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Nicole DiLibero
Senior Legal Counsel
RI Department of Corrections
40 Howard Avenue
Cranston, RI 02920

Dear Ms. DiLibero:

Thank you for your February 5th letter responding to my request for information about the DOC's policies and practices governing prenatal care and nutrition for incarcerated pregnant inmates. While we are still in the process of reviewing those documents, one troubling item contained in DOC policy quickly jumped out at me, and I write to urge the Department's immediate attention to it. While I'm sure its application is extremely rare, the ramifications are absolutely critical when it *is* applicable.

I refer to your Department's policy on "Gynecological Care, Pregnancy Counseling and Perinatal Care for Women Inmates," #18.53-2. Specifically, Section II.(F)(2)(b), relating to "Abortion," provides in relevant part:

> *After fetal viability, all abortion requests will be denied, except those necessary to protect the inmate-patient's life.*

This policy is not only a significant intrusion on inmates' reproductive rights, it is clearly unconstitutional. Under *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny, the policy's very limited exception for post-viability abortions is incorrect as a matter of law. Even at that stage, abortions must be allowed when necessary to protect the person's physical or mental health, not just their life. Even more to the point, this guarantee has now been codified in the Reproductive Privacy Act (RPA) enacted by the General Assembly last year, as that law explicitly bars the state from restricting "an individual person from terminating that individual's pregnancy after fetal viability when necessary to preserve *the health or life* of that individual." R.I.G.L. §23-4.13-2(a)(3) (emphasis added).

A review of our files shows that the ACLU had correspondence with your Department ten years ago on this very issue. At that time, your agency refused to change the policy, citing the state's "quick child" statute, R.I.G.L. §11-23-5, as the basis for keeping this unconstitutional restriction in place. With passage of the RPA, however, that position is no longer tenable, not only because of the Act's explicit affirmative language, but because the "quick child" statute was repealed at the same time.

We therefore request that the Department immediately revise this policy to conform to constitutional and statutory standards by allowing post-viability abortions when necessary to preserve the inmate's health.

Your prompt attention to this matter would be appreciated. Thank you, and I look forward to hearing back from you about it.

Sincerely,

Steven Brown
Executive Director

cc: Patricia Coyne-Fague, Director
Kathleen Kelly, Executive Counsel
Dr. Jennifer Clarke, Medical Program Director