



**Testimony for the Senate Finance Committee  
March 10, 2020**

**SB 357 – Pain-Capable Unborn Child Protection Act**

**OPPOSE**

JOSEPH SPIELBERGER  
PUBLIC POLICY COUNSEL

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

MAIN OFFICE  
& MAILING ADDRESS  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
or 240-274-5295  
F/410-366-7838

FIELD OFFICE  
6930 CARROLL AVENUE  
SUITE 610  
TAKOMA PARK, MD 20912  
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
JOHN HENDERSON  
PRESIDENT

The ACLU of Maryland strongly opposes SB 357, an unconstitutional pre-viability ban on abortion. This bill would ban abortion care after 20 weeks, restricting a woman’s right to make her own decision about whether to continue a pregnancy. The ACLU-MD supports reproductive freedom and bodily autonomy, and opposes efforts to interfere with a woman’s most personal and private medical decisions, which must be made by the individual herself, not the government.

The U.S. Supreme Court held in *Roe v. Wade* that states may not ban abortion prior to viability, and may ban abortion after viability only with adequate exceptions to protect a woman’s life and health.<sup>1</sup> These principles have been repeatedly upheld for four decades.<sup>2</sup> SB 357 fails on both counts by eliminating an individual’s choice pre-viability, and failing to protect a woman’s health.

By banning abortions at 20 weeks, a pre-viability stage of pregnancy, SB 357 contradicts longstanding precedent that individuals should “be free from unwanted governmental intrusion” when choosing to continue or end a pre-viability pregnancy.<sup>3</sup> The Supreme Court makes it clear that legislatures may not declare any one element, “be it weeks of gestation or fetal weight or any other single factor – as the determinant” of viability.<sup>4</sup> Thus regardless of any justification, SB 357’s ban on abortion starting at 20 weeks is per se unconstitutional.

Furthermore, SB 357 fails to protect a woman’s health, providing only an exception to prevent a woman’s death or “substantial and irreversible physical impairment of a major bodily function,” not her health, as precedent requires.<sup>5</sup> A pregnancy may go wrong for many ways that risk a woman’s health, but this

<sup>1</sup> 410 U.S. 113, 163-64 (1973).

<sup>2</sup> See *Planned Parenthood v. Casey*, 505 U.S. 833, 871 (1992), *Gonzalez v. Carhart*, 550 U.S. 124, 145 (2007).

<sup>3</sup> *Casey*, 505 U.S. at 851.

<sup>4</sup> *Colautti v. Franklin*, 439 U.S. 379, 388-89 (1979).

<sup>5</sup> *Casey*, 505 U.S. at 879.



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bill would force her to wait until any condition is life threatening enough for her doctor to act to protect her health.

SB 357 is another attack on women's health, and undermines access to reproductive health care, including abortion. We oppose this bill because it threatens women's health, demonstrates an appalling lack of trust in women, and is per se unconstitutional.

For the foregoing reasons, we urge an unfavorable report on SB 357.