

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5151

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 HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mr. NADLER (for himself, Ms. SLAUGHTER, Mrs. LOWEY, Mr. CONYERS, Mrs. MALONEY, Ms. SCHAKOWSKY, Ms. MATSUI, Ms. BALDWIN, Mr. SHERMAN, Mr. WEXLER, Mr. GRIJALVA, Mr. OLVER, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. LEE, Mr. McDERMOTT, Ms. SOLIS, Mr. BERMAN, Mr. FILNER, Ms. HARMAN, Mr. HINCHEY, Mr. OWENS, Mr. GEORGE MILLER of California, and Mrs. CAPPS) introduced the following bill; which was 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 30 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) Legal and practical barriers to the full  
13 range of reproductive services endanger women’s  
14 health and lives. Incremental restrictions on the  
15 right to choose imposed by Congress and State legis-  
16 latures have made access to abortion care extremely  
17 difficult, if not impossible, for many women across  
18 the country. Currently, 87 percent of the counties in  
19 the United States have no abortion provider.

20 (10) While abortion should remain safe and  
21 legal, women should also have more meaningful ac-  
22 cess to family planning services that prevent unin-  
23 tended pregnancies, thereby reducing the need for  
24 abortion.

1           (11) To guarantee the protections of *Roe v.*  
2           *Wade*, Federal legislation is necessary.

3           (12) Although Congress may not create con-  
4           stitutional rights without amending the Constitution,  
5           Congress may, where authorized by its enumerated  
6           powers and not prohibited by the Constitution, enact  
7           legislation to create and secure statutory rights in  
8           areas of legitimate national concern.

9           (13) Congress has the affirmative power under  
10          section 8 of article I of the Constitution and section  
11          5 of the 14th amendment to the Constitution to  
12          enact legislation to facilitate interstate commerce  
13          and to prevent State interference with interstate  
14          commerce, liberty, or equal protection of the laws.

15          (14) Federal protection of a woman's right to  
16          choose to prevent or terminate a pregnancy falls  
17          within this affirmative power of Congress, in part,  
18          because—

19                 (A) many women cross State lines to ob-  
20                 tain abortions and many more would be forced  
21                 to do so absent a constitutional right or Federal  
22                 protection;

23                 (B) reproductive health clinics are com-  
24                 mercial actors that regularly purchase medicine,

1 medical equipment, and other necessary sup-  
2 plies from out-of-State suppliers; and

3 (C) reproductive health clinics employ doc-  
4 tors, nurses, and other personnel who travel  
5 across State lines in order to provide reproduc-  
6 tive health services to patients.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) GOVERNMENT.—The term “government”  
10 includes a branch, department, agency, instrumen-  
11 tality, or official (or other individual acting under  
12 color of law) of the United States, a State, or a sub-  
13 division of a State.

14 (2) STATE.—The term “State” means each of  
15 the States, the District of Columbia, the Common-  
16 wealth of Puerto Rico, and each territory or posses-  
17 sion of the United States.

18 (3) VIABILITY.—The term “viability” means  
19 that stage of pregnancy when, in the best medical  
20 judgment of the attending physician based on the  
21 particular medical facts of the case before the physi-  
22 cian, there is a reasonable likelihood of the sustained  
23 survival of the fetus outside of the woman.

1 **SEC. 4. INTERFERENCE WITH REPRODUCTIVE HEALTH**  
2 **PROHIBITED.**

3 (a) STATEMENT OF POLICY.—It is the policy of the  
4 United States that every woman has the fundamental  
5 right to choose to bear a child, to terminate a pregnancy  
6 prior to fetal viability, or to terminate a pregnancy after  
7 fetal viability when necessary to protect the life or health  
8 of the woman.

9 (b) PROHIBITION OF INTERFERENCE.—A govern-  
10 ment may not—

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

13 (A) to bear a child;

14 (B) to terminate a pregnancy prior to via-  
15 bility; or

16 (C) to terminate a pregnancy after viability  
17 where termination is necessary to protect the  
18 life or health of the woman; or

19 (2) discriminate against the exercise of the  
20 rights set forth in paragraph (1) in the regulation  
21 or provision of benefits, facilities, services, or infor-  
22 mation.

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

1 **SEC. 5. SEVERABILITY.**

2       If any provision of this Act, or the application of such  
3 provision to any person or circumstance, is held to be un-  
4 constitutional, the remainder of this Act, or the applica-  
5 tion of such provision to persons or circumstances other  
6 than those as to which the provision is held to be unconsti-  
7 tutional, shall not be affected thereby.

8 **SEC. 6. RETROACTIVE EFFECT.**

9       This Act applies to every Federal, State, and local  
10 statute, ordinance, regulation, administrative order, deci-  
11 sion, policy, practice, or other action enacted, adopted, or  
12 implemented before, on, or after the date of enactment  
13 of this Act.

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