

## Questions & Answers about FOCA

The federal Freedom of Choice Act would prevent the government from discriminating against a woman on the basis of her reproductive decisions, about using birth control, having a child, or terminating a pregnancy. Senator Barbara Boxer (D-CA) and Representative Jerrold Nadler (D-NY) introduced this [landmark piece of legislation](#) as the nation marks the 31st anniversary of the U.S. Supreme Court's monumental 1973 decision in *Roe v. Wade*.

### **Q. If passed, how would FOCA affect women's reproductive freedom?**

A. Once passed, FOCA will protect a woman's right to choose by federal statute. This means that if our worst fear comes to pass and a newly constituted anti-choice Supreme Court overrules *Roe v. Wade*, women in the United States will have the protection of federal law in the exercise of their right to choose. In addition, FOCA would immediately restore reproductive freedom for the millions of American women who already face interference with their right to choose as a result of onerous state and federal restrictions.

FOCA will supercede anti-choice laws that restrict the right to choose, including laws that prohibit the public funding of abortions for poor women or counseling and referrals for abortions. Additionally, FOCA will prohibit onerous restrictions on a woman's right to choose, such as mandated delays and targeted and medically unnecessary regulations. As a result, women will be freed from improper governmental interference with their right to choose a pre-viability abortion. Women who require a post-viability abortion in order to preserve their lives or health will also be protected by FOCA. (Viability, the time at which a fetus is capable of sustained survival outside the womb, is determined on a case by case basis and cannot legally be established as occurring at a particular time for all women.). FOCA applies to measures enacted or implemented before, on, or after the date of its enactment.

### **Q. Does Congress have authority to enact FOCA?**

A. Yes. Congress has ample authority under Article I § 8 and section 5 of the 14th Amendment of the Constitution of the United States to enact this legislation. Congress has the authority to step in to ensure that a woman's fundamental right to choose is protected in all states and to prevent State interference with liberty or equal protection of the laws. Commerce Clause authority is derived from the economic and interstate nature of abortion services. Abortions are provided by medical professionals on a fee-for-service basis; many women travel across state lines to obtain abortions; clinics purchase supplies from out of state; and employees often travel across state lines to work in clinics. Therefore, Congress may enact legislation to create a national standard governing the provision of abortion services.

### **Q. Even if the Supreme Court overturns *Roe v. Wade*, won't states protect a**

## **woman's right to choose?**

A. Not everywhere. In recent years, state legislators have enacted hundreds of anti-choice laws — over 350 since 1995 alone. The situation will likely worsen dramatically if *Roe* is overturned. Also, women in many states could face sweeping criminal bans on abortion if *Roe v. Wade* is overturned. It is essential that the federal government step in to protect women since the states have such a wide disparity in protections for reproductive freedom. Liberty should not be a patchwork available only to women fortunate enough to live in a pro-choice state.

### **Q. Does FOCA go beyond the rights granted to women in *Roe v. Wade*?**

A. Like the Supreme Court decision in *Roe v. Wade*, FOCA will prohibit state interference with a woman's right to choose prior to the point of viability. As under *Roe*, states will also be able to prohibit abortion after viability, unless necessary to protect the woman's life or health. FOCA will restore the reproductive rights recognized under the 1973 *Roe* decision, before these rights were eroded by onerous state and federal restrictions aimed at curtailing freedom of choice.

FOCA embodies the full vision of reproductive freedom — it also forbids government from interfering with a woman's right to choose to bear a child. Moreover, it prohibits discrimination against the exercise of reproductive rights.

### **Q. Does FOCA prohibit states from limiting access to abortion services for minors?**

A. FOCA prohibits states from enacting laws intended to deny or interfere with a woman's fundamental right to choose an abortion. Minors have long been included within the protections of *Roe*. Parental consent or notification statutes have been used as a tool to deny access to abortion services for minors. When such laws deny or interfere with the ability of minors to access abortion services, they would violate FOCA.

### **Q. What would be the impact of FOCA on bans on abortion procedures (so-called "partial-birth" abortion bans)?**

A. FOCA would supersede the federal ban and any state ban, to the extent those bans restrict pre-viability abortion procedures, or post-viability procedures necessary to preserve a woman's health or life.

### **Q. What is the outlook for this legislation?**

A. Current anti-choice leadership in both the House and Senate will likely block any action on this legislation for the foreseeable future. However, success in the short term cannot be defined solely by passage of legislation, though FOCA's passage is our ultimate goal. In the short term, this legislation allows

the pro-choice community to make important headway as a movement — politically, electorally, and rhetorically. It helps us to: (1) articulate our vision of what it means to be pro-choice; (2) educate Americans about the threat facing Roe at the Supreme Court and the many other efforts long underway to erode Roe's protections; and (3) mobilize and activate pro-choice Americans as we build momentum for the serious battles that lie ahead.

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Planned Parenthood Federation of America is the nation's leading sexual and reproductive health care advocate and provider. We believe that everyone has the right to choose when or whether to have a child, and that every child should be wanted and loved. Planned Parenthood affiliates operate more than 860 health centers nationwide, providing medical services and sexuality education for millions of women, men, and teenagers each year. We also work with allies worldwide to ensure that all women and men have the right and the means to meet their sexual and reproductive health care needs.

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