From Pro-Choice to Pro-Abortion: The ROE Act as Abortion Absolutism

MCFL White Paper on the ROE Act
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I. Overview

What does the ROE Act do? A grim love letter written by the abortion industry to itself, this bill ("An Act to Remove Obstacles and Expand Abortion Access") completely overhauls the abortion code contained in the Massachusetts General Laws, creating a right to unrestricted abortion.

- It eliminates the parental-consent requirement for a minor girl seeking abortion (no matter how young); parents do not even have to be notified. No adult at all (except perhaps an adult impregnator) need be involved before, say, a pregnant 13-year-old walks into an abortion facility—not even a judge, as provided for under the current "judicial bypass" option.
- It expands taxpayer funding of abortion.
- It refuses legal protection to a child who survives an abortion attempt, enabling passive infanticide (through exposure).
- It eliminates all criminal penalties for the performance of any abortion—whether coerced, sex-selective, eugenic, incompetently executed, performed by a non-physician, inflicted on a victim of sex trafficking, statutory rape, or other sexual abuse, etc. Literally no abortion could be performed in Massachusetts that might become a matter for state law enforcement.
- It eliminates the requirement that abortions after the first trimester be performed in hospitals.
- It removes the current nominal hedge against late-term, or even full-term, abortion.
- It makes outlawing any abortion procedure, no matter how gruesome (such as partial-birth abortion), impossible in Massachusetts.
- It eliminates every single mention that there is another human being involved; it even eliminates any mention of "woman." [*Roe v. Wade*'s holding of a possible state interest in protecting prenatal human life and the state's interest in regulating later-term abortions for the sake of the health and safety of mothers is completely disavowed.]

This does not represent the American, or even the Massachusetts, consensus on abortion. This is abortion absolutism.

Going beyond even New York's Reproductive Health Act, the ROE Act creates a right to unrestricted abortion: "The Commonwealth shall not interfere with a person's personal decision

[1] Crucial input was provided by three lawyers in particular, Erika Bachiochi, Henry Luthin, and Lillian Vogl, who graciously applied their expertise to this analysis. Agreement by them with any given point is not to be assumed; any deficiencies remaining are my sole responsibility.

and ability to prevent, commence, terminate, or continue their own pregnancy consistent with this chapter. The Commonwealth shall not restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided."

The majority of Americans do not wish the agonizing and complex question of abortion to be settled in terms of the brute simplicity of abortion-industry radicalism, which is not pro-choice, but pro-abortion (the more abortion, the more profit for them). This legislation was drafted by the abortion industry, for the abortion industry. The mother and her difficulties disappear; the human being in the womb disappears.

II. Comprehensive Analysis

The ROE Act ≠ *Roe v. Wade*: Asserting an Absolute Right to Abortion

Despite its name, the ROE Act differs fundamentally from *Roe*—in being even more radical.

Roe v. Wade creates a right to abortion—but denies that right is absolute. Which is not to say the Supreme Court's creation of an abortion right in 1973 was anything but extreme, making it difficult to regulate abortion at all—given that the breadth of an overriding "health exception" to any abortion regulation (even for late-term abortions) was maximized in *Roe*'s companion case *Doe v. Bolton*, with the "health" of the mother there being defined to include "all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient." By nullifying, in effect, most government regulation of abortion, *Roe* plus *Doe* gave such scope for elective abortion[2] as to place America in the worst company in the world—the United States being one of only seven nations allowing elective abortions after 20 weeks (we have China and North Korea as company).

Doe's maximal construal of the "health exception" to any abortion regulation was always in real tension with *Roe*'s claims for there in fact existing a state interest, after the first trimester, to regulate abortion for the sake of the health of the mother seeking abortion and, after the second trimester, to regulate abortion in the interest of "potential human life."

From the majority opinion in *Roe v. Wade* (emphasis added): "Although the results are divided [federal and state court decisions concerning anti-abortion laws], most of these courts have agreed that the right of privacy, however based, is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute and is subject to some limitations; and that at some point **the state interests as to protection of health, medical standards, and prenatal life**, become dominant. We agree with this approach." And: "We, therefore, conclude that the right of personal privacy includes the abortion decision, but that **this right is not unqualified, and must be considered against important state interests in regulation**."[3]

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[2] An elective abortion is one not indicated by a grave threat to the mother's life or health.

[3] Other passages from *Roe v. Wade*: "The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus." And: "On the basis of elements such as these, appellant [Jane Roe] and some *amici* argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in

This tension between *Roe* and *Doe* was ambiguously resolved in the 1992 decision *Planned Parenthood v. Casey*, which authorized some real regulation of abortion in upholding *Roe*, opening the door to decades of incrementalist pro-life efforts, especially in the states, to place some restraint on the abortion industry and on the taking of prenatal human life (with such measures as partial-birth abortion bans, parental-consent and -notification laws, waiting periods, informed consent, protections for children who survive abortion, etc.)

All of the incrementalist (modest, yet significant) limitations[4] on abortion secured in this Commonwealth soon after *Roe* by a pro-life Democratic legislature would be undone by the deceptively named ROE Act. With this act, we do not have at hand the codification of *Roe v. Wade* as a prophylactic against its being overturned by a conservative Supreme Court majority. The ROE Act would not even deliver a pre-*Casey*, *Doe*-controlled *Roe*. No, what the ROE Act would enact is abortion absolutism as we have never seen it in this nation before this year: under no circumstances would any abortion be bound by criminally enforceable limits. This is not pro-choice; it is pro-abortion.[5]

Roe v. Wade sought, supposedly, to bring abortion out of the shadows and into hospitals. The problem is that the abortion industry involves an archipelago of lightly regulated abortion-performing entities, not necessarily subject to clinic licensure.[6] The ROE Act would make things even worse, eliminating all requirement of recourse to hospitals no matter how late-term an abortion. Even meaningful civil regulation of the abortion industry for the sake of the *Roe v. Wade*-defined interests of "safeguarding [the mother's] health" and "maintaining medical standards" would be undercut.[7]

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whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute."

[4] *Roe*-congruent limitations—if *Casey* reads *Roe* correctly.

[5] The only nominal distinction that would be left in the Massachusetts abortion code is the gesture towards viability in treating abortion somewhat differently before and after 24 weeks of gestation. But *Doe* is explicitly read into that provision (without quotation marks), with the effect of neutralizing *Casey*'s effect on the reception of *Roe*. And, even more importantly, all criminal susceptibility for failing to observe a difference between early- and late-term abortion (**or failing in any other way with regard to the abortion code)** would be eliminated. This fact sheet about late-term abortions is worth reading: https://lozierinstitute.org/questions-and-answers-on-late-term-abortion/.

[6] According to the Planned Parenthood-allied Guttmacher Institute: "There were 43 abortion-providing facilities in Massachusetts in 2014, and 14 of those were clinics. These numbers represent an 8% increase since 2011 in overall providers, and a 17% increase in clinics from 2011, when there were 40 abortion providers overall, of which 12 were clinics."
https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-massachusetts#7

[7] The ROE Act's declaration is astonishingly broad: "The Commonwealth shall not restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided."

Perhaps a virtually unaccountable abortion regime operating in a shadowy abortion archipelago is what the Massachusetts Supreme Judicial Court took the state constitution to mean by finding in John Adams's noble instrument a "fundamental right" to abortion in its 1981 decision *Moe v. Secretary of Administration and Finance*. But at least our statutory law was allowed to reflect a rhetorical commitment to the original *Roe*, later *Casey*-inflected, position that the right to abortion "is not absolute and is subject to some limitations."[8]

Who believes that abortion is an absolute right, not to be regulated in any way? Those who profit from the abortion industry.

More Abortions

Abortion in the Commonwealth is even now hardly subject to any real constraint. Yet it would take no great prognosticating capacity to see that some of the ROE Act's provisions would in fact increase the number of abortions.

Above all, the elimination of the parental-consent requirement for minors seeking abortion (with concomitant elimination of the provision of a "judicial bypass," in which a superior court judge authorizes the performance of an abortion on a minor in lieu of parental consent) means that the many girls, including sex-trafficked and otherwise abused girls, who are trapped in desperate situations have one less chance to escape. Beyond such cases, though, Planned Parenthood's constant commitment to alienating children from their parents in matters of sexuality only fosters further breakdown in intergenerational solidarity and leaves children even more exposed to the wolves in a time, that of #MeToo and clerical-abuse revelations, when we should be finding ways to empower parents to help their children. More alienation from parents will certainly mean more abortion. Remove parents, remove judges: the field is clear for the abuser and the sex trafficker.

The provision to expand income qualifications for receiving a taxpayer-funded abortion (under Healthy Start) would increase abortion numbers.

In general, the ROE Act gives even more strategic advantage to non-hospital-sited, assembly-line abortion performers (the abortion industry), not least by eliminating the hospital requirement for post-first-trimester abortions. Increasing abortion volume is their business model. Their market share will only increase with the ROE Act. We are a world away from Justice Blackmun's idyllic picture of a hospital consultation between a woman and her longtime doctor. That's not the reality under abortion incorporated.

[8] The ROE Act would codify the Supreme Court-created right to abortion under the liberty guarantee of the Fourteenth Amendment ***as*** absolute and subject to no limitations. This seems to be what taking abortion as a "fundamental right" means. (By the way, the Supreme Court in deriving an abortion right from the Fourteenth Amendment's guarantee of liberty, ignored, as has often happened in libertarian readings of substantive due process, that the life and liberty of some may be profoundly compromised by the "liberty" of others.)

The Death of Equality

But beyond the numbers, what we have in the abortion absolutism of the ROE Act is a fundamental rejection of science and ethics and American principles of equality in favor of extremist ideology and abortion-industry profit.

How can one speak of abortion seriously if one never acknowledges that both a mother and a distinct developing human being are at stake? And yet the ROE Act excises any mention of prenatal human life in its approach to abortion. The unborn child has been completely "disappeared" by these ideological enforcers.

If many fellow citizens are convinced of the hard necessity of abortion in certain cases, that is one thing. It is one thing to say that the liberty interest of a mother overrides the life interest of her unborn child in difficult-enough circumstances. It's quite another thing, a delusional thing, to pretend that this hard choice isn't hard at all by pretending as if modern embryology and developmental biology do not exist.

If the equality of women is something we must indeed continue struggling to secure in our society, it is also the case that the equality of the weakest members of the human species cannot be ignored—not if we wish to take seriously the fundamental proposition of America, as Lincoln taught at Gettysburg: we are a nation dedicated to the proposition that every single human being is equal. All the forms and show of a democratic republic, all the talk of rights and liberty, mean precisely nothing unless we strain to honor our first proposition.

III. Specific Analysis of the ROE Act (Bill S.1209)

The fundamental principle of the ROE Act is presented after a definitional prolegomena and a sweeping-away of the current prescriptions concerning abortion. By this grand pronouncement, we are left in no doubt about the radical pro-abortion stance to which this bill commits our government, and therefore our society: "The Commonwealth shall not interfere with a person's personal decision and ability to prevent, commence, terminate, or continue their own pregnancy consistent with this chapter. The Commonwealth shall not restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided."[9] (The rest of the ROE Act places no substantive hedge on this commitment to an unaccountable abortion regime.)

We must pause to recognize the breathtaking scope of this declaration: it creates a right to unrestricted abortion. We have never seen this before. Such an absolute right creates an impenetrable zone of personal autonomy, within which the taking of human life cannot be regulated at all—even in the interests of the health and safety of the mother.

[9] Under the ROE Act, no prescriptions (carrying criminal sanction) limiting abortion, including late-term abortion, would remain. Instead, the real prescription is applied over against the state, which is presumably there to protect the fundamental human interests of every human. But here we see, rather, the birth of a right to unrestricted abortion.

Changes to be made to MGL chapter 112, ***§12K***

Literally the first substantive thing the ROE Act does (in its redefinition of "abortion") is to completely efface the humanity of the unborn child. It is one thing to hold that abortions are necessary for the liberty of women and girls; it is another to pretend that there is no high cost to liberty secured in that way. We must be honest if we wish to have the kind of civic conversation such weighty matters require of us. We must at least attend to the scientific facts of embryology and developmental biology.

The current definition of abortion under section 12K of chapter 112 of the General Laws is "the knowing destruction of the life of an unborn child or the intentional expulsion or removal of an unborn child from the womb other than for the principal purpose of producing a live birth or removing a dead fetus."

The Newspeak definition of abortion according to the ROE Act: "any medical treatment intended to induce the termination of a clinically diagnosable pregnancy except for the purpose of producing a live birth. The term abortion does not include miscarriage management."[10]

The compulsion to dehumanize human beings in the earliest stages of our existence requires the ROE Act to delete entirely the definition of an "unborn child," which our current law recognizes as "the individual human life in existence and developing from implantation of the embryo in the uterus until birth."

The ROE Act even melds support of abortion with an effacement of the irreplaceable role of the bearer of the XX chromosomal pair (women) in the survival of our species. Rather than defining "pregnancy" as "the condition of a mother carrying an unborn child," the new definition is "the presence of an implanted human embryo or fetus within a person's uterus."

Mother and child are both eclipsed by the totality of abortion incorporated.

Changes to be made to MGL chapter 112, ***§12L*** *(having to do with aborting a pregnancy of less than 24 weeks)*

Is abortion a decision to be made "between a woman and her doctor"? Of course that catchphrase always misrepresented the reality of abortion "clinics." These are assembly lines, not spaces in

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[10] By excising the specification of "removing a dead fetus" as an act distinct from abortion (only replacing that distinction with language about abortion not including "miscarriage management"), the ROE Act conflates managing a stillbirth with abortion. Miscarriage and stillbirth are distinguished by the CDC according to when the loss of unborn life occurs, whether before or after 20 weeks of pregnancy.

These distinctions are important. People in tragic situations should not have their pain compounded by having the laws burden them with ideologically motivated, imprecise rhetoric. C-sections as part of perinatal hospice, for example, are not abortions. Take Potter's Syndrome, where the lack of amniotic fluid causes the mother's womb to basically crush the baby to death rather than expanding to make room for the growing baby. Having a C-section at six- or seven-months pregnancy, knowing the baby may not survive the procedure at all or may only survive for a few minutes after, in order to prevent a painful death in the womb, is not an abortion. But abortion absolutists do not usually undertake to see the world from the perspective of someone who is disabled, or from the perspective of those whose love keeps them from confusing caring-for with killing.

which a conversation between a mother and her longtime doctor unfolds.[11] As if to make this clear, the current requirement that "the best medical judgment of a physician" must be applied as to whether "the abortion is necessary under all attendant circumstances" is entirely excised. The ROE Act only requires the physician to make sure that the pregnancy is within 24 weeks. There is no other choice on the table but abortion.

*Changes to be made to MGL chapter 112, **§12M** (having to do with aborting a pregnancy of more than 24 weeks)*

These are late-term abortions, marked off at a point when the viability of the child becomes more likely. Under our current law, such abortions are permissible "only if it is necessary to save the life of the mother, or if a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health."

"Grave impairment" is more serious language than there is in *Doe*, which rhetorically weights the law against an elective abortion at this stage in the pregnancy—though in actual practice we already have a *Doe*-approach to the "health exception."

The ROE Act literally reads *Doe*'s expansive definition of "health" into the General Laws (though without quotation marks!)[12]

*Changes to be made to MGL chapter 112, **§12N** (punishment)*

All criminal penalty for a violation of the abortion provisions relating to early-term and late-term abortions is eliminated—say, if a physician were not the one to perform the abortion, or if any relevant distinction in handling the abortion of a child before or after 24 weeks were to go unobserved; etc. There is no way a person performing an abortion can be criminally punished, no matter the circumstances.

[11] The current section 12L contains an explicit requirement that an abortion be performed by a physician, which is also required by the current section 12M: this explicit requirement is not retained in the ROE Act. That said, throughout the rest of the proposed bill, several references are made to a "physician" as the performer of an abortion.

[12] I am also worried that a eugenic angle is being played with the addition of two new justifications for late-term abortion: "or in cases of lethal fetal anomalies, or where the fetus is incompatible with sustained life outside the uterus." Genetic testing (even with known occurrences of false results) and "search-and-destroy" abortions have formed a deadly symbiosis already. This might feed that vicious circle. *If* a child has a catastrophic deformity, truly incompatible with life outside the womb, there is the humane alternative of perinatal hospice. Actions taken as part of such a humane endeavor are not abortions. Such tragic situations should not be forced into the mold of abortion. A mother (and father) focused on the well-being of their child suffering from a catastrophic health condition are not intending abortion. They need real choices.

Changes to be made to MGL chapter 112, ***§12O***: simply eliminated. With regard to late-term abortions (at or after 24 weeks), current law requires the physician to consider which abortion method would be less dangerous for the mother to undergo.

And because, consistent with *Roe v. Wade*, we are here speaking of unborn children at a stage of possible viability, the current law rhetorically brings forward the humanity of the child. But the ROE Act eliminates all of this: even a child after 24 weeks of gestation is not to be acknowledged in any way.

Changes to be made to MGL chapter 112, ***§12P***: this is the born-alive provision, and it is simply eliminated.

Current law reads, with regard to an abortion attempted on a possibly viable child: "the physician performing the abortion shall take all reasonable steps, both during and subsequent to the abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the department of public health, in the room where the abortion is to be performed."[13]

The ROE Act countenances at least passive infanticide by eliminating the current provisions of section 12P, as well as by erecting an impenetrable wall against state criminal police power to regard any abortion whatsoever.

Changes to be made to MGL chapter 112, ***§§12Q and S***: informed consent and parental consent. (Rewritten in the new Section 12N of the ROE Act, which eliminates all requirement of parental consent.)

The current requirement is that the consent form "shall be written in a manner designed to permit a person unfamiliar with medical terminology to understand its purpose and content, and shall include the following information: a description of the stage of development of the unborn child; the type of procedure which the physician intends to use to perform the abortion; and the possible complications associated with the use of the procedure and with the performance of the abortion itself; the availability of alternatives to abortion; and a statement that, under the law of the commonwealth, a person's refusal to undergo an abortion does not constitute grounds for the denial of public assistance." Non-trivial, crucial information. The ROE Act states that the "informed" consent of the mother (who could be 12 or 13) shall be obtained…but without providing for any informing.[14]
That said, this informed consent provision was permanently enjoined *ab initio* by the federal court. That is, this provision has already been neutralized by abortion absolutists.

The ROE Act deletes the 24-hour waiting period (currently unenforced).

[13] Again, we consider here "botched abortions," not actions taken within the course of perinatal hospice.
[14] Free moral choice requires relevant information; to be truly pro-choice, one should be for more access to information, including to relevant scientific data on human development.

The most practically consequential aspect of the ROE Act is that it here eliminates parental consent (with concomitant elimination of the backup provision of a "judicial bypass"). There is no replacement with even parental notification.

Here we also have the elimination of the requirement of a "hospital duly authorized to provide facilities for general surgery" during or after the thirteenth week of pregnancy. The state's interest in regulating abortion for the health and safety of the mother as the pregnancy progresses, firmly asserted in *Roe v. Wade*, is simply cast aside in the ROE Act for the sake of the abortion industry.

The ROE Act retains the current definition of "hospital" in its definitional prolegomena, while eliminating all mention of hospitals in its proposed code. This is an audacious sleight of hand in favor of the abortion industry.

The pro-life movement continues to want at least that this grim work be done in a medical setting up to the standard of comparable medical settings: if her child must die, it is no good thing for the mother to be further endangered.

Changes to be made to MGL chapter 112, ***§12R*****:** accountability for a late-term abortion, wherein the interests of the mother's health and safety and the fate of the viable or almost-viable child are recognized by the state, à la *Roe v. Wade.*

This section requires that some accounting of a late-term abortion be given to the commissioner of public health, including verification that such an abortion was justified and that the child was not born alive.

This provision is eliminated by the ROE Act.

Another provision requires that steps be taken to deal with a possible complication of later-term abortion for mothers: sensitization of Rh-negative mothers to Rh-positive blood, which can be problematic for future pregnancies.

This provision is eliminated. (Should not the abortion industry want at least to make a show of caring about the health of mothers who undergo abortion?)

Most of the reporting requirements are eliminated, including "whether the mother survived the abortion; the details of any morbidity observed in the mother." Those who support the ROE Act support the abortion industry, not women and girls.

Changes to be made to MGL chapter 112, ***§12T*****:** eliminated—no criminal penalty for infanticide or for failing to consider the method of late-term abortion least dangerous for the mother.

Section 4 of the ROE Act puts us on the hook for increased taxpayer funding of abortions by extending Healthy Start Program coverage to abortion. According to the Department of Public Health, "the Healthy Start Program is a public health program designed to lower the infant mortality rate by enrolling eligible low income, uninsured women in early, continuous, comprehensive maternity care." There is dark irony here in shoehorning abortion coverage into a program "designed to lower the infant mortality rate." Indeed, there is a dark irony in forcing abortion coverage on minority communities which have always needed more support from society, rather than more death.[15]

IV. Conclusion

"We are responsible to all for all," the elder Zosima teaches in Dostoevsky's *The Brothers Karamazov*. We are responsible for mothers; we are responsible for the smallest and weakest humans. The liberty and equality of mothers and children must never be set at war.

The abortion industry profiteers from that war.

We would love them both. We would have peace in the social body. We would have liberty and equality for all.

We must overcome abortion absolutism. We must stop the ROE Act, for what is our liberty *for* but to secure the equality of all?

V. Call to Action

- Become a member of Massachusetts Citizens for Life, to amplify your voices and to coordinate effective action: https://www.masscitizensforlife.org/join. Please prayerfully consider financially supporting the urgent resistance against abortion absolutism: https://www.masscitizensforlife.org/donate.
- Sign our petition: https://www.masscitizensforlife.org/petition-against-extreme-roe-abortion-act?fbclid=IwAR0IN-cuPX09g3XSEWMYYRd0s4zAa0nWfaiJLjvhhd0V0FV3GP8ORu4Azuo.
- Call and write the legislators who represent you, especially those who serve on the Joint Committee on Public Health: https://malegislature.gov/Search/FindMyLegislator.
- Please use the information in this analysis to write letters to the editor. If you would like to organize a lecture on the dangers of this bill, please write dfranks@masscitizensforlife.org.

[15] There is also the real question of coerced abortion, given the social-power differential between males and females. An unscrupulous father is given more leverage to put responsibility on a woman or girl he impregnates, especially when an abortion is presented as somehow a normal part of "maternity and pregnancy care."

Appendix I: Text of the ROE Act (Bill S.1209)

SECTION 1. Chapter 112 of the General Laws is hereby amended by striking out section 12K, as appearing in the 2016 Official Edition, and inserting in place thereof the following section:

Section 12K. As used in section twelve L to section twelve U, inclusive, the following words shall have the following meanings:

Abortion, any medical treatment intended to induce the termination of a clinically diagnosable pregnancy except for the purpose of producing a live birth. The term abortion does not include miscarriage management.

Hospital, a hospital as defined in section fifty-two of chapter one hundred and eleven of the General Laws, and duly licensed under the provisions of section fifty-one of chapter one hundred and eleven of the General Laws.

Physician, an individual lawfully authorized to practice medicine within the Commonwealth.

Pregnancy, means the presence of an implanted human embryo or fetus within a person's uterus.

SECTION 2. Said Chapter 112 of the General Laws is hereby further amended by striking out Sections 12L through 12U, inclusive, as so appearing, and inserting in place thereof the following sections:

Section 12L. The Commonwealth shall not interfere with a person's personal decision and ability to prevent, commence, terminate, or continue their own pregnancy consistent with this chapter. The Commonwealth shall not restrict the use of medically appropriate methods of abortion or the manner in which medically appropriate abortion is provided.

Section 12M. A physician, acting within their lawful scope of practice, may perform an abortion when, according to the physician's best medical judgment, the patient is within twenty-four weeks from the commencement of pregnancy, as defined in section 12K of this chapter. A physician, acting within their lawful scope of practice, may perform an abortion when, according to the physician's best medical judgment based on the facts of the patient's case, the patient is beyond twenty-four weeks from the commencement of pregnancy and the abortion is necessary to protect the patient's life or physical or mental health, or in cases of lethal fetal anomalies, or where the fetus is incompatible with sustained life outside the uterus. Medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the person's age—relevant to the well-being of the patient.

12N. Prior to performing an abortion, a physician shall obtain the pregnant patient's written informed consent on a form prescribed by the Commissioner of Public Health. A pregnant person seeking an abortion shall sign the consent form before the abortion is performed, except in an emergency requiring immediate action. The consent form and any other forms shall be confidential and may not be released to any person other than to the pregnant person to whom such documents relate or the operating physician, except by the pregnant patient's written consent; provided, however, that this requirement shall not impose any waiting period between the signing of the consent form and the performance of the abortion.

12O. The department of public health shall have the authority to require aggregate reports regarding induced termination of pregnancy pursuant to sections twenty-four A and twenty-five A of chapter one hundred and eleven.

SECTION 3. Section 12F of Chapter 112 of the General Laws, as so appearing, is hereby amended by striking out, in line 20, the words “abortion or”.

SECTION 4. Section 10E of Chapter 118E of the General Laws, as so appearing, is hereby amended by striking out, in lines 17 to 19, inclusive, clause (i) and inserting in place thereof the following clause:-

(i) all medically necessary care relative to pregnancy, including but not limited to abortion, care to maintain health during the course of the pregnancy and delivery, and newborn hospital care;

Appendix II: The Abortion Code in the Massachusetts General Laws
(contained within Chapter 112, on "Registration of Certain Professions and Occupations")

Section 12K: Definitions applicable to Secs. 12L to 12U

Section 12K. As used in section twelve L to section twelve U, inclusive, the following words shall have the following meanings:

Abortion, the knowing destruction of the life of an unborn child or the intentional expulsion or removal of an unborn child from the womb other than for the principal purpose of producing a live birth or removing a dead fetus.

Hospital, a hospital as defined in section fifty-two of chapter one hundred and eleven of the General Laws, and duly licensed under the provisions of section fifty-one of chapter one hundred and eleven of the General Laws.

Physician, an individual lawfully authorized to practice medicine within the commonwealth.

Pregnancy, the condition of a mother carrying an unborn child.

Unborn child, the individual human life in existence and developing from implantation of the embryo in the uterus until birth.

Section 12L: Abortion; pregnancy existing for less than 24 weeks

Section 12L. If a pregnancy has existed for less than twenty-four weeks no abortion may be performed except by a physician and only if, in the best medical judgment of a physician, the abortion is necessary under all attendant circumstances.

Section 12M: Abortion; pregnancy existing for 24 weeks or more

Section 12M. If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary to save the life of the mother, or if a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

Section 12N: Violation of Sec. 12L or 12N; punishment

Section 12N. Any person who violates the provisions of sections twelve L or twelve M shall be punished by imprisonment for not less than one year nor more than five years. Conduct which violates the provisions of this act, which also violates any other criminal laws of the commonwealth, may be punished either under the provisions of sections 12K to 12U, inclusive, or under such other applicable criminal laws.

Section 12O: Abortion performed pursuant to Sec. 12M; protection of unborn child

Section 12O. If an abortion is performed pursuant to section twelve M, no abortion procedure which is designed to destroy the life of the unborn child or injure the unborn child in its mother's womb may be used unless, in the physician's best medical judgment, all other available

procedures would create a greater risk of death or serious bodily harm to the mother either at the time of the abortion, or subsequently as the result of a future pregnancy, than the one being used.

Section 12P: Abortion performed pursuant to Sec. 12M; preservation of life and health of child

Section 12P. If an abortion is performed pursuant to section twelve M, the physician performing the abortion shall take all reasonable steps, both during and subsequent to the abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the department of public health, in the room where the abortion is to be performed.

Section 12Q: Restrictions on abortions performed under Sec. 12L or 12M; emergency excepted

Section 12Q. Except in an emergency requiring immediate action, no abortion may be performed under sections twelve L or twelve M unless the written informed consent of the proper person or persons has been delivered to the physician performing the abortion as set forth in section twelve S; and if the abortion is during or after the thirteenth week of pregnancy, it is performed in a hospital duly authorized to provide facilities for general surgery.

Except in an emergency requiring immediate action, no abortion may be performed under section twelve M unless performed in a hospital duly authorized to provide facilities for obstetrical services.

Section 12R: Written statement of reasons for abortion as required by Sec. 12M; tests on pregnant patients prior to abortions; report to commissioner, contents; filing; statistical tables, annual report to general court; additional reports

Section 12R. If the physician performing the abortion is not the physician who made the medical judgment required by section twelve M, before performing the abortion he shall obtain from the physician making such judgment a written statement setting forth the exception contained in section twelve M that in his best medical judgment permits the abortion and the specified reasons why the abortion qualifies under that exception. Prior to the performance of an abortion, the physician shall make a positive determination of pregnancy, test for blood type and Rh type, test for Rho(D) sensitization on each patient found to be Rho(D) negative by use of an antiglobulin (Coombs) test performed by a blood bank operated by a licensed hospital, or by a laboratory, and offer Rho(D) immune globulin (Human) to each Rho(D) negative patient with a negative sensitization test at the time of any abortion. The physician performing the abortion shall retain this written statement as an attachment to the file copy of his report required by this section. Within thirty days after the performance of an abortion, the physician performing such abortion shall file with the commissioner of public health on a form prescribed by him the following information to the best of his knowledge: the date and place of the abortion; if he was the physician making the medical judgment required by section twelve M, the exception contained in said section that in his best medical judgment permitted the abortion and the specific reasons why the abortion qualified under that exception; if he is not the physician who made such medical judgment, the name and address of the physician from whom he received the written statement required by this section and the exception contained in said section twelve M that permitted the abortion and a verbatim recitation of the specific reasons why the abortion

qualified under either exception as set forth in the written statement he received from such physician; the age of the mother; the method used to perform the abortion; whether the mother survived the abortion; the details of any morbidity observed in the mother; the gestational age of the child; the weight and crown-rump length of the child if determinable; whether the unborn child was alive when removed or expelled from the mother and if so, the steps taken to preserve its life; and the length of time the child lived after removal or expulsion from the mother. The physician performing the abortion shall retain in his files for seven years after the abortion a copy of the report to which he should attach or otherwise add the name of the mother. The original of the report filed with the commissioner shall not contain the name of the mother and shall be maintained by the commissioner as a public record. The commissioner shall prepare from these reports such statistical tables with respect to maternal health, abortion procedures, the unborn child and viability as he deems useful and shall make an annual report thereof to the general court. Nothing in this section shall be construed to limit the authority of the department of public health to require reports pursuant to sections twenty-four A and twenty-five A of chapter one hundred and eleven.

Section 12S: Consent to abortion; form; persons less than eighteen years of age

Section 12S. No physician may perform an abortion upon a pregnant woman without first obtaining her written informed consent. The commissioner of public health shall prescribe a form for physicians to use in obtaining such consent. This form shall be written in a manner designed to permit a person unfamiliar with medical terminology to understand its purpose and content, and shall include the following information: a description of the stage of development of the unborn child; the type of procedure which the physician intends to use to perform the abortion; and the possible complications associated with the use of the procedure and with the performance of the abortion itself; the availability of alternatives to abortion; and a statement that, under the law of the commonwealth, a person's refusal to undergo an abortion does not constitute grounds for the denial of public assistance. A pregnant woman seeking an abortion shall sign the consent form described above at least twenty-four hours in advance of the time for which the abortion is scheduled, except in an emergency requiring immediate action. She shall then return it to the physician performing the abortion who shall maintain it in his files and destroy it seven years after the date upon which the abortion is performed.

The said consent form and any other forms, transcript of evidence, or written findings and conclusions of a court, shall be confidential and may not be released to any person except by the pregnant woman's written informed consent or by a proper judicial order, other than to the pregnant woman herself, to whom such documents relate, the operating physician, or any person whose consent is required pursuant to this section, or under the law. If a pregnant woman is less than eighteen years of age and has not married, a physician shall not perform an abortion upon her unless he first obtains both the consent of the pregnant woman and that of her parents, except as hereinafter provided. In deciding whether to grant such consent, a pregnant woman's parents shall consider only their child's best interests. If one of the pregnant woman's parents has died or is unavailable to the physician within a reasonable time and in a reasonable manner, consent of the remaining parent shall be sufficient. If both parents have died or are otherwise unavailable to the physician within a reasonable time and in a reasonable manner, consent of the pregnant woman's guardian or guardians shall be sufficient. If the pregnant woman's parents are divorced, consent of the parent having custody shall be sufficient. If a pregnant woman less than eighteen

years of age has not married and if one or both of her parents or guardians refuse to consent to the performance of an abortion, or if she elects not to seek the consent of one or both of her parents or guardians, a judge of the superior court department of the trial court shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if said judge determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion or, if said judge determines that she is not mature, that the performance of an abortion upon her would be in her best interests. A pregnant woman less than eighteen years of age may participate in proceedings in the superior court department of the trial court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel, and shall, upon her request, provide her with such counsel. Proceedings in the superior court department of the trial court under this section shall be confidential and shall be given such precedence over other pending matters that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the superior court department of the trial court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting his decision and shall order a record of the evidence to be maintained including his own findings and conclusions.

Nothing in this section is intended to abolish or limit any common law rights of persons other than those whose rights it governs for the purpose of any civil action or any action for injunctive relief under section twelve U.

Section 12T: Violations of Secs. 12O to 12R; punishment

Section 12T. Any person who commits an act in violation of sections twelve O or twelve P shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars, or by imprisonment of not less than three months nor more than five years, or by both said fine and imprisonment. Conduct which violates sections twelve O or twelve P which also violates any other criminal laws of the commonwealth, may be punished either under this section or under such other applicable criminal laws. Any person who willfully violates the provisions of section twelve Q or twelve R shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars.

Section 12U: Enjoining performance of abortion

Section 12U. The attorney general or any person whose consent is required either pursuant to section twelve S or under common law, may petition the superior court for an order enjoining the performance of any abortion that may be performed contrary to the provisions of sections twelve L to twelve T, inclusive.

Addenda (two other sections of the MGL to be modified by the ROE Act, with the modifications highlighted):

Chapter 112, Section 12F: Emergency treatment of minors

Section 12F. No physician, dentist or hospital shall be held liable for damages for failure to obtain consent of a parent, legal guardian, or other person having custody or control of a minor child, or of the spouse of a patient, to emergency examination and treatment, including blood transfusions, when delay in treatment will endanger the life, limb, or mental well-being of the patient.

Any minor may give consent to his medical or dental care at the time such care is sought if (i) he is married, widowed, divorced; or (ii) he is the parent of a child, in which case he may also give consent to medical or dental care of the child; or (iii) he is a member of any of the armed forces; or (iv) she is pregnant or believes herself to be pregnant; or (v) he is living separate and apart from his parent or legal guardian, and is managing his own financial affairs; or (vi) he reasonably believes himself to be suffering from or to have come in contact with any disease defined as dangerous to the public health pursuant to section six of chapter one hundred and eleven; provided, however, that such minor may only consent to care which relates to the diagnosis or treatment of such disease.

Consent shall not be granted under subparagraphs (ii) through (vi), inclusive, for abortion or sterilization. ["Abortion or" is to struck out.]

Consent given under this section shall not be subject to later disaffirmance because of minority. The consent of the parent or legal guardian shall not be required to authorize such care and, notwithstanding any other provisions of law, such parent or legal guardian shall not be liable for the payment for any care rendered pursuant to this section unless such parent or legal guardian has expressly agreed to pay for such care.

No physician or dentist, nor any hospital, clinic or infirmary shall be liable, civilly and criminally, for not obtaining the consent of the parent or legal guardian to render medical or dental care to a minor, if, at the time such care was rendered, such person or facility: (i) relied in good faith upon the representations of such minor that he is legally able to consent to such treatment under this section; or (ii) relied in good faith upon the representations of such minor that he is over eighteen years of age.

All information and records kept in connection with the medical or dental care of a minor who consents thereto in accordance with this section shall be confidential between the minor and the physician or dentist, and shall not be released except upon the written consent of the minor or a proper judicial order. When the physician or dentist attending a minor reasonably believes the condition of said minor to be so serious that his life or limb is endangered, the physician or dentist shall notify the parents, legal guardian or foster parents of said condition and shall inform the minor of said notification.

Chapter 118E, Section 10E: Healthy start program; medical assistance for pregnant women and infants; eligibility; types of assistance; protection from billing and collection practices

Section 10E. The division shall establish a program of medical care and assistance for pregnant women and infants who are not otherwise eligible for medical assistance under chapter 118E and who lack private health insurance coverage or have health insurance coverage which does not cover all medically necessary care covered by the program established by this section. The division shall furnish such medical assistance to each such pregnant woman and infant residing

in the commonwealth in accordance with standards of eligibility established by the division; provided, however, that the income eligibility standards shall not be more than 200 per cent of the non-farm income poverty guidelines defined by the United States Office of Management and Budget.

Assistance furnished pursuant to this section shall include, but shall not be limited to, the following care and services; provided, however, that unless otherwise specified to the contrary no payment shall be allowed for inpatient hospitalization:

(i) all medically necessary care to maintain health during the course of the pregnancy and delivery, including newborn hospital care; [to be replaced by: "all medically necessary care relative to pregnancy, including but not limited to abortion, care to maintain health during the course of the pregnancy and delivery, and newborn hospital care;"]

(ii) all medically necessary postpartum obstetric and gynecological care;

(iii) newborn care, including one postpartum pediatric ambulatory visit; and

(iv) outreach services designed to identify and encourage the participation of pregnant women and infants in this program.

The division shall ensure that all women who appear to be eligible for medical assistance under said chapter 118E are assisted in enrolling for such coverage.

The division shall promulgate and, from time to time, amend regulations detailing eligibility criteria, services to be covered in conformity with appropriate standards of care, and reimbursement policies.

Notwithstanding section 3 of chapter 6B or any other law to the contrary, no acute hospital shall deny access to care and services to recipients of the healthy start program established by this section; provided, however, that such recipients shall be exempt from any collection action, pre-admission deposit or any other form of billing or collection procedures arising from treatment by an acute care hospital provided under the healthy start program; and provided further, that a healthy start card shall constitute sole verification of application and eligibility for free care for inpatient hospital services. The program established herein shall be known as the healthy start program.