Legislative Testimony
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Written Testimony Supporting Senate Joint Resolution 35, A Resolution Proposing a State Constitutional Amendment Concerning Discrimination on the Basis of Sex Under the Equal Protection Clause

Senator Flexer, Representative Blumenthal, Ranking Members Sampson and Mastrofrancesco, and members of the Government Administration and Elections Committee:

My name is Jess Zaccagnino, and I am the policy counsel of the American Civil Liberties Union of Connecticut (ACLU-CT). I am writing to testify in support of Senate Joint Resolution 35, A Resolution Proposing a State Constitutional Amendment Concerning Discrimination on the Basis of Sex Under the Equal Protection Clause.

The ACLU-CT is an organization that is dedicated to furthering reproductive justice and gender equality. The ACLU-CT believes in a future where everyone can make decisions about reproductive health care, pregnancy, and parenting that are the best for them, which includes access to safe, legal, and affordable abortion. We are also dedicated to ensuring that LGBTQ+ people can live openly and freely, with full rights, personal autonomy, and freedom of expression and association.

Connecticut has been a preeminent leader in recognizing and safeguarding reproductive rights and gender equality. We thank this Committee for its dedication to ensuring that Connecticut remains a beacon of freedom as we witness direct and repeated attacks against civil rights and liberties across the country. Connecticut has long supported the right to reproductive health care. Connecticut affirmatively codified the right to abortion in state statute in 1990. Connecticut's Equal Rights

Amendment's protections are stronger than the federal Constitution by its explicit inclusion of prohibiting discrimination based on "sex."[1] Similarly, the Connecticut Superior Court found in *Doe v. Maher* that abortion access is both a privacy right and a fundamental part of gender equality under the state's Equal Rights Amendment ("ERA").[2] When the court invalidated the restrictions on the use of state funds for medically necessary abortions, the court found that pregnancy discrimination is a form of sex discrimination prohibited under the state ERA and is subject to strict scrutiny review. The 2022 General Assembly led the nation on abortion protections by passing the first shield law, the Reproductive Freedom Defense Act, which protects patients and providers from targeted legal attacks by anti-choice extremists in other states with radical and archaic abortion bans.

At the same time, Connecticut has a history of supporting LGBTQ+ rights and gender equality. In 1991, the General Assembly passed a law forbidding discrimination on the basis of sexual orientation, which was signed into law by Governor Lowell Weicker. Then, in 2005, Connecticut legalized civil unions for same-sex couples. Four years later, Connecticut became the third state to legalize same-sex marriage in *Kerrigan v. Commissioner of Public Health*, then affirmed by this legislature in statute. In that case, the Connecticut Supreme Court found that the state's constitution guarantees the right to marry for same-sex couples. While sexual orientation does not explicitly appear in the state constitution, the court found it to be a quasi-suspect class under the Equal Rights Amendment. When the General Assembly followed up the decision with legislation, it passed with bipartisan support—100-44 in the House and 28-7 in the Senate and was then signed into law by Governor Jodi Rell.

We are witnessing existential threats to civil rights and liberties in America, including regressive attacks on reproductive health care and gender equality. The

[1] *See, e.g.*, *State v. Buie*, 312 Conn. 574, 583–84 (2014); *State v. Davis*, 283 Conn. 280, 320 (2007).
[2] *Doe v. Maher*, 40 Conn. Supp. 394, 426 (1986).

decision to overturn *Roe* directly caused a devastating public health and civil liberties crisis. Fourteen states have entirely banned abortion, and many more have made abortion functionally unavailable by criminalizing abortion after only a few weeks of pregnancy, before most people know that they are pregnant. In 2024, 843 provisions were introduced to restrict reproductive rights and health care,[3] while at the same time, there were 533 anti-LGBTQ+ bills introduced across the country.[4] Currently, 21 states ban some or all abortions and 26 states categorically ban gender-affirming care for minors. Now, millions of people live hundreds of miles away from their closest providers of abortions or gender-affirming care. Hundreds of thousands of people have already traveled outside of their state, including to Connecticut, to get the care they need. We have continued to see attacks on reproductive health care and rights from the federal government and states—from abortion, family planning, contraception, IVF, and gender-affirming care. At the same time, the Trump administration targeted the LGBTQ+ community from the moment he stepped into office by supporting a bevy of policies that relentlessly harm LGBTQ+ people and their families and threaten their rights, safety, and fundamental freedom to exist. As politicians across the country deny our freedom, obstruct access to reproductive care, and threaten other substantive due process rights, the ACLU-CT is grateful to this Committee for continuing to prioritize access for our state's residents. Senate Joint Resolution 35 is a crucial moment for Connecticut to reinforce its constitutional protections that builds on the state's existing legal framework by enshrining a comprehensive guarantee of personal liberty and gender equality.

Everyone deserves access to reproductive health care in their community, on the timeline they choose, and by the provider they trust. Access to reproductive health care, including abortion and gender-affirming care, is not just about its legality; but it is also about humanity, dignity, and freedom. As the U.S. Supreme Court

[3] Kimya Forouzan, et al., *State Policy Trends 2024: Anti-Abortion Policymakers Redouble Attacks on Bodily Autonomy*, GUTTMACHER INST. (Dec. 16, 2024), https://www.guttmacher.org/2024/12/state-policy-trends-2024-anti-abortion-policymakers-redouble-attacks-bodily-autonomy?gad_source=1.
[4] *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024,* ACLU (accessed Feb. 7, 2025), https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024.

abandoned nearly fifty years of precedent on reproductive rights, a lack of access to reproductive health services is already threatening people's lives and futures across the country. People across the country have been forced to remain pregnant against their will, endangering their mental and physical health, their lives and futures, and their family's lives and futures. Justice Thomas's concurring opinion in *Dobbs* paints a dark picture, urging the Court to reconsider all its substantive due process precedents, specifically naming cases that protect the right to choose who one marries, whether to use contraception, and the ability to have consensual sex with partners of their choosing.[5] In the years since the *Dobbs* decision, there has already been a massive rise in anti-LGBTQ+ legislation at the state and local level, echoing attacks we have already seen on abortion and reproductive health care access. Threats to reproductive health care, gender-affirming care, and more recently-acquired LGBTQ+ rights will disproportionately harm marginalized communities of color. We are already seeing the effects of this as states across the country enact draconian bills that rigidly prohibit abortion and target transgender and nonbinary people.

Because of systemic racism, we know that those hurt first and worst by these attempts are Black and Latine people and those who are low-income. The promise of *Roe* has never been a reality for everyone in this country, and in the past year, in many places, that promise has been gutted entirely. More than half of Black women of reproductive age, plus transgender and nonbinary people, live in states with abortion bans. In Connecticut, and across the country, economic injustice, systemic racism, documentation status, targeted restrictions on reproductive health care and gender affirming care providers, and the criminalization of pregnancy outcomes have kept abortion access out of reach for people of color, young people, LGBTQ+ people, and lower-income people.

[5] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (Thomas J., concurring) ("For that reason, in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold, Lawrence,* and *Obergefell*.").

Senate Joint Resolution 35 is a crucial chance for Connecticut to bolster its existing constitutional protections as reproductive and LGBTQ+ rights in this country are under increasing existential threat. The amendment would prohibit the state from discriminating against individuals based on pregnancy, sexual orientation, gender identity and expression, and related health care, reinforcing protections that Connecticut has already recognized. The amendment does not change existing state abortion laws but rather fortifies their constitutional foundation, making them resistant to future rollbacks. This step is necessary to safeguard rights from erosion or reinterpretation over time. Other states area already moving beyond the limitations of *Roe* and *Casey*, designing amendments that recognize stronger, state-level protections beyond the abortion-specific rights created under those cases. Expanding this section of the Connecticut State Constitution would require courts to apply a higher legal standard when evaluating laws or policies that treat people in those categories differently, which will in turn make it much harder for the government to justify discrimination.

This framework makes sense. While our state statutes contain protections related to reproductive health care and LGBTQ+ rights, statutes may be repealed by a simple majority vote. The process of amending the Connecticut Constitution is much more arduous, ensuring stronger and more durable safeguards against discrimination. The Connecticut Constitution's due process, privacy, and equal protection guarantees are also stronger than their equivalents in the United States Constitution. The protections afforded by a robust gender equality amendment have never been more important. In overturning *Roe*, some members of the Supreme Court also called into question the legitimacy of other individual rights rooted in privacy and liberty, like marriage equality and contraception access. By explicitly naming pregnancy as well as sexual orientation and gender identity in the state constitution, people will be afforded greater protections under our existing Equal Rights Amendment in a time of increasing threats to their personal freedom, autonomy, and independence. Connecticut must continue to lead the nation in protecting access to reproductive

health care and LGBTQ+ people. This amendment is essential to fighting back against efforts to further erode rights and personal freedoms far beyond the reproductive rights rolled back by *Dobbs*. This amendment explicitly affirms that Connecticut is committed to ensuring no one faces discrimination because of who they are or the health care decisions they make. As of writing, there are nearly 1,900 testimonies submitted in support of the amendment—it is clear that the people want and needs this now more than ever. The people are speaking, and this Committee must hear them. As such, the ACLU-CT strongly supports Senate Joint Resolution 35, and encourages this Committee to do the same.