To: Vermont House Committees on Human Services and Judiciary

From: Janet Metz, West Bolton

Date; February 6th, 2019

I'd like to address my remarks to an argument made in support of this legislation: that it merely codifies Roe v. Wade.

In that decision, Supreme Court did not view a woman's right to choose to have an abortion as an absolute right. The justices noted that states did have some legitimate interests in regulating or prohibiting abortions.

The first was the protection of the health of the mother from the dangers of abortion procedures; the second was the protection of the life of the fetus. While these interests were not very strong in the early stages of pregnancy, they became more compelling in the later stages of the pregnancy.

Striking a balance between a woman's right to privacy and a state's interests, the Court set up a framework laying out when states could regulate and even prohibit abortions.

According to the framework, in the first trimester, a woman has the right to abort without restriction – there is minimal risk to the mother and the fetus is not yet viable.

During the second trimester, the state's interests become more compelling as the danger of complications increases and the fetus becomes more developed. During this stage, a state may regulate, but not prohibit

abortions, if the regulations are aimed at protecting the health of the mother.

During the third trimester, the risks to the mother greatly increase and the fetus is considered viable. The state may regulate or even prohibit abortions during this stage, if there is an exception for abortions necessary to preserve the life and health of the mother.

This framework was upheld in Casey v. Planned Parenthood in 1992 and stands today.

Certainly H.57, goes well beyond the scope of the Roe decision in denying any rights to unborn children, allowing abortion up to the point of birth, and abandoning the requirement that the procedure be done only when the mother's life or health is in jeopardy.

The Court's concept of viability is egregiously ignored in this legislation. Roe recognizes viability to exist in the third trimester, generally thought of as 28 weeks until birth. Yet in the 45 years since the decision medical advances have clearly pushed the concept back.

At 23 weeks of gestational age babies qualify for care at neonatal intensive care centers. Second trimester.

Most recent studies show about 50% survival rate in preterm babies born at 24 weeks gestational age. Thus, the fetal viability is now considered to be 24 weeks of gestational age. Second trimester.

At 27 weeks the survival rate is 90% with long-term morbidity is at its minimum. Still in the second trimester.

Clearly, the law is in need of catching up with science in terms of viability, rather than eliminating it as a consideration, as is done in H.57

Finally, the argument that Vermont has no statutory restrictions on abortion currently is a specious one. Although many of us here wish it were not, Roe v. Wade and ensuing case law are the current law of the land. No state legislation necessary. The sponsors of this bill owe it to Vermonters to admit that this legislation goes far beyond Roe, they would do well to consider that if enacted, H.57 and others like it will spur new legal challenges that may erode the very "rights" enshrined in Roe that they are trying to protect.