



PROPOSITION 1 – In Depth Supplement

Constitutional Right to Reproductive Freedom

Introduction

The Legislature put this on the ballot. If passed it changes the California Constitution.

Federal Background

Roe v. Wade recognized a protected right to choose an abortion in the US Constitution in 1973. Ever since then states and Congress have enacted legislation to define and limit the right. Over the years a variety of court challenges either upheld or rejected laws that limited the use of taxpayer money to pay for the procedures, required minors to obtain the consent of parents before getting an abortion, required married women to obtain the consent of their husbands, created waiting periods between first consultation and obtaining an abortion, and requiring those who seek abortions to be informed of medical risks, the stages of fetal development, and alternatives to abortion. Throughout the years the right to choose an abortion was upheld by the US Supreme Court even as limits to it were sometimes upheld.

In more recent years state legislatures began passing legislation to limit access to abortion prior to viability of the fetus. One such law is in Mississippi law, which banned abortion after the fifteenth week of pregnancy. The Mississippi law authorizes the state's Attorney General, as well as the Mississippi State Department of Health or the Mississippi State Board of Medical Licensure, to impose professional sanctions, including fines and a loss of licensure, on any physician who performs an abortion after 15 weeks. The constitutionality of that statute was challenged in the courts in the case of Dobbs v. Jackson Women's Health Organization.

On May 3, 2022, before the Supreme Court announced its decision in the Dobbs case, Politico reported that the Supreme Court had voted to strike down the holding in Roe, according to a leaked initial draft of the majority opinion which was written by Justice Alito. The draft opinion attempted to assuage any concerns that other rights may be in jeopardy of being summarily overturned as a result of the holding by stating the opinion should not be understood as casting doubt on other precedent-setting with respect to decisions that do not relate to abortion, including rights to contraception, interracial marriage, same-sex marriage, and intimate sexual conduct between individuals of the same sex.

In June 2022, the Supreme Court announced its opinion in the Dobbs case, upholding the Mississippi law and overturning the Roe decision, thereby eliminating any Federal protection for the right to choose an abortion. In a concurring opinion, Justice Thomas



stated that Federal protection for other personal rights like contraception should also be overturned.

The assertion that rights which are not explicitly mentioned in the Constitution must be deeply rooted in the history and traditions of the nation in order to be guaranteed by the Constitution leaves other important rights vulnerable, including access to contraception, the right to interracial marriage, the right of same sex couples to engage in intimate sexual conduct, and the right to same-sex marriage. These rights were at one time prohibited under the laws of this nation. Therefore, under the reasoning of the leaked opinion, they would not be considered to be “deeply rooted in the history and traditions of the nation,” and could be left open to state regulation (and restriction).

It is not clear how a Federal legislative ban on abortion would impact on the changes which would be made by Prop 1. The Constitution establishes a system of dual sovereignty between states and the federal Government. States generally have broad authority to enact legislation on matters related to the health and general welfare of its citizens, and a resolution of this issue may depend on the manner in which Congress might structure such a ban on abortion, if ever.

California Background

California currently recognizes the right to privacy in its constitution, and recognizes the right to reproductive freedom in both statutory and case law. Prop 1 seeks to further protect the fundamental right of privacy with respect to personal reproductive decisions, including whether to use birth control, and whether to bear a child or choose to have an abortion, for all Californians by amending the California Constitution to explicitly guarantee those rights.

Because of the way California courts have interpreted the right to privacy, the state can only restrict abortions when needed to meet certain state interests such as public health and safety. For example, California law requires abortion providers to be licensed. In addition, abortions can only be performed on a viable fetus if the pregnancy puts the health or life of the pregnant person at risk. Under state law, a fetus is considered viable if the fetus likely would be able to survive outside the uterus.

California Health Care

The Federal-State Medicaid program, known as Medi-Cal in California, provides health coverage to eligible low-income California residents. Health care services covered by Medi-Cal include abortion and contraceptives. The state and federal government share the cost of most Medi-Cal services, including contraceptives; however, the state pays the full cost of abortions provided through Medi-Cal.

About 2 million Californians buy health insurance plans through the state’s health insurance market, Covered California. Health care services covered by these plans include abortion and contraceptives. For most people enrolled in Covered California, the



state and federal governments help pay for at least some of the costs of buying these plans. However, the state alone pays for the cost of the plans to cover abortions.

FISCAL EFFECT

Prop 1 would change the California Constitution to expressly include existing rights to reproductive freedom. Because these rights already exist in California, Prop 1 would have no direct fiscal effects.

Supporters Say:

- Prop 1 will enshrine the fundamental right to an abortion and a fundamental right to contraception in California State Constitution.
- Doctors, nurses, and health providers all agree that Yes on Prop 1 is necessary to keep reproductive medical decisions where they belong—with individuals and their health care providers based on scientific facts, not political arguments.

Opponents Say:

- Women already have the right to choose under current California law. The recent U.S. Supreme Court ruling did not and will not change this. Prop 1 is not needed to protect women's health or their reproductive rights.
- Prop 1 is an extreme and costly proposal that punishes taxpayers; abortion seekers from outside California will swamp California resources.

***Supporters:** (Signers of official arguments are in bold.)

Protect Constitutional Abortion Rights

www.protectabortionca.com

California Medical Association
Planned Parenthood Affiliates of California
League of Women Voters of California
California Nurses Association
American College of Obstetricians and Gynecologists
UCLA Center on Reproductive Health, Law and Policy

***Opponents:** (Signers of official arguments are in bold.)

California Catholic Conference

<https://www.cacatholic.org/article/california-bishops-oppose-ca-constitutional-amendment-protect-abortion>

Dr. Anne Marie Adams, Gynecologist
Tak Allen, President, International Faith Based Coalition
Assemblymember Jim Patterson



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