



Memorandum

TO: RULES AND OPEN GOVERNMENT
GOVERNMENT COMMITTEE

FROM: Councilmember Carrasco
Councilmember Davis
Councilmember Esparza
Councilmember Arenas
Councilmember Foley

SUBJECT: REPRODUCTIVE FREEDOM RESOLUTION **DATE:** 10/28/2021

Approved

Date 10/28/2021

RECOMMENDATION:

Direct Staff to bring forward for Council approval a resolution affirming the City of San José's support for reproductive freedom and rights, and calling on Congress to protect reproductive freedom nationwide as prescribed in *Roe v. Wade*.

BACKGROUND

In 1973, the U.S. Supreme Court held in *Roe v. Wade* that abortion is a fundamental right protected under the United States Constitution based on the right to privacy in personal healthcare decisions. In 1992, the Court's decision in *Planned Parenthood v. Casey* affirmed *Roe*, and held that abortion restrictions must be reasonably related to a legitimate state purpose and avoid placing an undue burden on the right of pregnant people to obtain an abortion.

California has long been a model for providing and protecting access to reproductive health care and reproductive freedoms. Three years before *Roe v. Wade*, the California Supreme Court recognized that the fundamental right of a person to choose whether to bear children is protected by the U.S. Constitution. In 1972, Californians mobilized to enshrine the right to privacy in the California Constitution. In 2002, California passed the Reproductive Privacy Act, which embeds the right to choose or obtain an abortion in California public policy.

Unfortunately, numerous states throughout our nation are mobilizing to push laws and policies to undermine these long-established rights and freedoms. States including Texas and Mississippi have recently passed draconian laws designed to deprive their residents of the Constitutionally

recognized right to an abortion. In the case of the extreme, effectively six week abortion ban under the Texas law SB 8, private citizens are encouraged to bring forth civil suits to collect what have been described as “bounties” of \$10,000 against not only patients, but physicians and other healthcare workers providing care¹. Litigators for the Mississippi law, which will be heard by the Supreme Court this December, have expressly asked the Court to strike down *Roe* and the decades of precedent it has set. Were that to happen, seventeen states have existing abortion bans or trigger-laws which would go into effect almost immediately.

These efforts constitute the greatest threat to women’s reproductive rights and health that we as a nation have faced in decades. The health and safety of millions of people is at stake. Reproductive healthcare providers have warned us that an “Above-ground-railroad” has already begun here in the Bay Area, with at least one resident of Texas traveling here to secure an abortion now illegal in her home state². Beyond the borders of those states, the message to women, girls, and all those whose reproductive rights are threatened is that their lives, their safety, and their well-being don’t matter, and aren’t being considered in this debate. We have a responsibility to counter this message through advocating for strong reproductive freedom protections at every level of government, especially at the federal level where it is now threatened.

As other states and communities mobilize against reproductive freedom, California has continued to build a comprehensive system of support for Californians seeking sexual and reproductive care, supporting both patients and the medical professionals who care for them. From choosing a provider, to contraceptives and preventative care, to improving affordability of services, California recognizes that autonomy and agency are integral to exercising the fundamental right of privacy. Moreover, because reproductive freedom is intertwined with many issues of social justice such as economic, gender, and racial equity, a strong support system for reproductive freedom measures ensures that Californians of all backgrounds have access to the care they need.

However, even in California we face opposition to reproductive freedom that impacts our communities. The recent passage of SB 742, which limits protest activities within 30 feet of clinics that offer vaccination services, has prompted legal challenges from those protesting abortion services at clinics with both services. Even in our own community, the right of a woman to freely and privately access the reproductive healthcare she is constitutionally guaranteed, does not come without the threat of harassment and intimidation from those who would have us follow the Texas model.

San José has long stood up for the reproductive rights of women in our community. In 1999, the City passed a resolution on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which included equal access to healthcare services, including reproductive rights and family planning. This commitment was reaffirmed in 2017 with the Council’s unanimous approval of the Women’s Bill of Rights, which expanded our commitment

¹ <https://www.ama-assn.org/delivering-care/patient-support-advocacy/texas-sb-8-puts-bounties-doctors-heads-delivering-care>

² <https://www.mercurynews.com/2021/10/15/opinion-above-ground-railroad-for-abortion-has-already-begun/>

to applying the principles of the CEDAW in a local context. The national crisis that we face today, and our prior commitments to these principles as a city, demand that we speak up against this threat to equal access to healthcare for millions of women.

In 2019, Governor Gavin Newsom carried the torch of California's legacy by issuing the California Proclamation on Reproductive Freedom. California remains a champion of reproductive freedom, as noted by the Guttmacher Institute³. As opponents of reproductive freedom continue their attempts to strike down decades of precedent, San José must continue to serve as an exemplary model of commitment to defend and fight for reproductive freedom. And as the tenth largest city in the nation, we have an obligation to raise our collective voice against this injustice. Ensuring access to autonomy in reproductive decisions and access to care enhances our residents' quality of life. But just as important, when we stand up for reproductive freedom, we send the message to our women, girls, and all those impacted, that we will not be silent in the face of this threat to our safety and autonomy. We ask our Council colleagues to join us in reaffirming our strong commitment to safe and legal abortion, a cornerstone in the fight for reproductive freedom.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.

³ <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>

Draft Resolution Language

Resolution Declaring the City of San José a Defender for Reproductive Freedom

WHEREAS, California has worked to make reproductive freedom a fundamental right for all Californians by guaranteeing privacy regarding reproductive decisions and protecting a person's right to bodily autonomy, access to abortion, and to make independent reproductive choices including whether or not to terminate a pregnancy;

WHEREAS, reproductive rights are under attack in this country as states enact laws that restrict or ban abortion with serious implications for reproductive freedom in communities across the country;

WHEREAS, abortion restrictions, bans, and limitations to reproductive freedom disproportionately impact populations that already face barriers to accessing care including communities of color, individuals with low income, immigrant communities, youth, and rural communities;

WHEREAS, autonomy and agency in reproductive matters are central to secure gender, economic, and racial equity in all aspects of life;

WHEREAS, sufficient access to reproductive care is central to individual's ability to retain autonomy over their body, their choice to have children or not have children, and parent the children they have in safe and sustainable communities;

WHEREAS, abortion is health care and is a safe and common procedure, with one in four women obtaining an abortion by age 45.

WHEREAS, in 2019 Governor Gavin Newsom issued the California Proclamation on Reproductive Freedom to educate Californians on their reproductive rights under the state constitution and laws and affirm California's commitment to reproductive freedom.

WHEREAS, as states around the country enact abortion restrictions and outright bans to abortions, the City of San José can serve as a model and commit to defend and fight for reproductive freedom and welcome all those seeking to fully exercise their reproductive rights and access safe legal abortion as prescribed in *Roe v. Wade*.

THEREFORE BE IT RESOLVED, the City of San José is hereby a champion and defender of health equity and reproductive freedom for all, so that anyone may have access to the reproductive services they need, when they need them.

BE IT FURTHER RESOLVED that the City of San José calls on the United States Congress to protect reproductive freedom nationwide by enacting legislation to protect access to abortion and other reproductive care without government interference.

