

Good afternoon. My name is Sharon Toborg. I am the Policy Analyst for the Vermont Right to Life Committee. Thank you for the opportunity to testify on Proposal 5. Given the limited amount of time allocated for testimony, I would like to focus on just a few key aspects of Proposal 5:

1) Proposal 5 Goes Far Beyond *Roe v. Wade*

The U.S. Supreme Court found in *Roe v. Wade* that the right to privacy is broad enough to encompass a woman's decision to have an abortion. The Court put forth its "trimester" framework, whereby states could not regulate abortion in the first trimester; could regulate abortion to protect the safety of women in the second trimester; and after viability, could regulate or even prohibit abortion to protect the "potential life," except when necessary to protect the woman's life or health.

Proposal 5, however, would unequivocally protect abortion throughout pregnancy. That is the clear intent of the Proposal. No unborn human being, regardless of stage of development, could be protected by law under Proposal 5. Eleanor Spottswood from the Attorney General's Office, in her testimony yesterday, acknowledged this. She was clear that proposed legislation declaring a fetus a person at 24 weeks gestation would be declared unconstitutional under Proposal 5 if it interfered with a woman's ability to obtain an abortion.

As Professor Robert P. George, McCormick Professor of Jurisprudence at Princeton University, has noted about Proposal 5:

"People on both sides of the debate over abortion know that 'reproductive autonomy' is publicly understood to be a way of referring to an unlimited abortion license, that is, elective abortion permitted through the entire nine months of gestation and pregnancy up to and including the process of birth. That is undoubtedly how this language, would be interpreted by the Vermont courts.... One might ask, 'does the reference to a compelling State interest and least restrictive means' alter or modify that meaning?' The answer is plainly no..."

Unlike *Roe*, Proposal 5 guarantees "personal reproductive autonomy" to not just women, but to all individuals without regard to age. When considering legislative intent, Courts will look to passage of Act 47, where Legislators expressly rejected limits on abortion for minors, and rejected limits on abortion later in pregnancy.

2) Proposal 5 Goes Far Beyond Abortion

"Personal Reproductive Autonomy" has no fixed definition. This is by design. Some proponents of Proposal 5 say it includes rights to abortion, birth control, and sterilization; rights derived from various Supreme Court rulings over the years. Future Vermont court rulings will continue to expand that definition.

We can already see evidence of that expansion of definition. The ACLU, which is helping to lead the charge for passage of Proposal 5, already includes, "the right to decide if, when, and *how* to have children." (emphasis added) What could that come to mean? Would these "rights" be protected for Vermonters of any age? Unconstrained and unregulated science almost always negatively impacts the most vulnerable. Proposal 5 would tie the hands of future legislatures and prevent them from addressing the problems that are sure to arise.

3) Proposal 5 Will Impact Private Medical Providers

Advocates of Proposal 5 insist it will not affect private medical providers, because a constitutional amendment is only a restraint on government action. This is fiction. It will absolutely impact private health care providers, *because it will impact the ways in which government will be allowed or required to regulate them*. Vermont governmental agencies are intensely involved in every aspect of the provision of medical care, including:

- the licensing of physicians, nurses, other providers, and hospitals
- setting budgets, funding levels, and priorities
- issuing certificates of need
- investigating complaints against medical providers
- determining what constitutes unprofessional conduct and merits revoking of licensure

Under Proposal 5, any action – or inaction – by these governmental agencies that could be construed to “interfere” with reproductive autonomy would be subject to legal challenge, and need to meet the “strict scrutiny” standard, a high legal bar to overcome.

In addition, Vermont is one of only two states that does not provide conscience protections to medical workers in statute, although such legislation (H.497) has been proposed here. While there are some protections in Federal law, they are ignored. The current administration in Washington is working to dismantle what limited protections there are.

Absent effective protections for doctors and nurses, some health care organizations in Vermont are already moving toward policies to compel participation in abortion and other procedures, even if it goes against the doctor’s or nurse’s beliefs or medical judgement.

One need only look at the UVM Medical Center’s shifting policy. In 2019, they submitted a letter in support of Proposal 5, which also indicated that they “support[ed] the right of individual health care providers to elect to not participate in abortion procedures.” Now in 2021, while they still support Proposal 5, they only support the right of employees to “*request to opt out* of participating in these procedures.” (emphasis added). These changes in policy are already contributing to the shortage of doctors and nurses in our state.

4) Proposal 5 Takes Policy Decisions Away from the Legislature

Throughout the debate on Proposal 5, one thing has been clear: if enacted, Vermont’s courts, not the Legislature, will make policy decisions regarding “personal reproductive autonomy.” Given the unprecedented nature of this amendment, its vague wording, and the desire to expand its meaning, we should anticipate many court cases if Proposal 5 is enacted. These policy decisions should be made by Legislative deliberation, not Court mandate.

To conclude, most Vermonters do not support unrestricted, unregulated abortion. Proposal 5 is vague. The unfamiliar “compelling state interest” legal term of art is easy to misconstrue as *allowing* potential regulation, rather than restricting it. Putting this unclear language before the voters of Vermont is irresponsible, and I urge you not to advance this proposal.