

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.

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## IN THE SENATE OF THE UNITED STATES

APRIL 19, 2007

Mrs. BOXER (for herself, Mrs. MURRAY, Ms. STABENOW, Mr. BINGAMAN, Mr. MENENDEZ, Mr. LAUTENBERG, Mr. CARDIN, Mr. SCHUMER, Mrs. CLINTON, Mrs. FEINSTEIN, Ms. MIKULSKI, Mr. BAUCUS, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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:

1           (1) The United States was founded on core  
2 principles, such as liberty, personal privacy, and  
3 equality, which ensure that individuals are free to  
4 make their most intimate decisions without govern-  
5 mental interference and discrimination.

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

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

21           (4) The *Roe v. Wade* decision carefully balances  
22 the rights of women to make important reproductive  
23 decisions with the State's interest in potential life.  
24 Under *Roe v. Wade* and *Doe v. Bolton*, the right to  
25 privacy protects a woman's decision to choose to ter-

1       minate her pregnancy prior to fetal viability, with  
2       the State permitted to ban abortion after fetal via-  
3       bility except when necessary to protect a woman’s  
4       life or health.

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

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

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

1 tated by their ability to control their reproductive  
2 lives.”.

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

12 (9) Further threatening Roe, the Supreme  
13 Court recently upheld the first-ever Federal ban on  
14 an abortion procedure, which has no exception to  
15 protect a woman’s health. The majority decision in  
16 *Gonzales v. Carhart* (05-380, slip op. April 18,  
17 2007) and *Gonzales v. Planned Parenthood Federa-*  
18 *tion of America* fails to protect a woman’s health, a  
19 core tenet of *Roe v. Wade*. Dissenting in that case,  
20 Justice Ginsburg called the majority’s opinion  
21 “alarming”, and stated that, “[f]or the first time  
22 since *Roe*, the Court blesses a prohibition with no  
23 exception safeguarding a woman’s health”. Further,  
24 she said, the Federal ban “and the Court’s defense  
25 of it cannot be understood as anything other than

1 an effort to chip away at a right declared again and  
2 again by this Court”.

3 (10) Legal and practical barriers to the full  
4 range of reproductive services endanger women’s  
5 health and lives. Incremental restrictions on the  
6 right to choose imposed by Congress and State legis-  
7 latures have made access to reproductive care ex-  
8 tremely difficult, if not impossible, for many women  
9 across the country. Currently, 87 percent of the  
10 counties in the United States have no abortion pro-  
11 vider.

12 (11) While abortion should remain safe and  
13 legal, women should also have more meaningful ac-  
14 cess to family planning services that prevent unin-  
15 tended pregnancies, thereby reducing the need for  
16 abortion.

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

19 (13) Although Congress may not create con-  
20 stitutional rights without amending the Constitution,  
21 Congress may, where authorized by its enumerated  
22 powers and not prohibited by the Constitution, enact  
23 legislation to create and secure statutory rights in  
24 areas of legitimate national concern.

1           (14) Congress has the affirmative power under  
2 section 8 of article I of the Constitution and section  
3 5 of the 14th amendment to the Constitution to  
4 enact legislation to facilitate interstate commerce  
5 and to prevent State interference with interstate  
6 commerce, liberty, or equal protection of the laws.

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

11           (A) many women cross State lines to ob-  
12 tain abortions and many more would be forced  
13 to do so absent a constitutional right or Federal  
14 protection;

15           (B) reproductive health clinics are com-  
16 mercial actors that regularly purchase medicine,  
17 medical equipment, and other necessary sup-  
18 plies from out-of-State suppliers; and

19           (C) reproductive health clinics employ doc-  
20 tors, nurses, and other personnel who travel  
21 across State lines in order to provide reproduc-  
22 tive health services to patients.

23 **SEC. 3. DEFINITIONS.**

24           In this Act:

1           (1) GOVERNMENT.—The term “government”  
 2 includes a branch, department, agency, instrumen-  
 3 tality, or official (or other individual acting under  
 4 color of law) of the United States, a State, or a sub-  
 5 division of a State.

6           (2) STATE.—The term “State” means each of  
 7 the States, the District of Columbia, the Common-  
 8 wealth of Puerto Rico, and each territory or posses-  
 9 sion of the United States.

10           (3) VIABILITY.—The term “viability” means  
 11 that stage of pregnancy when, in the best medical  
 12 judgment of the attending physician based on the  
 13 particular medical facts of the case before the physi-  
 14 cian, there is a reasonable likelihood of the sustained  
 15 survival of the fetus outside of the woman.

16 **SEC. 4. INTERFERENCE WITH REPRODUCTIVE HEALTH**  
 17 **PROHIBITED.**

18           (a) STATEMENT OF POLICY.—It is the policy of the  
 19 United States that every woman has the fundamental  
 20 right to choose to bear a child, to terminate a pregnancy  
 21 prior to fetal viability, or to terminate a pregnancy after  
 22 fetal viability when necessary to protect the life or health  
 23 of the woman.

24           (b) PROHIBITION OF INTERFERENCE.—A govern-  
 25 ment may not—

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

3                   (A) to bear a child;

4                   (B) to terminate a pregnancy prior to via-  
5 bility; or

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

9           (2) discriminate against the exercise of the  
10 rights set forth in paragraph (1) in the regulation  
11 or provision of benefits, facilities, services, or infor-  
12 mation.

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

16 **SEC. 5. SEVERABILITY.**

17       If any provision of this Act, or the application of such  
18 provision to any person or circumstance, is held to be un-  
19 constitutional, the remainder of this Act, or the applica-  
20 tion of such provision to persons or circumstances other  
21 than those as to which the provision is held to be unconsti-  
22 tutional, shall not be affected thereby.

23 **SEC. 6. RETROACTIVE EFFECT.**

24       This Act applies to every Federal, State, and local  
25 statute, ordinance, regulation, administrative order, deci-



1 sion, policy, practice, or other action enacted, adopted, or  
2 implemented before, on, or after the date of enactment  
3 of this Act.

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