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Joint Committee on the Judiciary
Rep. Claire Cronin & Sen. Jamie Eldridge, Chairs

SUPPORT: H.3320/S.1209
THE ROE ACT

Chairwoman Cronin, Chairman Eldridge, and members of the Joint Committee on the Judiciary:

The ACLU of Massachusetts offers our strongest support for H.3320 and S.1209, jointly known as the ROE Act. This legislation is a top priority for our organization and our hundreds of thousands of members, supporters, and activists statewide.

Individual rights and freedoms—including full autonomy over our own bodies—are at the heart of who we are as a Commonwealth. Indeed, Massachusetts has often led the nation in guaranteeing personal freedom, equality, and health care.

We are so proud of the legislature's recent history of leading the way on reproductive freedom in particular. That leadership has included protecting Bay State residents from threats to reproductive health care by expanding access to affordable birth control, repealing archaic and unconstitutional anti-abortion laws, and safeguarding patient privacy. We also appreciate the legislature's passage of pro-active, pro-family legislation, including paid family and medical leave, and lifting the cap on kids.

Now, Massachusetts has the opportunity — and, in these troubling times, the responsibility — to lead again by guaranteeing the right to safe, legal abortion is one that is accessible to all people.

As we witness a tidal wave of new state laws to completely eliminate and criminalize abortion access around the country, we are grateful that we live in Massachusetts, where the right to abortion is already protected by our state constitution. In a case brought by the ACLU, *Moe v. Secretary of Administration and Finance,* the Massachusetts Supreme Judicial Court recognized a person's fundamental right under our state constitution to determine whether or not to carry a pregnancy to term.[1]

However, that right is elusive for far too many people in practice. Many state laws relative to abortion were designed to place unnecessary restrictions on the provision of abortion care. Those laws harm the real lives of real people — especially the most vulnerable Massachusetts residents.

[1] *Moe v. Secretary of Administration and Finance , 382 Mass. 629 (1981)*

Now is the time to fix our state law regarding abortion, to align it with our core values, and to enable all people to make health care decisions that are right for them, in consultation with their doctor, and without political interference.

Our laws should reflect modern Massachusetts values and codify the right to safe, legal abortion.

At the time of the U.S. Supreme Court's decision in *Roe v. Wade*, Massachusetts lawmakers did not trust women to make decisions about their own bodies. Indeed, they responded by swiftly passing a law with one clear objective: to limit abortion access.

As a result, current law on the books in the Commonwealth is replete with medically inaccurate definitions, inflammatory anti-choice language, and dangerous provisions. Some of these represent concrete obstacles to people accessing the health care they need; others lie dormant and unenforced—time bombs that could go off if, or when, *Roe v. Wade* is undermined.

Strikingly, our law's ideologically-driven definitions of pregnancy and abortion are the same as those used by the most strident anti-choice activists in other states to push safe, legal abortion totally out of reach. They are deeply and offensively political, not medical, and stand in stark contrast to the Commonwealth's proud commitment to science, medicine, and personal autonomy.

Likewise, our law mandates very specific, medically inappropriate, and manipulative barriers to care. One salient example: on its face, it would require a person to make multiple visits to a health care provider in order to obtain an abortion, and wait 24 hours between receiving counseling and receiving care. Medical research has shown that a waiting period serves no medical purpose.[2] Rather, it is exclusively political: a tool to call into question a person's ability to make a decision about her own body, and to delay access to health care. Thankfully, this offensive and dangerous provision has been enjoined by a court decision[3], but it needs to be stripped from the books before a future change in judicial doctrine causes it to be enforced and to interfere with a person's medical care and autonomy.

Nearly 50 years after *Roe*, we need to fix our laws to reflect the belief that the decision of whether and when to have children should be made by a woman in consultation with her doctor—and without government interference. The ROE Act is designed to finally remove these harmful barriers to medical care.

Our laws must remove unnecessary barriers to health care.

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[2] Joyce TJ et al., The Impact of State Mandatory Counseling and Waiting Period Laws on Abortion: A Literature Review, New York: Guttmacher Institute, 2009, https://www.guttmacher.org/report/impact-state-mandatory-counseling-and-waiting-period-laws-abortion-literature-review.

[3] *See* Planned Parenthood League of Massachusetts v. Bellotti, 641 F.2d 1006 (1981).

Anti-abortion laws on the Commonwealth's books have imposed unnecessary and sometimes insurmountable barriers to care for young people and people facing difficult decisions later in pregnancy. Too often, Massachusetts residents are forced to delay care, cross state lines, or be denied care altogether. The ROE Act will remove these barriers and expand access to safe, legal abortion for *all* people.

These access issues are where the rubber meets the road; where our laws on the books concretely harm real people's lives. It is essential that the legislature act to fix them this session.

Care later in pregnancy

Massachusetts law currently has a 24 week gestational limit on abortion care, unless it is necessary to save the life of the mother or if "the continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health." The ROE Act adds an exception for abortion care after 24 weeks of pregnancy in extremely rare cases of lethal fetal diagnoses, and modernizes the language in our current law to ensure a woman's health and the patient-provider relationship guides all medical decisions throughout a pregnancy.

Roe v. Wade protects a woman's right to end a later pregnancy to safeguard her own health. Yet qualifying language about "grave impairment" was put into Massachusetts law by legislators who opposed *Roe v. Wade* and intended to scare physicians away from providing constitutionally-protected health care. In the end, a woman's health, not political ideology, should guide her and her doctor's medical decisions.

The same principle informs the need to permit a person to access abortion care after 24 weeks of pregnancy in rare cases of lethal fetal diagnoses. When it is discovered that a fetus's brain has failed to develop, or its organs are growing outside its body, it is clear that it will not survive outside the uterus. In such tragic circumstances, current Massachusetts law puts abortion care out of reach, forcing women to carry non-viable pregnancies to term. It is unfathomable that Massachusetts is home to some of the country's leading health care institutions, yet medical practitioners are forced to tell patients facing difficult diagnoses that our laws prevent them from receiving the care they need in the Commonwealth. Instead, they must send them across the country for their health care, making it inaccessible to those who do not have significant financial means.

Every pregnancy is different, and the law cannot account for every potential complication. Throughout pregnancy, a woman must be able to make her own decisions based on her own medical circumstances with the advice of the health care professional she trusts.

Care for young people

Compared to most states in New England, Massachusetts has a very restrictive forced parental consent law governing a young woman's right to access safe, legal abortion. Young

women are trusted to make their own personal decisions when it comes to all pregnancy-related care—unless the care they seek is safe, legal abortion. The ROE Act would align a young woman's ability to access abortion with their ability to access all other pregnancy-related care. By enacting this change, we can protect the patient-provider relationship and better ensure young people's health, safety, and privacy.

Under state law, to end a pregnancy a young woman under the age of 18 must obtain consent from a parent or endure an onerous court process to obtain a judge's permission. This mandate ignores the lived realities of some young women and interferes with their ability to make a decision that is best for their health and well-being. When faced with an unintended pregnancy, the great majority of young women already turn to a parent or other trusted adult. But, for young women who can't—whether because they fear abuse, they are in foster care, or for some other reason—the current law puts their health and well-being at risk.

Forced parental consent is not the answer, and neither is forcing a young person to plead her case before a judge. The judicial bypass process imposes a series of hurdles for young women seeking access to a safe and legal abortion. In order to get the health care they need, they need to figure out that judicial bypass exists, learn about the process, find an attorney, schedule a hearing, miss school, secure transportation, and present their case before a judge. In the end, these court proceedings don't support or help young women. Unlike health care providers, judges are unable to help connect a young person to social services or supports. Forcing a young person to run the gauntlet of judicial bypass serves only to unnecessarily delay care, increase health care costs, and traumatize someone who is already going through a very difficult situation.[4]

The nation's leading medical organizations (including the American Medical Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Public Health Association) oppose mandatory parental consent laws. These laws don't achieve the intended goal of promoting family communication and instead increase the risk of harm to teens by delaying access to appropriate medical care.

Equality depends on a person being able to make decisions about her body. It's a matter of health care and human rights.

No matter how far we have come, women will not be equal members in society until all people have full access to reproductive health care. It is incumbent upon our government to enable us to make decisions about whether and when to become a parent in a way that is best for ourselves and for our families. That is critical to ensuring that people and families

[4] Janiak, et al., Massachusetts' Parental Consent Law and Procedural Timing Among Adolescents Undergoing Abortion, Obstetrics & Gynecology, May 2019. https://journals.lww.com/greenjournal/Fulltext/2019/05000/Massachusetts__Parental_Consent_Law_and_Procedural.19.aspx.

thrive and that everyone in our community can participate with freedom, dignity, and equality.

The ROE Act will update our statutes to ensure that Massachusetts law is rooted in medicine and science, respects the rights of women and their families, and protects the patient-provider relationship from political interference. It will codify the principle of access to reproductive health care into state law to prevent abortion from being singled out for unwarranted restrictions in the future. Because abortion is health care—and health care is a human right.

We respectfully urge the Committee to give the ROE Act a favorable report, and we would welcome the opportunity to work with the Committee to move this legislation forward. Thank you.