

Proposition X, initiative constitutional amendment  
The right to reproductive liberty  
Amends the California Constitution to add new article I, section 1.5

### **Text of proposed law**

#### Article I, section 1.5

(a) Protection for a right of reproductive liberty. Everyone has a right of reproductive liberty concerning their own body. That includes the fundamental right to choose whether to reproduce, including the right to control one's own pregnancy: to prevent it, to continue it, or to end it with an abortion. No infringements are permitted on the right to have an abortion before viability, or whenever the abortion is necessary to protect the pregnant person's life or health. After viability and where the pregnant person's life and health are not at issue, a law infringing this fundamental liberty interest, directly or otherwise, is valid only if it satisfies strict scrutiny: it must further a compelling governmental interest and must be the least restrictive means of furthering that compelling governmental interest.

(b) Definitions. The *right to control one's own pregnancy* applies to a woman, women, and any human capable of becoming pregnant regardless of how they self-identify. *Pregnant* and *pregnancy* mean the human reproductive process of carrying developing offspring within the body, beginning with an embryo's implantation into the uterine wall of the person carrying the fetus. *Abortion* means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth. *Viability* means the point in a pregnancy when, in the treating physician's good faith medical judgment on the particular facts of the case, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without applying extraordinary medical measures. *Necessary to protect the pregnant person's life or health* means it is so in the treating physician's good faith medical judgment on the particular facts of the case.

(c) No intent to impair other existing rights. This act establishes a new fundamental individual right, which may not be construed to impair or deny other rights retained by the people, and nothing in this act supersedes or modifies any other existing rights guaranteed by this Constitution. That includes any existing reproductive liberty rights, including those under Article I, section 1 (privacy) and Article I, section 7(a) (due process), and this act does not affect the construction of any statute, court rule, or other authority to the extent that it protects those rights. This act must be read in harmony with other provisions in this Constitution claimed to conflict with it, including Article I, section 7(a) (equal protection) and 7(b) (privileges and immunities), and this act is an exception to such other provisions in this Constitution to the extent necessary to prevent this act's invalidation. This act impairs neither liberty of nor obligations of contracts for compensation, such as surrogacy agreements.

(d) Independent existence. The right guaranteed by this act is established by the Constitution of the State of California and the will of its sovereign people, and depends on no other source of authority. This right exists independently from any rights guaranteed by the United States Constitution. A judicial decision that relies on this act states adequate and independent state law grounds, and need not rely on any federal authority.

(e) Rule of construction. This section is self-executing. Any statute, court rule, or other authority must be broadly construed if it furthers this right of reproductive liberty, and narrowly construed if it limits that right's exercise. Any statute, court rule, or other authority adopted after this act's effective date that limits the right of reproductive liberty post-viability, or where the pregnant person's life or health is not at issue, must be adopted with detailed factual findings demonstrating that the limitation is the least restrictive means of furthering a compelling governmental interest. Findings by the legislature in this context are entitled to no special weight and are subject to independent judicial review.

(f) Conflicts and severability. If any part or parts of this act are found to conflict with California law, federal law, or the United States Constitution, this section shall be implemented to the maximum extent that the conflicting authority permits. Any part of this act held invalid shall be severable from the remaining portions of this act, and a reviewing court is directed to save this act to the greatest possible extent.

### **Proponent's argument in favor**

This act is intended to create a new, express, self-executing, inalienable fundamental individual liberty interest held by Californians: a right to reproductive liberty. That includes a personal right to decide whether to become pregnant, to prevent pregnancy, whether to continue a pregnancy, and whether or not to give birth, which includes the right to terminate a pregnancy in one's own body before viability and anytime that pregnant person's life or health are at risk. The right to decide whether to become pregnant and to prevent pregnancy includes the right to make choices about and to obtain contraception and sterilization.

These decisions about our bodies are always reserved to each of us alone as matters of personal autonomy and privacy. If someone can become pregnant, it should be that person's sole judgment whether to get pregnant, to remain pregnant, and to give birth. But common sense and experience teach that those decisions are too often taken away and made by others — leaving only the pregnant person to risk death or other health complications from childbirth, and to bear the costs associated with birthing and raising a child. The law should recognize the uniqueness of pregnancy and its associated burdens, and protect the right of the person who bears all the risk to make the choices. This act will guarantee that anyone at risk of becoming pregnant can prevent pregnancy, can end their pregnancy, and can act on those decisions. And this act will ensure that no one can tell a pregnant person what to do about the pregnancy of their own body.

This act bars the law from requiring anyone to justify a decision to not get pregnant, or to end or to continue a pregnancy, and bars the legislature from imposing conditions on these decisions. Under this act a pregnant person has sole power to decide whether to end their pregnancy anytime their life or health are at risk, or before fetal viability (between 22 and 28 weeks) even if their life and health are not at risk. The legislature can only regulate abortion outside those conditions, and only then by satisfying strict judicial scrutiny. This incorporates the most protective aspects of *Roe* and *Casey* — and strengthens them. By this act the voters intend to require that, in a choice between a person and an unborn, California's policy is to value the person's health and autonomy over the

more attenuated state interests in future lives. This act is not intended to affect Penal Code section 187.

This act is necessary because reproductive liberty currently lacks express constitutional protection. Federal courts will no longer protect an unenumerated federal constitutional right to choose, California courts similarly might reverse their past decisions holding that California's constitutional privacy right includes a right to choose, and the state legislature could change the statutory laws that currently permit and regulate reproductive liberty. This amendment will ensure that even if those other protections fail, the California constitution will provide express textual protection for the right of reproductive liberty. This new express California constitutional right to reproductive liberty is intended to give courts independent state law grounds for deciding cases concerning reproductive liberty without relying on federal law.

This act is not about gender — it is about securing reproductive liberty and the right of autonomy to decide whether to reproduce. Regardless how someone self-identifies or how the government categorizes them, this act guarantees the right of any person who is capable of becoming pregnant to protect themselves from becoming pregnant, and guarantees the right of any person who does in fact become pregnant to end their own pregnancy. Equal protection of the laws does not require extending this right to persons who can neither be impregnated, nor carry a fetus, nor give birth. This distinction, based on that factual impossibility, realistically reflects the fact that those who can become pregnant face unique burdens and are not similarly situated compared with those who cannot.

This act is not intended to force medical providers to start providing abortions if they do not already do so. Nor does this act require anyone to perform an abortion if doing so would violate their sincere personal religious beliefs. And this act has no effect on the rights and duties of a non-childbearing parent after a child is born.