TESTIMONY IN SUPPORT OF 17-H 5343,
AN ACT RELATING TO HEALTH AND SAFETY – REPRODUCTIVE HEALTH CARE ACT
March 29, 2017

My name is Lynette Labinger and I am a volunteer attorney with the ACLU of Rhode Island. In that capacity, in years past —primarily in the 1980s and 1990s—I have brought court challenges which were successful in striking down as unconstitutional over a half dozen statutes enacted by past sessions of the General Assembly. These statutes were designed to interfere with a woman's reproductive right to choose, and it cost the state's taxpayers hundreds of thousands of dollars to unsuccessfully defend those laws. I am pleased to note that it has been more than 15 years since the ACLU has been forced to challenge any such law. I therefore agree that it is time for the legislature to consider a different approach.

That is why I am here this evening to speak in support of House Bill 5343, which is designed to codify the principles of *Roe v. Wade* and preserve the current rights and protections to reproductive freedom of choice enjoyed by women in the State of Rhode Island.

I understand that versions of this legislation have been introduced in the past. In the current national climate, I respectfully submit that it is imperative that the General Assembly address this legislation now.

Why do I say that?

Many advocates of reproductive freedom are deeply, and understandably, worried about the future of *Roe v. Wade* in a reconstituted U.S. Supreme Court. Even if *Roe* itself is never overturned, there is legitimate concern about the Court eroding

the principles underlying that decision such that a woman's exercise of her decision whether or not to terminate a pregnancy becomes more theoretical than realistic.

In that light, this legislation is designed to do nothing more than codify the current protections extended to all women by *Roe v. Wade* and its later cases. I have heard some of the criticisms that have been raised that the bill's current language can be interpreted to sweep more broadly than codifying Roe. It is my understanding that that is not its purpose and that the sponsors are prepared to accept or provide revisions that will eliminate those concerns. Based upon my reading of the bill and its stated purpose, I am confident that some of the language can and should be revised to clarify the bill's purpose and that this can readily be accomplished while still fulfilling, and without undermining, the bill's purpose.

In addition, I believe that a bill like this should do more than simply codify *Roe*'s language into statute. It should also clean up our Rhode Island law books, which continue to reflect old statutory prohibitions that have been declared unconstitutional or permanently enjoined, but for some reason have never been formally removed from the statute books. Their continued presence has had no significance up to now. But we live in uncertain times and a change at the national level may give rise to some arguing that these old, unconstitutional and obsolete statutes have new force. While I do not believe that is true, the notion of old and obsolete statutes being asserted as newly enforceable would interfere with the current legislature's legislative decisions. Your constituents of the present should have the right to have their expectations of the current state of the law fulfilled.

The General Assembly can do this by affirmatively removing these old, obsolete placeholders and recognizing the paramount right of women in our state to decide whether or not to bear children. Once the dust settles at the national level, if there is new room to legislate, then the current or future General Assembly can thoughtfully address the need for legislation based on current norms and standards. It should not be dictated by legislatures of the past whose enactments were previously struck down.

The proposed legislation, as written and as its supporters would propose that it be amended, is designed to preserve those provisions affecting abortions that are presently in force and conform to *Roe v. Wade*: basic informed consent and the requirement of parental or judicial consent for termination of a minor's pregnancy, the right of individuals who object on moral or religious grounds not to participate in termination procedures, and that portion of RI General Laws §36-12-2.1 which prohibits the state from including abortion coverage as part of basic health insurance to state employees.

In contrast, the legislation, as I understand is proposed to be amended, would make clear that the many provisions previously struck down or never enforced as fatally flawed are now formally repealed. Those statutes would be chapters 11-3 (a pre-Roe ban on all abortions), 23-4.8 (requiring notification of one's spouse before terminating a pregnancy), 23-4.12 (the state's "partial birth abortion" ban), 11-23-5 (banning the "murder of an unborn quick child," which contrary to Roe contains no exception to protect the woman's health), 27-18-28 (interfering with abortion

coverage in private insurance), and 36-12-2.1 (interfering with abortion coverage in insurance provided by municipalities to city or town employees).

This is basically a house-cleaning provision designed to codify and preserve the status quo and not allow confusion, chaos, or any dubious efforts to resurrect old, obsolete and invalidated statutes to interfere with a woman's difficult and personal decision on whether or not to terminate a pregnancy.

At a future legislative session, after this bill is enacted, I would encourage the legislature to take a step further and amend or repeal laws that this bill does not address, but that have a significant impact on a woman's right to choose – such as those banning public funding of abortions for poor women or abortion insurance coverage for state employees. But that is for another day.

I look forward to the Committee's favorable consideration of a revised version of this legislation, and I would be pleased to answer any questions that you may have.