



NOW-NYC
The Founding Chapter

Freedom of Choice Act (FOCA)

Background

Introduced in April 2007 by Senator Barbara Boxer (D-CA) and Representative Jerrold Nadler (D-NY), the Freedom of Choice Act (FOCA) would protect a woman's right to a safe abortion without government interference by making the right to choose a federal statute. "We can no longer rely on the Supreme Court to protect a woman's constitutional right to choose," said Nadler in presenting the bill.

FOCA would reverse the recent decisions made by the Supreme Court in *Gonzales v. Planned Parenthood* and *Gonzales v. Carhart*. These decisions uphold the Federal Abortion Ban Act of 2003, which breaks rank with thirty-five years of precedent by excluding any health exception for the woman for a certain type of abortion procedure. The decisions have been criticized for their vague language that opens the door for further restrictions on abortion. With these decisions, the Court has transferred the right to make personal, medical decisions from women and their doctors to politicians and Supreme Court Justices.

The decision made by the newly constituted Court—which includes the recent addition of two right-wing Supreme Court judges, John Roberts and Samuel A. Alito, Jr., along with their conservative colleagues Antonin Scalia, Clarence Thomas and Anthony Kennedy—demonstrates that the Court is unwilling to uphold the fundamental principals established in *Roe*: that a woman's health and life always take precedence. FOCA is an essential piece of legislation that will protect women's health at a time in our country when the government is systematically cutting away at the reproductive health rights of women and their families.

Key Points

- ❖ FOCA would declare the federal right to a safe abortion even if the Supreme Court overruled *Roe v. Wade*, thus restoring the full reproductive rights recognized in the *Roe v. Wade* decision of 1973.
- ❖ FOCA will protect reproductive rights by *prohibiting* state and federal government entities from denying or interfering with a woman's right to choose to bear a child, to terminate a pregnancy prior to viability, or to terminate a pregnancy after viability where termination is necessary to protect the life or health of the woman.
- ❖ This legislation would invalidate existing laws and prevent the establishment of future laws that interfere with or discriminate against a woman's right to choose, including preventing states from creating parental consent or notification statutes that make it more difficult for young women to receive safe abortions.
- ❖ FOCA would ensure that women's health remains of the utmost importance and would not allow politicians to ignore legal precedent and medical expertise. FOCA would supersede the Supreme Court's recent rulings that restrict abortion methods.

Impact and Necessity

The legislation would codify the 1973 *Roe v. Wade* decision and bar states from limiting abortion rights. It was introduced in 2006 and 2004 but never made it out of either the Senate or House judiciary committees.

That could change in the House this time with a strong Democratic majority; however it is uncertain if there are enough votes in the Senate.

Following the Supreme Court Decisions to uphold the Federal Abortion Ban Act of 2003, Justice Ruth Bader Ginsburg, a dissenting voice in the 5-4 vote, called the court's opinion "alarming" and said it "cannot be understood as anything other than an effort to chip away a right declared again and again by this court..."

The legislation would invalidate existing laws and stifle future attempts that interfere with or discriminate against the exercise of the right to reproductive freedom. It also would provide an individual aggrieved by a violation of the act a private right of civil action in order to obtain appropriate relief.