

ACLU-VT Testimony on P.R. 5
Senate Health and Welfare
Chloé White, Policy Director
March 13, 2019

Madam Chair and the distinguished members of the committee:

Thank you for inviting the ACLU of Vermont to testify on P.R. 5. We fully support the proposal and urge you to pass it so that the voters can make their voices heard on this critical issue.

The right to decide if, when, and how to have children is critical to an individual's autonomy, equality, and ability to participate in the social, economic, and political life of the state and the nation. Reproductive freedom is essential to fulfilling the promise of equality and self-determination rooted in our nation and our state's founding documents and principles.

Reproductive autonomy means opportunity: the opportunity to obtain an education, to work, to love, to build a family, to make a good life, and ultimately, the opportunity to live that life as one desires.

The United States Supreme Court has recognized the centrality of this right in numerous decisions. In *Griswold v. Connecticut* in 1965¹ and *Eisenstadt v. Baird* in 1972,² the Court struck down bans on contraception for married and single people, respectively. In *Eisenstadt*, the Court recognized the importance of “the right of the individual, married or single, to be free from unwarranted governmental intrusion so fundamentally affecting a person as the decision whether to bear or beget a child.”³ *Roe v. Wade*, decided in 1973, built upon these cases, recognizing abortion as a fundamental right⁴ alongside decisions relating to marriage, contraception, education, and family relationships.

Even in *Planned Parenthood v. Casey* (1992),⁵ a decision that weakened *Roe*, the Supreme Court continued to recognize reproductive autonomy as a fundamental right, saying that “the ability of women to

¹ 381 U.S. 479 (1965).

² 405 U.S. 438 (1972).

³ *Id.* at 453.

⁴ *Roe v. Wade*, 410 U.S. 113, 155 (1973).

⁵ 505 U.S. 833 (1992).



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participate equally in the economic and social life of the Nation has facilitated by their ability to control their reproductive lives.”⁶ The right to reproductive liberty, and particularly the right to abortion, remains, for the time being, a fundamental right at the national level, and should be recognized as such here in Vermont as well.

But this right is under attack at the federal level as well as in other states, which have passed over 400 restrictions on abortion since 2010.⁷ Justice Kavanaugh’s dissent in the recent Louisiana abortion clinic case,⁸ which could have closed nearly all the clinics in the state and essentially dismantled *Roe*, highlights the very real danger.⁹

In addition to the nomination of Justice Kavanaugh, the President has nominated, and the Senate has confirmed, a large number of new federal district and circuit court judges, including to our circuit, the Second, all of whom have a demonstrated record of hostility to abortion rights and reproductive liberty. Federal government agencies have proposed numerous rules and regulations that restrict reproductive rights, including the recent “domestic gag rule” that will adversely affect the provision of reproductive health care nationwide.¹⁰ *Roe*, and the fundamental right to an abortion, are in grave danger.

Vermont must respond to the mounting threat to abortion rights by enshrining reproductive autonomy as a constitutional and fundamental right.

⁶ *Id.* at 856.

⁷ Elizabeth Nash, et al., *State Policy Trends 2018: With Roe v. Wade in Jeopardy, States Continued to Add New Abortion Restrictions*, GUTTMACHER INST. (Dec. 2018), <https://www.guttmacher.org/article/2018/12/state-policy-trends-2018-roe-v-wade-jeopardy-states-continued-add-new-abortion>. These restrictions include banning abortion at six weeks, banning the most commonly used method of second-trimester abortion, and requiring clinics that perform abortions to follow onerous building guidelines and restrictions. The over 400 restrictions enacted since 2010 comprise more than a third of all abortion restrictions enacted since *Roe*. *Id.*

⁸ *June Medical Services, L.L.C., et al. v. Gee*, 586 U.S. ___ (2019) (Kavanaugh, J., dissenting).

⁹ In fact, there are at least 20 cases pending in federal court that could reach the Supreme Court and undermine or dismantle *Roe*. Ariana Eunjung Cha, *At least 20 abortion cases are in the pipeline to the Supreme Court. Any one could gut Roe v. Wade*, WASH. POST (Feb. 15, 2019), https://www.washingtonpost.com/health/2019/02/15/least-abortion-cases-are-steps-us-supreme-court-any-one-could-gut-roe-v-wade/?utm_term=.bb7cc32f551a.

¹⁰ Anna North, *New Trump administration rule will strip funding from Planned Parenthood*, VOX (Mar. 5, 2019), <https://www.vox.com/policy-and-politics/2019/2/22/18236227/abortion-planned-parenthood-gag-rule-trump>.

This proposal is a simple affirmation of our values – values that Vermonters have cherished for generations. Even in *Beecham v. Leahy*,¹¹ the Vermont Supreme Court decision overturning a statute forbidding medical providers from providing abortions, the Court recognized that the legislature had “affirmed the right of a woman to abort.”¹² There have been no other Vermont Supreme Court decisions on this issue since that case, yet it is clear that Vermonters value independence and the right to reproductive liberty free from government interference.

The lack of Vermont Supreme Court jurisprudence, and the legal cloud around these rights at the federal level, demonstrate the need for this amendment: there should be no question where Vermont stands with regard to its core values and commitment to fundamental rights. For those values and those rights to be protected definitively, they must be enshrined in our state constitution.

For all of these reasons the ACLU supports Proposal 5. And to ensure that this fundamental right is highlighted as voters consider this crucial issue, we would suggest specifically referencing the right to abortion in the “purpose” section of the bill.

No one knows exactly how far the federal government and courts will go in dismantling reproductive rights, but Vermont should give voters the opportunity to stand up to attacks and affirm their commitment to reproductive liberty by enshrining the fundamental right to reproductive autonomy in our constitution. This right deserves the highest level of legal protection, and we urge you to pass this proposal.

¹¹ 130 Vt. 164 (1972).

¹² *Id.* at 170.