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October 5, 2011

The Honorable Cynthia Stone Creem
Senate Chair—Joint Committee on the Judiciary
State House, Room 405
Boston, MA 02133

The Honorable Eugene L. O'Flaherty
House Chair—Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

RE: H.B. 515 / S.B. 671, *An Act Updating the Laws to Protect Women's Health*

Dear Chairwoman Creem and Chairman O'Flaherty:

I am writing to express my support for H.B. 515 / S.B. 671, *An Act Updating the Laws to Protect Women's Health*. This legislation seeks to update two laws and repeal three others relevant to access to reproductive health services. These amendments are necessary to address antiquated and constitutionally vulnerable statutes included in the General Laws and reaffirm the guaranteed right to access reproductive health services.

First, the legislation before the Committee repeals a law that was deemed unconstitutional nearly four decades ago, but nevertheless remains in the General Laws. Pursuant to the 1972 Supreme Court holding in *Eisenstadt v. Baird*, the constitutional right to privacy extends to the reproductive decisions of both married and unmarried people. *Eisenstadt v. Baird*, 405 U.S. 438 (1972). House Bill 515 / Senator 671 amends G.L. c. 272, §21A to reflect the state of the law today by striking out the statutory provision which limits the prescription and use of contraceptives to only "married"

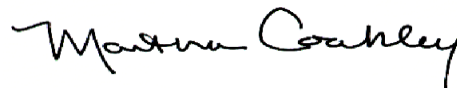
people. Common sense and court rulings make clear that this law is long overdue for a change.

Second, H.B. 515 / S.B. 671 amends the Commonwealth's abortion laws to allow abortions between weeks 13 and 23 of gestation to be performed in a clinical out-patient setting, while retaining a "hospital only" requirement for procedures beyond 23 weeks. Currently, G.L. c. 112, §12Q provides that abortions performed during or after the thirteenth week of gestation (the first trimester) may only be performed in a hospital with general surgery facilities. This creates an impractical and unnecessary limitation on reproductive health services. Indeed, several Massachusetts hospitals do not provide non-emergency abortion care, and where care is provided in a hospital, such care is more expensive than comparable care provided in an out-patient setting. As a result, some women may choose to forego the hospital procedure due to cost and may instead pursue other, far less safe, options. Moreover, our Appeals Court has indicated that such a requirement violates the constitution. *See In Re Moe*, 517 N.E.2d 170, 172 (Mass. App. Ct. 1987) (holding that abortions occurring at week 13 and beyond for certain minors could be performed in a non-hospital setting). For these reasons, our Office strongly supports amending this "hospital only" requirement to allow for more abortions to be performed in an out-patient setting.

Finally, the legislation before the Committee seeks to repeal three laws enacted in 1845, 1847 and 1879 that our office believes may be constitutionally vulnerable. Sections 19, 20 and 21 of chapter 272 of the General Laws respectively, ban performing abortions, advertising abortion services, or selling drugs or instruments used for performing abortions. G.L. c. 272, §§19, 20, 21. These three laws are incredibly vulnerable to a constitutional challenge because they have the effect of creating a total ban on abortion, thereby violating *Roe v. Wade*, the seminal United States Supreme Court case on abortion rights. In most states, pre-*Roe* laws banning all abortions have either been enjoined by a court or repealed by the Legislature. This legislation would make such repeals and thus, bring us in line with *Roe*.

This legislation would go a long way toward protecting privacy rights of women in Massachusetts. As such, I urge the Committee to give H.B. 515 / S.B. 671 a favorable report so that our laws can reflect the rights protected by the Constitution. As always, we are available to answer any questions at your convenience.

Cordially,

A handwritten signature in black ink, reading "Martha Coakley". The signature is fluid and cursive, with the first name "Martha" and last name "Coakley" clearly distinguishable.

Martha Coakley

Cc: Representative Ellen Story and Senator Harriett Chandler