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To prohibit, consistent with *Roe v. Wade*, the interference by the government with a woman's right to choose to bear a child or terminate a pregnancy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2004

Mrs. BOXER (for herself, Mr. CORZINE, Mrs. MURRAY, Mr. LAUTENBERG, Mrs. CLINTON, Ms. CANTWELL, Mr. JEFFORDS, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. SARBANES, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit, consistent with *Roe v. Wade*, the interference by the government with a woman's right 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:

1 (1) The United States was founded on the prin-
2 ciples of individual liberty, personal privacy, and
3 equality. Such principles ensure that each individual
4 is free to make the most intimate decisions free from
5 governmental interference and discrimination.

6 (2) A woman’s decision to commence, prevent,
7 continue, or terminate a pregnancy is one of the
8 most intimate decisions an individual ever faces. As
9 such, reproductive health decisions are best made by
10 the woman, in consultation with her medical pro-
11 vider or loved ones, without governmental inter-
12 ference.

13 (3) In 1965, in *Griswold v. Connecticut* (381
14 U.S. 479), and in 1973, in *Roe v. Wade* (410 U.S.
15 113) and *Doe v. Bolton* (410 U.S. 179), the Su-
16 preme Court recognized the right to privacy pro-
17 tected by the Constitution and that such right en-
18 compassed the right of every woman to weigh the
19 personal, moral, and religious considerations in-
20 volved in deciding whether to commence, prevent,
21 continue, or terminate a pregnancy.

22 (4) The *Roe v. Wade* decision carefully bal-
23 anced the rights of women to make important repro-
24 ductive decisions with the state’s interest in poten-
25 tial life. Under *Roe v. Wade* and *Doe v. Bolton*, a

1 woman’s right to choose to terminate her pregnancy
2 is absolute only prior to fetal viability, with the state
3 permitted to ban abortion after fetal viability except
4 when necessary to protect the life or health of a
5 woman.

6 (5) These decisions have protected the health
7 and lives of women in the United States. Prior to
8 the Roe v. Wade decision, an estimated 1,200,000
9 women each year were forced to resort to illegal
10 abortions, despite the known hazards that included
11 unsanitary conditions, incompetent treatment, infec-
12 tion, hemorrhage, disfiguration, and death.

13 (6) According to one estimate, prior to 1973, as
14 many as 5,000 women died each year in the United
15 States as a result of having an illegal abortion.

16 (7) In countries where abortion remains illegal,
17 the risk of complications and maternal mortality is
18 high. According to the World Health Organization,
19 of the approximately 600,000 pregnancy-related
20 deaths occurring annually around the world, 80,000
21 are associated with unsafe abortions.

22 (8) The Roe v. Wade decision expanded the op-
23 portunities for women to participate equally in soci-
24 ety. In 1992, in Planned Parenthood v. Casey (505
25 U.S. 833), the Supreme Court observed that, “[t]he

1 ability of women to participate equally in the eco-
2 nomic and social life of the Nation has been facili-
3 tated by their ability to control their reproductive
4 lives.”.

5 (9) Even though the Roe v. Wade decision
6 guaranteed a constitutional right to choose whether
7 to terminate or continue a pregnancy, threats to
8 that right remain, including possible reversal or fur-
9 ther erosion by the Supreme Court of the right, and
10 legislative and administrative policies at all levels of
11 government that make abortion more difficult and
12 dangerous to obtain.

13 (10) 87 percent of the counties in the United
14 States have no abortion provider.

15 (11) Legal barriers to the full range of repro-
16 ductive services endanger the health and lives of
17 women.

18 (12) Women should have meaningful access to
19 reproductive health services to prevent unintended
20 pregnancies, thereby reducing the need for abor-
21 tions.

22 (13) To ensure that a woman’s right to choose
23 whether to terminate a pregnancy is available to all
24 women in the United States, Federal protection for
25 that right is necessary.

1 (14) 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 (15) 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 (16) 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 50 States, the District of Columbia, the Com-
14 monwealth of Puerto Rico, and each territory or pos-
15 session 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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