

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



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Office of the Attorney General for the District of Columbia

Before the

Committee on Government Operations & Facilities
Councilmember, Robert White, Chairperson

Public Hearing
Bill 24-808 – Human Rights Sanctuary Amendment Act of 2022 and
Bill 24-726 – Enhancing Reproductive Health Protections Amendment Act of 2022

July 14, 2022

Remarks from the Attorney General of the District of Columbia

Thank you, Councilmember White and committee members, for holding this hearing today. And thank you to Councilmembers Nadeau and Henderson for introducing the legislation now before the Committee. As the District's chief legal officer, I am responsible for enforcing the District's laws, defending the District's policies, and advancing the public interest. And over my two terms as Attorney General, I have placed special emphasis on ensuring that our laws and policies protect those who are often marginalized. That is why I want to take a few minutes to express my commitment to doing everything I can to make the District a place where all are protected and empowered and to thank the Council for its ongoing efforts to do the same.

Last month, in *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned a precedent that had stood for nearly half a century and eliminated the constitutional right to abortion recognized in *Roe v. Wade*. This right not only enabled women to control their reproductive lives, but it also undergirded a host of other rights we rely on today, like the right to engage in same-sex relationships, the right to marry the partner of our choosing, and the unabated right to contraception. With the federal right to abortion now eliminated and other rights in jeopardy, we, sadly, know who is most at risk: women, people of color, low-income people, individuals with disabilities, and members of the LGBTQ+ community.

To all who are impacted by this decision, I want to assure you that our office will continue to stand up for your rights here in the District.

It is not enough to talk about equality on paper; we must enable it in practice. That is why my office has participated in more than 50 legal actions nationwide to defend reproductive rights across the country. It is also why, well in advance of the Court's *Dobbs* decision, OAG has been working with legal experts, health care providers, District agencies, and the Council to shore up local policies on abortion, birth control, and other necessary care. And it is why I signed a pledge, along with 82 other attorneys general and elected prosecutors, promising not to use the resources of my office to punish people who receive or provide abortion services.

One reason I have been able to take these actions is that District residents have been clear that they overwhelmingly and emphatically support expanding and protecting reproductive freedom. The Council has led the way in establishing laws to accomplish this, and today's hearing is another critical step on that path. It's for these reasons that abortion remains legal in the District, and the recent Supreme Court decision did not change that. Yet there is still much we can and must do to fight for full access to reproductive care – especially since we know the fragility of access in the District: Depending on who is in Congress and the White House, the federal government could use our lack of statehood to change our laws.

The Office of the Attorney General will do everything in our power to fiercely defend and strengthen the right to abortion in the District so that everyone can create their family how and when they choose. We will defend abortion providers who offer needed care to support the health, safety, and dignity of their patients. And we welcome the creative thinking that councilmembers and staff will undertake to meet this moment. We all have a role to play in standing up for reproductive rights, and we invite the collaboration of District residents, advocates, and all District government leaders as we ready for fights ahead.

Now, I would like to invite our Policy Director Kate Vlach to provide more detailed testimony on behalf of my office. Kate is leading our office’s work on reproductive rights. And, you should know, in addition to being a talented lawyer and policy professional, Kate has long fought for reproductive rights, including working for 10 years for the DC Abortion Fund, an organization that ensures people have the resources to access the health and medical care they seek.

Introduction

Good afternoon Chairperson White, Councilmembers, staff, and District of Columbia residents. My name is Kate Vlach, and I have the privilege of serving as the Policy Director for the Office of the Attorney General for the District of Columbia (OAG). Recognizing that the bills before the Committee today represent just a fraction of the Council measures under development to shore up reproductive rights and protections for the LGBTQ+ community, I will confine my remarks to the Human Rights Sanctuary Amendment Act of 2022 (“Sanctuary Bill”), which proposes a creative approach to the novel legal landscape we now face with the reversal of the constitutional right to abortion.

As the Attorney General explained, OAG steadfastly protects the rights to abortion, contraception, same-sex relationships, marriage equality, and transgender inclusion both here in the District and nationwide. We enforce the Human Rights Act to stop discrimination locally and have filed lawsuits and participated in dozens of amicus briefs and federal rulemakings on these subjects nationally. On behalf of OAG, I am pleased to express support for the Sanctuary Bill and its animating principles, which protect the rights of people in the District to make reproductive decisions, to access gender-affirming care, and to build a life with the partner of their choosing.

The District Has Long Led the Nation in Ensuring More Rights, Not Fewer

For decades, the District has been a national leader in recognizing and protecting civil and human rights for residents and visitors.

For instance, safe and legal abortion has been accessible in the District since 1971, two years before *Roe v. Wade*,¹ and we have welcomed District residents and women from across the country to receive this care in our city for more than 50 years.² The Council has remained so committed to protecting abortion rights in the District that it proactively stripped an inert abortion restriction from the books in 2003. Although the restriction had not been enforced for decades, the Council stated that it did not want to confuse people as to their rights and obligations, nor provide an opening to “selectively and arbitrarily ... punish people for offenses that are now recognized as

¹ *United States v. Vuitch*, 402 U.S. 62 (1971) (holding that a District law permitting abortion to preserve a woman’s life or health included abortions to preserve psycho-social wellbeing); *see also* Ted Joyce et al., *Abortion Before & After Roe* (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3791164/pdf/nihms491452.pdf>; Lurma Rackley, “District Abortion Clinic Opens to Brisk Business,” *Evening Star*, Mar. 16, 1971 (discussing the relatively affordable price of an abortion at the newly opened Preterm Clinic at 1726 I St. NW as compared to prices at Columbia Hospital and Washington Hospital Center).

² In 1972, more patients from other states sought abortion care in the District of Columbia than in any other jurisdiction with liberalized abortion laws. *See* Ted Joyce et. al, *supra* note 1, at 3.

discriminatory [or] inappropriate.”³ Instead, it clearly declared that “abortion is not appropriate for criminal sanction.”⁴

Similarly, the District was one of the first jurisdictions to legalize same-sex marriage,⁵ and for more than 30 years has recognized domestic partnerships regardless of gender. The District agency that registers these domestic partnerships emphasizes that this legal recognition is available to all couples “regardless of their place of residence.”⁶ And the District has been a leader in affording protections for sexual orientation and gender identity in our Human Rights Act. In fact, the Human Rights Act has prohibited discrimination based on sexual orientation since its enactment in 1978⁷ and protected the rights of transgender people nearly two decades before federal civil rights laws were interpreted to do so.⁸

The Sanctuary Bill Continues the District’s Tradition of Guaranteeing Freedoms to All People in our City

In particular, the Sanctuary Bill clarifies reproductive rights and LGBTQ+ rights in the District and protects those rights from out-of-state interference. The bill more precisely defines rights related to reproductive care, gender-affirming care, and same-sex relationships within the Human Rights Act and declares that accessing and providing this care or engaging in same-sex partnerships are protected activities under District law.⁹ Then, it insulates those protected activities from interference or punishment in two ways. First, it states that the District will not use any resources to assist in interstate civil or criminal investigations or proceedings against people who engage in those protected activities within the District. Second, it creates a civil cause of action for anyone facing financial penalties in a lawsuit filed under another state’s law for engaging in protected activities in the District. The target of the suit could initiate a claim against the person who filed the original suit to recover the amount of the judgment against them, plus costs and attorneys’ fees, thereby making them whole. Taken together, these provisions insulate our local

³ D.C. Council, Committee Report, Bill 15-79 “Elimination of Outdated Crimes Amendment Act of 2003” 1, https://lims.dccouncil.us/downloads/LIMS/12652/Committee_Report/B15-0079-COMMITTEEREPORT.pdf.

⁴ *Id.*

⁵ D.C. Code § 46-401.

⁶ D.C. Health, *Domestic Partnership*, <https://dchealth.dc.gov/service/domestic-partnership> (last visited July 10, 2022).

⁷ D.C. Law 2-38 “Human Rights Act of 1977,” <https://code.dccouncil.us/us/dc/council/laws/docs/2-38.pdf> (including sexual orientation since enactment in 1978).

⁸ *Compare* D.C. Law 16-58, “An Act to amend the Human Rights Act of 1977 to prohibit discrimination based on gender identity or expression,” <https://code.dccouncil.us/us/dc/council/laws/docs/16-58.pdf> (adding protections for gender identity and expression in 2005) *with Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

⁹ The protected activities are: 1) receiving or seeking an abortion or contraception; 2) performing or inducing an abortion; 3) engaging in conduct that aids, abets or advises the performance or inducement of an abortion or the use of contraception; 4) engaging in sexual conduct that is lawful in the District; 5) providing contraception to another person or entity; 6) using contraception; 7) entering into or remaining in a living arrangement, marriage, domestic partnership or civil union that is lawful in the District; 8) providing, consenting to receiving, or facilitating gender-affirming care; or 9) attempting or intending to engage in the protected activities.

policies from the chilling effects of other states' laws that could harm the very people our public policy protects.

Additional Protections are Needed Following a 50-Year Setback to Our Constitutional Rights and New Laws that Chill Protected Activity in the District

Protections like those proposed in the Sanctuary Bill have become even more critical in the wake of the Supreme Court's recent decision in *Dobbs v. Jackson Women's Health Organization*.¹⁰ In that opinion, the Supreme Court toppled the constitutional right to abortion and drew into question numerous other rights, like contraception and marriage equality, that rest on the same constitutional underpinnings. Given this threat, we must ensure that these rights are clearly and strongly protected in local laws. But even before the *Dobbs* decision, some states advanced restrictions that could interfere in new ways with reproductive rights and LGBTQ+ equality here in the District—either explicitly or by raising uncertainty, which chills the local exercise of rights.

Texas, for example, passed a law that allows private parties to sue anyone—from a taxi driver to a health care provider—who assists a person in getting all but the earliest of abortions in that state. The law guarantees penalties of at least \$10,000, with no limit on how high the penalty could be or how many times the helper could be sued.¹¹ Since then, Idaho has enacted an abortion ban modeled on Texas' bill,¹² and at least 15 other states have considered similar laws.¹³

Although, by their own terms, these statutes punish abortions only in the states where they are enacted, a motivated plaintiff may try to pursue a doctor, an abortion funding volunteer, or a nonprofit organization involved in assisting with an out-of-state abortion. And though the target of such a suit likely would ultimately prevail, it would come at a cost of tens of thousands of dollars in attorneys' fees and many hours spent defending the case. It is understandable then, why a driver, doctor, or aide organization might be reluctant to offer services in the face of such uncertainty. Indeed, as I will discuss later, these laws already are having a chilling effect on people in the District. And each new state abortion ban raises additional questions that will prompt caution and chill conduct elsewhere.

Though the laws enacted thus far do not seem to extend to abortions obtained outside those states, other measures have not been so modest in their reach: Some proposals would explicitly punish individuals who exercise their rights in other jurisdictions. For instance, the Missouri legislature this year considered a measure that would have allowed lawsuits against people who merely provide information or help people in need travel to places where abortion is legal, with the express

¹⁰ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ____ (2022).

¹¹ S.B. 8, Tex. 87th Leg. (2021), <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00008H.pdf>.

¹² See Sarah McCammon, "Idaho prepares to ban most abortions in the state as governor signs Texas-style law," *NPR*, Mar. 24, 2022, <https://www.npr.org/2022/03/23/1087202877/idaho-prepares-to-ban-most-abortions-in-the-state-as-governor-signs-texas-style-> (last visited June 25, 2022).

¹³ NARAL Pro-Choice America, *Memo: Fifteen States and Counting Poised to Copy Texas' Abortion Ban*, <https://www.prochoiceamerica.org/report/memo-fifteen-states-and-counting-poised-to-copy-texas-abortion-ban/> (last visited July 10, 2022).

aim of targeting out-of-state abortion providers.¹⁴ Although the Missouri proposal did not become law, Missouri and other states could enact laws in this mold in upcoming emergency legislative sessions being convened as soon as this summer. Just last week, for instance, Texas legislators promised to pass a new law punishing abortion-related travel.¹⁵ These types of laws would directly infringe on rights and health care practices in other jurisdictions and create the need for stronger protections here in the District.

Still 15 other states have considered or enacted laws that will limit access to medical care for transgender youth, and future measures may borrow enforcement mechanisms from the abortion context.¹⁶

New Laws Have Sowed Uncertainty around Reproductive Rights in the District

Let me share just a few stories of how these laws have already intruded into the exercise of reproductive rights in the District, a pattern that could repeat with gender-affirming care for young people and other protected activities if we do not buttress our laws.

In recent months, OAG has engaged in listening sessions with health care providers and nonprofit organizations that serve abortion patients here in the District to better understand their experiences and needs. At every turn, we have heard that this community needs more certainty about how their rights will be affected—certainty that the Sanctuary Bill aims to provide.

Women and others who need reproductive care are scared. One local clinic that offers abortion services, contraception, and testing for sexually transmitted infections said that, before the *Dobbs* decision, it typically spoke with 250 callers a day. But on the Monday after the *Dobbs* decision, call volume doubled to 500. Some callers were scrambling to find new appointments after they were displaced from clinics shuttered by *Dobbs*. But many callers already had appointments at the clinic and were seeking reassurance that it was still legal to show up for care. Another District clinic told us that, even before the Court toppled *Roe*, patients were “terrified” to travel here for care because the proliferation of abortion bans had left them unsure if was legal to do so or if they might face a lawsuit or jail time when they returned home.

Doctors, nurse practitioners, receptionists, and other health workers who offer reproductive health information and services like contraception and abortion care must also be protected. These providers reported that newly proposed measures have left them straining to track laws in patients’

¹⁴ See Alice Miranda Ollstein and Megan Messerly, “Missouri wants to stop out of state abortions. Others could follow.” *Politico*, Mar. 19, 2022, <https://www.politico.com/news/2022/03/19/travel-abortion-law-missouri-00018539> (last visited June 25, 2022).

¹⁵ See Letter from Texas Freedom Caucus legislators to Yvette Ostolaza, Chair of the Management Committee at Sidley Austin (July 7, 2022), <https://www.freedomfortexas.com/uploads/blog/3b118c262155759454e423f6600e2196709787a8.pdf>. The legislators also threatened a large law firm and its partners with prosecution and disbarment if the firm paid for its employees’ abortion-related travel costs.

¹⁶ Kerith J. Conron et al., UCLA School of Law Williams Institute, *Prohibiting Gender-Affirming Medical Care for Youth*, 2022, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Youth-Health-Bans-Mar-2022.pdf>.

home states, uncertain if they might face criminal prosecution for providing services.¹⁷ They dread what it might cost to defend themselves against civil lawsuits for treating patients who travel to the District and are concerned by notices from business insurance carriers that their policies do not cover costs from these new kinds of legal claims.

Local nonprofit organizations that provide financial assistance, travel support, meal cards, and hotel rooms to people who need access to the abortion services in the District are also under threat. We have spoken with the staff and volunteers who offer that aid, and they are fearful about consequences they might face. For a time last fall, they were not sure if they could risk serving Texans or residents from states with similar laws and thus limited which staff could interact with those patients. This fear arose even though Texas' abortion ban lacks the explicit extraterritorial reach that some other states have threatened.

Although we do not control the actions of other states, legislative efforts like the Sanctuary Bill send a message to patients, providers, and helpers who exercise their rights in the District that we will do all we can to protect them here. We look forward to working with the Council and all stakeholders to continue to refine the bill to ensure it will achieve its aims.

Conclusion

The Sanctuary Bill and related pending legislation seek to bolster the District's longstanding policy of protecting civil and human rights, including the rights to make pregnancy decisions, access gender-affirming medical care, and engage in same-sex relationships. This slate of reforms would provide District residents, visitors, medical providers, and aide organizations additional clarity and reassurance to exercise their rights without fear of prosecution or financial ruin. The Office of the Attorney General thanks the Council for continuing to lead the way on these issues, and we look forward to partnering with you as the Sanctuary Bill and others move through the legislative process so that we can ensure our community remains one where all people are safe and welcome.

¹⁷ Cf. Selena Simmons-Duffin, "Doctors weren't considered in Dobbs, but now they're on abortion's legal front lines," *NPR*, July 3, 2022, <https://www.npr.org/sections/health-shots/2022/07/03/1109483662/doctors-werent-considered-in-dobbs-but-now-theyre-on-abortions-legal-front-lines> ("We are hearing from our doctors on the ground at all times of day and night. . . . They are scared, they are in an impossible situation, and they don't know how to define laws that are happening by the minute.").