

109TH CONGRESS
2^D SESSION

S. 2593

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 6, 2006

Mrs. BOXER (for herself, Mrs. FEINSTEIN, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Ms. STABENOW, and Ms. CANTWELL) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom of Choice
5 Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States was founded on core
9 principles, such as liberty, personal privacy, and

1 equality, which ensure that individuals are free to
2 make their most intimate decisions without govern-
3 mental interference and discrimination.

4 (2) One of the most private and difficult deci-
5 sions an individual makes is whether to begin, pre-
6 vent, continue, or terminate a pregnancy. Those re-
7 productive health decisions are best made by women,
8 in consultation with their loved ones and health care
9 providers.

10 (3) In 1965, in *Griswold v. Connecticut* (381
11 U.S. 479), and in 1973, in *Roe v. Wade* (410 U.S.
12 113) and *Doe v. Bolton* (410 U.S. 179), the Su-
13 preme Court recognized that the right to privacy
14 protected by the Constitution encompasses the right
15 of every woman to weigh the personal, moral, and
16 religious considerations involved in deciding whether
17 to begin, prevent, continue, or terminate a preg-
18 nancy.

19 (4) The *Roe v. Wade* decision carefully balances
20 the rights of women to make important reproductive
21 decisions with the State's interest in potential life.
22 Under *Roe v. Wade* and *Doe v. Bolton*, the right to
23 privacy protects a woman's decision to choose to ter-
24minate her pregnancy prior to fetal viability, with
25 the State permitted to ban abortion after fetal via-

1 bility except when necessary to protect a woman’s
2 life or health.

3 (5) These decisions have protected the health
4 and lives of women in the United States. Prior to
5 the Roe v. Wade decision in 1973, an estimated
6 1,200,000 women each year were forced to resort to
7 illegal abortions, despite the risk of unsanitary con-
8 ditions, incompetent treatment, infection, hemor-
9 rhage, disfiguration, and death. Before Roe, it is es-
10 timated that thousands of women died annually in
11 the United States as a result of illegal abortions.

12 (6) In countries in which abortion remains ille-
13 gal, the risk of maternal mortality is high. According
14 to the World Health Organization, of the approxi-
15 mately 600,000 pregnancy-related deaths occurring
16 annually around the world, 80,000 are associated
17 with unsafe abortions.

18 (7) The Roe v. Wade decision also expanded the
19 opportunities for women to participate equally in so-
20 ciety. In 1992, in *Planned Parenthood v. Casey* (505
21 U.S. 833), the Supreme Court observed that, “[t]he
22 ability of women to participate equally in the eco-
23 nomic and social life of the Nation has been facili-
24 tated by their ability to control their reproductive
25 lives.”.

1 (8) Even though the Roe v. Wade decision has
2 stood for more than 30 years, there are increasing
3 threats to reproductive health and freedom emerging
4 from all branches and levels of government. In 2006,
5 South Dakota became the first State in more than
6 15 years to enact a ban on abortion in nearly all cir-
7 cumstances. Supporters of this ban have admitted it
8 is an attempt to directly challenge Roe in the courts.
9 Other States are considering similar bans.

10 (9) Legal and practical barriers to the full
11 range of reproductive services endanger women's
12 health and lives. Incremental restrictions on the
13 right to choose imposed by Congress and State legis-
14 latures have made access to abortion care extremely
15 difficult, if not impossible, for many women across
16 the country. Currently, 87 percent of the counties in
17 the United States have no abortion provider.

18 (10) While abortion should remain safe and
19 legal, women should also have more meaningful ac-
20 cess to family planning services that prevent unin-
21 tended pregnancies, thereby reducing the need for
22 abortion.

23 (11) To guarantee the protections of Roe v.
24 Wade, Federal legislation is necessary.

1 (12) Although Congress may not create con-
2 stitutional rights without amending the Constitution,
3 Congress may, where authorized by its enumerated
4 powers and not prohibited by the Constitution, enact
5 legislation to create and secure statutory rights in
6 areas of legitimate national concern.

7 (13) Congress has the affirmative power under
8 section 8 of article I of the Constitution and section
9 5 of the 14th amendment to the Constitution to
10 enact legislation to facilitate interstate commerce
11 and to prevent State interference with interstate
12 commerce, liberty, or equal protection of the laws.

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

17 (A) many women cross State lines to ob-
18 tain abortions and many more would be forced
19 to do so absent a constitutional right or Federal
20 protection;

21 (B) reproductive health clinics are com-
22 mercial actors that regularly purchase medicine,
23 medical equipment, and other necessary sup-
24 plies from out-of-State suppliers; and

1 (C) reproductive health clinics employ doc-
2 tors, nurses, and other personnel who travel
3 across State lines in order to provide reproduc-
4 tive health services to patients.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) GOVERNMENT.—The term “government”
8 includes a branch, department, agency, instrumen-
9 tality, or official (or other individual acting under
10 color of law) of the United States, a State, or a sub-
11 division of a State.

12 (2) STATE.—The term “State” means each of
13 the States, the District of Columbia, the Common-
14 wealth of Puerto Rico, and each territory or posses-
15 sion of the United States.

16 (3) VIABILITY.—The term “viability” means
17 that stage of pregnancy when, in the best medical
18 judgment of the attending physician based on the
19 particular medical facts of the case before the physi-
20 cian, there is a reasonable likelihood of the sustained
21 survival of the fetus outside of the woman.

22 **SEC. 4. INTERFERENCE WITH REPRODUCTIVE HEALTH**
23 **PROHIBITED.**

24 (a) STATEMENT OF POLICY.—It is the policy of the
25 United States that every woman has the fundamental

1 right to choose to bear a child, to terminate a pregnancy
 2 prior to fetal viability, or to terminate a pregnancy after
 3 fetal viability when necessary to protect the life or health
 4 of the woman.

5 (b) PROHIBITION OF INTERFERENCE.—A govern-
 6 ment may not—

7 (1) deny or interfere with a woman’s right to
 8 choose—

9 (A) to bear a child;

10 (B) to terminate a pregnancy prior to via-
 11 bility; or

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

15 (2) discriminate against the exercise of the
 16 rights set forth in paragraph (1) in the regulation
 17 or provision of benefits, facilities, services, or infor-
 18 mation.

19 (c) CIVIL ACTION.—An individual aggrieved by a vio-
 20 lation of this section may obtain appropriate relief (includ-
 21 ing relief against a government) in a civil action.

22 **SEC. 5. SEVERABILITY.**

23 If any provision of this Act, or the application of such
 24 provision to any person or circumstance, is held to be un-
 25 constitutional, the remainder of this Act, or the applica-

1 tion of such provision to persons or circumstances other
2 than those as to which the provision is held to be unconsti-
3 tutional, shall not be affected thereby.

4 **SEC. 6. RETROACTIVE EFFECT.**

5 This Act applies to every Federal, State, and local
6 statute, ordinance, regulation, administrative order, deci-
7 sion, policy, practice, or other action enacted, adopted, or
8 implemented before, on, or after the date of enactment
9 of this Act.

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