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**LEGISLATIVE TESTIMONY**

To: Members of the Joint Committee on the Judiciary  
From: Daniel Avila, Esq., Associate Director for Policy & Research  
Re: House 1687, “An Act Relative to a Woman’s Right to Know,” House 1735, “An Act Relative to Consent and Counseling for Certain Minors,” and House 1734/Senate 831, “An Act Relative to Public Health”  
Date: March 4, 2008

The Massachusetts Catholic Conference (“Conference”) respectfully submits this testimony in support of House 1687, “An Act Relative to a Woman’s Right to Know” and in opposition to House 1735, “An Act Relative to Consent and Counseling for Certain Minors,” and House 1734/Senate 831, “An Act Relative to Public Health.”

**Strengthening State Law by Protecting A Woman’s Right to Know**

House 1687 requires the Department of Public Health (DPH) to make available a pamphlet, web page and telephone message describing a woman’s rights under the Massachusetts Patients Rights Act, detailing the risks of abortion, listing agencies providing abortion alternatives and prenatal care, and supplying scientifically accurate descriptions of fetal development. Abortion providers would have to let women know beforehand that such materials are available and give these materials to those who request them. Abortion facilities would have to allow women 24 hours to reflect before going through with the abortion. These requirements would not apply in medical emergencies.

The Roman Catholic Church joins other secular and religious organizations in affirming the dignity of all human life at every stage of existence from conception until natural death. Current law in Massachusetts allows women to obtain an abortion for any reason and at any stage of pregnancy, without affording women the right to full informed consent. The State’s mandatory version of the consent form merely describes abortion as a procedure where “the contents of the womb (uterus) are removed,” fails to include any reference to the potential for psychological or emotional problems after an abortion, and omits any listing of or contact information for agencies providing pregnancy assistance. See attached sample of the form required by the Massachusetts Department of Public Health.

House 1687 would improve current policy, and move our laws closer to providing equal protection for all human life. It would reinforce every woman’s right to know the complete facts about the new life developing within her, about significant psychological and emotional risks associated with a decision to take that life, and about the availability of agencies prepared to help women who choose life. In short, the bill would require those performing abortions to first offer women information that weighs in favor of choosing life and to do so in a manner that respects women.

Opponents claim that this bill unfairly tilts the consent process against abortion, yet they fail to acknowledge that current industry practices are slanted towards abortion. Due to economic and ideological pressures, women are subjected to a counseling approach that emphasizes the virtues, so to speak, of the industry-preferred choice. See Daniel Avila, “The Right to Choose, Neutrality, and Abortion Consent in Massachusetts,” 38 Suffolk U. L. Rev. 511, 530-47 (2005), available online at [http://www.law.suffolk.edu/highlights/stuorgs/lawreview/documents/AvilaFinal\\_000.pdf](http://www.law.suffolk.edu/highlights/stuorgs/lawreview/documents/AvilaFinal_000.pdf). Those offering abortions in Massachusetts believe that they are providing a benefit. And none perform abortions

expense-free. Thus abortion providers retain a vested interest in one outcome, abortion, and have every motivation to offer to potential consumers only such information that favors that outcome.

House 1687 ensures a level field for women by requiring information that an abortion purveyor otherwise has little incentive to avail. Imparting more balance to the consent process satisfies state constitutional requirements of neutrality. See, Avila, *supra* at 548-56. Thus the Conference supports the bill's passage.

### **Making State Law Even More Permissive**

Two bills seek to amend current law to make it more permissive.

House 1735, "An Act Relative to Consent and Counseling for Certain Minors," would amend current abortion law governing consent for minors. The bill would remove existing safeguards seeking to ensure judicially that a minor who does not want or cannot obtain parental consent is found to be mature enough to make an abortion decision or that, lacking maturity, the minor is making a decision found to be in her best interests.

House 1735 would allow abortions to be performed on minors without any finding of maturity or best interests as long as the minor obtains counseling from an adult designated within a category of eligible candidates, such as a social worker, guidance counselor, or teacher. The required verification of counseling need only indicate that "the alternative choices available to manage the pregnancy and the possibility of involving the woman's parent, guardian, or other adult family member in her decision making" were discussed. Thus, minors with insufficient maturity to understand the consequences of an abortion decision, or who are choosing an abortion against their best interests, would be free to obtain abortions without parental consent.

Parents have an irreplaceable role to play in the development and well-being of their children. That role should not be subverted by authorizing other adults in non-judicial settings, who may have ties to the abortion industry, to facilitate a minor's access to an abortion without parental knowledge. The bill's passage would substantially weaken even what little protections there are for parents and their vulnerable daughters under current law. For that reason, the Conference opposes the bill.

House 1734 and Senate 831, "An Act Relative to Public Health," would expressly repeal certain currently unenforced abortion and contraception-related restrictions in the Massachusetts General Laws. However, due to its confusing language and structure, the bill could also be read as either impliedly protecting from further legislative repeal, or as impliedly repealing, all of the other remaining, and currently enforced abortion and contraception restrictions that were not expressly repealed by the bill. Depending on which interpretation is applied, the bill either would weaken or strengthen current abortion and contraception-related restrictions.

Section 1 of the bill would have the legislature find that a "fundamental right" of "reproductive choice" is protected under the state constitution to a greater extent than under the federal constitution. Similarly, Section 1 would have the legislature find that laws such as "a near-total ban on abortion" are unconstitutional and thus "currently unenforceable" because they amount to "restrictions on a woman's right to access to reproductive health care." Section 1 ends by stating that "Existing laws of the commonwealth that do not comport with the Declaration of Rights and that do not serve the public interest must be repealed."

Sections 2 through 6 then announce that "hereby repealed" are portions of the current code requiring abortions after 13 weeks to be performed in hospitals, punishing attempts to cause miscarriage that lead to a woman's death, prohibiting advertising for contraception and abortion, barring the provision of the

means used by another to cause “self-abuse,” contraception or abortion, and limiting the provision of contraceptives to situations involving a physician’s prescription for use by married persons.

The bill’s poor drafting raises critical questions of interpretation. Does Section 1, by referring to “existing laws” that “must be repealed” establish an unlimited “reproductive right” that renders nugatory all present (and future) “restrictions” on abortion and contraception, and regardless of whether they were expressly repealed in Sections 2 through 6? Or does the combination of Section 1 and Sections 2 through 6 work to preserve from further repeal those provisions that were not expressly repealed by the bill? After all, if the bill only expressly repeals some but not all of the existing restrictions, then is that an implied indication by its drafters that the remaining, untouched provisions should not be considered unconstitutional, and thus should be preserved as somehow consistent with the newly declared right found in Section 1? A definitive reading is shrouded in textual mystery.

Many of the legislative sponsors of House 1734 and Senate 831 are on record as supporting a bill filed in the past that would have expressly abolished all abortion and contraception restrictions. See House 708, the so-called “Freedom of Choice Act,” filed in the 2005-2006 legislative term. This fact makes it more likely than not that a hostility towards restrictions on abortion and contraception, rather than any beneficence, lies behind the drafting of House 1734 and Senate 831. At the very least, the confused drafting provides no sure guarantee that current laws would be strengthened by the passage of House 1734/Senate 831. Thus, the Conference opposes the bill.

### **Requested Committee Action**

For the foregoing reasons, the Conference urges the Committee to give House 1687 a favorable report recommending the bill’s passage, and to give House 1734 and 1735, and Senate 831 an unfavorable report recommending that these latter bills ought not pass.

The Massachusetts Catholic Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston and the Dioceses of Fall River, Springfield, and Worcester.