



ISSUE BRIEF: September 17, 2024

## The “Reproductive Freedom” Amendment - What It Says and What It Means

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KEY TAKEAWAYS
The legislative language contains terms and phrases that are unconstrained, broad, and legally undefined.
The language therefore gives minors the right to “reproductive care” and prevents parents from caring for their children.
The amendment is unnecessary under current Maryland law, which essentially guarantees abortion through all 9 months of pregnancy.

During the Fall of 2024, Marylanders will vote on Question 1, whether to amend the Declaration of Rights of the Maryland Constitution to add a new section that enshrines a right to “Reproductive Freedom,” as the supreme law of the state. Marylanders ought to vote “no” on Question 1 because it is overly broad, undermines parental rights, disenfranchises a significant minority of Maryland voters, and is unnecessary.

### The Legislative and Amendment Language

Here's what the law that authorizes the amendment says (emphasis added):

“That **every person**, as a central component of an individual’s right 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. The State may not, directly or indirectly, deny, burden, or abridge the right unless justified by a

compelling state interest achieved by the least restrictive means.” (1)

Here's what the ballot will say (not required to match amendment language):

“Question 1 - Constitutional Amendment (Ch. 245 of the 2023 Legislative Session)

Declaration of Rights - Right to Reproductive Freedom

The proposed amendment confirms an individual’s fundamental right to reproductive freedom, including but not limited to the ability to make and effectuate decisions to prevent, continue, or end the individual’s pregnancy, and provides the State may not, directly or indirectly, deny, burden, or abridge the right unless justified by a compelling State interest achieved by the least restrictive means.” (2)

### **Observations and Implications**

- The amendment language does not constrain, let alone define, the word “Individual,” nor does the legislative language define the word “person.” This amendment will therefore apply to any person of any age in Maryland, including minors. A minor’s right to “reproductive freedom,” therefore, cannot be abridged by anyone, including their parents. The amendment undermines parental rights.
- Current Maryland statutes do not define “reproductive freedom.” The Amendment takes this legally undefined term and expands it to a virtually unlimited degree with this incredibly broad phrase “including, but not limited to...” It opens the door to much more than abortion, including, apparently, a right to a vasectomy.
- Because of this broad language, we believe that the bill will open the door to minors accessing all kinds of treatments that they believe are related to their “reproductive freedom,” including hormones and surgeries to “prevent” one’s own reproductive choices; i.e. transgenderism.
- We believe it will outlaw any kind of common-sense restrictions on abortion, such as waiting periods, mandatory ultrasounds, parental approval or notification, or even increased health and safety standards for abortion businesses. Recent polling suggests that 33% of Maryland Democrats favor some restrictions on Abortion, so this amendment would disenfranchise the opinions of these Democrats, and any moderately prochoice Independents and Republicans. (3)
- By elevating this to the status of the Supreme Law of Maryland, we believe the amendment could chip away at the religious liberty and conscience objections of government funded health care providers (individuals, hospitals, clinics) who do not want to participate in abortions, or who want to honor parental rights.
- When the bill to authorize the language during the 2023 session was debated, all attempts to apply more strict language and definitions to this amendment

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(replacing “person” with woman, “reproductive freedom” with abortion, applying a minimum age or parental consent requirements) were rejected by the legislative majority in Annapolis. (4)

## Summary of Current Law regarding Abortion in Maryland

The amendment is unnecessary given the current status of Abortion in Maryland. As much as the Maryland Family Institute would want it to be otherwise, there is no serious threat to abortion either being waged, or even contemplated, given the recent legal history.

1991 -- Maryland Freedom of Choice Act – Abortion legal in Maryland for any reason until viability, and, with broad exceptions including a woman’s “health,” through all nine months until birth. (5)

2022 -- Abortion Care Access Act – removed physician requirement to perform abortions, Medicaid and private health insurance providers completely cover costs, \$3.5 million annual fund for abortion training. (6)

Here is an excellent graphic on the current MD law on Abortion by Americans United for Life: <https://aul.org/law-and-policy/state-spotlight/maryland/>. Here is an excellent summary of current MD law on abortion and how the amendment will change that law, which can be printed and distributed:

<https://www.mdrtl.org/MDRTL.Law%20and%20Effects%20of%20Amendment.pdf>

We encourage Marylanders to visit our [Question 1 Resources page](#) for more information, including articles and advertisements.

**Jeffrey S. Trimbath** is the Founder and President of and **Jonathan M. Alexandre, Esq.** is Legislative Counsel for Maryland Family Institute.

### Endnotes:

- (1) - H.B. 705, 2023 Leg., 445th Sess. (Md. 2023) (enacted as ch. 245).
- (2) - MD. CONST. art. 48 (proposed).
- (3) - Goucher College Poll, Sarah T. Hughes Center for Politics at Goucher College, The Baltimore Banner & WYPR,\*\* at 13 (June 2022), [<https://www.goucher.edu/hughes-center/documents/Goucher-College-Poll-June-2022-Part-1.pdf>].
- (4) - H.B. 705, 2023 Leg., 445th Sess. (Md. 2023) (hearing before the Health and Government Operations Committee, Feb. 21, 2023) (Del. A. Jones, et al.).
- (5) - MD. CODE ANN., Health-Gen. § 20-209 (1991).
- (6) - H.B. 937, 2022 Leg., 444th Sess. (Md. 2022) (enacted as ch. 56)