Memorandum

Date: March 18, 2019

To: Sen. Erin Lynch Prata, Chair, Senate Judiciary Committee
Members, Senate Judiciary Committee

From: Lynette Labinger, ACLU of Rhode Island Cooperating Attorney

Re: Analysis of S 152 SubA and Response to Linton/RIRTL Memoranda

Introduction/Scope

The purpose of this Memorandum is two-fold: 1) address whether and, if so, how S152 SubA fulfills the goal of codifying the current state of reproductive choice in Rhode Island; and 2) respond to and refute the claims of the Linton/RI Right To Life Memorandum of March 2, 2019[1] that the SubA "would work a radical change in Rhode Island law as it relates to the regulation of abortion."

What Are the Controlling Principles of Roe v. Wade and Later Cases

In Roe v. Wade, 410 US 113 (1973), and later cases such as Planned Parenthood v. Casey, 505 US 833 (1992), and Whole Woman's Health v. Hellerstedt, 136 S.Ct. 2292 (2016), the United States Supreme Court has recognized that an individual has a constitutional right, grounded in the "liberty" interest of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, to make her own decisions concerning whether to bear children, and this constitutional interest limits the state and federal governments' ability to restrict those decisions. Earlier decisions had limited governments' authority to prohibit access to contraception. See, e.g., Eisenstadt v. Baird, 405 US 438 (1972).

In Roe and later cases, the Court also made clear that this constitutionally-protected right is not absolute and can be subjected to certain restrictions and regulations. Roe and later cases have defined the scope of these permitted restrictions. In the discussion which follows, I will refer to the constitutional standards established by Roe and the later cases as "the Roe principles."

The Roe principles provide that, before "viability", the state cannot prohibit abortions, but it may impose restrictions or regulations that further its legitimate interest in regulating the medical profession or to further the health of the pregnant person. However, such restrictions are still

[1] We understand that the Judiciary Committee has been provided with four documents byRIRTL: 1) a Memorandum dated January 24, 2019; 2) a "supplemental" Memorandum dated February 6, 2019; 3) a "Concurrence" dated February 26, 2019; and 4) a Memorandum dated March 2, 2019 concerning H 5125 SubA. The first three documents all address original bills H 5125, H 5127 and S 152. The author of all three memoranda, Paul Linton, has indicated that he has restated all of his earlier positions in his latest March 2, 2019 Memorandum. In light of that acknowledgement, I will limit my response and focus to the March 2, 2019 Memorandum.

subject to a finding of unconstitutionality if they impose a significant obstacle to the pregnant individual's access to abortion.[2]

After viability, the Roe principles make clear that abortions can be prohibited, except when necessary to preserve the life or health of the pregnant individual.

"Viability" is a medical concept. In Roe v. Wade, 410 U.S. at 160, the U.S. Supreme Court described "viability" as the point at which the fetus becomes "potentially able to live outside the mother's womb, albeit with artificial aid." In Planned Parenthood v. Danforth, 428 U.S. 52, 64 (1976), the U.S. Supreme Court stated that viability "essentially is a medical concept…The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the responsible attending physician."

The concepts of "life" and "health" have common understandings. The Supreme Court clearly understood and intended that "health" encompasses *both* physical and mental health, stating, in Doe v. Bolton, 410 U.S. 179, 192 (1973):

> Whether, in the words of the Georgia statute, "an abortion is necessary" is a professional judgment that the Georgia physician will be called upon to make routinely. We agree with the District Court [citation omitted] that the medical judgment may be exercised in the light of all factors --physical, emotional, psychological, familial, and the woman's age -- relevant to the wellbeing of the patient. *All these factors may relate to health.* This allows the attending physician the room he needs to make his best medical judgment. And it is room that operates for the benefit, not the disadvantage, of the pregnant woman.
> (Emphasis added)

When opponents of the Reproductive Privacy Act recently objected to a lack of definition of the word "health" in this legislation, I conducted a search of the Rhode Island General Laws to find other uses of the word "health" that included a definition of the word in other legislative contexts. This search was not comprehensive, and I do not have a list of all of the other references to "health" in the General Laws —of which there are at least thousands—but I did not find one usage that purported to define "health" as part of the enactment. This is not surprising. For example, in

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[2] The following explanation appears in Hellerstedt, 136 S.Ct. at 2309:

> We begin with the standard, as described in Casey. We recognize that the "State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient." Roe v. Wade, 410 U.S. 113, 150, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). But, we added, "a statute which, while furthering [a] valid state interest, has the effect of placing a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends." Casey, 505 U.S., at 877, 112 S.Ct. 2791 (plurality opinion). Moreover, "[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." Id., at 878, 112 S.Ct. 2791.

United States v. Vuitch, 402 U.S. 62, 72 (1971), decided before Roe, the Supreme Court rejected a claim that a criminal statute prohibiting abortion was void for vagueness on the ground that the words "as necessary for the preservation of the mother's life or health" were unconstitutionally vague. The Court noted that:

> [The interpretation applied by the D.C. courts] accords with the general usage and modern understanding of the word 'health,' which includes psychological as well as physical well-being. Indeed Webster's Dictionary, in accord with that common usage, properly defines health as the '(s)tate of being * * * sound in body (or) mind.' Viewed in this light, the term 'health' presents no problem of vagueness. Indeed, whether a particular operation is necessary for a patient's physical or mental health is a judgment that physicians are obviously called upon to make routinely whenever surgery is considered.
> (Footnote omitted)

Not every state has adopted the same provisions regulating abortion. For example, some states, like Rhode Island, require that a minor seeking an abortion either obtain the consent of one parent or obtain judicial authorization. Other states do not require consent, but require parental notice in advance of the abortion, with exceptions for emergencies and provisions for judicial bypass. See, e.g., Hodgson v. Minnesota, 497 U.S. 417 (1990). Others do not require either consent or notice. See Ayotte v. Planned Parenthood of Northern New England, 546 US 320, 326 n. 1 (collecting statutory references).

Thus, in order to fulfill the stated purpose of S152 SubA to codify the Roe principles *as they are currently in effect in Rhode Island*, we need to first understand the current state of the law governing abortion as it is in effect and operation in Rhode Island.

What Is the Current State of the Law Governing Abortion in Rhode Island

In Rhode Island, the right to abortion is protected only by federal law, not by RI state law. Rhode Island law, as expressed through a variety of statutes and Article I §2 of the Rhode Island Constitution, tilts only one way, and that is antagonistic to the exercise of reproductive choice.

Rhode Island's Constitution, in Article I §2, makes clear that the protections of due process and equal protection and the prohibition against gender discrimination there established cannot be used as a foundation to recognize a state constitutional right to abortion, or to public funding of

abortion.[3] There are also no state laws securing or protecting the right to abortion in Rhode Island. There are only laws and regulations which regulate or prohibit abortions.[4]

Application of the Roe principles to Rhode Island restrictions on abortion has resulted in a series of court decisions determining the constitutionality of these provisions as a matter of federal constitutional law under the Roe principles, and not as a matter of state constitutional or statutory law.

Rights and limitations currently in effect. We start with the basic premise of the Roe principles that, notwithstanding the absence of an affirmative legislative recognition of the right to obtain an abortion in Rhode Island, pregnant persons in Rhode Island have a right—as a result of federal constitutional mandate--to obtain an abortion prior to viability without interference from the State, and to obtain an abortion post-viability when necessary to preserve their life or health.

Rhode Island has enacted numerous restrictions on the performance of abortion which are in operation and have not been challenged as contrary to the Roe principles. Rhode Island requires "informed consent" before abortion (§§23-4.7-1 through 23-4.7-8) and requires "parental consent" (with an alternative judicial bypass) for a minor to obtain an abortion (§23-4.7-6). Rhode Island has imposed a ban on most public funding of abortion (§§23-13-21, 42-157-3(d), 42-12.3-3), and has elected not to include abortion coverage in state health insurance for its employees (§36-12-2.1). The Department of Health has promulgated regulations governing facilities providing abortions and prohibits post-viability abortions except where necessary to preserve the life or health of the pregnant person. Rhode Island regulates experimentation on fetuses (§11-54-1), preserves the right of medical professionals to decline to participate in abortion or sterilization procedures (§23-17-11), and imposes criminal sanctions on medical personnel who fail to provide reasonable medical care to an infant born alive in the course of an abortion (§11-9-18).

[3] "Section 2. Laws for good of whole – Burdens to be equally distributed – Due process – Equal protection – Discrimination – No right to abortion granted. All free governments are instituted for the protection, safety, and happiness of the people. All the laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof."

[4] At the same time, there is no merit to the suggestion or argument that the language in Article I §2 presents any obstacle to a legislatively-created protection of reproductive rights. To the contrary, Article I §2 addresses only how that specific section—conferring a right to equal protection and due process, including protection against gender discrimination—shall be interpreted. It contains no prohibition against the legislature enacting provisions addressing or protecting reproductive rights or funding of abortions. This is also the official position of the Attorney General, as set forth in a legal brief filed on behalf of the House Speaker, Senate President and Governor in a February 2019 court filing in Armstrong v. Mattiello, KC-2019-0071.

These are the requirements and restrictions which are in effect and operation in Rhode Island and which comprise the "status quo."

Unconstitutional prohibitions and limitations not in effect but not repealed. Other statutory limitations, such as spousal notification (which would be repealed by Section 4 of the SubA), an absolute criminal ban on all but "life-saving" abortions enacted in 1973 (repealed by Section 2), and a ban on a state-labelled "partial birth abortion" (repealed by Section 5) do not satisfy the Roe principles and have been declared and enjoined as unconstitutional and are not in effect. Rhode Island's "quick child" statute (repealed by Section 3) has a "life", but not a "health," exception. It has never been enforced and its unconstitutionality has been acknowledged. The State's attempted interference with private health insurance (repealed by Section 6) and with health insurance of municipal employees (that portion only deleted in Section 7) were each declared unconstitutional in 1984 and have never been enforced.

All of these unconstitutional restrictions remain on the law books but are not in effect or enforced. They do not form a part of the current state of the law governing abortion in Rhode Island.

What Is the Purpose of S152 SubA

The express purpose of S152 SubA is to codify the current status of reproductive rights in Rhode Island and protect the right to abortion as a matter of state law.

Senate 152 SubA is written to recreate the federal constitutional protections as a matter of Rhode Island law. It achieves this goal, **first**, by setting forth in legislative language the protections and limitations presently in place and in force in Rhode Island concerning abortions and reproductive choice, and, **second**, by repealing those RI statutes still on the books which—if allowed to be enforced—would prohibit or substantially burden reproductive choice. To enact a law protecting the current right to abortion in the state, these laws must be repealed.

First. Section 1 of the SubA adds a chapter 4.13 to Title 23. In proposed §23-4.13-2(a), the affirmative rights of reproductive choice currently enjoyed by pregnant persons in Rhode Island are set forth. They provide, as is currently the case, that the State and its subdivisions cannot impose restrictions: (1) on an individual, prior to viability, in commencing, continuing or terminating a pregnancy (23-4.13-2(a)(1)); (2) at any stage, including post-viability, where the individual decides to continue the pregnancy to term; (3) on an individual post-viability, in terminating a pregnancy when necessary to preserve her health or life; (4) on the methods of contraception or abortion, provided they are evidence-based and medically recognized, and subject to enumerated restrictions set forth in subsection (c); (5) on access to those methods of contraception or abortion, with the same qualifications as (4).

Proposed §23-4.13-2(b) contains the definition of "fetal viability" which conforms to the language of the Roe principles, and particularly Roe v. Wade, 410 US at 160, and Planned Parenthood v. Danforth, 428 US 52, 64 (1976).

Proposed §23-4.13-2(c) and (d) of Section 1, along with Sections 7-10 of the SubA, set forth and preserve each of the restrictions and regulations on abortion currently and constitutionally in effect in Rhode Island.

• Section 23-4.13-2(c)(1) preserves the provisions of §§ 11-9-18 titled "Care of babies born alive during attempted abortions", 11-54-1 titled "Experimentation on human fetuses", 23- 4.6-1 titled "Consent to medical and surgical care", 23-4.7-1 through 23-4.7-8 titled "Informed consent for abortion", 23-13-21 titled "Comprehensive reproductive health services", 23-17-11 titled "Abortion and sterilization -- Protection for nonparticipation -- Procedure", or 42-157-3(d) of the section titled "Rhode Island Health Benefit Exchange -- General requirements".

• Section 23-4.13-2(c)(2) explicitly recognizes that the provisions contained in the federal "Partial-Birth Abortion Act of 2003", 18 USC §1531, are fully applicable to Rhode Island.

• Section §23-4.13-2(d) expressly prohibits post-viability abortions "except when necessary, in the medical judgment of the physician, to preserve the life or health of that individual," and incorporates, in subsection 2(d)(1), the sanctions of RIGL §5-37-5.1 of "unprofessional conduct" on any physician who knowingly violates the provisions of the subsection.

• Section 7 of the SubA preserves the state prohibition on coverage for abortion in state employees' health care in §36-12-2.1 while deleting the portion declared unconstitutional (extending the prohibition to municipalities) in 1984.

• Section 8 retains §42-12.3-3 with a modification required to conform to federal requirements, while otherwise preserving its restrictions on public funding of abortions.

• Section 9 preserves §23-4.7-6, the State's restriction on abortions for minors without parental consent (with judicial bypass) while adding language, discussed in a later section, consistent with the Roe principles.

• Section 10 amends §5-37-5.1 to include the corresponding reference that a knowing violation of §23-4.13-2(d) constitutes "unprofessional conduct," consistent with the sanctions in place for violations of other abortion-related laws.

Second. The SubA repeals those unconstitutional and unenforceable Rhode Island statutes which, if allowed to be enforced, would undermine the goal of codifying the current status of reproductive rights in Rhode Island by creating substantial and in some instances insurmountable obstacles to the exercise of that right. These provisions need to be formally repealed to fully achieve that goal.

The SubA accomplishes this as follows:

Sec.	Action	Reason
2	Repeals RIGL c.11-3, ban on all but "life-saving" abortions	Declared unconstitutional in Doe v. Israel, 358 F. Supp. 1193, stay denied pending appeal, 482 F.2d 156 (1973), cert. denied, 416 U.S. 993.
3	Repeals RIGL §11-23-5, "quick child" statute	Unconstitutionality acknowledged. in Rodos v. Michaelson 396 F. Supp. 768 (D.R.I. 1975), reversed on lack of standing, 527 F.2d 582 (1st Cir. 1975).
4	Repeals RIGL c.23-4.8, requiring spousal notification	Declared unconstitutional in 1984 in Planned Parenthood v. Bd. of Medical Review, 598 F. Supp. 625 (D.R.I. 1984).
5	Repeals RIGL c. 23-4.12, banning state-labelled "partial birth abortion"	Declared unconstitutional in Rhode Island Medical Soc'y v. Whitehouse, 66 F. Supp. 2d 288 (1999), aff'd 239 F.3d 104 (1st Cir. 2001).
6	Repeals §27-18-28, interfering with private health insurance	Declared unconstitutional in 1984 NEA of RI v. Garrahy, 598 F. Supp 1374 (D.R.I. 1984), aff'd, 779 F.2d 790 (1st Cir. 1986).
7	Amends §36-12-2.1 to remove prohibition on municipal employees' health insurance	Declared unconstitutional in 1984 NEA of RI v. Garrahy, 598 F. Supp 1374 (D.R.I. 1984), aff'd, 779 F.2d 790 (1st Cir. 1986).

Thus, the SubA fully achieves its express purpose of creating the current status of reproductive rights in Rhode Island as a statutory right under Rhode Island law. It does not advance or recede from the current status. It does not in any respect mark a "radical departure" from the current state of the law in Rhode Island, notwithstanding the claim of attorney Linton in the Memorandum produced for Rhode Island Right to Life.

In the pages which follow, I address the claims contained in the Linton Memorandum and demonstrate their fallacy.

Rebuttal of the Linton Memorandum

Page 1, Response to "Executive Summary"

In his March 2, 2019 Memorandum, Linton purports to address H 5125 SubA in comparison to H 5125. In this response, we address S 152 SubA without referring back either to S 152 or the original House bills. Senate 152 Sub A is substantively identical to H 5125 SubA.

As discussed above, the SubA does no more than codify the right to reproductive choice as it currently exists in Rhode Island. The SubA is quite straightforward in its intention to repeal statutes that have been declared or acknowledged as unconstitutional and to preserve statutes and regulations that are constitutional under federal law and are currently in force in Rhode Island.

The fallacy of Linton's claim that the SubA repeals Roe-consistent requirements is perhaps well-illustrated by his remarkable assertion that the SubA repeals by implication fetal-experimentation penalties set forth in RIGL §11-54-2 notwithstanding that the SubA expressly recognizes and preserves the prohibitions on fetal experimentation contained in RIGL §11-54-1 and directs that §23-4.13-2(a) shall not be construed to abrogate them.[6]

Page 2-3, "Impact on Post-Viability Abortions"

Linton acknowledges that the SubA expressly prohibits post-viability abortions except those necessary to preserve the life or health of the pregnant individual. It should be noted that the same standard has been in place for years as a matter of Department of Health regulation, and post-viability abortions in Rhode Island are rarely performed. Furthermore, the Supreme Court requires that abortion be available post-viability if an individual's health or life is at risk. These exceptions are not optional for any state. Physicians need to be able to use their professional medical judgement to make the best decisions possible when treating their pregnant patients.

Linton claims that the prohibition is "blunted" because the SubA does not contain a definition of "health." Linton proceeds to complain that the absence of a specific definition means that "mental health (psychological or emotion)" could be included. To Linton, that demonstrates that the SubA does not codify the Roe principles.

Linton is simply wrong. As discussed above, the Roe principles make clear that mental health and well-being *is* a valid component of "health". A statute that *prohibited* consideration of the pregnant person's mental health and restricted decisions concerning post-viability abortions to her physical health would not comport with the Roe principles and would be unconstitutional.

Linton also claims that a prohibition which carries a penalty of professional discipline, but not criminal exposure, is insufficient. But that is Linton's expression of opinion as someone who wants to see abortion completely banned: there is nothing in the Roe principles which requires the sanction of criminal enforcement and, in fact, the status quo in Rhode Island—which the SubA is intended to preserve and codify—utilizes precisely that deterrent of professional misconduct to regulate physician performance of abortions. Thus, both the current requirements of informed consent and parental consent embody the same range of sanctions as this bill for engaging in "unprofessional conduct" under §5-37-5.1.

Page 3, "Impact on Methods of Abortion"

Linton disingenuously states that the SubA will alter the status quo by outlawing "partial-birth abortions" in Rhode Island. To reach this false statement, Linton claims that "existing" Rhode Island law prohibits "partial-birth abortions." In fact, the particular provision of Rhode Island law, RIGL chapter 23-4.12, was declared unconstitutional and enjoined in 1999 and has never been in effect. The fact that opponents consider such unconstitutional and enjoined laws nonetheless

[6] In the height of conceit, Linton claims, footnote 2 at 1, that the failure to add a reference to §11-54-2 in the SubA, after he pointed out its absence in an earlier memorandum, demonstrates that its omission was not an oversight and was intended to repeal penalties associated with §11-54-1.

“existing” underscores their opposition to the Roe principles themselves. It highlights the need to adopt pro-active protections as set forth in Section 1 of the SubA and to formally repeal unconstitutional laws that, if they were allowed to take effect in a post-Roe legal environment, would deny pregnant persons reproductive rights established by the Roe principles.

Rhode Island’s unconstitutional and never-enforced prohibition of a procedure labelled “partial birth abortion” is materially different from the procedure prohibited by federal law. In upholding the federal ban in Gonzales v. Carhart, 550 US 124 (2007), the Supreme Court was very careful to distinguish the narrow procedure banned by the federal act—which it upheld--from the procedure invalidated in Stenberg v. Carhart, 530 US 914 (2000). The First Circuit Court of Appeals found that Rhode Island’s procedure was substantively identical to that invalid procedure when it agreed that Rhode Island’s prohibition was unconstitutional. RI Medical Society v. Whitehouse, 239 F.3d 104 (1st Cir. 2001).

As the SubA explicitly acknowledges, the federal Partial Birth Abortion Act is recognized as controlling in Rhode Island, and all provisions concerning access to or methods of abortions in section (a) of §23-4.13-1 would be required to comply with the mandates of that federal law.

Linton also claims that there are no limitations in SubA on the “method of abortion.” That is incorrect. In addition to the prohibitions set forth in the federal Partial Birth Abortion Act, subsections (4) and (5) of §23-4.13-1(a) expressly acknowledge that the methods of contraception and abortion (1) must be evidence-based and medically recognized; and (2) may be restricted by evidence-based medically appropriate standards enumerated in the provisions of subsections §23-4.13-1(c) or (d).

Page 4, “Impact on the Regulation of Abortion Facilities”

Section 23-4.13-2(c)(3) expressly allows reasonable regulation of medicine, including abortion and physicians that provide abortion.

At page 4 of the Memorandum, Linton acknowledges that the language of proposed §23-4.13-2(c)(3) empowers the Department of Health to develop and apply general medical standards to licensed health care facilities that provide abortions. Despite this clear language, Linton engages in a tortured reading of each word, complete with speculation, as to how the ordinary meaning of those words, with the qualifiers in each section, could nonetheless be interpreted to mean something else.

Nor is there anything out of the ordinary about the use of the word “pretext”, which merely gives the regulated entity an opportunity to challenge a particular regulation on the basis that it was applied, adopted or enforced in order to interfere with access to abortion—which is simply a statement embodying the Roe principles prohibiting restrictions that place an undue or substantial burden on access to abortion.

Page 5, "Impact on Medicaid Funding of Abortions"

S152 SubA does not have any impact on public funding of abortions for Medicaid-eligible women, other than amending §42-12.3-3 to conform to federal requirements. Rhode Island prohibits funding for low-income women except in cases of rape, incest, or to save the life of the person. Linton's suggestion that the SubA's "non-interference" language encompasses public funding of abortions is completely at odds with federal constitutional decisions, such as Harris v. McRae, 448 U.S. 297 (1980), which stand for the proposition that withholding public funding is not a restriction on abortion. S152 SubA does not include public funding of abortions beyond the narrow, federally-mandated exemptions contained in §42-12.3-3.

Page 5, "Impact on Parental Consent"

The Roe principles require that, if a state requires parental involvement when a minor is making her decision about whether to terminate a pregnancy, the state prohibition cannot create an absolute parental veto. Thus a parental consent provision must have an alternate method to obtain approval through a "judicial bypass" mechanism. Rhode Island has long had in place a requirement of one-parent consent to abortion with a judicial bypass.

Senate 152 SubA does not remove this requirement. That the Sub A includes a statutory recognition of two categories of close family members capable of providing consent for a minor's abortion in very limited circumstances does not change the fact Rhode Island prohibits a minor from obtaining an abortion on her own—that she needs parental consent or judicial authorization to proceed. The new language does not alter that prohibition, but allows a grandparent or adult sibling to serve in the role of "parental surrogate" to provide consent—but only where the parents have died or are unavailable and there is no legal guardian. This new language recognizes the practical reality that a family crisis can occur where there is not time to delay—because delay increases the risks involved to the minor—in order to wait for the parent's return or to institute formal guardianship proceedings. This provision is clearly consistent with the Roe principles.

Page 5, Impact on the "Quick Child statute"

Senate 152 SubA would repeal the "quick child" statute, which is concededly unconstitutional and was expressly adopted to criminalize post-viability abortions. Its repeal does not change the status quo. Consideration of additional provisions to address third party assaults on, or injuries to, a pregnant person have nothing to do with the codification of the Roe principles.

Page 5-6, Regulating Non-Physicians from Performing Abortions

Linton's claim that S152 SubA would prevent the Department of Health from promulgating regulations concerning the performance of abortions or which medical professionals can perform them is without support and is addressed above.

Page 6, Other Statutes

Linton correctly observes that S152 SubA would repeal other statutes, such as spousal notification and RI General Laws chapter 11-3 (prohibiting all abortions), which "are currently unenforceable" because they have been declared unconstitutional and enjoined.

Linton offers no principled explanation as to why their formal repeal expands the Roe principles or alters the current status of reproductive rights in Rhode Island. It would not.

Conclusion

Nothing in the Linton Memorandum, fairly assessed, supports its premises. To the contrary, as discussed here, Senate 152 SubA fulfills its stated intent "to codify the privacy rights guaranteed by the decision reached in the United States Supreme Court case of Roe v. Wade, 410 U.S. 113 (1973) and its progeny." It should be passed.