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Freedom of Choice Act (Introduced in Senate)

S 2020 IS

108th CONGRESS

2d Session

S. 2020

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.

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 the principles of individual liberty, personal privacy, and equality. Such principles ensure that each individual is free to make the most intimate decisions free from governmental interference and discrimination.
- (2) A woman's decision to commence, prevent, continue, or terminate a pregnancy is one of the most intimate decisions an individual ever faces. As such, reproductive health decisions are best made by the woman, in consultation with her medical provider or loved ones, without governmental interference.
- (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 the right to privacy protected by the Constitution and that such right encompassed the right of every woman to weigh the personal, moral, and religious considerations involved in deciding whether to commence, prevent, continue, or terminate a pregnancy.
- (4) The *Roe v. Wade* decision carefully balanced 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*, a woman's right to choose to terminate her pregnancy is absolute only prior to fetal viability, with the state permitted to ban abortion after fetal viability except when necessary to protect the life or health of a woman.
- (5) These decisions have protected the health and lives of women in the United States. Prior to the *Roe v. Wade* decision, an estimated 1,200,000 women each year were forced to resort to illegal abortions, despite the known hazards that included unsanitary conditions, incompetent treatment, infection, hemorrhage, disfigurement, and death.
- (6) According to one estimate, prior to 1973, as many as 5,000 women died each year in the United States as a result of having an illegal abortion.
- (7) In countries where abortion remains illegal, the risk of complications and 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.
- (8) The *Roe v. Wade* decision 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.'
- (9) Even though the *Roe v. Wade* decision guaranteed a constitutional right to choose whether to terminate or continue a pregnancy, threats to that right remain, including possible reversal or further erosion by the Supreme Court of the right, and legislative and administrative policies at all levels of government that make abortion more difficult and dangerous to obtain.
- (10) 87 percent of the counties in the United States have no abortion provider.

- (11) Legal barriers to the full range of reproductive services endanger the health and lives of women.
- (12) Women should have meaningful access to reproductive health services to prevent unintended pregnancies, thereby reducing the need for abortions.
- (13) To ensure that a woman's right to choose whether to terminate a pregnancy is available to all women in the United States, Federal protection for that right is necessary.
- (14) 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.
- (15) 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.
- (16) 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 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 50 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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