Written Testimony of Katie Glenn, Esq.
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On H.B. 5125, the Reproductive Privacy Act
Submitted to the Senate Committee on Health and Human Services
June 12, 2019

Dear Chairperson Miller and Members of the Committee:

My name is Katie Glenn and I work as Government Affairs Counsel with Americans United for Life (AUL), the oldest and most active pro-life non-profit advocacy organization. Established in 1971, AUL has dedicated nearly 50 years to advocating for comprehensive legal protections for human life from conception to natural death. Thank you for the opportunity to provide legal testimony on H.B. 5125, the Reproductive Privacy Act, which would enshrine expansive pro-abortion measures in Rhode Island law. I have thoroughly reviewed H.B. 5125, and it is my legal opinion that the Act has severe consequences for the health of women and the unborn. It expands abortion allowances beyond *Roe v. Wade* and its progeny, rejects the state's legitimate interest in protecting life, and prohibits commonsense protections for women's health from being enacted in the future.

The Act effectively expands abortion up until birth.

The Act would result in the expansion of abortion beyond what was permissible in *Roe* to any time it is "necessary to preserve the health or life of that individual." The Supreme Court considers "health" to include all factors, including "physical, emotional, psychological, familial, and the woman's age" for the purposes of post-viability abortions.[1] By failing to define or limit "health," the Act allows for abortion up to the moment of delivery of the child which effectively creates abortion on demand at any point in the pregnancy. Adding a requirement that the physician record the reason for the late-term abortion in the woman's medical record is not a restriction on late-term abortions and therefore does nothing to prevent them from happening.

The Act removes commonplace restrictions and impedes necessary regulatory oversight.

The Act removes the state ban on the gruesome partial-birth abortion procedure, decriminalizes the willful killing of an unborn child, and prevents future protections for the health of the mother and child, including protections against coerced abortion, sex-selective abortion, and abortion based on genetic anomalies such as Down syndrome. These changes are unnecessary and harmful.

[1] *Doe v. Bolton*, 410 U.S. 179, 192 (1973). This was later circumscribed by legitimate state interests. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

First, H.B. 5125 notes that it shall not be "construed to . . . [a]brogate the provisions of [the federal Partial-Birth Abortion Ban]." Nevertheless, the Act removes Rhode Island's prohibition on partial-birth abortion.[2] The federal Partial-Birth Abortion Ban Act of 2003 prohibits physicians from knowingly performing partial-birth abortions except in cases where it is necessary to save the life of the mother.[3] However, as a federal law, this prohibition only covers activity with a federal tie, such as a hospital receiving federal funds. "Congress found . . . '[a] moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion . . . is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.'"[4] But even before the federal government weighed in, Rhode Island legislators passed a state Partial-Birth Abortion Ban.[5] The State has an interest in ensuring the partial-birth abortion, which "remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives,"[6] is not permitted or performed. Repealing the state Partial-Birth Abortion Ban will lead to confusion for abortion providers and women, and, after nearly two decades on the books, there is no reason for the Rhode Island General Assembly to reestablish this disturbing practice.

Second, the Act would remove the State's fetal homicide law. As it stands, Rhode Island criminalizes the "willful killing of an unborn quick child by any injury to the mother of the child," recognizing both the woman and child as separate victims. H.B. 5125 dehumanizes the unborn child by refusing to acknowledge him or her as a potential victim. Instead of recognizing each as victims of felonious attack, the Act alters Rhode Island criminal law so that if a pregnant woman is physically harmed in a way which results in the death of her child, and the perpetrator "*knows or has reason to know*" the woman was pregnant, the State will only recognize the woman as the victim of an assault or battery. By refusing to acknowledge the second victim–the unborn child–the Act intentionally minimizes the gravity of the crime committed. Not only does this dehumanize the unborn child who is equally a victim in this situation, but the Act requires that the assailant knows or has reason to know the woman was pregnant, which could be circumvented. Pleading ignorance to the pregnancy denies justice to the unborn child and those who grieve his or her loss. Rhode Island has a duty to protect its citizens and provide justice for victims of violent crime; passing the Act and repealing this criminal statute does the exact opposite.

Third, in *Roe v. Wade*, the Supreme Court explained that "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life."[7] Most

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[2] The partial-birth abortion procedure consists of the abortion practitioner delivering a living baby through the birth canal until either only the head remains inside or the head alone is completely outside the body of the mother. The abortion practitioner then forces a pair of scissors into the base of the baby's skull, suctions the brain out through the hole created, and proceeds to finish the delivery of the now-dead baby. *See, e.g.*, *Gonzales v. Carhart*, 550 U.S. 124 (2007); Partial-Birth Abortion Ban Act of 2003 Pub. L. No. 108-105, § 2 117 Stat. 1201 (2003) [hereinafter the Federal Partial-Birth Abortion Ban Act] (findings).

[3] 18 U.S.C. § 1531.

[4] Federal Partial-Birth Abortion Ban Act at § 2(1).

[5] 1997 R.I. Pub. Laws 76 § 2.

[6] Federal Partial-Birth Abortion Ban Act at § 2(2).

[7] 410 U.S. 113, 154 (1973).

recently in *Whole Woman's Health v. Hellerstedt*, the Court reiterated that the "State has a legitimate interest in seeing to it that abortion, like any medical procedure, is performed under circumstances that insure maximum safety for the patient."[8] As a reflection of a state's legitimate interest in protecting life, a state may pass common-sense health and safety abortion regulations, including provisions to ensure the informed consent and health of a woman who chooses to have an abortion.[9] In blatant disregard of the State's prerogative, the Act not only circumscribes Rhode Island's ability to act upon its legitimate state interest in protecting life and ensuring the mother's health, but also rejects that Rhode Island has any affirmative interest in the life of the unborn altogether.

The Act prohibits regulations of abortion providers that could be considered a restriction on an individual from having an abortion. The Act thereby engenders a regulatory regime that is akin to the one in Pennsylvania that allowed the infamous abortion provider, Kermit Gosnell, to operate his "House of Horrors" for many years. Gosnell, who was ultimately convicted of involuntary manslaughter, was able to provide unsafe, unsanitary, and deadly abortions for many years because, according to the Grand Jury report, the Pennsylvania Department of Health thought it could not inspect or regulate abortion clinics because that would interfere with access to abortion.[10] By lowering professional accountability, abortion providers in Rhode Island will be free to operate without regulation and oversight, to the detriment of women and young girls.[11] If Rhode Island passes the Act, it will turn a blind eye to unsafe abortion practices by abdicating its proper duty to protect women.

In conclusion, I urge this Committee to further Rhode Island's important state interests in preserving human life and protecting women's health and reject H.B. 5125.

Sincerely,

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[8] 790 F.3d 563, 567 (2016) (quoting *Roe*, 410 U.S. at 150).
[9] *See, e.g.*, *Casey*, 505 U.S. at 883 ("[R]equiring that the woman be informed of the availability of information relating to fetal development and the assistance available should she decide to carry the pregnancy to full term is a reasonable measure to ensure an informed choice, one which might cause the woman to choose childbirth over abortion. This requirement cannot be considered a substantial obstacle to obtaining an abortion, and, it follows, there is no undue burden.")
[10] *See, e.g.*, Conor Friedersdorf, *Why Dr. Kermit Gosnell's Trial Should Be a Front-Page Story*, ATLANTIC (Apr. 12, 2013), https://www.theatlantic.com/national/archive/2013/04/why-dr-kermit-gosnells-trial-should-be-a-front-page-story/274944/ (discussing the case of Kermit Gosnell).
[11] *See, e.g.*, AMS. UNITED FOR LIFE, UNSAFE (2d ed. 2018) (report documenting unsafe practices of abortion providers and harm to women's health and safety).