

Nevada LIFE (Life Issues Forum and Education)

Engaging The Hearts And Minds Of Nevadans on Life Issues...

August 23, 2007

Nevada LIFE Briefing on HR 1964, “*The Freedom Of Choice Act.*”

1. Short History of FOCA

The Freedom of Choice Act (FOCA) was introduced in the early 1990’s because its sponsors feared that *Roe v. Wade* would be overturned. They were also concerned that the Court was allowing states to regulate abortion under *Roe* in ways that restricted access to abortion. FOCA was meant to make *Roe* federal law in case of its demise and to eliminate the limitations/regulations that the court had been allowing. Speaker of the House Tom Foley declared that if the Court overturned *Roe*, Congress would write it into law. In 1994 Foley became the only Speaker to lose his seat in Congress. When the pro-life Republican leadership was elected in 1994, FOCA was dropped. With the Democrats rise to power in 2007 and the upholding of the *Partial Birth Abortion Ban*, FOCA has been reintroduced.

2. The Relevant Text of FOCA-What FOCA Says It Would Do.

SEC. 4. INTERFERENCE WITH REPRODUCTIVE HEALTH PROHIBITED.

(a) Statement of Policy- It is the policy of the United States that every woman has the fundamental right to choose to bear a child, to terminate a pregnancy prior to fetal viability, or to terminate a pregnancy after fetal viability when necessary to protect the life or health of the woman.

(b) Prohibition of Interference- A government may not--

(1) deny or interfere with a woman's right to choose--

(A) to bear a child;

(B) to terminate a pregnancy prior to viability; or

(C) to terminate a pregnancy after viability where termination is necessary to protect the life or health of the woman; or

(2) discriminate against the exercise of the rights set forth in paragraph (1) in the regulation or provision of benefits, facilities, services, or information.

(c) Civil Action- An individual aggrieved by a violation of this section may obtain appropriate relief (including relief against a government) in a civil action.

SEC. 5. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which the provision is held to be unconstitutional, shall not be affected thereby.

SEC. 6. RETROACTIVE EFFECT.

This act applies to every federal, state, and local statute, ordinance, regulation, administrative order, decision, policy, practice, or other action enacted, adopted, or implemented before, on, or after the date of enactment of this act.

3. What FOCA Means.

Abortion advocates argue that this is codification of Roe. It is more accurate to say this is the codification of *Roe v. Wade* and *Doe v. Bolton* without all of the limitations that have been allowed under *Roe*. Indeed, FOCA would invalidate “every federal, state, and local statute, ordinance, regulation, administrative order, decision, policy, practice, or other action enacted, adopted, or implemented before, on, or after the date of enactment of this act.” Leading political supporters and advocates have already admitted to these effects including the recently upheld *Partial Birth Abortion Ban*.

In addition to striking down these limitations, National Right To Life’s Douglas Johnson says *"This sweeping mandate means, among other things, that statement or action by any government official, including any elected official, and any government program of any kind, could be legally attacked if someone thought it discriminated against abortion... This sweeping mandate would cover everything from rural health clinics, to health education programs in public schools, to pro-life speeches by public officials."*

4. Effects Admitted To By Supporters of FOCA.

FOCA has supporters admit that it would eliminate these limitations regarding abortion.

Those effects include but are not limited to the invalidation of:

- The Partial Birth Abortion Ban.
- Abortion funding bans like the Hyde Amendment, which prohibits most federal funding of abortion, abortion counseling or abortion referrals: and the laws of many states that restrict state funding of abortion.
- Laws prohibiting abortions in government-operated hospitals.
- Laws requiring parental notification or consent, or judicial authorization, before an abortion can be performed on a minor daughter. Planned Parenthood calls these a “tool to deny abortion services to minors.”
- Laws requiring that girls and women seeking abortion receive certain information on matters such as fetal development and alternatives to abortion (CA Senator Barbara Boxer calls these “anti-choice propaganda lectures), and then wait a specified period before the abortion is actually performed, usually 24 or 48 hours.

Other Effects Would Include:

- Conscience" laws, allowing doctors, nurses, or other state-licensed professionals, and hospitals or other health-care providers, to decline to provide or pay for abortions.
- Laws prohibiting medical personal other than doctors from performing abortion.
- Government officials could become targets of lawsuits for anything that anyone thought discriminates against abortion.

HR 1964/FOCA, would invalidate these sensible regulations which are supported by vast numbers of Americans. *A vote for HR 1964 is a vote for partial birth abortion, taxpayer funding of abortion, forced participation in abortion, and among others, a vote to keep parents in the dark.*

5. Nevada LIFE's Position.

Nevada LIFE opposes FOCA. FOCA would write Roe into law and invalidate the limitations and regulations that the Supreme Court has allowed under Roe. The abortion rate has been steadily lowering as these limitations have been passed into law. To invalidate them would increase abortion. The recent closing of clinics in New Jersey, Alabama, Florida and elsewhere show that the abortion industry is not capable of self-regulation and that clinic standards are absolutely necessary.

FOCA states that the policy of the United States is that the right to abortion is a “fundamental right.” We believe that the unborn child has a fundamental right to life.

We reject the findings. The findings for the most part are wrong, do not argue for abortion and are dangerous to universal human rights. Roe is not “carefully balanced.” It struck down abortion laws in all 50 states. Under *Roe v. Wade* an abortion can be procured without justification through the “second trimester” (now viability). Roe allows abortion after viability (the “third trimester”) for health reasons. The health exception was defined in *Doe v. Bolton*: “the medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the wellbeing of the patient. All these factors may relate to health.”

This means that abortion is legal in the United States until the end of the “second trimester” (now viability) for no reason and that abortion is legal for almost any reason afterwards as long as a physician can be found to do it. The U.S. Senate Judiciary Committee concluded in 1983 “...that no significant legal barriers of any kind whatsoever exist today in the United States for a woman to obtain an abortion for any reason during any stage of her pregnancy.” (*Report, Committee on the Judiciary, U.S. Senate, on Senate Joint Resolution 3, 98th Congress, 98-149, June 7, 1983, p. 6.*) Nothing has changed to change this situation.

We reject FOCA even if current limitations like partial birth abortion, federal funding restrictions, parental involvement laws, conscience protections *and others provisions were allowed to stand.* We believe that the unborn child has a fundamental right to life. FOCA, like Roe, would make abortion an absolute right throughout pregnancy in the event Roe were reversed.

The findings in FOCA state in part that abortion has not increased abortion, has saved the lives of women, expanded the opportunities for women to participate equally in society, and among other things, it states that the state should stay out of the decision to abort because it is an intimate and personal decision, and abortion falls under the right to privacy.

Among these findings many are factually false. The abortion rate has risen dramatically with legalization and death due to abortion was decreasing before legalization. Thirty-nine women died of abortion in the year before Roe. In 1960, Planned Parenthood Director Dr. Mary Calderone, said “Abortion is no longer a dangerous procedure. This applies not just to therapeutic abortions as performed in hospitals but also to so-called illegal abortions as done by physician... 90 percent of all illegal abortions are presently being done by physicians...”

Other findings are dangerous to universal human rights. The arguments that a class of human beings (the unborn) can be disposed of because such a decision is personal, there's a right to do so in privacy, it expands one's opportunities and that doing so legally reduces the risk of injury, undermines universal human rights.