

**Testimony of Sharon Toborg, Vermont Right to Life Committee Policy Analyst on PR. 5
Before the Vermont House Human Services Committee ~ April 11, 2019**

Thank you for the opportunity to testify. My name is Sharon Toborg, and I am Policy Analyst for the Vermont Right to Life Committee. Vermont Right to Life was founded in 1971 and our mission is to achieve universal recognition of the sanctity of human life from conception through natural death, rejecting abortion, infanticide, and euthanasia. VRLC opposes Proposition 5 for several reasons.

First, Prop 5 is intended to create State Constitutional protection for abortion, which takes the life of an unborn child, violating their right to life.

Second, Prop 5 is neither clear in its wording, nor sure in its effect. Placing it before the voters would be irresponsible. Prop 5 creates a right to “personal reproductive autonomy,” the meaning of which is not made clear in the Article. While proponents of Prop 5 have stated it is intended to cover contraception, sterilization, and abortion, those words appear nowhere in the Article, nor in the purpose. In fact, the Senate Health and Welfare Committee rejected the recommendation of the Attorney General’s Office, the ACLU, and Vermont Right to Life that abortion be specifically referenced in the proposal. Does the phrase “personal reproductive autonomy” encompass *how* one becomes pregnant? This could provide Constitutional protection for potentially dangerous or experimental reproductive technologies, and leave the State unable to regulate them to protect the health and safety of women. Legislative Council informed the Senate Health and Welfare Committee the ultimately it would be up to the Courts to decide what falls under that rubric of “personal reproductive autonomy”, as well as what constitutes a “compelling state interest.” Far from being carefully crafted, the members of the Senate Health and Welfare Committee felt the need to offer a last-minute amendment to the proposal they voted out of Committee just days earlier, when they realized the language they originally passed might have some unintended consequences. What other problems with the language did the Committee miss?

Third, which should be of concern to us all, Prop. 5 provides an avenue through which men could seek to shirk their responsibilities to support the children they father, leading to increased financial pressure on women to seek abortion. In 2007, the United States Court of Appeals for the Sixth Circuit issued a ruling in the case of *Dubay v. Wells*. Lauren Wells, who was in a relationship with Matthew Dubay, told Dubay she was infertile and using birth control. However, she became pregnant, had the baby, and sued for child support. Dubay claimed that the Michigan Paternity Act violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. In that particular case, the Court ruled against Dubay. Under Prop. 5, however, such a case would be considered in a different legal

environment. We must remember that the constitutional amendment proposed here is a legal novelty, and how it might be interpreted is a wide-open question. With a State Constitutional “right to personal reproductive autonomy,” which would require a higher standard of scrutiny by the court than was required in *Dubay*, the result of a similar case in Vermont could well be different. While proponents of Prop 5 brush aside that possibility, Legislative Council acknowledged in testimony before the Senate Health and Welfare Committee that it is unclear how Prop. 5 would apply to a person like *Dubay*, who can’t get pregnant, yet would be guaranteed “personal reproductive autonomy.”

Fourth, Prop 5 would eliminate the State’s ability to regulate abortion based on its legitimate interests in protecting life and maternal health. Catherine Glen Foster, an attorney who is an expert on constitutional law and abortion jurisprudence, submitted written testimony on Proposal 5, noting that:

*By preventing any regulation of the abortion process unless it is “justified by a compelling State interest achieved by the least restrictive means,” this Proposal immediately rejects the Supreme Court’s supposition in *Roe* that “a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life.” The Supreme Court has upheld restrictions on the provision of abortion due to the state’s legitimate interest in protecting life and provisions to ensure the informed consent and health of the woman on whose child the abortion will be performed.*

Prop 5 would establish an extremely high bar for any regulation of abortion – a bar higher than that established by *Roe v. Wade* and its progeny.

In the theoretical event that *Roe v. Wade* is overturned and the issue is returned to the states, Vermont already has unlimited, unregulated abortion – which has been the case for 47 years, since the Vermont Supreme Court ruled in *Beecham v. Leahy*. It is improbable, to say the least, to think that would change. Proposal 5 is unwise because it has potential unintended consequences, while doing nothing to further protect rights Vermonters already have.