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The Honorable Ann Pugh, Chair
House Committee on Human Services
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: H.57 – An Act relating to preserving the right to an abortion

Dear Chair Pugh and Members of the Committee,

My name is Bor Yang and I am the Executive Director and Legal Counsel of the Vermont Human Rights Commission (HRC). The HRC has jurisdiction over claims of discrimination in housing, state government employment and places of public accommodations. The HRC achieves its mission by enforcing laws through investigations and litigation, conciliating disputes pre and post investigative reports, educating the public and providing information and referrals and advancing effective public policies on human rights. Sex is a protected category in all areas and breast-feeding is a protected activity in places of public accommodations and state government employment.

The HRC firmly believes that the right to an abortion is a fundamental human right and we strongly support the passage of this bill. We are proud to be among the states preparing for the possibility that our nation will no longer have federal protections for legal abortion. We know due to the current composition of the Supreme Court that we are likely to see *Roe v. Wade* overturned in the near future. Anti-abortion advocacy groups are working hard to file suits in lower courts in the hopes of appeals, giving the Supreme Court a chance to review an abortion case and overturn *Roe v. Wade*. If Vermont wants to protect access to abortion, we need to act now. All the political parties in the legislature seem to support the House bill, and Gov. Phil Scott has said he would be supportive of the legislation.¹

The most robust protection at the state level exists when the right to abortion is safeguarded by the state constitution. According to an analysis by the Center for Reproductive Rights, there are nine states in which the highest state court has interpreted its state constitution to protect the right to abortion.² The senate is looking to amend our state constitution which we strongly support

¹ Vermont Introduces Bill Affirming Right to Abortion, <https://vtdigger.org/2019/01/22/house-bill-protect-right-abortion-introduced/>

² What if Roe Fell. <https://www.reproductiverights.org/what-if-roe-fell>

because an amendment to the constitution cannot be overturned as easily as a statute. However, inserting or establishing new rights under a state constitution is an arduous undertaking that may not be practical or possible to do in a timely manner.³ We encourage the House to consider a constitutional amendment in the future.

Currently California, Connecticut, Delaware, Hawaii, Maine, Maryland, Nevada, Oregon and Washington have statutes protecting the right to abortion prior to viability. New York passed a law during their current legislative session protecting the right to abortion prior to viability unless the abortion is necessary to save a woman's life. The Rhode Island and New Mexico legislatures are also currently considering a bill to protect access to abortion.

Oregon's law enacted in 2017 is notable in that it prohibits the state from interfering with or restricting "the choice of a consenting individual to terminate the individual's pregnancy."⁴ This protects abortion at any time, not just pre-viability. The Oregon law is cited by both supporters and detractors as the most sweeping of state efforts to entrench the right to both abortion and affordable contraception.

The Reproductive Health Equity Act...requires insurers to cover, with no cost to the patient, the entire gamut of reproductive treatment – contraception, vasectomies and prenatal care along with abortion, post-natal care and screenings for cancer and sexually transmitted diseases. It enshrines in Oregon the right to abortion, even if *Roe v Wade* is overturned by the Supreme Court and allocates public funds for family planning services....the law also says the coverage applies to everyone, regardless of gender, gender identity or immigration status – meaning that even those people who are in the country illegally will get the coverage spelled out in the statute.⁵

The HRC would also support a bill like Oregon's that provides greater access to all for reproductive treatments. As we know, access to abortion already looks very different from state to state, and a person's access to timely, affordable abortion care can be profoundly impacted by her race, socioeconomic status and available resources.⁶ Currently, affordability is one of the most significant barriers to obtaining abortion care in the United States. The average amount paid for an early medication abortion (up to 9 weeks' gestation) was \$535 in 2014, and abortion costs tend to increase as a pregnancy progresses.⁷ We would support a statute that includes the funding element in the future.

Other states have been preparing for *Roe v. Wade* to be overturned for many years. Maine, Maryland, Nevada and Washington all enacted their legislation prior to the current crisis in the

³ <https://www.guttmacher.org/gpr/2019/01/ensuring-access-abortion-state-level-selected-examples-and-lessons#>

⁴ <https://www.guttmacher.org/gpr/2019/01/ensuring-access-abortion-state-level-selected-examples-and-lessons#>

⁵ <https://www.usnews.com/news/the-report/articles/2017-08-11/states-forge-ahead-on-abortion-and-birth-control-legislation>

⁶ Guttmacher Institute, <https://www.guttmacher.org/gpr/2019/01/ensuring-access-abortion-state-level-selected-examples-and-lessons>

⁷ Guttmacher Institute, *Induced abortion in the United States, Fact Sheet*, New York: Guttmacher Institute, 2018, <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

Supreme Court.⁸ Below we have included the specifics of what the states that currently have statutory protection include:

In 1973, Nevada enacted a law affirming a woman's right to choose. This law was amended several times and in its current form is consistent with the framework of *Roe v. Wade*. This law ensures women's access to pre-viability abortion services and would remain in effect even if *Roe* were overturned. In November 1990, Nevada voters passed a ballot initiative approving this law, and as a result the statute will remain in effect and cannot be amended, repealed, or otherwise changed except by a direct vote of the people.⁹

Washington: Freedom of Choice Act; Washington has created additional protections for reproductive rights in its state law. In 1991, Washington voters narrowly passed this law via a ballot initiative reaffirming *Roe v. Wade*. This law ensures women's access to pre-viability abortion services and would remain in effect even if *Roe v. Wade* were overturned.¹⁰

Maryland: Maryland has created additional protections for reproductive rights by adding an affirmative right to choose to its state law. In 1991, the legislature passed a pro-choice law asserting that the state could not interfere with a woman's right to decide whether or not to continue her pregnancy within the boundaries established in *Roe v. Wade*. Anti-choice groups tried to repeal the law with a ballot initiative in 1992, but voters overwhelmingly approved the law.¹¹

*Maine—FOCA—*Maine has created additional protections for reproductive rights by adding an affirmative right to choose into its state law. In 1979, Maine enacted a law stating that it is the public policy of the state that abortion after viability can only be provided if necessary, to preserve the life or health of the woman and that abortion care may be provided only by a physician. In 1993, Maine reaffirmed its public policy that a woman's right to privacy must not be restricted except as described in the 1979 law. This law ensures women's access to pre-viability abortion services and would remain in effect even if *Roe v. Wade* were overturned.¹²

*Hawaii—FOCA—*Hawaii created additional protections for reproductive rights by adding an affirmative right to choose into its state law. This ensures women's access to pre-viability abortion services that would remain in effect even if *Roe v. Wade* were overturned.¹³

California: California has created additional protections for reproductive rights by adding an affirmative right to choose into its state law. This law ensures women's

⁸ Induced abortion in the United States, *Fact Sheet*, New York: Guttmacher Institute, 2018, <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

⁹ <https://www.prochoiceamerica.org/state-law/nevada/>

¹⁰ <https://www.prochoiceamerica.org/state-law/washington/>

¹¹ <https://www.prochoiceamerica.org/state-law/maryland/>

¹² <https://www.prochoiceamerica.org/state-law/maine/>

¹³ : <https://www.prochoiceamerica.org/state-law/hawaii/>

access to pre-viability abortion services and would remain in effect even if *Roe v. Wade* were overturned.

“The legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. . . . Every individual has the fundamental right to choose or refuse birth control. . . . Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion. . . . The state shall not deny or interfere with a woman’s fundamental right to choose to bear a child or to choose and obtain an abortion.” Cal. Health & Safety Code § 123462 (Enacted 2002).¹⁴

Connecticut: Protections: Freedom of Choice Act (FOCA)—Connecticut has created additional protections for reproductive rights by adding an affirmative right to choose into its state law. This law ensures women’s access to pre-viability abortion services would remain in effect even if *Roe v. Wade* were overturned.¹⁵

Delaware—First in the country to pass such law. Aimed at protecting women’s access to pre-viability abortion services if *Roe v. Wade* was overturned.¹⁶

There are many states with pending legislation or legal cases to block a woman’s access to abortion. There are almost two dozen states that would see an almost immediate ban on abortion if *Roe v. Wade* is overturned, transforming nearly half of the country into anti-choice territory in an instant. The Center for Reproductive Rights deems another 11 states "at-risk" for losing abortion rights.¹⁷ It is so important that states like ours that value women and children keep abortion legal. The passage of the bill during this session is important to all Vermonters and there is no time to waste!

Thank you.

Sincerely,



Bor Yang
Executive Director and Legal Counsel

¹⁴ <https://www.prochoiceamerica.org/state-law/california/>

¹⁵ <https://www.prochoiceamerica.org/state-law/connecticut/>

¹⁶ <https://www.reuters.com/article/us-usa-abortion-delaware-idUSKBN190217>

¹⁷ https://broadly.vice.com/en_us/article/wjbmzkz/trigger-laws-these-states-will-immediately-ban-abortion-if-roe-v-wade-is-repealed