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Senate

Statement of Senator Dianne Feinstein

The Importance of Roe v. Wade

Mr. President, I rise today to support the motion to disagree with the House message accompanying S. 3, the late-term abortion bill, and to speak today about a very important Supreme Court decision: *Roe vs. Wade*.

A provision was included in the late-term abortion bill that passed the Senate in March recognizing the importance of *Roe v. Wade* in securing the constitutional right to choose and stating that this decision should not be overturned.

This provision was a simple Sense of the Senate resolution. Let me read its exact language:

(1) the decision of the Supreme Court in *Roe v. Wade* (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and

(2) such decision should not be overturned.

I am pleased that this amendment was added on a strong bipartisan vote of 52 to 46.

Unfortunately, though, the similar House-passed late-term abortion bill lacks this language. Indeed, the House refused to agree to it.

While I oppose the both the House and Senate late-birth abortion bills because I believe that they are too broadly written, lack an exception

for women's health, and are flagrantly unconstitutional, I strongly support the *Roe v. Wade* language we added to the Senate-passed bill. That is why I plan to vote for the motion to disagree today.

Mr. President, the past 30 years, since the Supreme Court upheld a woman's right to choose, have brought a great deal of change for women in America. Some of that has been good, while some has not been so good.

But now, in 2003, the right to choose is under attack—and more so, I believe, than any other time during the last 30 years.

It's easy to take the right to choose for granted. For many women, it is all they have ever known. The option has always been available.

I lived during a time, however, when an estimated 1.2 million women each year resorted to illegal, back-alley abortions despite the possibility of infection and death.

I remember that time very vividly. In college during the 1950s, I knew young women who found themselves pregnant with no options. I even knew a woman who committed suicide because she was pregnant and abortion was illegal in the U.S.

I also remember the passing

of a collection plate in my college dormitory so that another friend could go to Mexico for an abortion.

Later, in the 1960s, I spent eight days a year for five years sentencing women to California prisons. I even sentenced individuals who performed abortions because, at that time, abortion was still illegal in my state.

I remember these cases particularly well. I remember the crude instruments used. I remember women who were horribly damaged by illegal abortions. In fact, the only way a case really came to the attention of the authorities was if the woman getting the abortion died or was severely injured.

I will never forget one woman whom I sentenced to 10 years—the maximum sentence because she had been in and out of state institutions several times. I asked her why she continued to perform abortions. She said, "Because women are in such trouble and they have no other place to go, so they came to me because they know I would take care of them."

Mr. President, not a year has gone by since I became U.S. Senator that some legislator hasn't proposed legislation that would compromise this right—that would return us to the days of the 50s, 60s, and early 70s. But, fortunately, we

have been able to beat back many of these attempts, either in Congress or in the courts.

What concerns me the most about the debate we are having today about *Roe v. Wade* is that it is the beginning of a long march to take women back 35 years, back to the passing of the plate at Stanford, back to the back-alley abortions and trips to Mexico, and back to the time when women could not control their own bodies.

What we are hearing today is that some senators are so uncomfortable with the right to choose that they want to strip out language that recognizes the importance of *Roe v. Wade* and that states, consistent with current Supreme Court jurisprudence and settled caselaw, that the decision should not be overturned.

But it is because of *Roe*—and only because of *Roe*—that women have been able to decide over the past 30 years, in consultation with their doctors, about whether to terminate a pregnancy in the first trimester without interference from the state or federal government.

Mr. President, let me talk a little about this landmark opinion.

In 1973, in *Roe v. Wade*, the Supreme Court decided that a woman's constitutional right to privacy includes her qualified right to terminate her pregnancy.

The Court also established a trimester system to govern abortions. In that system, in the first 12 to 15 weeks of a pregnancy—when 95.5 percent of all abortions occur and the procedure is medically the safest—the abortion decision and its effectuation must be left to the woman and her doctor.

In the second trimester, when the procedure in some situations poses a greater health risk, states may regulate abortion, but only to protect the health of the mother. This might mean, for example, requiring that an

abortion be performed in a hospital or performed by a licensed physician.

In the later stages of pregnancy, at the point the fetus becomes viable and is able to live independently from the mother, the state has a strong interest in protecting potential human life. States may, if they choose, regulate and even prohibit abortion except where necessary to preserve the life or health of the woman.

In 1992, in *Planned Parenthood v. Casey*, the Supreme Court specifically reaffirmed *Roe*'s standard for evaluating restrictions on abortion after viability but eliminated *Roe*'s trimester framework by explicitly extending the state's interest in protecting potential life and maternal health to apply throughout the pregnancy.

Thus, under *Casey*, regulations that affect a woman's abortion decision that further these state interests are valid unless they have the "purpose or effect" of "imposing a substantial obstacle" in the woman's path.

However, the bottom line is that in *Casey* the Court retained the "central holding" of *Roe v. Wade*. As a result, women in all 50 states still enjoy the constitutional right to choose.

Mr. President, the challenge for American men and women who support a pro-choice agenda will be to continue to make their voices heard in an environment that appears focused on nullifying all reproductive rights and trying to overturn *Roe* after 30 years.

Roe v. Wade secured an important constitutional right—a right I strongly support.

I am deeply concerned about passing a late-term birth abortion bill that doesn't include language recognizing the importance of *Roe*. That is why I believe that we should disagree with the House

message accompanying S. 3.

I urge my colleagues to vote to support the language in the Senate-passed version of S. 3 regarding the importance of *Roe v. Wade*. We cannot—we must not—go back to a time without choice.

Thank you.