



**WASHINGTON LAWYERS' COMMITTEE**  
**FOR CIVIL RIGHTS AND URBAN AFFAIRS**

**The Washington Lawyers' Committee for Civil Rights and Urban Affairs  
Testimony Before the District of Columbia Committee on Government Operations  
and Facilities Regarding B24-808, the "Human Rights Sanctuary Amendment Act  
of 2022" and B24-726, the "Enhancing Reproductive Health Protections  
Amendment Act of 2022"  
Submitted July 28, 2022**

The fundamental rights of abortion and other reproductive healthcare services are under attack. The Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act will further racial justice by protecting people who can get pregnant and the LGBTQIA+ community in the District of Columbia, the majority of whom are Black residents, from discrimination in employment, education, and policing. These Acts will also expand critical protection to people who can get pregnant and to people who assist with abortions. Furthermore, by creating a private right of action for interference in reproductive health decisions, the Human Rights Sanctuary Act guarantees that a person's right to bodily autonomy and safe, lifesaving medical services will be protected in the face of increasing criminalization around the country. The Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "Committee"), strongly supports B24-808, the Human Rights Sanctuary Amendment Act of 2022 ("Human Rights Sanctuary Act") and B24-726, the Enhancing Reproductive Health Protections Amendment Act of 2022 ("Enhancing Reproductive Health Protections Act").

The Human Rights Sanctuary Act prevents the District from cooperating with investigations and proceedings conducted by states who have imposed criminal or civil liability for reproductive services protected by District law. The Act also creates a private right of action that people who can get pregnant can utilize to recover damages from a party bringing an action against them for engaging in protected conduct in the District of Columbia. The Enhancing Reproductive Health Protections Act expands the definition of "reproductive health decisions" under the DC Human Rights Act to include protection for individuals assisting another person with seeking, inducing, or attempting to induce an abortion.

Passing the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act is a matter of racial justice and equity. The fight for bodily autonomy and reproductive freedom has been intertwined with the fight for racial justice throughout our nation's history. The institution of slavery uniquely exploited Black women through forced birth and reproduction.<sup>1</sup> This bodily regulation and the resistance against it through self-managed abortions are foundational to the current landscape of reproductive rights.<sup>2</sup> In fact, the reproductive justice movement, founded by Black

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<sup>1</sup> Cineas, Fabiola, *Reproductive Rights Have Never Been Secure. Ask Black Women.*, VOX, 13 July 2022, <https://www.vox.com/23205101/abortion-rights-reproductive-justice-black-women>.

<sup>2</sup> *Id.*

women in the 1990's, expands upon the reproductive rights movements of the 1940's and 1970's to acknowledge that a person's socioeconomic status, gender, and race affect their access to quality reproductive healthcare, a concept that the reproductive rights movement failed to holistically address.<sup>3</sup> Today, women of color and otherwise marginalized people who can get pregnant disproportionately and systemically lack access to quality reproductive healthcare,<sup>4</sup> resulting in high maternal mortality rates, especially for Black women. Women of color are more likely to have medical insurance under Medicaid, and are therefore disproportionately impacted by the Hyde Amendment's Medicaid coverage restriction for abortion. Black women receive 53.4% of abortions in the District of Columbia, and 38.4% of abortions nationwide,<sup>5</sup> yet they are still overlooked in the conversation surrounding reproductive rights in a post-*Roe* world.

While the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act do not take direct aim at these disparities, some of which require federal or other solutions beyond D.C.'s control, they preserve the local status quo at a time when reproductive rights are swiftly being dismantled across the country. In particular, the Acts meet the urgency of the moment by protecting reproductive freedoms already held by D.C. residents, the D.C. healthcare community, and those who travel to seek full spectrum healthcare in the District. To further racial justice and equity, equal and protected access to abortion necessitates proactive legislation like like the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act, especially for our significantly Black and mobile population.

## **I. Passing the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act Furthers Economic Justice and Worker's Rights.**

### **a. Equality in Pay and Economic Standing**

The Human Rights Sanctuary Act will help combat the gender wage gap by making the District of Columbia a safe place to obtain abortions, contraception, and other reproductive health services necessary for women to advance economically. Women

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<sup>3</sup> Pacia, Danielle M, *Reproductive Rights vs. Reproductive Justice: Why the Difference Matters in Bioethics*, HARVARD LAW PETRIE-FLOM CENTER, 3 Nov 2020, <https://blog.petrieflom.law.harvard.edu/2020/11/03/reproductive-rights-justice-bioethics/>.

<sup>4</sup> Hoyert, Donna L., *Maternal Mortality Rates in the United States, 2020*, Center for Disease Control, <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/maternal-mortality-rates-2020.htm> (last viewed 21 July 2022); *The Costs of Reproductive Health Restrictions*, INSTITUTE FOR WOMEN'S POLICY RESEARCH, <https://iwpr.org/costs-of-reproductive-health-restrictions/> (last visited July 7, 2022).

<sup>5</sup> *Morbidity and Mortality Weekly Report Abortion Surveillance — United States, 2019*, CENTER FOR DISEASE CONTROL, 26 Nov 2021, <https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm#T6> down.

working full-time already make significantly less money than their male counterparts, especially Black women, Indigenous women, and other women of color.<sup>6</sup> Economic researchers have proven that access to legalized abortion increases women’s labor force participation, education, and earnings – and that all these effects are particularly salient for Black women.<sup>7</sup>

Without unfettered access to reproductive healthcare, pregnant people will be forced to take on the significant medical risks of pregnancy, the financial and emotional burdens of carrying a fetus to term, and the financial costs of raising children, further exacerbating wage disparities.<sup>8</sup> By preventing interference with pregnant people’s access to abortion and reproductive healthcare, the Human Rights Sanctuary Act will help prevent this additional barrier to economic equity.

### **b. Combatting The Criminalization of Work**

The Human Rights Sanctuary Act will also combat the criminalization of the work of healthcare and social service providers by preventing D.C. from participating in their investigation and prosecution by other states. Several states have already, or plan to, criminalized access to abortion and reproductive health services. For example, in nearby West Virginia, the Attorney General has taken the position that West Virginia’s 150-year old abortion ban is enforceable in the wake of *Dobbs*.<sup>9</sup> West Virginia’s ban makes it a felony not just to seek an abortion, but also criminalizes a disturbingly wide range of supporting activity, such as “causing” a woman to take action with the intent of ending a pregnancy.<sup>10</sup> Next door to D.C., Virginia Governor Glen Youngkin, has tasked

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<sup>6</sup> Matsui, Amy K., *Abortion Bans Are an Attack on Women’s Economic Security*, NATIONAL WOMEN’S LAW CENTER, 4 June 2019, <https://nwl.org/abortion-bans-are-an-attack-on-womens-economic-security/>.

<sup>7</sup> Caitlin Knowles Meyers & Morgan Welch, *What can economic research tell us about the effect of abortion access on women’s lives?*, THE BROOKINGS INSTITUTION, 30 Nov 2021, <https://www.brookings.edu/research/what-can-economic-research-tell-us-about-the-effect-of-abortion-access-on-womens-lives/>.

<sup>8</sup> Gray, Katti, *Lack of abortion access creates economic hardships for women*, WOMEN’S MEDIA CENTER, 7 Feb 2018, <https://www.womensmediacenter.com/news-features/lack-of-abortion-access-creates-economic-hardships-for-women>

<sup>9</sup> *West Virginia’s 150-year-old abortion ban blocked by judge*, CBS NEWS, 19 July 2022, <https://www.cbsnews.com/news/abortion-law-west-virginia-blocked-tera-salango/>.

<sup>10</sup> W. Va. Code § 61 – 2 – 8 (2020). Relatedly, while prosecution of cross-border abortion provision presents novel inter-jurisdictional legal complexities, scholars in this area predict that states will stretch their powers to stop abortions, including those outside their borders. *See, e.g.*, David S. Cohen, Greer Donley & Rachel Rebouche, *The New Abortion Battleground*, 123 COLUMBIA LAW REVIEW (forthcoming 2023), draft available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4032931](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4032931) (discussing, among other issues, extraterritorial application of criminal abortion laws); *see also* Rachel M. Cohen, *The coming legal battles of post-Roe America*, VOX.COM, <https://www.vox.com/2022/6/27/23183835/roe-wade-abortion-pregnant-criminalize>.

state legislators with drafting new legislation banning abortions later than fifteen weeks.<sup>11</sup> Other states across the country have enacted a variety of abortion bans or restrictions,<sup>12</sup> including Texas, which recently passed a provision allowing ordinary people to sue abortion providers and collect cash judgments.<sup>13</sup>

The Act will help shield D.C.'s healthcare workers, social service providers, and advocates by prohibiting D.C.'s involvement in their prosecution in other states. A myriad of workers in the District support full-spectrum healthcare, including access to abortion. In 2017, D.C. had eight facilities providing abortions,<sup>14</sup> representing staff members whose job duties may require the support, counseling, and service of pregnant people seeking access to their full range of healthcare options. In addition to facilities directly providing abortions, D.C. is home to a thriving community of advocates and social service providers, ranging from homeless shelter workers serving LGBTQIA+ youth, canvassers handing out leaflets about abortion rights, and nurses and social workers, all of whom may provide information and assistance to in and out-of-state residents in accessing abortion. The professional activities of all of these D.C. workers may be criminalized by other states – chilling their work, threatening their livelihood and potentially making them fearful of travel. For example, a D.C. healthcare provider that mailed pills for a medication abortion to a West Virginia patient, or provided such pills in D.C. to a Texas resident for use by the patient back home in Texas, or even engaged in a counseling phone call with a Missouri resident to help arrange travel logistics for an abortion in D.C., could potentially be exposed to criminal liability in the relevant state. The Acts would ensure that D.C. does not take any action to aid these states in pursuing criminal investigation and prosecution of these providers. D.C. absolutely must pass the Act to protect its workers.

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<sup>11</sup> It is unclear what enforcement mechanisms would be used in Governor Youngkin's preferred ban, were it to pass. Local Lawmakers React to Gov. Glenn Youngkin's push to ban abortions after 15 weeks, Wsls.com, <https://www.wsls.com/news/virginia/2022/06/29/local-lawmakers-react-to-gov-glenn-youngkins-push-to-ban-abortions-after-15-weeks/>

<sup>12</sup> *After Roe Fell: Abortion Laws by State*, CENTER FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/maps/abortion-laws-by-state/> (last visited July 28, 2022)

<sup>13</sup> Feuer, Alan, *The Texas Abortion Law Creates a Kind of Bounty Hunter. Here's How It Works.*, THE NEW YORK TIMES, 10 Sept. 2021, <https://www.nytimes.com/2021/09/10/us/politics/texas-abortion-law-facts.html>.

<sup>14</sup> *State Facts About Abortion: District of Columbia – June 2022*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-district-columbia> (last visited 21 July 2022).

### **c. Combatting Workplace Discrimination**

Further, without the Enhancing Reproductive Health Protections Act, healthcare providers are especially vulnerable to employment discrimination. Healthcare professionals who advocate for or want to provide safe and accessible abortions have faced retaliation, discipline, termination, and restrictive workplace policies that prevent them from providing care to their patients.<sup>15</sup> This discrimination against abortion providers has a direct effect on the patients themselves, resulting in fewer practitioners and less access to the care patients need. By expanding existing protections for individuals who assist and support others with self-managed abortions, this Act will allow healthcare professionals security to better serve their patients.

## **II. Passing the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act Furthers Policing Justice.**

The Human Rights Sanctuary Amendment Act prohibits the District from participating in out-of-state investigations launched by states intent on criminalizing full-spectrum healthcare, which includes abortion services. This Act is an important protection against subjecting people to invasive questioning and draconian penalties for decisions about their health, family structure, and sexuality. Without this Act, over-zealous law enforcement agents from across the country, with little more than biased assumptions and a suspicion that a woman induced her own miscarriage,<sup>16</sup> for example, can seek private medical information, sexual histories, and other information from the District government. Further, new laws that criminalize abortion, gender affirming care, and consensual sexual activity will only provide more opportunity for the criminal systems in other states to interrogate, arrest, and incarcerate people of color,<sup>17</sup> and other marginalized communities who are continuously overlooked in conversations about reproductive justice. Although the District and its leaders cannot control law enforcement agents from other jurisdictions, the District can and should shield District residents,

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<sup>15</sup> *Diagnosing Discrimination: Barriers Facing Health Care Providers Who Support and Perform Abortion*, NATIONAL WOMEN'S LAW CENTER, 2018, 7-8, <https://nwlc.org/wp-content/uploads/2018/04/ProviderDiscrimReport2018.pdf>.

<sup>16</sup> Priscilla Thompson & Alexandra Turcios Cruz, *Woman prosecuted for miscarriage highlights racial disparity in similar cases*, NBC NEWS, 5 Nov 2021, <https://www.nbcnews.com/news/us-news/woman-prosecuted-miscarriage-highlights-racial-disparity-similar-cases-rcna4583>.

<sup>17</sup> *Elizabeth Hinton, LeShae Henderson, et al.*, AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM, May 2018, <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> (last visited 21 July 2022). Black Americans are five times as likely as white Americans to be incarcerated in a state prison. Black and Brown Americans are more likely to be stopped by the police, held without bail pending trial, and prosecuted under more serious charges than their white counterparts. *Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT, 4, 2021, <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

District workers, and those who travel to the District to seek healthcare from harm. Any resources and funding that might be spent in supporting these out-of-state investigations are better spent here in the District to fight inequity including violence interruption, affordable housing, and education.

Likewise, the Human Rights Sanctuary Amendment Act’s private cause of action that will allow individuals to fight back against “bounty lawsuits” for conduct that is lawful in the District is a powerful protection for medical professionals and patients alike. Reproductive freedoms are legal in the District because the District’s chosen lawmakers have chosen to make it legal. But the threat of a hefty monetary verdict in an out-of-state lawsuit could chill District residents, medical providers, and visitors from freely acting in accordance with those legal protections. A private citizen from a state with a “bounty law” could sue a man who traveled with his wife to the District to have an abortion, or a tourist from Texas that decided to volunteer at Planned Parenthood during her visit, or a District resident who texted their friends in the “bounty” state about reproductive health options that are available here. The private cause of action in the Human Rights Sanctuary Amendment Act would allow any of these actors to recover money damages, expenses, and reasonable attorney’s fees accrued as a result of the bounty law litigation from the party who brought the action or seeks to enforce the action. This will prevent people within the District from bearing an unjust financial burden for engaging in protected conduct in the District. Those who live and work in the District should be able to live and work under the laws that District voters have consented to through the democratic process. The private cause of action is a way to reduce the chilling effect of, “bounty lawsuits,” affirm Home Rule, and uphold the principle of federalism that state leaders elsewhere frequently trumpet.

### **III. D.C.’s Unique Position as a Sanctuary**

D.C.’s status as a sanctuary city, guaranteed by these Acts, will be critical to people throughout the DMV region as well as for those who travel from farther away to the District of Columbia. The Kaiser Family Foundation estimates that in 2019, 69% of abortions performed in D.C. were obtained by out-of-state residents.<sup>18</sup> After the decision in *Dobbs*, this percentage threatens to rise as pregnant people residing in states that eliminate access to reproductive justice increasingly seek healthcare within the District.

The District of Columbia, Maryland, and Virginia regions are already a hub of mobility for people who frequently cross state lines for work and other reasons. The Washington Lawyers’ Committee’s free Workers’ Rights Clinic serves hundreds of low-

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<sup>18</sup> *Percentage of Legal Abortions Obtained by Out-of-State Residents*, KAISER FAMILY FOUNDATION, <https://www.kff.org/womens-health-policy/state-indicator/abortions-by-out-of-state-residents/?currentTimeframe=0&selectedRows=%7B%22states%22:%7B%22district-of-columbia%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited 21 July 2022).

income DMV workers each year. We see this principle of mobility in action: workers who reside in the District and work in a neighboring state, or neighboring state residents who commute to D.C. for work, or people that work in all three jurisdictions in the regular course of their duties.

According to the Guttmacher Institute, college age women from 20-24 make up the majority of people in the United States who have had abortions.<sup>19</sup> Nearly 40% of people who seek abortion services do so because of the impact on their education.<sup>20</sup> With the District's large population of out-of-state students enrolled at District of Columbia colleges,<sup>21</sup> the Human Rights Sanctuary Act will also protect youth who receive abortion services within the District from abortion bounty-hunting laws and allow them to continue their education without significant disruption.

Given that Virginia Governor Glenn Youngkin has announced his approval of the Supreme Court's decision in *Dobbs* and made clear his intentions to restrict abortion rights in the Commonwealth,<sup>22</sup> D.C.'s role as a nerve center for residence and economic activity makes it uniquely positioned to serve as a bulwark against the regressive actions of its neighbor. This is particularly critical for Virginia's low-income, Black, LGBTQIA+ residents and residents of color,<sup>23</sup> who have long borne the heavy and disproportionate burdens of a lack of access to quality healthcare and reproductive justice.

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<sup>19</sup> Jenna Jerman, Rachel K. Jones, et. al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, GUTTMACHER INSTITUTE, <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014> (last visited 21 July 2022).

<sup>20</sup> Kelliher, Rebecca, *Abortion Access and College Students*, DIVERSE: ISSUES IN HIGHER EDUCATION, 23 Sept 2021, <https://www.diverseeducation.com/students/article/15114980/abortion-access-and-college-students>.

<sup>21</sup> 99% of American University undergrads, 96% of Catholic University of America undergrads, 97% of George Washington University undergrads, 99% of Georgetown College undergrads, and 98% of Howard University undergrads were out of state students in Fall of 2020. *Enrollment by Residency (In-State vs. Out-of-State)*, COLLEGE TRANSITIONS, <https://www.collegetransitions.com/dataverse/enrollment-by-residency> (last visited 21 July 2022).

<sup>22</sup> Denault, Mikayla, *Virginia Gov. Glenn Youngkin pushes 15-week abortion ban after Supreme Court decision*, CBS NEWS, 10 July 2022, <https://www.cbsnews.com/news/abortion-virginia-glenn-youngkin-15-week-ban-supreme-court-face-the-nation/>.

<sup>23</sup> 20% of Virginia's residents are Black; 10% are Hispanic or Latino; and 7% are Asian. 10% of Virginians live in poverty. *QuickFacts Virginia*, US CENSUS BUREAU, <https://www.census.gov/quickfacts/VA> (last visited 21 July 2022).

#### IV. Conclusion

Passing the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act furthers the District of Columbia's longstanding commitment to civil rights for all people. The *Dobbs* decision does not exist in a vacuum: local legislatures have been threatening reproductive justice,<sup>24</sup> the LGBTQIA+ community,<sup>25</sup> and bodily autonomy for years and will continue to do so unless these rights are codified and safeguarded by sanctuaries like the District of Columbia. Justice Clarence Thomas' concurrence in the *Dobbs* decision also places many hard-fought civil rights in danger,<sup>26</sup> and the Council's proactivity on protecting these rights is invaluable to the wellbeing of the communities within the District that will be most affected in the coming years.

The District of Columbia should be a sanctuary that promotes a safe and equitable community. To achieve this goal, the District must pass the Human Rights Sanctuary Act and the Enhancing Reproductive Health Protections Act. The Washington Lawyers' Committee urges this Council to pass the Human Rights Sanctuary Amendment Act of 2022 and the Enhancing Reproductive Health Protections Amendment Act of 2022, and expand critical protections to people who can get pregnant and increase access to necessary medical procedures for vulnerable populations in the District of Columbia. Thank you for the opportunity to provide testimony on this important issue.

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<sup>24</sup> "Several states are also taking aim at access to contraception, such as emergency contraception pills (known as the morning-after pill or Plan B) and intrauterine devices, or IUDs. Many of these state legislatures are also taking steps to limit funding for family planning at reproductive health centers, which could restrict access to contraception, particularly for low-income women, many of whom live in contraception deserts." Kate Bahn & Emilie Openchowski, *Factsheet: What the research says about the economic impacts of reproductive care*, WASHINGTON CENTER FOR EQUITABLE GROWTH, 27 June 2022, <https://equitablegrowth.org/factsheet-what-the-research-says-about-the-economic-impacts-of-reproductive-care/>.

<sup>25</sup> *Legislative Tracker: Anti-Transgender Legislation*, FREEDOM FOR ALL AMERICANS, <https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/> (last visited 22 July 2022); Ronan, Wyatt, *BREAKING: 2021 Becomes Record Year For Anti-Transgender Legislation*, HUMAN RIGHTS CAMPAIGN, 13 March 2021, <https://www.hrc.org/press-releases/breaking-2021-becomes-record-year-for-anti-transgender-legislation>.

<sup>26</sup> Weil, Cortney, *Concurring opinion in Dobbs case ignites concerns that gay marriage may be next*, BLAZE MEDIA, 24 June 2022, <https://www.theblaze.com/news/liberals-fear-gay-marriage-to-be-overturned>.