

**Testimony of Sharon Toborg, Vermont Right to Life Committee Policy Analyst On PR. 5  
Before the Vermont Senate Health and Welfare Committee ~ March 13, 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. In pursuit of that mission, VRLC through peaceful, legal means, seeks changes in public opinion, public policy, the law, and individual behavior that respect the right to life and reject abortion, euthanasia, and other actions that deny the right to life. VRLC is a non-partisan, non-sectarian, membership organization representing a broad cross-section of Vermonters.

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 that child's right to life.

Second, a right to "personal reproductive autonomy" is not the same as a right to abortion. That makes Prop. 5 very different than *Roe v. Wade*. *Roe v. Wade* is limited in scope, while Prop. 5 is expansive. Since there is no definition of "reproductive autonomy," a wide range of actions and technologies could be construed to have been given Constitutional protection by Prop. 5. While it is impossible to foresee every possible scenario, several serious concerns are outlined in a brief prepared by the Bioethics Defense Fund, a copy of which I have submitted with my testimony. Should Prop. 5 be enacted, the State would have to have a "compelling state interest" to regulate an undefined "personal reproductive autonomy." It would be up to the Courts to decide what falls under that rubric, as well as (as noted by Legislative Council) what constitutes a "compelling state interest." Decisions about important public policy questions will be taken out of the hands of the people, acting through their elected representatives, and will be placed in the hands of unelected judges.

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 case, the Court ruled against Dubay. Under Prop. 5, however, the legal landscape would be different. 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. As Legislative Council noted in this Committee on February 28, it is unclear how Prop. 5 would apply to people who can’t get pregnant.

Then there is the question of whether the language of Prop. 5 is appropriate for the Constitution. Most of the other rights in the Constitution are true individual rights. The ability to exercise them does not depend on another, and there exists the ability for people to exercise these rights simultaneously. But an individual right to “reproductive autonomy” is an oxymoron. An individual cannot reproduce without the involvement of another. Reproduction involves at least two people, both of whom may desire to exercise their “individual reproductive autonomy” in diametrically opposed and incompatible ways. For example, when a couple has stored frozen embryos and one person wants the embryos destroyed while the other would like to bring them to term. In theory, Prop. 5 guarantees reproductive autonomy to both parties, but reality dictates only one can actually exercise it. While various rights do come into conflict from time to time, Prop. 5’s wording is inherently in conflict with itself,

The main sponsor of Prop. 5, Sen. Tim Ashe, indicated in December that he would introduce a constitutional amendment to protect abortion rights. Yet he opted for Prop. 5’s expansive language rather than using clear language to protect abortion rights. And for what? Even if – and I think it is a big if – *Roe v. Wade* is overturned, abortion rights face no threat in Vermont. The House just passed legislation that would enshrine an unrestricted right to abortion throughout pregnancy in State statute. Placing broad language in the Constitution, in order to protect a specific right that Vermonters already have is bad public policy. I urge you to reject Prop. 5.