

**Calendar No. 61**

103D CONGRESS  
1ST SESSION

**S. 25**

**[Report No. 103-42]**

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**A BILL**

To protect the reproductive rights of women, and  
for other purposes.

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APRIL 29 (legislative day, APRIL 19), 1993  
Reported without amendment

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. MITCHELL (for himself, Mr. AKAKA, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mr. BOREN, Mrs. BOXER, Mr. BRADLEY, Mr. BRYAN, Mr. CAMPBELL, Mr. CHAFEE, Mr. COHEN, Mr. DODD, Mr. FEINGOLD, Ms. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. INOUE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KERREY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Ms. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. ROBB, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, Mr. WELLSTONE, Mr. SHELBY, Mr. KRUEGER, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

APRIL 29 (legislative day, APRIL 19), 1993

Reported by Mr. KENNEDY, without amendment

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**A BILL**

To protect the reproductive rights of women, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Freedom of Choice  
3 Act of 1993”.

4 **SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND**  
5 **PURPOSE.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) The 1973 Supreme Court decision in *Roe v.*  
8 *Wade* established constitutionally based limits on the  
9 power of States to restrict the right of a woman to  
10 choose to terminate a pregnancy. Under the strict  
11 scrutiny standard enunciated in *Roe v. Wade*, States  
12 were required to demonstrate that laws restricting  
13 the right of a woman to choose to terminate a preg-  
14 nancy were the least restrictive means available to  
15 achieve a compelling State interest. Since 1989, the  
16 Supreme Court has no longer applied the strict scru-  
17 tiny standard in reviewing challenges to the constitu-  
18 tionality of State laws restricting such rights.

19 (2) As a result of the Supreme Court’s recent  
20 modification of the strict scrutiny standard enun-  
21 ciated in *Roe v. Wade*, certain States have restricted  
22 the right of women to choose to terminate a preg-  
23 nancy or to utilize some forms of contraception, and  
24 these restrictions operate cumulatively to—

25 (A)(i) increase the number of illegal or  
26 medically less safe abortions, often resulting in

1 physical impairment, loss of reproductive capac-  
2 ity or death to the women involved;

3 (ii) burden interstate commerce by forcing  
4 women to travel from States in which legal bar-  
5 riers render contraception or abortion unavail-  
6 able or unsafe to other States or foreign na-  
7 tions;

8 (iii) interfere with freedom of travel be-  
9 tween and among the various States;

10 (iv) burden the medical and economic re-  
11 sources of States that continue to provide  
12 women with access to safe and legal abortion;  
13 and

14 (v) interfere with the ability of medical  
15 professionals to provide health services;

16 (B) obstruct access to and use of contra-  
17 ceptive and other medical techniques that are  
18 part of interstate and international commerce;

19 (C) discriminate between women who are  
20 able to afford interstate and international travel  
21 and women who are not, a disproportionate  
22 number of whom belong to racial or ethnic mi-  
23 norities; and

24 (D) infringe upon women's ability to exer-  
25 cise full enjoyment of rights secured to them by

1 Federal and State law, both statutory and con-  
2 stitutional.

3 (3) Although Congress may not by legislation  
4 create constitutional rights, it may, where authorized  
5 by its enumerated powers and not prohibited by a  
6 constitutional provision, enact legislation to create  
7 and secure statutory rights in areas of legitimate na-  
8 tional concern.

9 (4) Congress has the affirmative power both  
10 under section 8 of article I of the Constitution of the  
11 United States and under section 5 of the Fourteenth  
12 Amendment of the Constitution to enact legislation  
13 to prohibit State interference with interstate com-  
14 merce, liberty or equal protection of the laws.

15 (b) PURPOSE.—It is the purpose of this Act to estab-  
16 lish, as a statutory matter, limitations upon the power of  
17 States to restrict the freedom of a woman to terminate  
18 a pregnancy in order to achieve the same limitations as  
19 provided, as a constitutional matter, under the strict scru-  
20 tiny standard of review enunciated in *Roe v. Wade* and  
21 applied in subsequent cases from 1973 to 1988.

22 **SEC. 3. FREEDOM TO CHOOSE.**

23 (a) IN GENERAL.—A State—

1           (1) may not restrict the freedom of a woman to  
2 choose whether or not to terminate a pregnancy be-  
3 fore fetal viability;

4           (2) may restrict the freedom of a woman to  
5 choose whether or not to terminate a pregnancy  
6 after fetal viability unless such a termination is nec-  
7 essary to preserve the life or health of the woman;  
8 and

9           (3) may impose requirements on the perform-  
10 ance of abortion procedures if such requirements are  
11 medically necessary to protect the health of women  
12 undergoing such procedures.

13       (b) RULES OF CONSTRUCTION.—Nothing in this Act  
14 shall be construed to—

15           (1) prevent a State from protecting unwilling  
16 individuals or private health care institutions from  
17 having to participate in the performance of abortions  
18 to which they are conscientiously opposed;

19           (2) prevent a State from declining to pay for  
20 the performance of abortions; or

21           (3) prevent a State from requiring a minor to  
22 involve a parent, guardian, or other responsible  
23 adult before terminating a pregnancy.

1 **SEC. 4. DEFINITION OF STATE.**

2       As used in this Act, the term “State” includes the  
3 District of Columbia, the Commonwealth of Puerto Rico,  
4 and each other territory or possession of the United  
5 States.