

**Testimony of Jen Jenkins
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**Before the Committee on Government Operations and Facilities
Council of the District of Columbia**

Public Hearing Regarding:

**Bill 24-0808
“Human Rights Sanctuary Amendment Act of 2022”**

July 14, 2022

The Legal Aid Society of the District of Columbia¹ submits the following testimony in support of the Human Rights Sanctuary Amendment Act of 2022. This legislation would prevent the District from cooperating in efforts to impose civil or criminal liability for protected acts in the District (including seeking or providing abortions and gender-affirming care for youth). If enacted, it would also create a private right of action against anyone who pursues a Texas-style bounty system related to protected acts² – firmly putting the District on the side of protecting reproductive rights in all of their forms and ensuring that the District plays no role in affirming other states’ legislative attacks on the LGBTQ+ community.

The immediate passage of this measure is critical in light of the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, which eliminated the longstanding

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² See Chelsea Tejada, American Civil Liberties Union, *Texas’ Bounty Hunter Abortion Ban is a Dire Warning of What Lays Ahead for Our Reproductive Rights*, March 17, 2022, <https://www.aclu.org/news/reproductive-freedom/texas-bounty-hunter-abortion-ban-is-a-dire-warning-of-what-lays-ahead-for-our-reproductive-rights>.

constitutional interpretation that seeking an abortion falls under the Fourteenth Amendment's right to privacy established in *Roe v. Wade*.³ As a result of the *Dobbs* decision, anti-abortion states can legally prohibit abortion in their states unless their state constitutions protect the right to obtain an abortion. The decision also jeopardizes the right to privacy as it applies to LGBTQ+ equality.⁴

The bill, rooted in the District's human rights protections, seeks to deter attacks on reproductive health seekers and LGBTQ+ people in the District. Parties seeking to punish abortion seekers and LGBTQ+ people in the District through bounty schemes like the one passed in Texas will be deterred because damages could be sought against any party that brought an action leading to a judgment or that has sought to enforce such a judgment against individuals covered by the bill. If there is a chance of financial loss, parties are less likely to pursue individuals for laws based on ignorance and cruelty. Further, for any interstate investigation that did occur, the District would be prohibited from cooperating, thus making it extremely difficult, if not entirely impossible, for another state to exercise its animosity against individuals and families that would be protected by this bill and sought refuge in the District.

The Council's proposed legislation continues the District's history as a haven for those seeking reproductive freedom and health and a right to equality for LGBTQ+ people. According to the Kaiser Family Foundation, more than two-thirds (69 percent) of all legal abortions obtained in the District were by out of state residents.⁵ And the District has long been a leader in passing and implementing LGBTQ+ inclusive laws and policies, including allowing same-gender couples to be "domestic partners" since 1992.⁶ The District's protections of LGBTQ+ people can be seen in the data. Notably, if the District were a state, it would have the most significant proportion of LGBTQ+ and, specifically, transgender residents of any state in the U.S.⁷

³ *Dobbs v. Jackson Women's Health Organization*, No. 19-139, 597 U.S. __ (2022) (explicitly overturning *Roe v. Wade*, 410 U.S. 113 (1973)).

⁴ Brief for LGBTQ Organization and Advocates As Amici Curiae in Support of Respondents, pp. 28-30, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. __ (2022) (No. 19-139).

⁵ Kaiser Family Foundation, Percentage of Legal Abortions Obtained by Out-of-State Residents, <https://www.kff.org/womens-health-policy/state-indicator/abortions-by-out-of-state-residents/?currentTimeframe=0&selectedRows=%7B%27states%27%7B%27district-of-columbia%27%7D%7D%7D&sortModel=%7B%27colId%27%3A%27Location%27%2C%27sort%27%3A%27asc%27%7D>.

⁶ DC Health, Domestic Partnership, <https://dchealth.dc.gov/service/domestic-partnership-~:text=Since June 11, 1992, unmarried,in hospitals and nursing homes>.

⁷ UCLA School of Law, Williams Institute, <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=11-density;How Many Adults Identify As Transgender in the United States?, June, 2016, https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf>.

States Burdened Healthcare Seekers and LGBTQ Identity Prior to *Dobbs*

Unfortunately, many states did not wait for the Supreme Court to issue its final decision before moving to restrict access to and/or criminalize abortions, criminalize gender-affirming care for Alabama minors, or to prohibit Florida teachers from even casually mentioning gender identity or sexual orientation, and, overall, to punish parents and youth in the states where over 300 anti-LGBTQ bills have been proposed in 2022 before the year is half over.⁸

And prior to the issuance of the *Dobbs* ruling— even with *Roe v. Wade* and *Planned Parenthood v. Casey* in place – the right to obtain an abortion has only been really meaningful for those who could afford to pay.⁹ Now, the Court’s opinion in *Dobbs* makes abortion unattainable for an even larger number of abortion seekers, with the burden falling heaviest on those whose rights our society too often considers expendable or non-existent – those who are economically disadvantaged. In fact, the ruling will perpetuate marginalization because, as states move to criminalize individuals who are seeking abortion care and/or have miscarriages, access to essentials such as public benefits, housing, parental rights, and employment could be jeopardized due to systemic barriers for people with conviction records.

Congress Could Further Prevent the District from Creating Access to Abortions

The one thing that the District cannot do is consistently help those who need it most obtain these essential health services. While the District funds the provision of gender-affirming care through its Medicaid program and prevents private insurers from discriminating against individuals based on gender identity, the District is prohibited from funding abortions (except in cases to save the life of the pregnant person or when the pregnancy occurred as a result of rape or incest) through locally-raised Medicaid funds that primarily support Black and brown residents.¹⁰ And when D.C. has tried to spend its own money to make reproductive rights a reality in the District for

⁸ Brooke Migdon, Changing America, Gender-affirming Care Ban Goes Into Effect in Alabama, May 9, 2022, <https://thehill.com/changing-america/respect/equality/3481830-gender-affirming-care-ban-goes-into-effect-in-alabama/>; Florida's Governor Signs Controversial Law Opponents Dubbed 'Don't Say Gay', March 28, 2022, <https://www.npr.org/2022/03/28/1089221657/dont-say-gay-florida-desantis>; Human Rights Campaign, State Legislative Attacks On LGBTQ+ People, <https://www.hrc.org/campaigns/the-state-legislative-attack-on-lgbtq-people - state-legislative-tracker-map>.

⁹ See Will Daniel, Abortions Were Already Getting More Expensive. Now, with the Supreme Court Poised to Weigh in, They’re Likely to Get Even Pricier, May 3, 2022, <https://fortune.com/2022/05/03/abortions-costs-rise-more-expensive-roe-v-wade-overturned/>; see also *Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973).

¹⁰ See DC Abortion Fund, How Medicaid Bans Affect DC, <https://dcabortionfund.org/2017/01/how-medicaid-bans-affect-dc-residents/>; March of Dimes, Medicaid Coverage by Race/Ethnicity: District of Columbia, 2018-2020 Average, <https://www.marchofdimes.org/peristats/data?reg=99&top=11&stop=653&lev=1&slev=4&obj=1&sreg=11>.

those who cannot afford to pay for abortion services, Congress has – in all but a few years in the early 1990s and later in 2009 and 2010 – prevented the District from doing so.¹¹

Further, we are increasingly concerned that Congress could use its “power of the purse” to go further than just preventing the District from funding essential health care for its citizens. Congress could hold the District’s budget hostage to amendments that would outlaw abortion in the District or impose cruel, transphobic restrictions on the ability to receive gender-affirming health care services. Or Congress could pass legislation banning abortion or providing gender-affirming health care services for minors (and adults) nationally, leaving the District and all other states and localities helpless to protect these fundamental rights.

Conclusion

Legal Aid strongly supports this legislation and thanks Councilmember Nadeau and the bill’s co-introducers. Until the rights of women and the LGBTQ+ community are fully recognized, we can take the affirmative step of supporting these communities within and outside the District through the Human Rights Sanctuary Amendment Act of 2022. But we also must do all we can to provide access to essential health services to all who need them regardless of race, gender identity, or wealth.

¹¹ *See id.*