

# **Women's Law Project**

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December 12, 2023

Chairman Briggs, Chairman Kauffman, and members of the Pennsylvania House Judiciary Committee:

Thank you for the opportunity to submit testimony on behalf of the Women's Law Project in support of HB 1888.

The Women's Law Project is a nonprofit public interest legal advocacy organization with offices in Philadelphia and Pittsburgh. We provide free, confidential legal advice and legal representation in cases involving sex and gender discrimination, sexual harassment and assault, pregnancy discrimination, workplace accommodations for employees who are pregnant or nursing, and sex and gender discrimination in educational institutions, among other matters related to equality for women, girls, and LGBTQ people. Since our founding 50 years ago, the Women's Law Project has played a leading role in Pennsylvania and nationally in expanding and protecting reproductive rights. We strongly support amending the Pennsylvania Constitution with an explicit provision protecting personal reproductive liberty as a fundamental right.

Since the U.S. Supreme Court eliminated abortion rights from the federal Constitution in 2022, seven states have adopted state constitutional provisions that protect reproductive rights, most recently Ohio, which adopted an abortion rights constitutional amendment this past November by a double-digit margin. Additional states such as Maryland, Arizona, and Missouri are expected to add to that number in 2024. These constitutional provisions, as well as provisions from several other states that pre-date the *Dobbs* decision, have taken various forms and are founded upon a variety of different doctrines, including privacy, bodily autonomy, liberty, due process, and equality.

Pennsylvania's Constitution already has equality provisions—a sex and gender equality provision in the Equal Rights Amendment, Art. I Sect. 28, as well as equal protection provisions in Art. I, Sect. 1 and 26 and Art. III, Sect. 32. These equality provisions prohibit Pennsylvania from conferring benefits or imposing burdens on people on the basis of sex, gender, or sex-linked characteristics such as pregnancy. The Pennsylvania Constitution also already contains robust privacy and due process protections that we believe prohibit the Commonwealth from interfering with reproductive liberty and familial privacy.

The Pennsylvania Supreme Court is currently considering the Women's Law Project's challenge to Pennsylvania's Medicaid abortion coverage ban, 18 Pa. Cons. Stat. §§ 3215(c) and (j), in light of these state constitutional equality guarantees. This case, *Allegheny Reproductive Health Center v. DHS*, 26 MAP 2021, was argued in October 2022. We expect a

ruling in this case at any time. As we argue in that case, the Pennsylvania Constitution *already* protects the right to reproductive autonomy, including the right to abortion. We hope that this ruling will shed light on the level of protection which Pennsylvania's existing constitutional guarantees extend to abortion rights and other reproductive rights. However, in case the Pennsylvania Supreme Court issues a ruling that does not squarely resolve this question, a state constitutional provision that makes abortion and other reproductive rights an explicit part of the state Constitution is an alternate path to the same goal.

HB 1888 embeds the principle of personal reproductive liberty right in our Constitution's Declaration of Rights. It ensures that people can make the decisions that are best for them and their families when it comes to contraception, abortion, and fertility care, without fear that extreme abortion bans will interfere with their ability to get necessary health care. While it is difficult for us to imagine a circumstance in which the brutality of government-compelled childbirth or government-compelled pregnancy termination could be acceptable, HB 1888 does allow for limitations on personal reproductive liberty if justified by a compelling state interest achieved by the least restrictive means.

According to the Guttmacher Institute, by 2024, roughly 30 million women of reproductive age will live in states with abortion bans. The horror stories already pouring in from states that lack basic constitutional protection for reproductive rights are terrifying and heartbreaking: the 10-year-old Ohio child, pregnant from a rape, who was banned from getting the medical care she needed in her home state. The Texas woman carrying a 20-week pregnancy with a fatal anomaly, vainly pleading with the Texas Supreme Court to let her get the abortion care that will save her life, only to be denied and forced to flee the state. The patient who suffered preterm pre-labor rupture of membranes and nearly died in the ICU after being denied medical care due to an abortion ban. In states without an abortion ban mandating substandard care, patients with this common but dangerous second-trimester complication are offered immediate treatment. Now, patients who experience this severe complication in abortion-ban states are often sent home and forced to wait for a serious infection to develop before they are allowed treatment. For additional examples of the catastrophic harm abortion bans are inflicting on pregnant patients, [see Care Post-Roe: Documenting cases of poor-quality care since the Dobbs decision \(ansirh.org\)](#). Post-*Dobbs*, countless patients like these have been forced into medical crises by abortion bans. Beyond each individual horror story, these anti-science government mandates are undermining our overall healthcare system by manufacturing delays, deepening inequities, worsening health outcomes, and increasing the cost and logistic complexity of care.

Because HB 1888 is a proposed constitutional amendment, it will need not only the approval of the Pennsylvania legislature in two consecutive legislative sessions, but also ratification by the electorate, in whose hands the power to decide this question rests. We believe that most Pennsylvanians will agree that the state Constitution should protect the right of the people to direct their own lives, determine their own reproductive destiny, and make their own decisions about pregnancy, family, and childbearing, without interference or coercion from government officials. We believe that the only appropriate role for state government in our reproductive decisions is to respect, support, and help effectuate them. To reiterate, we believe

our state Constitution already protects these rights. However, reproductive liberty is so fundamental to equality and human dignity that it is appropriate for it to be explicitly enshrined in our state Constitution. We thank Representatives Otten, Hanbidge, and the other sponsors of HB 1888 for taking this giant step toward reproductive justice.

Thank you for the opportunity to submit this testimony.

Respectfully submitted,

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