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ACLU OF RI POSITION: OPPOSE

TESTIMONY IN OPPOSITION TO
25-H 5295, AN ACT RELATING TO CRIMINAL OFFENSES – CHILDREN
and 25-H 5296, RELATING TO BORN-ALIVE INFANT PROTECTION ACT
April 8, 2025

The ACLU of RI is opposed to passage of these two anti-abortion bills being considered by the House Judiciary Committee today. (We have separately provided testimony on a third anti-abortion bill on today's agenda, H-5661.) They seek to undermine the state's statutory protections available to an individual to exercise their right to an abortion without undue government interference, and attempt to turn this legislative body into an arbiter of medical decisions. These assaults on reproductive freedom should be rejected.

Before turning to the provisions of this legislation, it is important to understand what Rhode Island law currently permits and what is already prohibited. In 2019, after careful review and several revisions, the General Assembly enacted the Reproductive Privacy Act (RPA), which was signed into law by Governor Raimondo.

The RPA did several things. First, it codified, for Rhode Island, the standards mandated by Supreme Court decisions, generically known as the protections of *Roe v. Wade,* as they existed until the Court's complete overturning of that precedent in 2022. The RPA prohibits government agencies from interfering with individuals in making decisions to commence, continue or terminate a pregnancy prior to fetal viability. The RPA also established that fetal viability is a critical marker, after which the government may restrict the individual's decision to terminate a pregnancy except when termination is necessary to preserve the health or life of that individual.

The RPA also guaranteed that the State would not interfere with access to evidence-based medical care or medical treatment, and repealed or modified laws still technically on the books that had been declared unconstitutional and unenforceable, clarifying where our laws now stand.

At the same time, the RPA made clear that Rhode Island's statute which mandates "care of babies born alive during attempted abortion," R.I.G.L. §11-9-18, was not affected or undermined by the passage of the RPA. That statute provides:

> "Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to provide reasonable medical care and treatment to an infant born alive in the course of an abortion shall be guilty of a felony and upon conviction shall be fined not exceeding five thousand dollars ($5,000), or imprisoned not exceeding five (5) years, or both. Any physician, nurse, or other licensed medical person who knowingly and intentionally fails to

> provide reasonable medical care and treatment to an infant born alive in the course of an abortion, and, as a result of that failure, the infant dies, shall be guilty of the crime of manslaughter."

Similarly, Rhode Island statutes that require "informed consent" for abortions, §§23-4.7-1 through 23-4.7-8, and restrict experimentation on human fetuses, §11-54-1, were not affected or undermined by the passage of the RPA. The RPA likewise made clear that it did not interfere with the federal law prohibiting "partial-birth abortions." Finally, the RPA addressed requirements for record-keeping for every termination after fetal viability as well as imposition of penalties for professional misconduct for violations of the law's terms.

Thus, the RPA carefully navigated between recognizing and honoring the individual's ability to make their own reproductive decisions, in consideration of best medical practices, about commencing, continuing or terminating a pregnancy, while also respecting the State's interest in fetal viability. The current legislation, it is submitted, is designed to, and will completely, disrupt that carefully crafted resolution, and should be rejected for that reason.

2025-H 5296 would enact a "Born-Alive Infant Protection Act." As noted above, Rhode Island already has a criminal statute, R.I.G.L. §11-9-18, which mandates "Care of babies born alive during attempted abortion." The RPA specifically acknowledged that this statute was not affected or undermined by the passage of the RPA. No more is needed to address this situation, assuming it might occur.

However, this bill is designed to do much more, and would interfere with and criminalize medical procedures and termination decisions protected by the RPA. It effectively bans termination of a pregnancy at any gestational age by redefining the mandates of providing medical care to the fetus without regard to viability. And, since it says nothing about viability, it also says nothing about recognizing the life or health of the pregnant individual. In fact, it acknowledges that whether or not the fetus was viable at the time the termination was performed is irrelevant in providing for a "wrongful death" action by the parent. These provisions directly contravene, and thus effectively nullify, the RPA.

House bill H-5295 appears to add a duplicate provision to §11-9-18. However, it too defines the scope of its coverage to include every gestational age and thus also effectively bans termination of pregnancy at any gestational age, thereby undermining the RPA.

In conclusion, both of these bills are an attack on the state's presciently adopted Reproductive Privacy Act, medical science, the doctor-patient relationship, and a person's fundamental right to bodily autonomy. They should be soundly rejected.

Submitted by:
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