

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

FAX: (802) 828-3187

TTY: (802) 828-3665

<http://www.ago.vermont.gov>

**STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001**

**Proposition 5
Testimony of Attorney General T.J. Donovan
March 13, 2019**

Madam Chair and committee members, thank you for this opportunity to provide testimony in support of Proposition 5, which recognizes reproductive autonomy, including abortion, as a fundamental right under the Vermont Constitution.

Under current federal constitutional law, there exists a fundamental right to abortion. This has been long recognized in cases such as *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Federal constitutional jurisprudence provides that fundamental rights are entitled to heightened protection against governmental interference through the Due Process Clause when they are implicit in the concept of ordered liberty or deeply rooted in the nation's history and tradition.

However, recent changes in the make-up of the Supreme Court have created a risk that this long recognized fundamental right to abortion could be reversed or substantially eroded.

The Vermont constitution should be amended, as proposed in Proposition 5, to expressly protect the fundamental right to reproductive autonomy, including abortion, because it is both implicit in this state's concept of ordered liberty and deeply rooted in this state's history and tradition. Vermont has a long history and tradition of not restricting abortion. The decision about whether to abort a pregnancy should always remain a private/personal one between a woman and her health care provider.

Proposition 5 creates a special opportunity for Vermont. Like other Vermont Constitutional provisions, we have an opportunity to create protections for individual freedom and liberty that surpasses the Federal Constitution. Examples of such enhanced protections include Vt. Const., Ch. I., Art. 11, which safeguards individual privacy against unreasonable search and seizure,¹ or the common benefits clause found in Vt. Const., Ch. I, Art. 7. One need

¹ Article 11 cases include: *State v. Burgess*, 2010 VT 64, ¶ 8, 188 Vt. 235, 5 A.3d 911 (holding that exit orders in vehicle stops are not allowed as a matter of course under the Vermont Constitution but rather

only recall the case of *Baker v. State*, 170 Vt. 194 (1999), where the Common Benefits Clause was interpreted to provide protections for same sex couples who sought the benefits and protections of marriage. Similar protections did not exist under the U.S. Constitution's Equal Protection Clause at that time.

I strongly support passage of Proposition 5 to protect the fundamental right to reproductive autonomy, including abortion. I also look forward to talking with Vermonters about this important fundamental right as the constitutional amendment process works its way through the legislature and to a vote by the citizens of Vermont.

require "particular justification"); *State v. Bauder*, 2007 VT 16, ¶ 1, 181 Vt. 392, 924 A.2d 38 (holding that absent exigent circumstances, officers must obtain warrants before searching a vehicle); *State v. Rheume*, 2005 VT 106, ¶ 8 n.*, 179 Vt. 39, 889 A.2d 711 ("[W]e have recognized that Article 11 affords individuals greater privacy rights than its federal counterpart in certain circumstances.").