February 20, 2017

VIA ELECTRONIC MAIL

The Very Rev. Bernard A. Healey
Executive Director
Rhode Island Catholic Conference
One Cathedral Square
Providence, RI 02903

Dear Father Healey:

We have reviewed proposed Bill H5343 which would amend Section 23 of Rhode Island General Laws and have the following comments.

First, by virtue of proposed Sections 23-4.13-2 (a)(1)-(3), if passed this statute will bind not only future legislators from law making concerning but also the executive branch from regulating in any way the provision of abortion services. More than that, as explained below, it could bring about challenges to long standing statutory provisions, which we reference below. This current sitting Legislature, as well intentioned as it may be, cannot possibly know what laws might best serve the people of Rhode Island in the future. Moreover, the notion of passing legislation today that bars both lawmaking and regulation in the future, thus depriving both the legislative and executive branches from exercising their constitutional functions, runs counter to the fundamental principles undergirding the State of Rhode Island Constitution.

Second, the use of the word "interfere" in the proposed statute lacks definition, which could lead to all sorts of unintended consequences. When combined with the abdication of the lawmaking and executive functions, this renders the statute problematic. By way of example only, and there are many, one can envision a scenario where even a law protecting a constitutional right to assemble or a regulation or law designed to protect the health of women undergoing abortions (ensuring proper regulation of facilities providing abortion procedures, for example) could be construed to interfere in some way with a woman's choice. Another potential outcome of the statute could be that poor women who want to terminate their pregnancy might demand that the State fund abortions under this statute. Query whether the State would be deemed to "interfere" with a poor woman's decision to terminate a pregnancy if it does not provide state funded facilities or otherwise fund the procedure which she cannot afford, when women of more sufficient means can. Still another example would be statutory rape laws which might be challenged under this statute. Under the proposed amendment the State can pass no law or regulation that interferes with a woman's decision to commence a pregnancy. Yet there are laws on the books today that do just that, including laws that define the age of viable consent, and make it a crime for a man to engage with an underage woman.

It seems to us that any such law would "interfere" with a woman's decision to "commence" a pregnancy and would violate the black letter of the statute

Third, it makes little sense to pass a statute that provides that neither the State nor its agencies can restrict the manner in which medically recognized methods of abortion are provided. The term "medically recognized" is not defined in the proposed statute nor is any standard established from which it can be defined. One wonders what "medically recognized" means, by whom, and at what time. Does "medically recognized" simply mean any effective medical procedure, even though it increases likelihood of harm to the mother at the time of the procedure or in the future? Under this proposed statute as it is worded the State has no say in what is "medically recognized" or by whom. Over the years there have been "medically performed", and therefore "medically recognized", methods of abortion that may not be acceptable precisely because they increase risk to the woman undergoing the procedure. Why exactly would the Legislature even create the shadow of a doubt that it can legislate protections based on what is best and required here in the State of Rhode Island now and in the future?

Fourth, the term "fetal viability" means something scientifically. It is very seldom, although it can be, a subjective term and even then there are certain defined indicia. It was the subject of much discussion in *Roe v. Wade* and, as stated by the United States Supreme Court over 15 years ago, the construct of fetal viability enunciated in *Roe v. Wade* is on a collision course with itself (or words to that effect). That is because science and health methods as well as a better understanding of fetal health has demonstrated that life in the womb can survive outside the womb at a much earlier time than understood in 1973. It would be a dereliction of duty for this Legislature to completely abandon its function, and allow the definition of fetal viability to be made on a case by case basis by a physician with profit or other motives without definition or statutory protections of any kind. Such a definition should be the product of hearings and consideration of all factors that bear on this obviously important question, since it figures so prominently in the proposed statute. Keep in mind, the Legislature under this statue can neither restrict nor guide the subjective decision making nor pass a law defining what factors need to be considered by the physician. This is simply a free pass for a physician to perform abortions at any time, in any way, during a pregnancy or even delivery precisely because the State under this proposed statute completely abdicates its legislative and regulatory functions and leaves it to the subjective decision of the physician, without any standard established.

In sum, this proposed statute is imprecise, overly broad, lacks definition and, because the Legislature foregoes its present and future rights (and duties), as well as those of the Executive branch, it can be expected that it will cause both unintended foreseeable and unforeseeable consequences.

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