

TO: Members, House Health & Government Operations

**FROM: Therese M. Hessler, Director of Administration & Legislation
Maryland Right to Life**

DATE: March 9, 2018

**RE: SUPPORT - House Bill 1355 - Unborn Child Protection from
Dismemberment Abortion Act of 2018**

Chairman Pendergrass, Vice-Chair Bromell, and members of the committee, I am Therese Hessler. I serve as Director of Administration & Legislation for Maryland Right to Life and I am here on behalf of our organization and supporters to urge a favorable report on House Bill 1355 (HB1355.)

Maryland Right to Life strongly supports HB1355, the Unborn Child Protection from Dismemberment Abortion Act of 2018.

For years, opposition to similar bills have argued that banning dismemberment abortions would be a violation of a woman's constitutional right - mainly stating it would be a violation of a woman's 14th amendment right.¹

While the interpretation of "privacy" seems to be definitionally based, the Court's drawing on the line of cases (like *Roe v. Wade*, 1970²; as well as *San Antonio School District v. Rodriguez*, 1972³, along with many others) show us that privacy as a concept appears to encompass at least two different but related aspects:

1. It relates to the right or the ability of individuals to determine how much and what information about themselves is to be revealed to others.
2. It relates to the idea of autonomy, the freedom of individuals to perform or not perform certain acts or subject themselves to certain experiences.

In these same cases, the Court observed that only personal privacy rights are "guaranteed and deemed fundamental" if they justify a compelling interest - The compelling interest to keep dismemberment abortions legal is absolutely not fundamental.

¹<https://www.law.cornell.edu/constitution/amendmentxiv>

² roe v. wade

³ san antonio school district v rodriguez

Dismemberment abortions are unnecessary and cruel - ripping a viable and pain-capable child limb by limb during the procedure.

There is no undue burden on these constitutional rights that supporting HB1355 would cause.

These bills were written with a clause to protect a mother's health when needed and should not be opposed on the argument that banning dismemberment abortions place a woman's health in jeopardy. This aforementioned clause prevents it.⁴

HB1355 is likely to be upheld by the Supreme Court as constitutional in light of its decision upholding the Partial-Birth Abortion Ban Act of 2003, *Gonzales v. Carhart*.⁵

Gonzales justified the federal law protecting unborn children from partial-birth abortions based on the government's "interest in protecting the integrity and ethics of the medical profession,"⁶ and on the "premise...that the State, from the interpretation of the pregnancy, maintains its own regulatory interest in protecting the life of the fetus that may become a child... Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including the life of the unborn."⁷

The *Gonzales* Court quotes a Congressional Finding from the Partial-Birth Abortion Ban Act:

Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life.

The same principle applies to dismemberment abortions, in which a sharp instrument is used to slice up a living unborn child.

Gonzales itself described the gruesome nature of dismemberment abortions: "Friction causes the fetus to tear apart. For example, a leg might be ripped off the fetus..."⁸

Contrasting the partial birth or "intact D&E" abortion, the Court said, "In an intact D&E procedure the doctor extracts the fetus in a way conducive to pulling out its entire body, instead of ripping it apart."⁹

⁴ HB1355 20-217 pg. 3, line 30 (G)(1).

⁵ 550 U.S. 124 (2007).

⁶ *Id.* at 157, quoting *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997).

⁷ *Gonzales*, 550 U.S. at 158

⁸ *Id.* at 135

⁹ *Id.* at 137. see also *id.* at 152.

The dissent in a similar case, *Stenberg v. Carhart*,¹⁰ stated, the fetus, in many cases, dies just as a human adult or child would: It bleeds to death as it is torn limb from limb.”

Indeed, the dissent in *Gonzales* stated:¹¹

Non-intact D&E could equally be characterized as “brutal,” ...involving as it does “tearing a fetus apart” and “ripping off” its limbs,...¹² ”The notion that either of these two equally gruesome procedures...is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational.”¹³

Voting yes to HB1355 does not bear an unconstitutional "undue burden" on abortion because other methods could be used. ***This bill only bans elective D&E abortions on living fetuses.***

[The Fourth upheld that protecting unborn children from the brutal inhumanity of the partial birth abortion did not impose an unconstitutional “undue burden” on abortion because other methods could be used.] In particular, it noted that “the Act’s prohibition only applies to the delivery of ‘a living fetus.’ ...If the intact D&E procedure is truly necessary in some circumstances, it appears likely an injection that kills the fetus is an alternative under the Act that allows the doctor to perform the procedure.”¹⁴

Under HB1355, elective D&E abortions can legally be done if the fetus has been killed first, (ie a feticide procedure performed) prior to beginning the D&E procedure. **In this bill, “dismemberment abortion” “means, with the intent to cause the death of the unborn child, to purposely dismember a living unborn child by using clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two rigid levers, slice, crush, or grasp a portion of the unborn child’s body to cut or rip it off and to extract the pieces of the body of the unborn child one at a time with the aforementioned devices or tools or by use of a suction device.”¹⁵**

¹⁰ 350 U.S. 914, 958-59

¹¹ *Gonzales*, 550 U.S. at 182

¹² Internal citations to majority opinion omitted.

¹³ *Quoting Stenberg v. Carhart*, 530 U.S. 914, 946-947 (2000).

¹⁴ *Gonzales*, 550 U.S. at 164, quoting 18 U.S.C. § 1531(b)(1)(A) (2000 ed., Supp. IV).

¹⁵ HB1355 20-217 pg. 3 line 10 (D)(1).

One study found no difference in complications between those women injected with a feticidal agent prior to a D&E abortion and those injected with a placebo.¹⁶ The study also showed a strong preference for fetal death prior to the abortion (92% in both groups.)¹⁷

In the second and third trimester a feticide procedure prior to a D&E abortion is usually accomplished with injection of potassium chloride, injection of digoxin, or by cord transection which result in the death of the fetus within two minutes.¹⁸

The opposition also usually states that late-term abortions (20 weeks or later) are very rare and make up about 1% of the annual abortions in the United States. With around 900,000 abortions in the United States each year this means there's an average of 9,000 late term abortions annually.¹⁹ **According to the National Abortion Federation Abortion Training Textbook – “D&E remains the most prevalent method of second-trimester pregnancy termination in the USA, accounting for 96% of all second trimester abortions”.**²⁰ Using those statistics that's **an average of 8,640 living fetuses that are ripped apart limb by limb during a dismemberment abortion each year in the United States.**

24 states currently ban late-term abortions in the second and third trimester (after 20 weeks gestation) (with exceptions for the health or life of the mother.)

Compared to nearby states, Maryland has significantly fewer restrictions on abortion. There is no waiting period (Virginia requires patients to get an ultrasound and then, in most cases, wait 24 hours before an abortion), and an abortion can be performed any time before the fetus is viable; allowing many women who are non-residents, to specifically come to Maryland to have these brutal, cruel, and inhumane dismemberment abortions which rip their living fetus apart during a stage of pregnancy that many states and health professionals acknowledge the fetus would be viable outside of the womb.²¹

¹⁶ Patricia A. Lohr, “Surgical Abortion in the Second Trimester,” 16 *Reproductive Health Matters* 151, 152 (2006).

¹⁷ *Obstet Gynecol.* 2001 Mar;97(3):471-6. (<https://www.ncbi.nlm.nih.gov/pubmed?term=Jackson%20RA%2C%20et%20al.%20Digoxin%20to%20facilitate%20late%20second-trimester%20abortion%3A%20a%20randomized%2C%20masked%2C%20placebo-controlled%20trial.>)

¹⁸ Centre for Fetal Care, L Pasquini, V Pontello, S Kumar, November 2007. (<http://onlinelibrary.wiley.com/store/10.1111/j.1471-0528.2007.01639.x/asset/j.1471-0528.2007.01639.x.pdf?v=1&t=jehp69ni&s=a2e945b5f3830fc86c7f5e4578d-cbb63ddfec2d4>).

¹⁹The Alan Guttmacher Institute (AGI), Late-term abortions: legal considerations, *Issues in Brief*, New York: AGI, 1997.

²⁰ Paul, Maureen, et al., eds. Management of unintended and abnormal pregnancy: comprehensive abortion care. John Wiley & Sons, 2009 at p157.

²¹ Health and Human Development Neonatal Research Development, 2015 (<http://www.nejm.org/doi/full/10.1056/NEJMoa1410689>)

Maryland law leaves the viability “in the best judgement of the attending physician based on the particular facts of the case before the physician”²² leaving room for late-term abortionists to define a fetuses viability or woman’s health based on the information she [the woman requesting the late-term abortion] presents - generally right before she has the late-term abortion procedure.

Passing HB1355 - Unborn Child from Dismemberment Abortion Act of 2018 is not a violation of women’s rights.

Passing HB1355 does not jeopardize a woman’s health.

Passing HB1355 does not build any framework to ban abortion in Maryland.

But not passing HB1355 and allowing dismemberment abortions to continue in Maryland allows this inhumane and savage form of abortion to continue to cause unnecessary and extreme pain to a living fetus.

Please support HB1355 as there is no reason for dismemberment abortions to stay legal in Maryland. We urge favorable reports.

Thank you.

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²² § 20-209 (A) (B)(1)(2).