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Rhode Island

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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 24-H 7375,
AN ACT RELATING TO DEATH BY WRONGFUL ACT
March 5, 2024

This bill, as its explanation states, "expands the statute of limitations with respect to any wrongful act resulting in the death of a child in utero or within six (6) months after the birth of the child, to ten (10) years after the death of the child." The ACLU of Rhode Island strongly opposes this bill as worded.

Specifically, we are deeply troubled by the ramifications of the bill's language relating to a cause of action for wrongful death in the case of a "child in utero." While we cannot speak to the bill sponsor's intent, that language could easily be used, and appears designed, to undermine abortion rights and the General Assembly's codification of those rights in the Reproductive Privacy Act.[1]

With the U.S. Supreme Court's overturning of *Roe v. Wade*, the bill's specific reference to "death of a child in utero" could be read to support an argument that a would-be father opposing abortion, as the purported "next of kin," would have a cause of action for the "wrongful death" – i.e., an abortion – of a fetus, whether it was viable or not. The R.I. Supreme Court has recognized a cause of action for the wrongful death of a viable,[2] but not of a nonviable,[3] fetus within the parameters of the *Roe* decision, but this bill's wording could be seen as an attempt to overturn that distinction. Just as importantly, in light of the demise of *Roe*, reproductive rights would also be at great and direct risk in the context of performing later-term abortions necessary to preserve a person's life or health, as the current proposed language of this bill, contrary to the RPA, could easily be construed to support a cause of action for "wrongful death" in those circumstances as well.

In the unlikely event that is not the bill's intent, the ACLU believes that the legislation must be amended to eliminate that interpretation. The reference to "death of a child in utero" should be omitted or, more transparently, the bill should be amended to explicitly state that "nothing herein shall be construed to modify or alter the provisions of the Reproductive Privacy Act, R.I.G.L. §23-4.13-1 et. seq."

Thank you for your consideration of our views.

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[1] We consider it relevant to note that this bill's sponsor is lead sponsor of another bill that explicitly provides for wrongful death lawsuits on behalf of non-viable fetuses in the abortion context. *See* 24-H 7529.

[2] *Presley v. Newport Hospital,* 117 R.I. 177, 189, 365 A.2d 748, 754 (1976).

[3] "We do not believe that the Legislature intended a nonviable fetus to be defined as a 'person' within the meaning of the wrongful-death statute." *Miccolis v. AMICA Mut. Ins. Co.*, 587 A.2d 67, 71 (R.I. 1991)