PROPOSAL 5
Case Notes

Article 22. [Personal reproductive liberty]

That an individual's right to personal reproductive autonomy[1] is central to the liberty and dignity[2] to determine one's own life course[3] as protected by this Constitution,[4] and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.[5]

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[1] "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833,856 (1992). "These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Id*. at 851.

[2] In reaffirming Roe v. Wade, the Casey Court described the centrality of "the decision whether to bear . . . a child," Eisenstadt v. Baird, 405 U. S. 438, 453 (1972), to a woman's "dignity and autonomy," her "personhood" and "destiny," her "conception of . . . her place in society." 505 U. S., at 851–852 (1992).

[3] In her dissent in Gonzalez v. Carhart 550 U.S. 124 at 172 (2007), Justice Ginsburg concluded: "Thus, legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature."

[4] The Court in Lawrence v. Texas described the Casey decision as reaffirming "the substantive force of the liberty protected by the Due Process Clause," and confirming that "…our laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." 539 U.S. 558, 574 (2003). While the federal Constitution establishes minimum levels below which states cannot go in treating individuals, states can, and often do, afford persons within their jurisdiction more protection for individual rights. *See, e.g.*, Harris v. McRae, 448 U.S. 297, 311 (1980). The Vermont Constitution provides more protection for the individual than the federal Constitution, and delineates rights not recognized or guaranteed by that document. *See e.g.* State v. Jewett, 146 Vt. 221 (1985) (state constitution may protect Vermonters "however the philosophy of the U.S. Supreme Court may ebb and flow"); State v. Badger, 141 Vt. 430, 438 (1982) ("Indeed [the Vermont Supreme Court has] at times interpreted our constitution as protecting rights which were explicitly excluded from federal protection.") Articles One, Four, Five, Six, Seven, Nine, and Eighteen of Chapter 1 of the Vermont Constitution provide for equality and protection of rights. The Common Benefits Clause is the first and primary safeguard of the rights and liberties of all Vermonters, and the federal Equal Protection clause may supplement the protections afforded by it, but not supplant it. *See* Baker v. State, 170 Vt. 194 (1999).

[5] When certain fundamental rights are at issue, the U.S. Supreme Court has held that "a regulation limiting these rights may be justified only by a compelling State interest, and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake." Roe v. Wade, 410 U.S. 113 (1973), citing Griswold v. Connecticut, 381 U.S. 479 (1965).