

across State lines in order to provide reproductive health services to patients.

SEC. 3. DEFINITIONS.

In this Act:

(1) GOVERNMENT- The term `government' includes a branch, department, agency, instrumentality, or official (or other individual acting under color of law) of the United States, a State, or a subdivision of a State.

(2) STATE- The term `State' means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States.

(3) VIABILITY- The term `viability' means that stage of pregnancy when, in the best medical judgment of the attending physician based on the particular medical facts of the case before the physician, there is a reasonable likelihood of the sustained survival of the fetus outside of the woman.

SEC. 4. INTERFERENCE WITH REPRODUCTIVE HEALTH PROHIBITED.

(a) Statement of Policy- It is the policy of the United States that every woman has the fundamental right to choose to bear a child, to terminate a pregnancy prior to fetal viability, or to terminate a pregnancy after fetal viability when necessary to protect the life or health of the woman.

(b) Prohibition of Interference- A government may not--

(1) deny or interfere with a woman's right to choose--

(A) to bear a child;

(B) to terminate a pregnancy prior to viability;

or

(C) to terminate a pregnancy after viability where termination is necessary to protect the life or health of the woman; or

(2) discriminate against the exercise of the rights set forth in paragraph (1) in the regulation or provision of benefits, facilities, services, or information.

(c) Civil Action- An individual aggrieved by a violation of this section may obtain appropriate relief (including relief against a government) in a civil action.

SEC. 5. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which the provision is held to be unconstitutional, shall not be affected thereby.

SEC. 6. RETROACTIVE EFFECT.

This Act applies to every Federal, State, and local statute, ordinance, regulation, administrative order, decision, policy, practice, or other action enacted, adopted, or implemented before, on, or after the date of enactment of this Act.

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Pamphlet 468

Freedom of Choice Act

Freedom of Choice Act (Introduced in Senate)
S 1173 IS

110th CONGRESS

1st Session

S. 1173

To protect, consistent with Roe v. Wade, a woman's freedom to choose to bear a child or terminate a pregnancy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 19, 2007

Mrs. BOXER (for a current list of co-sponsors, click here) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect, consistent with Roe v. Wade, a woman's freedom to choose to bear a child or terminate a pregnancy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Freedom of Choice Act'.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The United States was founded on core principles, such as liberty, personal privacy, and equality, which ensure that individuals are free to

make their most intimate decisions without governmental interference and discrimination.

(2) One of the most private and difficult decisions an individual makes is whether to begin, prevent, continue, or terminate a pregnancy. Those reproductive health decisions are best made by women, in consultation with their loved ones and health care providers.

(3) In 1965, in *Griswold v. Connecticut* (381 U.S. 479), and in 1973, in *Roe v. Wade* (410 U.S. 113) and *Doe v. Bolton* (410 U.S. 179), the Supreme Court recognized that the right to privacy protected by the Constitution encompasses the right of every woman to weigh the personal, moral, and religious considerations involved in deciding whether to begin, prevent, continue, or terminate a pregnancy.

(4) The *Roe v. Wade* decision carefully balances the rights of women to make important reproductive decisions with the State's interest in potential life. Under *Roe v. Wade* and *Doe v. Bolton*, the right to privacy protects a woman's decision to choose to terminate her pregnancy prior to fetal viability, with the State permitted to ban abortion after fetal viability except when necessary to protect a woman's life or health.

(5) These decisions have protected the health and lives of women in the United States. Prior to the *Roe v. Wade* decision in 1973, an estimated 1,200,000 women each year were forced to resort to illegal abortions, despite the risk of unsanitary conditions, incompetent treatment, infection, hemorrhage, disfigurement, and death. Before *Roe*, it is estimated that thousands of women died annually in the United States as a result of illegal abortions.

(6) In countries in which abortion remains illegal, the risk of maternal mortality is high. According to the World Health Organization, of the approximately 600,000 pregnancy-related deaths

occurring annually around the world, 80,000 are associated with unsafe abortions.

(7) The *Roe v. Wade* decision also expanded the opportunities for women to participate equally in society. In 1992, in *Planned Parenthood v. Casey* (505 U.S. 833), the Supreme Court observed that, '[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.'

(8) Even though the *Roe v. Wade* decision has stood for more than 34 years, there are increasing threats to reproductive health and freedom emerging from all branches and levels of government. In 2006, South Dakota became the first State in more than 15 years to enact a ban on abortion in nearly all circumstances. Supporters of this ban have admitted it is an attempt to directly challenge *Roe* in the courts. Other States are considering similar bans.

(9) Further threatening *Roe*, the Supreme Court recently upheld the first-ever Federal ban on an abortion procedure, which has no exception to protect a woman's health. The majority decision in *Gonzales v. Carhart* (05-380, slip op. April 18, 2007) and *Gonzales v. Planned Parenthood Federation of America* fails to protect a woman's health, a core tenet of *Roe v. Wade*. Dissenting in that case, Justice Ginsburg called the majority's opinion 'alarming', and stated that, '[f]or the first time since *Roe*, the Court blesses a prohibition with no exception safeguarding a woman's health'. Further, she said, the Federal ban 'and the Court's defense of it cannot be understood as anything other than an effort to chip away at a right declared again and again by this Court'.

(10) Legal and practical barriers to the full range of reproductive services endanger women's health and lives. Incremental restrictions on the right to choose imposed by Congress and State legislatures

have made access to reproductive care extremely difficult, if not impossible, for many women across the country. Currently, 87 percent of the counties in the United States have no abortion provider.

(11) While abortion should remain safe and legal, women should also have more meaningful access to family planning services that prevent unintended pregnancies, thereby reducing the need for abortion.

(12) To guarantee the protections of *Roe v. Wade*, Federal legislation is necessary.

(13) Although Congress may not create constitutional rights without amending the Constitution, Congress may, where authorized by its enumerated powers and not prohibited by the Constitution, enact legislation to create and secure statutory rights in areas of legitimate national concern.

(14) Congress has the affirmative power under section 8 of article I of the Constitution and section 5 of the 14th amendment to the Constitution to enact legislation to facilitate interstate commerce and to prevent State interference with interstate commerce, liberty, or equal protection of the laws.

(15) Federal protection of a woman's right to choose to prevent or terminate a pregnancy falls within this affirmative power of Congress, in part, because—

(A) many women cross State lines to obtain abortions and many more would be forced to do so absent a constitutional right or Federal protection;

(B) reproductive health clinics are commercial actors that regularly purchase medicine, medical equipment, and other necessary supplies from out-of-State suppliers; and

(C) reproductive health clinics employ doctors, nurses, and other personnel who travel