

What is the government's role in regulating abortion under FOCA?

Today, Life Matters focuses on ...

... FOCA's Section 4 (b)—PROHIBITION OF INTERFERENCE:

"A government may not-

- (1) **deny or interfere** with a woman's right to chose-
- (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
 - (D) **discriminate** against the exercise of the rights set forth in paragraph (1) in the regulation or provision of benefits, facilities, services, or information."

... and Section 4 (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"

What is the meaning of "deny and interfere" in FOCA, and what consequences does it have?

The word interfere is unqualified. Thus, FOCA does not bar 'substantial', 'undue', or 'unwarranted' interference, ..., but **any interference, however slight**, with the decision whether to have an abortion.

By outlawing any interference with the abortion decision, FOCA would bar a broad range of abortion regulations, however slight their impact on the woman's decision whether to have an abortion.*

What does FOCA intend by "discriminate"?

Although "**discriminate**" usually has a negative connotation, in law it simply means to "**treat differently**". Thus, legislation that funds childbirth or other health services but not abortion, public hospitals that provide services related to childbirth but not abortion, and public benefits that pay for childbirth but not abortion, all of these, treat abortion differently and therefore could be said to "discriminate".*

What are the consequences of outlawing any kind of interference with the "right to chose"?

In section 4(c), FOCA creates a cause of action for anyone aggrieved by a violation of the Act, therefore resolving any question as to standing in favor of anyone aggrieved by a violation.

The combined impact of these various provisions is the likely **invalidation of a broad range of state laws** if challenged under FOCA, including ...

- Informed consent laws
- Parental notification laws
- Laws promoting maternal health, if they result in an increased cost for abortion
- Abortion clinic regulations, even those designed to make abortion safer for women
- Government programs and facilities that pay for, provide, or insure childbirth or health care services generally, but not abortion
- **Law protecting the conscience rights** of doctors, nurses and hospitals, if those laws create even minimal delay or inconvenience in obtaining an abortion or treat abortion differently than other medical procedures
- Laws prohibiting a particular abortion procedure, such as **partial birth abortion** and many others.*

A Summary of FOCA

FOCA is a radical measure. It would, by its terms, go well beyond *Roe*. It would have an immediate effect on a wide range of state legislation regulating abortion. It would create a federal policy that at the very least would invite a challenge to existing federal laws on abortion. It would impose upon the entire country an abortion regime far worse than anything wrought by *Roe* or cases decided under it. **It would jeopardize many laws enacted by the people and their elected representatives, at the federal and state level, over the last several decades.** It is difficult to recall any other single piece of legislation that, in a single stroke, would have such a comparable destructive impact on the government's ability to regulate abortion.*

Questions to Ponder

- **Do U.S. citizens understand the abortion issue well enough to make political decisions in good conscience?**
- **Is the information provided by the popular media sufficient, fair, and balanced?**
- **Should people have the right to express their opinions in matters of abortion legislation?**

* USCCB Office of the General Counsel, Memorandum, August 15, 2008