Testimony for the Health and Government Operations Committee

HB 18 – Health – Abortions - Reporting Requirements
OPPOSE

HB 19 – Health – Abortions – Location of Procedure
OPPOSE

HB 20 – Health – Abortion – Transport of Patient
OPPOSE

March 15, 2011

The ACLU of Maryland strongly opposes HB 18, HB 19, and HB 20, as they are all dangerous attempts to limit women's access to vital reproductive health services, and wrongly target abortion providers. I will briefly discuss each bill's dangers, and we request unfavorable reports on all of them.

HB 18, which requires a physician who performs an abortion in the State to report the abortion to the Department of Health and Mental Hygiene, is an invasion of privacy and places patients and medical professionals at risk of harm. While the bill does not require the identification of any patient, if a woman knows that her abortion will be reported, it will have a chilling effect on women seeking abortions. Whether and when to have children, and especially the consideration of abortion, is a deeply personal decision, and any public reporting of such a decision invades the privacy of such a decision.

As recognized in *Eisenstadt v. Baird*, "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwanted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." 405 U.S. 438, 453 (1972). We suggest HB 18 is just such "unwanted governmental intrusion."

Additionally, such reporting puts medical personnel and women at risk of harassment and violence. It is no secret that foes of abortion have used violence to achieve their goals of stopping abortion when they have not been able to do so legally. Just two years ago Dr. George Tiller was assassinated in his church. Prior to that, 7 abortion providers were murdered, and 17 were the targets of attempted murder. From 1993 - 2009, there have

been 6263 acts of violence against abortion providers.[1] Identifying facilities and doctors, as well as the complications associated with their procedures, puts them at risk, of everything from harassment to murder.

HB 18 also puts the patients at risk. While the names of the women are not to be reported, providers are to report any abortions they perform, as well as any complications or injuries involved in a woman's procedure. There is enough information required to be reported that someone could determine the identity of the women, putting them at risk of harassment and violence.

These are not simply theoretical risks. John Ashcroft, as U.S. Attorney General, sought the medical records of women who had abortions.[2] Indiana's attorney general also attempted to seize medical records of young women seeking abortions from reproductive health clinics.[3] Phill Kline, while Attorney General of Kansas, subpoenaed the medical records of women seeking abortions. Planned Parenthood later sued Kline for disclosing material that had been sealed by the court.[4] The department's gathering of this information is an open invitation to abuse and jeopardizes patients and doctors.

For these reasons, the ACLU of Maryland opposes HB 18.

HB 19, which provides that if an abortion procedure is begun in the State, the entire abortion procedure must be performed in the State, is unconstitutional, unnecessary, and will not protect the health of women.

The personal right to freedom of movement, specifically interstate travel, is inherent among the fundamental liberties protected by the United States Constitution. *See Shapiro v. Thompson*, 394 U.S. 618, 643 (1969). Our constitution requires that "all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Id*. at 629. This bill directly inhibits the fundamental right to interstate travel by proscribing movement out of the State of Maryland.

When a law infringes upon the fundamental right of interstate movement, it must be constitutionally judged by the strictest standard of whether it promotes a compelling state interest. *Id.*; *See also Saenz v. Roe*, 526 U.S. 489, 498 (1999). No such state interest is shown here. At minimum, the freedom of interstate travel cannot be stifled unless the government has a "legitimate and substantial" purpose and there are not other means by

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[1] *NAF Disruption and Violence Statistics*, www.prochoice.org/pubs_research/publications/downloads/about_abortion/stats_table2009.pdf

[2] "Ashcroft: Abortion Records Needed", *Washington Post*, Feb. 11, 2004, http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A37689-2004Feb12¬Found=true.

[3] "Planned Parenthood Sues over Record Request in Indiana," *New York Times*, Mar. 17, 2005, http://query.nytimes.com/gst/fullpage.html?res=9D03E6D8133CF934A25750C0A9639C8B63.

[4] *See Planned Parenthood of Kansas v. Kline*, No. 98,747, http://www.kscourts.org/cases-and-opinions/opinions/supct/2008/20081205/98747.htm.

which that purpose can be "more narrowly achieved." *Aptheker v. Secretary of State*, 378 U.S. 500, 508 (1964).

While proponents of the bill may claim that the bill protects women's health, the bill is, in fact, an attempt to limit women's constitutional right to choose an abortion. There is never a legitimate, no less, compelling government interest when a state makes a law as a "pretext for the usurpation of powers not belonging to the government." *McCulloch v. Maryland*, 17 U.S. 316, 359 (1819). This bill is introduced as a pretext for limiting women's access to abortions. Further, limiting a woman's right to an abortion under this bill is unlawful, pursuant to Maryland Code Annotated, Health-General Article, § 20-209.[5] Therefore, not only would this bill be unconstitutional because it is introduced as a pretext for another goal, but that goal is also unlawful under Maryland law.

HB 19 is not narrowly tailored to advance a compelling or substantial and legitimate state interest, and harms and endangers women. We urge an unfavorable report.

HB 20, providing that a patient requiring transport during an abortion procedure may only be transported if the provider determines that transportation is necessary to protect to the life or health of the patient, and that the patient only be transported by an ambulance, is unnecessary and wrongfully singles out abortion providers.

This bill is unnecessary, as appropriate emergency transport measures are part of the standard of care used by the health occupation board. Legislators should not be controlling those standards of care. Also, we understand that the Department of Health and Mental Hygiene (DHMH) will address this issue when it promulgates regulations for abortion providers.

Further, legislators should not be controlling our doctor's standards of care. HB 20 intrudes into the practice of medicine and the patient-doctor relationship to politicize that relationship with respect to a single aspect of care.

Further, DHMH will be administering new regulations for abortion providers and emergency transport will be part of those new regulations.

This bill is also problematic because it wrongly singles out just one type of office procedure, as all office-based procedures should have emergency procedures. As such, we believe that this bill is part of an ongoing effort to build a web of statutory and regulatory requirements just for abortion providers in an effort to reduce access to care.

This bill will not protect women, it will harm them. We request an unfavorable report.

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[5] Pursuant to § 20-209(b), the State may not interfere with the decision of a woman to terminate a pregnancy: "(1) Before the fetus is viable; or (2) At any time during the woman's pregnancy, if: (i) The termination procedure is necessary to protect the life or health of the woman; or (ii) The fetus is affected by genetic defect or serious deformity or abnormality."