

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SR 6 (Skinner)

Version: January 28, 2021

Hearing Date: March 9, 2021

Fiscal: No

Urgency: No

TSG

SUBJECT

Women's Reproductive Health

DIGEST

This resolution marks the 48th anniversary of the U.S. Supreme Court's decision in the case *Roe v. Wade* (1973) 410 U.S. 113, which established a person's right, under the federal constitution, to choose whether or not to carry a pregnancy to term.

EXECUTIVE SUMMARY

Roe v. Wade was decided on January 22, 1973. To mark the anniversary of the decision, this resolution makes a series of California State Senate findings regarding the positive impact of that ruling on the reproductive, economic, and social life of the nation as a whole, and women in particular. The resolution highlights recent trends – legal, legislative, and in the form of targeted violence and obstruction – that threaten to weaken or even overturn *Roe v. Wade's* essential holding. It reaffirms California's strong support for every individual's fundamental right to make decisions regarding their own pregnancy and reproduction. With this in mind, the resolution urges the U.S. President and Congress to express support for the constitutional right to control reproductive decisions as well as for access to comprehensive reproductive health care services.

The resolution is author-sponsored. Opposition comes from those favoring greater restriction or outright prohibition on access to abortion.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Holds that the federal constitution's implied right to privacy extends to a woman's decision about whether or not to have an abortion. (*Roe v. Wade* (1973) 410 U.S. 113.)
- 2) Authorizes the government to impose restrictions on abortion as long as those restrictions do not create an undue burden on a woman's right to choose to terminate a pregnancy. (*Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833.)

Existing state law:

- 1) Holds that the state constitution's express right to privacy extends to a woman's decision about whether or not to have an abortion. (*People v. Belous* (1969) 71 Cal.2d 954.)
- 2) Provides that every woman has the fundamental right to choose to bear a child or to choose to obtain an abortion, with specified exceptions. (Health & Saf. Code § 123462(b).)
- 3) Prohibits the state from denying or interfering with a woman's fundamental right to choose to bear a child or to choose to obtain an abortion, with specified exceptions. (Health & Saf. Code § 123462(c).)

This resolution:

- 1) Declares that:
 - a) the 48th anniversary of *Roe v. Wade* is an occasion deserving of acknowledgement;
 - b) *Roe v. Wade* has been the cornerstone to the ability of women to control when, if, with whom, and how many children to have, thus facilitating women's participation in economic and social life;
 - c) *Roe v. Wade* has drastically reduced the percentage of women who die or are severely injured while attempting to terminate their pregnancies;
 - d) interference with the constitutional right to terminate a pregnancy forces women into illegal and dangerous abortions;
 - e) *Roe v. Wade* continues to protect the health and freedom of women throughout the U.S. by providing access to a safe medical procedure that nearly 25 percent of women will use;
 - f) the central holding of *Roe v. Wade* is in serious jeopardy as a result of former President Trump's appointment of new justices to the United States Supreme Court who have a record of hostility to a women's constitutional right to make choices regarding reproductive health;

- g) abortion service providers face ongoing threats of violence for their work; and
 - h) the State of California strongly supports the constitutional right set forth in the holding of *Roe v. Wade*.
- 2) Urges the U.S. President and Congress to express their support for a woman's fundamental right to control her own reproductive decisions, as well as their support for access to comprehensive reproductive care, including services provided by Planned Parenthood.

COMMENTS

1. Background

Roe v. Wade, (1973) 410 U.S. 113, is the landmark U.S. Supreme Court decision holding that the implied constitutional right to privacy extends to a woman's decision whether to terminate a pregnancy, while allowing that some state regulation of abortion access could be permissible. The plaintiff in the case was "Jane Roe," an unmarried woman who wanted to end her pregnancy under safe and clinical conditions but was unable to obtain a legal abortion in Texas because her life was not threatened by the continuation of the pregnancy. Unable to afford travel to another state to obtain an abortion, she challenged the statute making it a crime to perform an abortion unless a woman's life was at stake. She also claimed that the Texas law abridged her right of personal privacy.

The Court struck down the Texas law, finding for the first time that the constitutional right to privacy is "broad enough to encompass a woman's decision whether or not to terminate her pregnancy." At the same time, the high court also defined two compelling state interests that would satisfy restrictions on a woman's right to choose to terminate a pregnancy: 1) states may regulate the abortion procedure after the first trimester of pregnancy in ways necessary to promote a woman's health; and 2) after the point of fetal viability outside of the womb, a state may, to protect the potential life of the fetus, prohibit abortions that are not necessary to preserve a woman's life or health.

2. Ongoing legal challenges to *Roe v. Wade*

Roe v. Wade has been one of the most debated Supreme Court decisions, and its application and continued validity have frequently been challenged in the courts. Most significantly, in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) 505 U.S. 833, the Court reaffirmed the basic holding of *Roe v. Wade*, yet also permitted states to impose restrictions on abortion as long as those restrictions do not create an undue burden on a woman's right to choose to terminate a pregnancy.

Exactly what constitutes an undue burden remains a point of frequent legal contention. For example, under the *Casey* standard, the U.S. Supreme Court upheld a federal statute that restricted so-called "partial birth abortions." (*Gonzales v. Carhart* (2007) 550 U.S.

124.) More recently, the Court applied the same standard to strike down a Texas law that required any facility performing abortions to meet the state requirements for an ambulatory surgical center and also required any doctor performing abortions to have admitting privileges at a hospital within 30 miles. (*Whole Woman's Health v. Hellerstedt* (2016) ___ U.S. ___; 136 S. Ct. 2292). Since, in practice, almost no abortion facility or provider could meet these mandates, the Texas law had the effect of dramatically restricting access to abortion services in the state. Although the Court reaffirmed that ruling last year in *June Medical Services, L.L.C. v. Russo* (2020) ___U.S.___ (140 S.Ct. 2103), the outcome in that case relied upon the vote of Justice Ruth Bader Ginsburg, who subsequently passed away, and the concurrence of Chief Justice John Roberts, who joined the majority on the basis of *stare decisis* – the doctrine that courts must ordinarily follow prior precedent – alone.

Meanwhile, as the post-*Roe* jurisprudence has evolved, a minority of the U.S. Supreme Court's justices have at various times indicated their belief that *Roe v. Wade* should be overturned altogether. (See, e.g., *Webster v. Reprod. Health Servs.* (1989) 492 U.S. 490.) With President Donald Trump's appointment of Justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the high court, it may be that a majority for that view now exists.

Were the U.S. Supreme Court to overturn *Roe v. Wade*, state governments or the federal government would then be free to impose additional restrictions on abortion or even outlaw it entirely. Access to abortion in California might not be immediately affected by such a ruling, since the California Supreme Court has found a right to abortion access in the state constitution's privacy clause. (*People v. Belous* (1969) 71 Cal.2d 954.) If *Roe v. Wade* were overturned, however, the federal government could potentially seek to impose nationwide restrictions on abortion. By virtue of the U.S. Constitution's Supremacy Clause, such restrictions might preempt the existing state protections.

3. Economic and social impacts of *Roe v. Wade*

The existence of a constitutional right to choose whether, when, with whom, and how many children to bear has had a profound impact on the lives of women in the U.S. Indeed, in upholding the fundamental conclusion of *Roe v. Wade* while reaching its decision in *Planned Parenthood v. Casey*, the Supreme Court noted that “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.” (*supra*, 588 U.S. 833, 856.)

In reviewing a wide selection of data in 2013, the Guttmacher Institute reached similar conclusions. “Once young women were able to satisfy their education and first full-time job aspirations with a reduced risk of unplanned interruptions, their own expectations

of their career trajectories – and the expectations of employers – evolved. Many began to seek and attain jobs and professional status in fields previously dominated by men.”¹

4. Sources for the statistics cited in the resolution

The resolution states that, prior to *Roe v. Wade*, illegal abortion accounted for approximately 17 percent of all reported deaths attributed to pregnancy and childbirth, a statistic that comes from the Guttmacher Institute’s 2003 special analysis of conditions prior to the decision.²

The resolution next declares that, globally, 13 percent of maternal deaths each year can be attributed to unsafe abortion. That statistic appears in a 2009 Review in Obstetrics & Gynecology article on the subject.³ The figure is also backed by the World Health Organization’s (WHO) September 2020 Fact Sheet on the subject.⁴ That fact sheet, citing an internal WHO study from 2014, states that: “[e]ach year between 4.7% – 13.2% of maternal deaths can be attributed to unsafe abortion.”

The resolution goes on to assert that national peer-reviewed studies show that abortion is a safe medical procedure. This was the conclusion of a National Academies of Science, Engineering, and Medicine study on the matter.⁵

Next, the resolution states that one in every four women will access abortion services at some point in their lifetimes. This statistic is drawn from research published in the American Journal of Public Health.⁶

Finally, data collected and published by the National Abortion Federation supports the resolution’s statistics regarding rising levels of violence against abortion providers.⁷

¹ Sonfield et al, *The Social and Economic Benefits of Women’s Ability to Determine Whether and When to Have Children*, (March 2013) Guttmacher Institute https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf p. 11 (as of Feb. 11, 2021).

² Gold, *Lessons from Before Roe: Will Past Be Prologue?* (March 2003) Guttmacher Institute Policy Review <https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue> (as of Feb. 11, 2021).

³ Haddad and Nour. *Rev Obstet Gynecol*. 2009 Spring; 2(2): 122–126. (“Some 68,000 women die of unsafe abortion annually, making it one of the leading causes of maternal mortality (13 percent).”)

⁴ *Preventing Unsafe Abortion* (Sept. 25, 2020) World Health Organization <https://www.who.int/en/news-room/fact-sheets/detail/preventing-unsafe-abortion> (as of Jan. 7, 2020).

⁵ *The Safety and Quality of Abortion Care in the United States* (March 2018) National Academies of Science, Engineering, and Medicine <https://www.nap.edu/resource/24950/03162018AbortionCarehighlights.pdf> (as of Feb. 11, 2021).

(“Legal abortions in the United States – whether by medication, aspiration, D&E, or induction – are safe and effective.”)

⁶ Rachel K. Jones, Jenna Jerman, “Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014”, *American Journal of Public Health* 107, no. 12 (December 1, 2017): pp. 1904–1909.

5. Arguments supporting or opposing the resolution

According to the author:

Unsafe abortions caused as many as 5,000 deaths every year – and people of color are disproportionately at risk because they often lack access to high quality reproductive healthcare. *Before Roe v. Wade*, an estimated 1.2 million women resorted to illegal abortion every year. Though the last several decades have seen great expansions to access to quality reproductive healthcare, some states continue to chip away at or restrict access to legal abortion. This legislative body must continue to support full access to quality reproductive healthcare, and to affirm a woman’s constitutional right to control her own reproductive decisions. To this end, it is appropriate and necessary to celebrate the 48th anniversary of *Roe v. Wade*.

In opposition to the resolution, California Family Council writes:

If each human being is created equal, then no person or government has the right to take away someone’s right to live, without due process of law. Unborn human beings deserve the same right to life, liberty, and the pursuit of happiness as everyone else. Abortion violates this principle, and just like the dehumanizing institution of slavery, and it deserves to be abolished.

In light of this Truth, California should not be celebrating ending the lives of innocent children who never had the opportunity to experience the liberty our country says it still believes in.

Support: None received.

Opposition: California Family Council

⁷ 2019 Violence and Disruption Statistics. National Abortion Federation
<https://5aa1b2xfmfh2e2mk03kk8rsx-wpengine.netdna-ssl.com/wp-content/uploads/NAF-2019-Violence-and-Disruption-Stats-Final.pdf> (as of Feb. 11, 2021).

RELATED LEGISLATION

Pending Legislation:

HR 10 (Calderon, 2021) is similar to SR 6. HR 10 is currently pending consideration on the Assembly Floor.

Prior Legislation:

SR 66 (Leyva, 2020) was similar to SR 6.

HR 69 (Limón, 2020) was similar to SR 6.

SR 7 (Leyva, 2019) was similar to SR 6.

SB 24 (Leyva, Ch. 740, Stats. 2019) required each student health care services clinic on a California State University or University of California campus to offer abortion by medication techniques, as specified, beginning in 2023.

SB 301 (Leyva, 2019) would have required the Department of Health Care Services, if there were any reductions in federal financial participation to the Family PACT Program, to submit to the Legislature a plan, within 60 days of the reduction, to ensure the sustainability of the program and other specified family planning services. SB 301 died in the Assembly Appropriations Committee.

ACR 110 (Wicks, 2019) would have declared, among other things, that California is a Reproductive Freedom State for All and would have provided that the Legislature is committed to guaranteeing the constitutionally protected right to an abortion and supporting efforts to increase access to the best available reproductive and pregnancy-related care for women and pregnant individuals. ACR 110 died in the Senate Judiciary Committee.

HR 6 (Limón, 2019) was similar to SR 6.

SR 72 (Leyva, 2018) was similar to SR 6.

SR 12 (Atkins, 2017) was similar to SR 6.

HR 32 (Atkins, 2016) was similar to SR 6.

SJR 19 (Jackson, Res. Ch. 52, Stats. 2016) was similar to SR 6.

SR 55 (Jackson, 2014) urged the U.S. Senate to reconsider and approve SB 2578, the "Not My Boss's Business Act," which sought to prevent employers from denying coverage of contraceptives regardless of their religious views.

SR 6 (Skinner)

Page 8 of 8

SR 10 (Jackson, 2013) was similar to SR 6.

SJR 19 (Alquist, 2005) was similar to SR 6. SJR 19 was referred to this Committee but not set for hearing.

AJR 3 (Cohn, Res. Ch. 83, Stats. 2005) was similar to SR 6

AJR 57 (Jackson, Res. Ch. 50, Stats. 2004) was similar to SR 6.

AJR 2 (Jackson, Res. Ch. 63, Stats. 2003) was similar to SR 6.

SJR 3 (Karnette, Res. Ch. 112, Stats. 2001) was similar to SR 6.
