



February 25, 2022

The Honorable Charles Schumer
Majority Leader
United States Senate
S-221, U.S. Capitol Building
Washington, DC 20510-0001

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, U.S. Capitol Building
Washington, DC 20510-0001

Re: H.R. 3755, the Women's Health Protection Act of 2021

Dear Leader Schumer and Leader McConnell:

By way of introduction, the American Center for Law & Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of life. ACLJ attorneys have argued before the Supreme Court of the United States and other federal and state courts in a number of significant cases involving the freedoms of speech and religion, as well as the right to life. Counsel for the ACLJ have also presented expert testimony before federal and state legislative bodies, including testimony just this week before the Maryland state legislature. The ACLJ and its international affiliates are committed to defending human rights and religious liberty around the world.

We write today to share our concerns about the ideas and proposals embodied in H.R. 3755, the Women's Health Protection Act, which is scheduled for a vote in the U.S. Senate on February 28, 2022. We write on behalf of our organization, informed by decades of experience in both the legislative and litigation arenas on this issue, and to give voice to the approximately 400,000 individuals who have signed our petition in favor of legal protections for pre-born children.¹

¹ *Overtune Roe v. Wade: Defeat Abortion. Save Babies.*, ACLJ.ORG, <https://aclj.org/pro-life/overtune-roe-v-wade-defeat-abortion-save-babies> (last visited Feb. 22, 2022).



Proponents of H.R. 3755, and in fact the preamble of the bill itself, assert that the termination of a pregnancy is a constitutional right affirmed by the U.S. Supreme Court's 1973 opinion in *Roe v. Wade*.² This assertion is flawed on a number of levels, and even Justice Blackmun's opinion in *Roe* conceded that the Court's ruling would be overtaken if it were ever established that the baby in utero has a right to life.³ Further, as we pointed out to the Maryland state legislature earlier this week, the U.S. Constitution is silent on abortion, but very direct about the right to life when it states, "nor shall any person . . . be deprived of life . . ."⁴

Given this constitutional posture and the ongoing national controversy over the sanctity of life, it would be highly inappropriate for the federal government to restrict a state's ability to legislate on the matter. Yet, the Women's Health Protection Act would do just that. Under the construct of this legislation, both a state's past efforts to enact measures protecting a mother and/or her pre-born child and its future efforts to do so would be eviscerated. By granting an overriding statutory right to provide abortions, and by precluding efforts to accompany that grant with protective guidelines, this legislation poses a physical threat to both pregnant mothers and their unborn babies. It is also hostile to a state's inherent authority and duty to seek the welfare of its residents.

The viability of *Roe* itself is currently being decided by the U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization*. While we do not yet know how the Supreme Court will rule in this case, and therefore do not yet know the complete legal landscape on this issue going forward, the enactment of the policy schemes proposed in H.R. 3755 would be extremely detrimental to the appropriate balance of power on this hotly debated issue. We respectfully request that the U.S. Senate carefully consider the constitutional flaws of this legislation, respect the judicial process that is underway at the U.S. Supreme Court, and refrain from usurping the legitimate legislative authority of the states.

Going forward, we also fervently encourage the U.S. Senate to vigorously uphold the U.S. Constitution's charge that no person shall be deprived the right to life.

Sincerely,



Jordan Sekulow
Executive Director

² Women's Health Protection Act of 2021, S. 1975, 117th Cong. (2021).

³ *Roe v. Wade*, 410 U.S. 113 at 157 (1973).

⁴ U.S. CONST. AMEND. V.