

104TH CONGRESS
1ST SESSION

H. R. 776

To protect the reproductive rights of women, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1995

Mr. TORKILDSEN introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To protect the reproductive rights of women, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom of Choice
5 Act of 1995”.

6 **SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND**
7 **PURPOSE.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The 1973 Supreme Court decision in *Roe v.*
10 *Wade* established constitutionally based limits on the
11 power of States to restrict the right of a woman to

1 choose to terminate a pregnancy. Under the strict
2 scrutiny standard enunciated in *Roe v. Wade*, States
3 were required to demonstrate that laws restricting
4 the right of a woman to choose to terminate a preg-
5 nancy were the least restrictive means available to
6 achieve a compelling State interest. Since 1989, the
7 Supreme Court has no longer applied the strict scru-
8 tiny standard in reviewing challenges to the constitu-
9 tionality of State laws restricting such rights.

10 (2) As a result of the Supreme Court's recent
11 modification of the strict scrutiny standard enun-
12 ciated in *Roe v. Wade*, certain States have restricted
13 the right of women to choose to terminate a preg-
14 nancy or to utilize some forms of contraception, and
15 these restrictions operate cumulatively to—

16 (A)(i) increase the number of illegal or
17 medically less safe abortions, often resulting in
18 physical impairment, loss of reproductive capac-
19 ity or death to the women involved;

20 (ii) burden interstate commerce by forcing
21 women to travel from States in which legal bar-
22 riers render contraception or abortion unavail-
23 able or unsafe to other States or foreign na-
24 tions;

1 (iii) interfere with freedom of travel be-
2 tween and among the various States;

3 (iv) burden the medical and economic re-
4 sources of States that continue to provide
5 women with access to safe and legal abortion;
6 and

7 (v) interfere with the ability of medical
8 professionals to provide health services;

9 (B) obstruct access to and use of contra-
10 ceptive and other medical techniques that are
11 part of interstate and international commerce;

12 (C) discriminate between women who are
13 able to afford interstate and international travel
14 and women who are not, a disproportionate
15 number of whom belong to racial or ethnic mi-
16 norities; and

17 (D) infringe upon women's ability to exer-
18 cise full enjoyment of rights secured to them by
19 Federal and State law, both statutory and con-
20 stitutional.

21 (3) Although Congress may not by legislation
22 create constitutional rights, it may, where authorized
23 by its enumerated powers and not prohibited by a
24 constitutional provision, enact legislation to create

1 and secure statutory rights in areas of legitimate na-
2 tional concern.

3 (4) Congress has the affirmative power both
4 under section 8 of article I of the Constitution of the
5 United States and under section 5 of the Fourteenth
6 Amendment of the Constitution to enact legislation
7 to prohibit State interference with interstate com-
8 merce, liberty or equal protection of the laws.

9 (b) PURPOSE.—It is the purpose of this Act to estab-
10 lish, as a statutory matter, limitations upon the power of
11 States to restrict the freedom of a woman to terminate
12 a pregnancy in order to achieve the same limitations as
13 provided, as a constitutional matter, under the strict scru-
14 tiny standard of review enunciated in *Roe v. Wade* and
15 applied in subsequent cases from 1973 to 1988.

16 **SEC. 3. FREEDOM TO CHOOSE.**

17 (a) IN GENERAL.—A State—

18 (1) may not restrict the freedom of a woman to
19 choose whether or not to terminate a pregnancy be-
20 fore fetal viability;

21 (2) may restrict the freedom of a woman to
22 choose whether or not to terminate a pregnancy
23 after fetal viability unless such a termination is nec-
24 essary to preserve the life or health of the woman;
25 and

1 (3) may impose requirements on the perform-
2 ance of abortion procedures if such requirements are
3 medically necessary to protect the health of women
4 undergoing such procedures.

5 (b) RULES OF CONSTRUCTION.—Nothing in this Act
6 shall be construed to—

7 (1) prevent a State from protecting unwilling
8 individuals or private health care institutions from
9 having to participate in the performance of abortions
10 to which they are conscientiously opposed;

11 (2) prevent a State from declining to pay for
12 the performance of abortions; or

13 (3) prevent a State from requiring a minor to
14 involve a parent, guardian, or other responsible
15 adult before terminating a pregnancy.

16 **SEC. 4. DEFINITION OF STATE.**

17 As used in this Act, the term “State” includes the
18 District of Columbia, the Commonwealth of Puerto Rico,
19 and each other territory or possession of the United
20 States.

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