HB

35

<target><bill>HB 35</bill><subject>HB
35</subject><comm>HFIN26</comm></target>

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT
HB 35 Parental Notification and Consent for a Pregnant Minor Aborting an Unborn Child

---

HB 35 requires parental consent unless the minor chooses a judicial bypass and enacts a notification process that the Court determined is the least restrictive means of achieving the State's compelling interest. It leaves intact the four exemptions from parental consent: *married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting.*

On November 2, 2007 in *State of Alaska v. Planned Parenthood of Alaska*, the Alaska Supreme Court, in a 3 – 2 decision, has once again undermined a long history of social law, the intent of the Constitution, and the will of the people of Alaska.

The legislature passed the Parental Consent Act (PCA) in 1997. In July of that same year, Alaska Superior Court Judge Sen Tan ruled the law was unconstitutional because "the privacy clause of the Alaska Constitution protects minors as well as adults." The Superior Court did not address whether or not the PCA violated the privacy clause. The State appealed the decision and the Supreme Court ruled that the privacy clause extends to minors unless **there is a compelling state interest using the least restrictive means available**. The Supreme Court remanded the case back to Sen Tan to hold an evidentiary hearing to determine if PCA furthered a compelling state interest.

In January 2003 the Superior Court held a bench trial spanning almost three weeks to hear evidence regarding the constitutionality of the PCA. In October 2003, Judge Sen Tan ruled the PCA was **unconstitutional because it did not further a compelling state interest while using the least restrictive means available**. In January 2004 the Superior Court enjoined the State from enforcing the PCA declaring the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution.

On November 2, 2007, the court agreed with the State that *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities"* are *"compelling interests."* So the issue at hand for the court was whether the PCA was the least restrictive means of achieving the State's compelling interests.

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HB 35 addresses the legal issues of parental consent in a practical manner based on the historical beliefs of our forefathers. The Parental Consent Act of 1997 was fully compliant with the U.S. Supreme Court precedent *Bellotti v. Baird,* (443 U.S. 622 1979). In essence, the Alaska Supreme Court in its November 2, 2007 decision struck down a decision of the U.S. Supreme Court. Justice Carpeneti eloquently wrote the dissenting decision stating the following:

"Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."

The dissent opinion brought to light the lack of consideration or recognition in case law that *"children are not generally considered competent to consent to medical procedures."* It brought to light the four exemptions in the PCA, *"married minors, ... minors who have been legally emancipated, ...minors who have entered the armed services of the United States ,and ...who have become employed and self-subsisting."* For those pregnant minors who did not fall into the four exempt categories a judicial bypass provision was provided for appropriate circumstances. It was a process designed to be speedy and cost-free to the child. The PCA called for a five-day response of the court; HB 364 calls for a three-day response. Failure by the court to respond in time would be construed as an act constructive authorization. The judicial bypass requires a sworn statement from the pregnant minor and an adult family member or state agent such as an Office of Children's Services caseworker or law enforcement officer.

Carpeneti discussed the fact that the Court quickly recognized that there was a compelling State interest but failed *to "look closely at the nature of the state's and parents' interests"* leaving *"its constitutional 'balance' one-sided."* Carpeneti continues in his dissent to outline case law that creates a judicial history of "*treating minors differently from adults,*" "*protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity,*" prohibiting minors from making contract to *"smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parent's consent they may not become licensed drivers or get married or obtain general medical or dental treatment."*

"In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest."

In his dissenting opinion, Carpeneti uses the litmus test for parental consent that is required for participation in school field trips to demonstrating the extent to which the State must go to terminate parental rights is his argument:

"In addition to society's interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in raising of their children."

Carpeneti's dissenting opinion determines that the State's compelling interest does outweigh the equal protection and privacy clauses because:

"In sum, the norm in American, and Alaskan, life and law is that the parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling."

I believe parental consent can still recognize the State's compelling interest in *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities."* In addition to **parental consent,** HB 35 provides for a judicial bypass for sexual abuse cases using a ***lower standard than the 1997 PCA Act's clear and convincing*** provision, and a **provision prohibiting the parents from coercing a pregnant minor to have an abortion.**

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HOUSE COMMITTEE REPORT

(11)
Date Referred to Committee: March 16, 2009 — FURTHER REFERRALS:

Date of Committee Action: 3\27\09

The FINANCE Committee considered: **HOUSE BILL NO. 35**

"An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; relating to reporting of abortions performed on minors; amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20, Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an effective date."

HB 35 NOTICE & CONSENT FOR MINOR'S ABORTION

Recommends it be replaced with [ ] HCS or [A] CS for HB 35 (FIN)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR ____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to ____ Committee
[ ] Letter of Intent ____ Committee

List of Abbrev for Depts: ADM, CED, COR, CRT, EED, DEC, DFG, GOV, DHS, LWF, LAW, LEG, MVA, DNR, DPS, REV, DOT, UA

***NEW* FISCAL NOTES** (*Assigned by Chief Clerk's Office)

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓
HSS	2		✓	

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Thomas			✓	
R Foster	Foster	X			
[signature]	[illegible]				✓
[signature]	Salmon				✓
Harry Crawford	CRAWFORD				✓
[signature]	Joule			✓	
Alan Austerman	Austerman			X	
Anna Fairclough	FAIRCLOUGH				✓
Mike Kelly	KELLY	X			
Chair: [signature]	Hawker			☆	
Chair: Bill Stoltze	Stoltze	*			

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AMENDMENT 1 withdrawn 3/27/09

OFFERED IN THE HOUSE FINANCE COMMITTEE

By REP. GARA

TO: HB 35

1. Page 2, lines 3-4:

   Following "notice":

   Delete "and consent"

2. Page 3, lines 7-8:

   Following "performed":

   Delete "and the parent, legal guardian, or custodian has consented in writing to the performance or inducement of the abortion"

3. Page 3, lines 10-11:

   Following "notice":

   Delete "and consent"

4. Page 3, lines 13-14:

   Following "notice":

   Delete "and consent"

5. Page 5, line 5:

   Following "to":

   Delete "and the consent of"

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6. Page 5, line 8:

   Following "to":

   Delete "or the consent of"

7. Page 5, line 17:

   Following "to":

   Delete "or the consent of"

8. Page 5, lines 20-21:

   Following "notice to":

   Delete "or the consent of"

9. Page 5, line 24:

   Following "the":

   Delete "consent of"

   Insert "notice to"

10. Page 6, line 7:

    Following "to":

    Delete "or the consent of"

11. Page 6, line 11:

    Following "such":

    Delete "consent"

    Insert "notice"

12. Page 6, line 27:

    Following "to":

    Delete "or the consent of"

13. Page 6, line 30-31:

Following “to”

Delete “or the consent of”

14. Page 8, lines 15-16:

Following “to”:

Delete “and the consent of”

15. Page 8, line 25:

Following “to”:

Delete “and the consent of”

16. Page 9, line 18:

Following “to”:

Delete “and the consent of”

17. Page 9, lines 30-31:

Following “to”:

Delete “or the consent of”

AMENDMENT 2 withdrawn 3/27/09

OFFERED IN THE HOUSE FINANCE COMMITTEE

By REP. GARA

TO: HB 35

1. Page 3, lines 20-28:

Delete all text.

AMENDMENT 3 NOT offered

OFFERED IN THE HOUSE FINANCE COMMITTEE

By REP. GARA

TO: HB 35

1. Page 3, lines 6-7:

    Delete "not less than 48 hours before the abortion is performed"

2. Page 4, line 23:

    Delete "48 hours"

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AMENDMENT 4 Failed 5 yea 6 NAY

OFFERED IN THE HOUSE FINANCE COMMITTEE

By REP. GARA

TO: HB 35

1. Page 7, line 25:

   Following "have":

   Insert "or refrain from having"

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 35
(H) Publish Date: 3/16/09

Identifier (file name): **HB035-DHSS-MS-03-09-09**
Title: Notice & Consent for Minor's Abortion
Sponsor: Coghill
Requester: House JUD

Dept. Affected: Health & Social Services
RDU: Health Care Services
Component: Medicaid Services
Component Number: 2077

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims	***	***	***	***	***	***	***
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match	***	***	***	***	***	***	***
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost: ________

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This fiscal note is indeterminate (***).

There is no way to determine which minors enrolled in Medicaid had consent from a parent or guardian for abortions because the department does not require a consent form to process claims.

Expenditures for abortions are made from general fund dollars. These claims are paid pursuant to an Alaska Supreme Court decision that requires state funding of medically necessary abortions for low-income women eligible for Medicaid. (continued on page 2)

Prepared by: William J. Streur, Deputy Commissioner
Phone 269-7827
Division: Health Care Services
Date/Time 3/9/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services
Date 3/9/2009

(Revised 9/10/2008 OMB)

FISCAL NOTE #2

STATE OF ALASKA

2009 LEGISLATIVE SESSION

BILL NO. HB 35

ANALYSIS CONTINUATION

The only abortion services eligible for federal financial participation are those that the department is required to cover under the federal Hyde amendment. To qualify under the Hyde amendment, the abortion must be the result of rape or incest, or the life of the mother must be endangered if the pregnancy were carried to term. Hyde amendment qualifying abortion claims are rare—in FY 2008, there were no Hyde amendment claims.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 35
(H) Publish Date: 3/16/09

Identifier (file name): HB035-LAW-CIV-3-6-09
Title: An Act relating to notice and consent for a minor's abortion.
Sponsor: REPRESENTATIVE(s) COGHILL, Neuman, et al.
Requester: Judiciary

Dept. Affected: LAW
RDU: CIVIL
Component: HUMAN SERVICES
Component Number: 2208

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: ________

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

See attached page...

Prepared by: Robert Meiners, Deputy Director
Phone 907-465-5427
Division: Administrative Services Division
Date/Time 3/9/09 10:20 PM
Approved by: Richard Svobodny, Acting Attorney General
Department of Law
Date 3/9/2009

(Revised 9/10/2008 OMB)

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FISCAL NOTE #1

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 35

ANALYSIS CONTINUATION

HB35 would amend existing state statutes regarding the requirement of parental notice and consent to be given if a person under age 17, who is unmarried, unemancipated, and pregnant, intends to obtain an abortion. The bill prohibits a person from performing an abortion unless the requisite parental notice and consent is provided or the person qualifies for an exception to those requirements. The bill also enacts new provisions of law regarding coercion of a minor who is pregnant and regarding certain reports that must be filed by physicians.

If this bill is enacted there would be a zero cost of implementation to the department. Should a legal challenge be mounted, especially of a constitutional nature, there would be costs in defending the provisions of this bill. Costs of defending legislation may arise with any legislature and often can not be anticipated; however, the department has previously defended the constitutionality of similar legislation. Those efforts approached $500,000 in addition to the payment of a court ordered award of $940,000 in costs and fees to the plaintiffs in the case.

HB 35 PARENTAL CONSENT FOR ABORTIONS

- This bill is in the Alaska Statutes dealing with abortions.
- This bill answers an Alaska Supreme Court decision in statute by modifying the standards, process, and parental part of a minor girl with regard to abortions.

THE STANDARD

- The Standards are a balance of parental rights and responsibilities, the minor's right of protection under the privacy clause, and the states compelling interest in protecting the family, the minor, and each right enjoyed by both.
- The way the Court viewed the standard was it needed to be the least restrictive of the minor's right to privacy.
- Therefore this bill outlines the flow of consent requirements:

  1. Minor must obtain consent of parents and 48 hour notice for fit and loving parents.
  2. If married - no parental consent required.
  3. If legally emancipated – no parental consent required.
  4. If entered in armed forces – no parental consent required.
  5. If self-subsisting and employed – no parental consent required.
  6. If petition court showing mature decision – no parental consent required.
  7. If court inactive – no parental consent required.
  8. If sexual or physical abuse upon signature and witness – no parental **or court** consent required.

9. **ADDITIONAL BYPASS OF JUDICIAL BYPASS:**

Victims of physical abuse, sexual abuse, or emotional abuse can go **directly to a doctor** for an abortion **with a signed and notarized statement from** the **minor** and one of the following:

(1) Adult sibling
(2) Law enforcement officer
(3) DHSS representative such as a case worker for OCS or JJ
(4) A grandparent
(5) A stepparent

THE PROCESS

NOTIFICATION OF PARENTS:

Parental notification must be given by the referring physician or the physician intending to perform the abortion:

1. First preference is notice in person or by phone.
   (a) There must be documentation of notice or attempted notice.
   (b) Verification of person's identity & relationship must be made by physician.
2. If notice cannot be made in person or by phone, written "constructive notice" by certified mail must be sent 48 hours before the abortion can be performed.

- Physicians judgment – defined

- Medical emergency – defined

BYPASS PROVISION

- A minor after determining pregnancy and desire for an abortion may bypass parental consent and notification by getting a court order, or by court inaction; **OR**

- If by written statement the minor shows physical or sexual abuse, she may bypass parents and the courts with at least one witness **OR** can demonstrate that it is otherwise not in the minor's best interest – ***LEAST RESTRICTIVE***

MANDATORY REPORTING OF ABUSE OR SEXUAL ASSAULT:

(1) A physician is required to report abuse under the child protection laws in AS 47.17.

(2) A physician is required to make a reasonable effort to preserve products of conception and evidence when pregnancy was result of criminal sexual assault.

COERCION OF A MINOR PROHIBITED:

A minor cannot be coerced to have an abortion.

If a parent who has a legal duty to do so, refuses to provide financial support for a minor who is pregnant so as to force the minor to have an abortion that is considered evidence for the minor child to obtain emancipation.

U.S. SUPREME COURT DECISION

In ***Bellotti v. Baird***, (1979), the Massachusetts parental consent law was found unconstitutional by the U.S. Supreme Court because:

1. It allowed judicial authorization for an abortion to be withheld from a minor who is mature and competent enough to make the decision independently. **HB 35 complies and allows exemption for this minor.**

2. It required parental notification in all cases (parents were required to be notified if their daughter initiated proceedings in

superior court) without allowing the minor to seek an independent judicial assessment of her competence to decide the abortion issue. **HB 35 allows for judicial by pass without notification of parents.**

LEGISLATIVE RESEARCH SERVICES

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State Capitol, Juneau, AK 99801

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March 26, 2009

Memorandum

TO: Representative Les Gara
FROM: Chuck Burnham, Legislative Analyst
RE: Mandatory Waiting Periods for Medical Procedures
LRS Report 09.226

You asked whether there exist any mandated waiting periods for medical procedures in current Alaska law similar to that proposed in HB 35 (2009).

Briefly, our research located no legally mandated waiting period that must observed before an individual may receive a medical procedure or treatment in Alaska, nor did we find any requirement that a parent or guardian be notified in a specified timeframe prior to a child receiving such a procedure or treatment.

As you know, Section 3 of HB 35 repeals and reenacts AS § 18.16.020 to prohibit a person from performing or inducing an abortion on an unmarried, unemancipated minor under age 17 unless consent is granted by a parent or legal guardian, is authorized by court order, or the minor takes specific steps to show that she is the victim of a pattern of abuse at the hands of one or both parents or a legal guardian. Under the bill, AS § 18.16.020(a)(1) provides the following stipulation, which must be met to satisfy the parental consent requirement for an abortion:

> . . . one of the minor's parents, the minor's legal guardian, or the minor's custodian has been given notice of the planned abortion not less than 48 hours before the abortion is performed and the parent, legal guardian, or custodian has consented in writing to the performance or inducement of the abortion.

It appears to be common in Alaska law for consent from a parent or guardian to be sought and/or obtained prior to providing medication or treatment, or performing a medical procedure on a minor.[1] However, the requirement in HB 35 that notice be given to a parent or guardian 48 hours in advance of a planned abortion appears to be unique in Alaska law.[2]

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[1] See, for example, requirements in AS § 47.30.693, 7 AAC 10.1070, and 7 AAC 41.210.

[2] We searched the Lexis databases of Alaska Statutes and Alaska Administrative Code using multiple terms and phrases in our effort to identify current laws with provisions similar to the notice requirement of HB 35. Although we believe our research to be thorough, there may nonetheless be such provisions in Alaska law that were not located by our research due to variations in wording or construction.

ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

SECTIONAL

House Bill 35
Parental Notification and Consent for a Pregnant Minor's Abortion

Section 1: AS 18.16.010(a) Abortions
This section amends the requirement that notice, along with consent, be given prior to an abortion being performed on a minor, except if a court has authorized the minor to consent to the abortion without parental notice.

Section 2: AS 18.16.010(g) Abortions
This section adds language to provide a defense for a physician or surgeon that performs an abortion on a minor because in their clinical judgment the minor was in serious risk to her life or physical health. This section defines the terms "clinical judgment" and "defense" and adds the words "medical instability caused by a" which broadens the definition of the term "medical emergency".

Section 3: AS 18.16.020 Notice and consent required before minor's abortion.
This section is repealed and reenacted to include notification to parents, legal guardian, or custodian prior to an abortion and address the needs of a minor that is a victim of abuse. The section states that before an abortion can be performed on a minor at least one of the following applies: (1) one of the minor's parents, legal guardian or custodian has been given notice of the planned abortion not less than 48 hours prior to the abortion and has consented in writing to the procedure; (2) a court issues an order; (3) court inaction results in constructive authorization for the minor to consent to the abortion without notice and consent; or (4) the minor is a victim of abuse and the abuse is documented, signed and notarized by the minor and certain other individuals. Additionally physicians are required to report suspected abuse, and when informed that a pregnancy resulted from sexual assault retain and preserve all products of conception and evidence for use by law enforcement.

Section 4: AS 18.16.030(a) Judicial by-pass for minor seeking an abortion.
This section adds conforming language "notice to" when a pregnant minor is filing a complaint with the superior court for authorization to the procedure without "notice or" consent of a parent, guardian, or custodian.

Section 5: AS 18.16.030(b) Judicial by-pass for minor seeking an abortion
This section adds "notice to or" regarding the statement submitted to the superior court when a minor is trying to get judicial by-pass in order to have an abortion without "notice or" consent of a parent, guardian, or custodian.

Section 6: AS 18.16.030(c) Judicial by-pass for minor seeking an abortion
This section amends the number of days for the court to schedule a hearing from five to three business days. Conforming language "notice to or" has been added before consent because if a hearing is not held by the third business day it is considered a constructive order of the court authorizing the complainant to consent to an abortion without notice or consent.

Section 7: AS 18.16.030(j) Judicial by-pass for minor seeking an abortion
This section amends the number of days for the superior court to deliver a copy of an appeal to the supreme court from four days to three days after an appeal is filed. It also amends from four days to three days for the appellant to file a brief after the appeal is docketed. Conforming language "notice to or" has been added before consent because if the court fails to meet the timeframe set above the court's inaction is considered a constructive order authorizing the appellant to consent to an abortion without notice or consent.

Section 8: AS 18.16.030(n) Judicial by-pass for minor seeking an abortion
This section amends the information provided to a minor to include requesting the court to direct the school to provide the minor with an excused absence and directing the school not to notify the minor's parent, legal guardian, or custodian.

Section 9: AS 18.16: New Sections
AS 18.16.035 Coercion/emancipation
This section states that a person may not coerce a pregnant minor to have an abortion. Denial of financial support by a parent or guardian who has a legal duty of support for purposes of coercing a minor to have an abortion shall be sufficient evidence of emancipation status. "Coercion" means to restrain or dominate a minor by force, threat of force, or deprivation of food, support, or shelter.

AS 18.16.040 Reports
This section sets out the timeframe and information physicians are required to file reports with DHSS if they have performed an abortion on a minor. Reports filed under this section may not include any identifying information on the minor except her age.

Sections 10, 1l, 13: Direct Court Rule Amendments
These sections deal with Scope, Petition, and Findings & Order and add in **notice to and the** consent **of a parent, guardian, or custodian** to conform to the intent of this bill requiring notice and consent for a minor to get an abortion.

Sections 12 and 15: Direct Court Rule Amendments – Constructive Order
These sections provide "constructive orders" to Rules 220(h) and Rule 20(f) changing the time lines for the courts for entering an order and holding a hearing from [FIVE] to **three** days.

Section 16: SEVERABILITY:
This section discusses what happens to the remainder of the bill if any provisions are found to be invalid or unenforceable.

26-LS0192\A

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Bellotti v. Baird, 443 U.S. 622 (1979)

U.S. Supreme Court (July 1979)

Id. vLex: VLEX-19981639
http://www.vlex.com/vid/19981639

Text

U.S. Supreme Court BELLOTTI v. BAIRD, 443 U.S. 622 (1979) 443 U.S. 622

BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. v. BAIRD ET AL. APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS No. 78-329. Argued February 27, 1979. Decided July 2, 1979.*

[Footnote *] Together with No. 78-330, Hunerwadel v. Baird et al., also on appeal from the same court.

A Massachusetts statute requires parental consent before an abortion can be performed on an unmarried woman under the age of 18. If one or both parents refuse such consent, however, the abortion may be obtained by order of a judge of the superior court "for good cause shown." In appellees' class action challenging the constitutionality of the statute, a three-judge District Court held it unconstitutional. Subsequently, this Court vacated the District Court's judgment, Bellotti v. Baird, 428 U.S. 132, holding that the District Court should have abstained and certified to the Massachusetts Supreme Judicial Court appropriate questions concerning the meaning of the statute. On remand, the District Court certified several questions to the Supreme Judicial Court. Among the questions certified was whether the statute permits any minors - mature or immature - to obtain judicial consent to an abortion without any parental consultation whatsoever. The Supreme Judicial Court answered that, in general, it does not; that consent must be obtained for every nonemergency abortion unless no parent is available; and that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. Another question certified was whether, if the superior court finds that the minor is capable of making, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, the court may refuse its consent on a finding that a parent's, or its own, contrary decision is a better one. The Supreme Judicial Court answered in the affirmative. Following the Supreme Judicial Court's judgment, the District Court again declared the statute unconstitutional and enjoined its enforcement.

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Held:

The judgment is affirmed. Pp. 633-651; 652-656.

450 F. Supp. 997, affirmed.

MR. JUSTICE POWELL, joined by MR. CHIEF JUSTICE BURGER, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST, concluded that:

1. There are three reasons justifying the conclusion that the constitutional

Page 443 U.S. 622, 623

rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding role of parents in the upbringing of their children. Pp. 633-639.

2. The abortion decision differs in important ways from other decisions facing minors, and the State is required to act with particular sensitivity when it legislates to foster parental involvement in this matter. Pp. 639-642.

3. If a State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes, or that even if she is not able to make this decision independently, the desired abortion would be in her best interests. Such a procedure must ensure that the provision requiring parental consent does not in fact amount to an impermissible "absolute, and possibly arbitrary, veto." Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74. Pp. 642-644.

4. The Massachusetts statute, as authoritatively interpreted by the Supreme Judicial Court, unduly burdens the right to seek an abortion. The statute falls short of constitutional standards in two respects. First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, whether or not in the pregnant minor's best interests, without affording her an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests. Pp. 644-651.

MR. JUSTICE STEVENS, joined by MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN, concluded that the Massachusetts statute is unconstitutional because under the statute, as written and as construed by the Massachusetts Supreme Judicial Court, no minor, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent of either both parents or a superior court judge, thus making the minor's abortion decision subject in every instance to an absolute third-party veto. Planned Parenthood of Central Missouri v. Danforth, , controlling. Pp. 652-656.

POWELL, J., announced the judgment of the Court and delivered an opinion, in which BURGER, C. J., and STEWART and REHNQUIST, JJ., joined.

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REHNQUIST, J., filed a concurring opinion, post, p. 651. STEVENS, J., filed an opinion concurring in the judgment, in which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined, post, p. 652. WHITE, J., filed a dissenting opinion, post, p. 656.

Garrick F. Cole, Assistant Attorney General of Massachusetts, argued the cause for appellants in No. 78-329. With him on the briefs were Francis X. Bellotti, Attorney General, pro se, and Michael B. Meyer and Thomas R. Kiley, Assistant Attorneys General. Brian A. Riley argued the cause for appellant in No. 78-330. With him on the brief was Thomas P. Russell.

Joseph J. Balliro argued the cause for appellees in both cases. With him on the brief was Joan C. Schmidt. John H. Henn also argued the cause for appellees in both cases. With him on the brief were Scott C. Moriearty, Sandra L. Lynch, Loyd M. Starrett, and John Reinstein.Fn

Fn

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Stuart D. Hubbell and Robert A. Destro filed a brief for the Catholic League for Religious and Civil Rights et al. as amici curiae urging reversal in No. 78-329. Eve W. Paul, Harriet F. Pilpel, and Sylvia A. Law filed a brief for the Planned Parenthood Federation of America, Inc., et al. as amici curiae urging affirmance in both cases. Briefs of amici curiae were filed by Victor G. Rosenblum, Dennis J. Horan, and John D. Gorby in both cases for Americans United for Life, Inc., et al.; and by George E. Reed and Patrick F. Geary in No. 78-329 for the United States Catholic Conference.

MR. JUSTICE POWELL announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST joined.

These appeals present a challenge to the constitutionality of a state statute regulating the access of minors to abortions. They require us to continue the inquiry we began in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), and Bellotti v. Baird, 428 U.S. 132 (1976).

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I

A

On August 2, 1974, the Legislature of the Commonwealth of Massachusetts passed, over the Governor's veto, an Act pertaining to abortions performed within the State. 1974 Mass. Acts, ch. 706. According to its title, the statute was intended to regulate abortions "within present constitutional limits." Shortly before the Act was to go into effect, the class action from which these appeals arise was commenced in the District Court[Footnote 1] to enjoin, as unconstitutional, the provision of the Act now codified as Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979).[Footnote 2]

Section 12S provides in part:

"If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents [to an abortion to be performed on the mother] is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If

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one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other

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person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient. The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files."

Physicians performing abortions in the absence of the consent required by 12S are subject to injunctions and criminal penalties. See Mass. Gen. Laws Ann., ch. 112, 12Q, 12T, and 12U (West Supp. 1979).

A three-judge District Court was convened to hear the case pursuant to 28 U.S.C. 2281 (1970 ed.), repealed by Pub. L. 94-381, 1, 90 Stat. 1119.[Footnote 3] Plaintiffs in the suit, appellees in both the cases before us now, were William Baird; Parents Aid Society, Inc. (Parents Aid), of which Baird is founder and director; Gerald Zupnick, M. D., who regularly performs abortions at the Parents Aid clinic; and an unmarried minor, identified by the pseudonym "Mary Moe," who, at the commencement of the suit, was pregnant, residing at home with her parents, and desirous of obtaining an abortion without informing them.[Footnote 4]

Mary Moe was permitted to represent the "class of unmarried minors in Massachusetts who have adequate capacity to give a valid and informed consent [to abortion], and who do not wish to involve their parents." Baird v. Bellotti, 393 F. Supp. 847, 850 (Mass. 1975) (Baird I). Initially there was some confusion whether the rights of minors who wish abortions without parental involvement but who lack "adequate capacity" to give such consent also could be adjudicated in

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the suit. The District Court ultimately determined that Dr. Zupnick was entitled to assert the rights of these minors. See Baird v. Bellotti, 450 F. Supp. 997, 1001, and n. 6 (Mass. 1978).[Footnote 5]

Planned Parenthood League of Massachusetts and Crittenton Hastings House & Clinic, both organizations that provide counselling to pregnant adolescents, and Phillip Stubblefield, M. D. (intervenors),[Footnote 6] appeared as amici curiae on behalf of the plaintiffs. The District Court "accepted [this group] in a status something more than amici because of reservations about the adequacy of plaintiffs' representation [of the plaintiff classes in the suit]." Id., at 999 n. 3.

Defendants in the suit, appellants here in No. 78-329, were the Attorney General of Massachusetts and the District Attorneys of all counties in the State. Jane Hunerwadel was permitted to intervene as a defendant and representative of the class of Massachusetts parents having unmarried minor daughters who then were, or might become, pregnant. She and the class she represents are appellants in No. 78-330.[Footnote 7]

Following three days of testimony, the District Court issued an opinion invalidating 12S. Baird I, supra. The court rejected appellees' argument that all minors capable of becoming pregnant also are capable of giving informed consent

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to an abortion, or that it always is in the best interests of a minor who desires an abortion to have one. See 393 F. Supp., at 854. But the court was convinced that "a substantial number of females under the age of 18 are capable of forming a valid consent," id., at 855, and "that a significant number of [these] are unwilling to tell their parents." Id., at 853.

In its analysis of the relevant constitutional principles, the court stated that "there can be no doubt but that a female's constitutional right to an abortion in the first trimester does not depend upon her calendar age." Id., at 855-856. The court found no justification for the parental consent limitation placed on that right by 12S, since it concluded that the statute was "cast not in terms of protecting the minor, . . . but in recognizing independent rights of parents." Id., at 856. The "independent" parental rights protected by 12S, as the court understood them, were wholly distinct from the best interests of the minor.[Footnote 8]

B

Appellants sought review in this Court, and we noted probable jurisdiction. Bellotti v. Baird, 423 U.S. 982 (1975). After briefing and oral argument, it became apparent that 12S was susceptible of a construction that "would avoid or substantially modify the federal constitutional challenge to the statute." Bellotti v. Baird, 428 U.S. 132, 148 (1976) (Bellotti I). We therefore vacated the judgment of the District Court, concluding that it should have abstained and certified to the Supreme Judicial Court of Massachusetts appropriate questions concerning the meaning of 12S, pursuant to existing

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procedure in that State. See Mass. Sup. Jud. Ct. Rule 3:21.

On remand, the District Court certified nine questions to the Supreme Judicial Court.[Footnote 9] These were answered in an

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opinion styled Baird v. Attorney General, 371 Mass. 741, 360 N. E. 2d 288 (1977) (Attorney General). Among the more important aspects of 12S, as authoritatively construed by the Supreme Judicial Court, are the following:

1. In deciding whether to grant consent to their daughter's abortion, parents are required by 12S to consider exclusively what will serve her best interests. See id., at 746-747, 360 N. E. 2d, at 292-293.

2. The provision in 12S that judicial consent for an abortion shall be granted, parental objections notwithstanding, "for good cause shown" means that such consent shall be granted if found to be in the minor's best interests. The judge "must disregard all parental objections, and other considerations, which are not based exclusively" on that standard. Id., at 748, 360 N. E. 2d, at 293.

3. Even if the judge in a 12S proceeding finds "that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion," he is entitled to withhold consent "in circumstances where he determines that the best interests of the minor will not be served by an abortion." Ibid., 360 N. E. 2d, at 293.

4. As a general rule, a minor who desires an abortion may not obtain judicial consent without first seeking both parents' consent. Exceptions to the rule exist when a parent is not available or when the need for the abortion

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constitutes "`an emergency requiring immediate action.'"[Footnote 10] Id., at 750, 360 N. E. 2d, at 294. Unless a parent is not available, he must be notified of any judicial proceedings brought under 12S. Id., at 755-756, 360 N. E. 2d, at 297.

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5. The resolution of 12S cases and any appeals that follow can be expected to be prompt. The name of the minor and her parents may be held in confidence. If need be, the Supreme Judicial Court and the superior courts can promulgate rules or issue orders to ensure that such proceedings are handled expeditiously. Id., at 756-758, 360 N. E. 2d, at 297-298.

6. Massachusetts Gen. Laws Ann., ch. 112, 12F (west Supp. 1979), which provides, inter alia, that certain classes of minors may consent to most kinds of medical care without parental approval, does not apply to abortions, except as to minors who are married, widowed, or divorced. See 371 Mass., at 758-762, 360 N. E. 2d, at 298-300. Nor does the State's common-law "mature minor rule" create an exception to 12S. Id., at 749-750, 360 N. E. 2d, at 294. See n. 27, infra.

C

Following the judgment of the Supreme Judicial Court, appellees returned to the District Court and obtained a stay of the enforcement of 12S until its constitutionality could be determined. Baird v. Bellotti, 428 F. Supp. 854 (Mass. 1977) (Baird II). After permitting discovery by both sides, holding a pretrial conference, and conducting further hearings, the District Court again declared 12S unconstitutional and enjoined its enforcement. Baird v. Bellotti, 450 F. Supp. 997 (Mass. 1978) (Baird III). The court identified three particular aspects of the statute which, in its view, rendered it unconstitutional.

First, as construed by the Supreme Judicial Court, 12S requires parental notice in virtually every case where the parent is available. The court believed that the evidence warranted a finding "that many, perhaps a large majority of 17-year olds are capable of informed consent, as are a not insubstantial number of 16-year olds, and some even younger." Id., at 1001. In addition, the court concluded that it would not be in

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the best interests of some "immature" minors - those incapable of giving informed consent - even to inform their parents of their intended abortions. Although the court declined to decide whether the burden of requiring a minor to take her parents to court was, per se, an impermissible burden on her right to seek an abortion, it concluded that Massachusetts could not constitutionally insist that parental permission be sought or notice given "in those cases where a court, if given free rein, would find that it was to the minor's best interests that one or both of her parents not be informed . . . ." Id., at 1002.

Second, the District Court held that 12S was defective in permitting a judge to veto the abortion decision of a minor found to be capable of giving informed consent. The court reasoned that upon a finding of maturity and informed consent, the State no longer was entitled to impose legal restrictions upon this decision. Id., at 1003. Given such a finding, the court could see "no reasonable basis" for distinguishing between a minor and an adult, and it therefore concluded that 12S was not only "an undue burden in the due process sense, [but] a discriminatory denial of equal protection [as well]." Id., at 1004.

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Finally, the court decided that 12S suffered from what it termed "formal overbreadth," ibid., because the statute failed explicitly to inform parents that they must consider only the minor's best interests in deciding whether to grant consent. The court believed that, despite the Supreme Judicial Court's construction of 12S, parents naturally would infer from the statute that they were entitled to withhold consent for other, impermissible reasons. This was thought to create a "chilling effect" by enhancing the possibility that parental consent would be denied wrongfully and that the minor would have to proceed in court.

Having identified these flaws in 12S, the District Court considered whether it should engage in "judicial repair." Id., at 1005. It declined either to sever the statute or to give

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it a construction different from that set out by the Supreme Judicial Court, as that tribunal arguably had invited it to do. See Attorney General, 371 Mass., at 745-746, 360 N. E. 2d, at 292. The District Court therefore adhered to its previous position, declaring 12S unconstitutional and permanently enjoining its enforcement.[Footnote 11] Appellants sought review in this Court a second time, and we again noted probable jurisdiction. 439 U.S. 925 (1978).

II

A child, merely on account of his minority, is not beyond the protection of the Constitution. As the Court said in In re Gault, 387 U.S. 1, 13 (1967), "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[Footnote 12] This observation, of course, is but the beginning of the analysis. The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: "Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination

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of a State's duty towards children." May v. Anderson, 345 U.S. 528, 536 (1953) (concurring opinion). The unique role in our society of the family, the institution by which "we inculcate and pass down many of our most cherished values, moral and cultural," Moore v. East Cleveland, 431 U.S. 494, 503-504 (1977) (plurality opinion), requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

A

The Court's concern for the vulnerability of children is demonstrated in its decisions dealing with minors' claims to constitutional protection against deprivations of liberty or property interests by the State. With respect to many of these claims, we have concluded that the child's right is virtually coextensive with that of an adult. For example, the Court has held that the Fourteenth Amendment's guarantee against the deprivation of liberty without due process of law is applicable to children in juvenile delinquency proceedings. In re Gault, supra. In particular, minors involved in such proceedings are entitled to adequate notice, the assistance of counsel, and the opportunity

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to confront their accusers. They can be found guilty only upon proof beyond a reasonable doubt, and they may assert the privilege against compulsory self-incrimination. In re Winship, (1970); In re Gault, supra. See also Ingraham v. Wright, 430 U.S. 651, 674 (1977) (corporal punishment of schoolchildren implicates constitutionally protected liberty interest); cf. Breed v. Jones, (1975) (Double Jeopardy Clause prohibits prosecuting juvenile as an adult after an adjudicatory finding in juvenile court that he had violated a criminal statute).

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Similarly, in Goss v. Lopez, 419 U.S. 565 (1975), the Court held that children may not be deprived of certain property interests without due process.

These rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults. Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults. In order to preserve this separate avenue for dealing with minors, the Court has said that hearings in juvenile delinquency cases need not necessarily "`conform with all of the requirements of a criminal trial or even of the usual administrative hearing.'" In re Gault, supra, at 30, quoting Kent v. United States, 383 U.S. 541, 562 (1966). Thus, juveniles are not constitutionally entitled to trial by jury in delinquency adjudications. McKeiver v. Pennsylvania, (1971). Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, . . . sympathy, and . . . paternal attention." Id., at 550 (plurality opinion).

B

Second, the Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.[Footnote 13]

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Ginsberg v. New York, 390 U.S. 629 (1968), illustrates well the Court's concern over the inability of children to make mature choices, as the First Amendment rights involved are clear examples of constitutionally protected freedoms of choice. At issue was a criminal conviction for selling sexually oriented magazines to a minor under the age of 17 in violation of a New York state law. It was conceded that the conviction could not have stood under the First Amendment if based upon a sale of the same material to an adult. Id., at 634. Notwithstanding the importance the Court always has attached to First Amendment rights, it concluded that "even where there is an invasion of protected freedoms `the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . .,'" id., at 638, quoting Prince v. Massachusetts, 321 U.S. 158, 170 (1944).[Footnote 14] The Court was convinced that the New York Legislature rationally could conclude that the sale to children of the magazines in question presented a danger against which they should be guarded. Ginsberg, supra, at 641. It therefore rejected

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the

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argument that the New York law violated the constitutional rights of minors.[Footnote 15]

C

Third, the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors.[Footnote 16] But an additional and more important justification for state deference to parental control over children is that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). "The duty to prepare the child for `additional obligations' . . .

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must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." Wisconsin v. Yoder, 406 U.S. 205, 233 (1972). This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.

We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is something we expect the State not to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice. Thus, "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, supra, at 166 (emphasis added).

Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." Ginsberg v. New York, supra, at 639.

Properly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual

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participation in a free society meaningful and rewarding.[Footnote 17] Under the Constitution, the State can "properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." Ginsberg v. New York, 390

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U.S., at 639.[Footnote 18]

III

With these principles in mind, we consider the specific constitutional questions presented by these appeals. In 12S, Massachusetts has attempted to reconcile the constitutional right of a woman, in consultation with her physician, to choose to terminate her pregnancy as established by Roe v. Wade, (1973), and Doe v. Bolton, 410 U.S. 179 (1973), with the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child. As noted above, 12S was before us in Bellotti I, 428 U.S. 132 (1976), where we remanded the case for interpretation of its provisions by the Supreme Judicial Court of Massachusetts. We previously had held in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), that a State could not lawfully authorize an absolute parental veto over the decision of a minor to terminate her pregnancy. Id., at 74. In

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Bellotti I, supra, we recognized that 12S could be read as "fundamentally different from a statute that creates a `parental veto,'" 428 U.S., at 145, thus "avoid[ing] or substantially modify[ing] the federal constitutional challenge to the statute." Id., at 148. The question before us - in light of what we have said in the prior cases - is whether 12S, as authoritatively interpreted by the Supreme Judicial Court, provides for parental notice and consent in a manner that does not unduly burden the right to seek an abortion. See id., at 147.

Appellees and intervenors contend that even as interpreted by the Supreme Judicial Court of Massachusetts 12S does unduly burden this right. They suggest, for example, that the mere requirement of parental notice constitutes such a burden. As stated in Part II above, however, parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor.[Footnote 19] It may further determine, as a general proposition, that such consultation is particularly desirable with respect to the abortion decision - one that for some people raises profound moral and religious concerns.[Footnote 20] As MR. JUSTICE STEWART wrote in concurrence in Planned Parenthood of Central Missouri v. Danforth, supra, at 91:

"There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried

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pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." (Footnote omitted.)[Footnote 21]

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But we are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions that may be made during

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minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter.

A

The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman, see Roe v. Wade, 410 U.S., at 153, is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Yet, an abortion may not be the best choice for the minor. The circumstances in which this issue arises will vary widely. In a given case, alternatives to abortion, such as marriage to the father of the child, arranging for its adoption, or assuming the responsibilities of motherhood with the assured support of

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family, may be feasible and relevant to the minor's best interests. Nonetheless, the abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences.

For these reasons, as we held in Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 74, "the State may not impose a blanket provision . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy." Although, as stated in Part II, supra, such deference to parents may be permissible with respect to other choices facing a minor, the unique nature and consequences of the abortion decision make it inappropriate "to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." 428 U.S., at 74. We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure[Footnote 22] whereby authorization for the abortion can be obtained.

A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes;[Footnote 23] or

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(2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding

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in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the "absolute, and possibly arbitrary, veto" that was found impermissible in Danforth. Ibid.

B

It is against these requirements that 12S must be tested. We observe initially that as authoritatively construed by the highest court of the State, the statute satisfies some of the concerns that require special treatment of a minor's abortion decision. It provides that if parental consent is refused, authorization may be "obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary." A superior court judge presiding over a 12S proceeding "must disregard all parental objections, and other considerations, which are not based exclusively on what would serve the minor's best interests."[Footnote 24] Attorney General,

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371 Mass., at 748, 360 N. E. 2d, at 293. The Supreme Judicial Court also stated: "Prompt resolution of a [12S] proceeding may be expected. . . . The proceeding need not be brought in the minor's name and steps may be taken, by impoundment or otherwise, to preserve confidentiality as to the minor and her parents. . . . [W]e believe that an early hearing and decision on appeal from a judgment of a Superior Court judge may also be achieved." Id., at 757-758, 360 N. E. 2d, at 298. The court added that if these expectations were not met, either the superior court, in the exercise of its rulemaking power, or the Supreme Judicial Court would be willing to eliminate any undue burdens by rule or order. Ibid.[Footnote 25]

Despite these safeguards, which avoid much of what was objectionable in the statute successfully challenged in Danforth, 12S falls short of constitutional standards in certain respects. We now consider these.

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(1)

Among the questions certified to the Supreme Judicial Court was whether 12S permits any minors - mature or immature - to obtain judicial consent to an abortion without any parental consultation whatsoever. See n. 9, supra. The state court answered that, in general, it does not. "[T]he consent required by [12S must] be obtained for every nonemergency abortion where the mother is less than eighteen years of age and unmarried." Attorney General, supra, at 750, 360 N. E. 2d, at 294. The text of 12S itself states an exception to this rule, making consent unnecessary from any parent who has "died or has deserted his or her family."[Footnote 26] The Supreme Judicial Court construed the statute as containing an additional exception: Consent need not be obtained "where no parent (or statutory substitute) is available." 371 Mass., at 750, 360 N. E. 2d, at 294. The court also ruled that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion.[Footnote 27] Id., at 755-756, 360 N. E. 2d, at 297.

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We think that, construed in this manner, 12S would impose an undue burden upon the exercise by minors of the right to seek an abortion. As the District Court recognized,

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"there are parents who would obstruct, and perhaps altogether prevent, the minor's right to go to court." Baird III, 450 F. Supp., at 1001. There is no reason to believe that this would be so in the majority of cases where consent is withheld. But many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access to court. It would be unrealistic, therefore, to assume that the mere existence of a legal right to seek relief in superior court provides an effective avenue of relief for some of those who need it the most.

We conclude, therefore, that under state regulation such as that undertaken by Massachusetts, every minor must have the opportunity - if she so desires - to go directly to a court without first consulting or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her

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best interests. If the court is persuaded that it is, the court must authorize the abortion. If, however, the court is not persuaded by the minor that she is mature or that the abortion would be in her best interests, it may decline to sanction the operation.

There is, however, an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision. Also, as we have observed above, parents naturally take an interest in the welfare of their children - an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents. These factors properly may be taken into account by a court called upon to determine whether an abortion in fact is in a minor's best interests. If, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement. On the other hand, the court may deny the abortion request of an immature minor in the absence of parental consultation if it concludes that her best interests would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate. But this is the full extent to which parental involvement may be required.[Footnote 28] For the reasons stated above, the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court.

(2)

Section 12S requires that both parents consent to a minor's abortion. The District Court found it to be "custom" to perform other medical and surgical procedures on minors with the consent of only one parent, and it concluded that "nothing about abortions . . . requires the minor's interest to be treated

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differently." Baird I, 393 F. Supp., at 852. See Baird III, supra, at 1004 n. 9.

We are not persuaded that, as a general rule, the requirement of obtaining both parents' consent unconstitutionally burdens a minor's right to seek an abortion. The abortion decision has implications far broader than those associated with most other kinds of medical

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treatment. At least when the parents are together and the pregnant minor is living at home, both the father and mother have an interest - one normally supportive - in helping to determine the course that is in the best interests of a daughter. Consent and involvement by parents in important decisions by minors long have been recognized as protective of their immaturity. In the case of the abortion decision, for reasons we have stated, the focus of the parents' inquiry should be the best interests of their daughter. As every pregnant minor is entitled in the first instance to go directly to the court for a judicial determination without prior parental notice, consultation, or consent, the general rule with respect to parental consent does not unduly burden the constitutional right. Moreover, where the pregnant minor goes to her parents and consent is denied, she still must have recourse to a prompt judicial determination of her maturity or best interests.[Footnote 29]

(3)

Another of the questions certified by the District Court to the Supreme Judicial Court was the following: "If the superior court finds that the minor is capable [of making], and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision

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is a better one?" Attorney General, 371 Mass., at 747 n. 5, 360 N. E. 2d, at 293 n. 5. To this the state court answered:

"[W]e do not view the judge's role as limited to a determination that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion. Certainly the judge must make a determination of those circumstances, but, if the statutory role of the judge to determine the best interests of the minor is to be carried out, he must make a finding on the basis of all relevant views presented to him. We suspect that the judge will give great weight to the minor's determination, if informed and reasonable, but in circumstances where he determines that the best interests of the minor will not be served by an abortion, the judge's determination should prevail, assuming that his conclusion is supported by the evidence and adequate findings of fact." Id., at 748, 360 N. E. 2d, at 293.

The Supreme Judicial Court's statement reflects the general rule that a State may require a minor to wait until the age of majority before being permitted to exercise legal rights independently. See n. 23, supra. But we are concerned here with the exercise of a constitutional right of unique character. See supra, at 642-643. As stated above, if the minor satisfies a court that she has attained sufficient maturity to make a fully informed decision, she then is entitled to make her abortion decision independently. We therefore agree with the District Court that 12S cannot constitutionally permit judicial disregard of the abortion decision of a minor who has been determined to be mature and fully competent to assess the implications of the choice she has made.[Footnote 30]

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IV

Although it satisfies constitutional standards in large part, 12S falls short of them in two respects: First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental

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consultation or notification in every instance, without affording the pregnant minor an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests.[Footnote 31] Accordingly, we affirm the judgment of the District Court insofar as it invalidates this statute and enjoins its enforcement.[Footnote 32]

Affirmed.

FootnotesFootnote 1 The court promptly issued a restraining order which remained in effect until its decision on the merits. Subsequent stays of enforcement were issued during the complex course of this litigation, with the result that Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979), never has been enforced by Massachusetts.

Footnote 2 As originally enacted, 12S was designated as 12P of chapter 112. In 1977, the provision was renumbered as 12S, and the numbering of subdivisions within the section was eliminated. No changes of substance were made. We shall refer to the section as 12S throughout this opinion.

Footnote 3 The proceedings before the court and the substance of its opinion are described in detail in Bellotti v. Baird, 428 U.S. 132, 136-143 (1976).

Footnote 4 Three other minors in similar circumstances were named in the complaint, but the complaint was dismissed as to them for want of proof of standing. That decision has not been challenged on appeal.

Footnote 5 Appellants argue that these "immature" minors never were before the District Court and that the court's remedy should have been tailored to grant relief only to the class of "mature" minors. It is apparent from the District Court's opinions, however, that it considered the constitutionality of 12S as applied to all pregnant minors who might be affected by it. We accept that the rights of this entire category of minors properly were subject to adjudication.

Footnote 6 In 1978, the District Court permitted postjudgment intervention by these parties, who now appear jointly before this Court as intervenor-appellees.

Footnote 7 As their positions are closely aligned, if not identical, appellants in Nos. 78-329 and 78-330 are hereinafter referred to collectively as appellants.

Footnote 8 One member of the three-judge court dissented, arguing that the decision of the majority to allow Mary Moe to proceed in the case without notice to her parents denied them their parental rights without due process of law, and that 12S was consistent with the decisions of this Court recognizing the propriety of parental control over the conduct of children. See 393 F. Supp., at 857-865.

Footnote 9 The nine questions certified by the District Court, with footnotes omitted, are as follows: "1. What standards, if any, does the statute establish for a parent to apply when considering whether or not to grant consent? "a) Is the parent to consider `exclusively . . . what will serve the child's best interest'? "b) If the parent is not limited to considering exclusively the minor's best interests, can the parent take into consideration the `long-term consequences to the family and her parents' marriage relationship'? "c) Other? "2. What standard or standards is the superior court to apply? "a) Is the superior court to disregard all parental objections that are not based exclusively on what would serve the minor's best interests? "b) If the superior court finds that the minor is capable, and has, in fact,

made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision is a better one? "c) Other? "3. Does the Massachusetts law permit a minor (a) `capable of giving informed consent,' or (b) `incapable of giving informed consent,' `to obtain [a court] order without parental consultation'? "4. If the court answers any of question 3 in the affirmative, may the superior court, for good cause shown, enter an order authorizing an abortion, (a), without prior notification to the parents, and (b), without subsequent notification? "5. Will the Supreme Judicial Court prescribe a set of procedures to implement c. 112, [12S] which will expedite the application, hearing and decision phases of the superior court proceeding provided thereunder? Appeal? "6. To what degree do the standards and procedures set forth in c. 112, 12F (Stat. 1975, c. 564), authorizing minors to give consent to medical and dental care in specified circumstances, parallel the grounds and procedures for showing good cause under c. 112, [12S]? "7. May a minor, upon a showing of indigency, have court-appointed counsel? "8. Is it a defense to his criminal prosecution if a physician performs an abortion solely with the minor's own, valid, consent, that he reasonably,

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and in good faith, though erroneously, believed that she was eighteen or more years old or had been married? "9. Will the Court make any other comments about the statute which, in its opinion, might assist us in determining whether it infringes the United States Constitution?"

Footnote 10 Section 12S itself dispenses with the need for the consent of any parent who "has died or has deserted his or her family."

Footnote 11 The dissenting judge agreed that the State could not permit a judge to override the decision of a minor found to be mature and capable of giving informed consent to an abortion. He disagreed with the remainder of the court's conclusions: the best-interests limitation on the withholding of parental consent in the Supreme Judicial Court's opinion, he argued, must be treated as if part of the statutory language itself; and he read the evidentiary record as proving that only rarely would a pregnant minor's interests be disserved by consulting with her parents about a desired abortion. He also noted the value to a judge in a 12S proceeding of having the parents before him as a source of evidence as to the minor's maturity and what course would serve her best interests. See Baird III, 450 F. Supp., at 1006-1020.

Footnote 12 Similarly, the Court said in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976): "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."

Footnote 13 As MR. JUSTICE STEWART wrote of the exercise by minors of the First Amendment rights that "secur[e] . . . the liberty of each man to

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decide for himself what he will read and to what he will listen," Ginsberg v. New York, 390 U.S. 629, 649 (1968) (concurring in result): "[A]t least in some precisely delineated areas, a child - like someone in a captive audience - is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. It is only upon such a premise, I should suppose, that a State

may deprive children of other rights - the right to marry, for example, or the right to vote - deprivations that would be constitutionally intolerable for adults." Id., at 649-650 (footnotes omitted).

Footnote 14 In Prince an adult had permitted a child in her custody to sell religious literature on a public street in violation of a state child-labor statute. The child had been permitted to engage in this activity upon her own sincere request. 321 U.S., at 162. In upholding the adult's conviction under the statute, we found that "the interests of society to protect the welfare of children" and to give them "opportunities for growth into free and independent well-developed men and citizens," id., at 165, permitted the State to enforce its statute, which "[c]oncededly . . . would be invalid," id., at 167, if made applicable to adults.

Footnote 15 Although the State has considerable latitude in enacting laws affecting minors on the basis of their lesser capacity for mature, affirmative choice, Tinker v. Des Moines School Dist., (1969), illustrates that it may not arbitrarily deprive them of their freedom of action altogether. The Court held in Tinker that a schoolchild's First Amendment freedom of expression entitled him, contrary to school policy, to attend school wearing a black armband as a silent protest against American involvement in the hostilities in Vietnam. The Court acknowledged that the State was permitted to prohibit conduct otherwise shielded by the Constitution that "for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others." Id., at 513. It upheld the First Amendment right of the schoolchildren in that case, however, not only because it found no evidence in the record that their wearing of black armbands threatened any substantial interference with the proper objectives of the school district, but also because it appeared that the challenged policy was intended primarily to stifle any debate whatsoever - even nondisruptive discussions - on important political and moral issues. See id., at 510.

Footnote 16 See, e. g., Mass. Gen. Laws Ann., ch. 207 7, 24, 25, 33, 33A (West 1958 and Supp. 1979) (parental consent required for marriage of person under 18); Mass. Gen. Laws Ann., ch. 119, 55A (West Supp. 1979) (waiver of counsel by minor in juvenile delinquency proceedings must be made through parent or guardian).

Footnote 17 See Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Children to Their "Rights," 1976 B. Y. U. L. Rev. 605.

Footnote 18 The Court's opinions discussed in the text above - Pierce, Yoder, Prince, and Ginsberg - all have contributed to a line of decisions suggesting the existence of a constitutional parental right against undue, adverse interference by the State. See also Smith v. Organization of Foster Families, 431 U.S. 816, 842-844 (1977); Carey v. Population Services International, 431 U.S. 678, 708 (1977) (opinion of POWELL, J.); Moore v. East Cleveland, (1977) (plurality opinion); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Cf. Parham v. J. R., (1979); id., at 621 (STEWART, J., concurring in result).

Footnote 19 In Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 75, "[w]e emphasize[d] that our holding . . . [did] not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."

Footnote 20 The expert testimony at the

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hearings in the District Court uniformly was to the effect that parental involvement in a minor's abortion decision, if compassionate and supportive, was highly desirable. The findings of the court reflect this consensus. See Baird I, 393 F. Supp., at 853.

Footnote 21 MR. JUSTICE STEWART'S concurring opinion in Danforth underscored the need for parental involvement in minors' abortion decisions by describing the procedures followed at the clinic operated by the Parents Aid Society and Dr. Gerald Zupnick: "The counseling . . . occurs entirely on the day the abortion is to be performed . . . . It lasts for two hours and takes place in groups that include both minors and adults who are strangers to one another . . . . The physician takes no part in this counseling process . . . . Counseling is typically limited to a description of abortion procedures, possible complications, and birth control techniques . . . . "The abortion itself takes five to seven minutes . . . . The physician has no prior contact with the minor, and on the days that abortions are being performed at the [clinic], the physician . . . may be performing abortions on many other adults and minors . . . . On busy days patients are scheduled in separate groups, consisting usually of five patients . . . . After the abortion [the physician] spends a brief period with the minor and others in the group in the recovery room . . . ." 428 U.S., at 91-92, n. 2, quoting Brief for Appellants in Bellotti I, O. T. 1975, No. 75-73, pp. 43-44. In Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973), we emphasized the importance of the role of the attending physician. Those cases involved adult women presumably capable of selecting and obtaining a competent physician. In this case, however, we are concerned only with minors who, according to the record, may range in age from children of 12 years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.

Footnote 22 As 12S provides for involvement of the state superior court in minors' abortion decisions, we discuss the alternative procedure described in the text in terms of judicial proceedings. We do not suggest, however, that a State choosing to require parental consent could not delegate the alternative procedure to a juvenile court or an administrative agency or officer. Indeed, much can be said for employing procedures and a forum less formal than those associated with a court of general jurisdiction.

Footnote 23 The nature of both the State's interest in fostering parental authority and the problem of determining "maturity" makes clear why the State generally may resort to objective, though inevitably arbitrary, criteria such as age limits, marital status, or membership in the Armed Forces for lifting some or all of the legal disabilities of minority. Not only is it difficult to

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define, let alone determine, maturity, but also the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended. As discussed in the text, however, the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors.

Footnote 24 The Supreme Judicial Court held that 12S imposed this standard on the superior

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court in large part because it construed the statute as containing the same restriction on parents. See supra, at 630. The court concluded that the judge should not be entitled "to exercise his authority on a standard broader than that to which a parent must adhere." Attorney General, 371 Mass., at 748, 360 N. E. 2d, at 293. Intervenors argue that, assuming state-supported parental involvement in the minor's abortion decision is permissible, the State may not endorse

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the withholding of parental consent for any reason not believed to be in the minor's best interests. They agree with the District Court that, even though 12S was construed by the highest state court to impose this restriction, the statute is flawed because the restriction is not apparent on its face. Intervenors thus concur in the District Court's assumption that the statute will encourage parents to withhold consent for impermissible reasons. See Baird III, 450 F. Supp., at 1004-1005; Baird II, 428 F. Supp. 854, 855-856 (Mass. 1977). There is no basis for this assertion. As a general rule, the interpretation of a state statute by the State's highest court "is as though written into the ordinance itself," Poulos v. New Hampshire, 345 U.S. 395, 402 (1953), and we are obliged to view the restriction on the parental-consent requirement "as if [12S] had been so amended by the [Massachusetts] legislature." Winters v. New York, 333 U.S. 507, 514 (1948).

Footnote 25 Intervenors take issue with the Supreme Judicial Court's assurances that judicial proceedings will provide the necessary confidentiality, lack of procedural burden, and speed of resolution. In the absence of any evidence as to the operation of judicial proceedings under 12S - and there is none, since appellees successfully sought to enjoin Massachusetts from putting it into effect - we must assume that the Supreme Judicial Court's judgment is correct.

Footnote 26 The statute also provides that "[i]f both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient."

Footnote 27 This reading of the statute requires parental consultation and consent more strictly than appellants themselves previously believed was necessary. In their first argument before this Court, and again before the Supreme Judicial Court, appellants argued that 12S was not intended to abrogate Massachusetts' common-law "mature minor" rule as it applies to abortions. See 428 U.S., at 144. They also suggested that, under some circumstances, 12S might permit even immature minors to obtain judicial approval for an abortion without any parental consultation. See 428 U.S., at 145; Attorney General, supra, at 751, 360 N. E. 2d, at 294. The Supreme Judicial Court sketched the outlines of the mature minor rule that would apply in the absence of 12S: "The mature minor rule calls for an analysis of the nature of the operation, its likely benefit, and the capacity of the particular minor to understand fully what the medical procedure involves. . . . Judicial intervention is not required. If

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judicial approval is obtained, however, the doctor is protected from a subsequent claim that the circumstances did not warrant his reliance on the mature minor rule, and, of course, the minor patient is afforded advance protection against a misapplication of the rule." Id., at 752, 360 N. E. 2d, at 295. "We conclude that, apart from statutory limitations which are

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constitutional, where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth." Id., at 754, 360 N. E. 2d, at 296. The Supreme Judicial Court held that the common-law mature minor rule was inapplicable to abortions because it had been legislatively superseded by 12S.

Footnote 28 Of course, if the minor consults with her parents voluntarily and they withhold consent, she is free to seek judicial authorization for the abortion immediately.

Footnote 29 There will be cases where the pregnant minor has received approval of the abortion decision by one parent. In that event, the parent can support the daughter's request for a prompt judicial determination, and the parent's support should be given great, if not dispositive, weight.

Footnote 30 Appellees and intervenors have argued that 12S violates the Equal Protection Clause of the Fourteenth Amendment. As we have concluded that the statute is constitutionally infirm for other reasons, there is no need to consider this question.

Footnote 31 Section 12S evidently applies to all nonemergency abortions performed on minors, without regard to the period in pregnancy during which the procedure occurs. As the court below recognized, most abortions are performed during the early stages of pregnancy, before the end of the first trimester. See Baird III, 450 F. Supp., at 1001; Baird I, 393 F. Supp., at 853. This coincides approximately with the pre-viability period during which a pregnant woman's right to decide, in consultation with her physician, to have an abortion is most immune to state intervention. See Roe v. Wade, 410 U.S., at 164-165. The propriety of parental involvement in a minor's abortion decision does not diminish as the pregnancy progresses and legitimate concerns for the pregnant minor's health increase. Furthermore, the opportunity for direct access to court which we have described is adequate to safeguard throughout pregnancy the constitutionally protected interests of a minor in the abortion decision. Thus, although a significant number of abortions within the scope of 12S might be performed during the later stages of pregnancy, we do not believe a different analysis of the statute is required for them.

Footnote 32 The opinion of MR. JUSTICE STEVENS, concurring in the judgment, joined by three Members of the Court, characterizes this opinion as "advisory"

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and the questions it addresses as "hypothetical." Apparently, this is criticism of our attempt to provide some guidance as to how a State constitutionally may provide for adult involvement - either by parents or a state official such as a judge - in the abortion decisions of minors. In view of the importance of the issue raised, and the protracted litigation to which these parties already have been subjected, we think it would be irresponsible simply to invalidate 12S without stating our views as to the controlling principles. The statute before us today is the same one that was here in Bellotti I. The issues it presents were not then deemed "hypothetical." In a unanimous opinion, we remanded the case with directions that appropriate questions be certified to the Supreme Judicial Court of Massachusetts "concerning the meaning of [12S] and the procedure it imposes." 428 U.S., at 151. We directed that this be done because, as stated in the opinion, we thought the construction of 12S urged by appellants would

"avoid or substantially modify the federal constitutional challenge to the statute." Id., at 148. The central feature of 12S was its provision that a state-court judge could make the ultimate decision, when necessary, as to the exercise by a minor of the right to an abortion. See id., at 145. We held that this "would be fundamentally different from a statute that creates a `parental veto' [of the kind rejected in Danforth.]" Ibid. (footnote omitted). Thus, all Members of the Court agreed that providing for decisionmaking authority in a judge was not the kind of veto power held invalid in Danforth. The basic issues that were before us in Bellotti I remain in the case, sharpened by the construction of 12S by the Supreme Judicial Court.

MR. JUSTICE REHNQUIST, concurring.

I join the opinion of MR. JUSTICE POWELL and the judgment of the Court. At such time as this Court is willing to

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reconsider its earlier decision in Planned Parenthood of Central Missouri v. Danforth, (1976), in which I joined the opinion of MR. JUSTICE WHITE, dissenting in part, I shall be more than willing to participate in that task. But unless and until that time comes, literally thousands of judges cannot be left with nothing more than the guidance offered by a truly fragmented holding of this Court.

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join, concurring in the judgment.

In Roe v. Wade, 410 U.S. 113, the Court held that a woman's right to decide whether to terminate a pregnancy is

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entitled to constitutional protection. In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 72-75, the Court held that a pregnant minor's right to make the abortion decision may not be conditioned on the consent of one parent. I am persuaded that these decisions require affirmance of the District Court's holding that the Massachusetts statute is unconstitutional.

The Massachusetts statute is, on its face, simple and straightforward. It provides that every woman under 18 who has not married must secure the consent of both her parents before receiving an abortion. "If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown." Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979).

Whatever confusion or uncertainty might have existed as to how this statute was to operate, see Bellotti v. Baird, , has been eliminated by the authoritative construction of its provisions by the Massachusetts Supreme Judicial Court. See Baird v. Attorney General, 371 Mass. 741, 360 N. E. 2d 288 (1977). The statute was construed to require that every minor who wishes an abortion must first seek the consent of both parents, unless a parent is not available or unless the need for the abortion constitutes "`an emergency requiring immediate action.'" Id., at 750, 360 N. E. 2d, at 294. Both parents, so long as they are available, must also receive notice of judicial proceedings brought under the statute by the minor. In those proceedings, the task of the judge is to determine whether the best interests of the minor will be served by an abortion. The decision is his to make, even if he finds "that the minor is capable of making, and has made, an informed and reasonable

decision to have an abortion." Id., at 748, 360 N. E. 2d, at 293. Thus, no minor in Massachusetts, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent

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of either both her parents or a superior court judge. In every instance, the minor's decision to secure an abortion is subject to an absolute third-party veto.1

In Planned Parenthood of Central Missouri v. Danforth, supra, this Court invalidated statutory provisions requiring the consent of the husband of a married woman and of one parent of a pregnant minor to an abortion. As to the spousal consent, the Court concluded that "we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy, when the State itself lacks that right." 428 U.S., at 70. And as to the parental consent, the Court held that "[j]ust as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Id., at 74. These holdings, I think, equally apply to the Massachusetts statute. The differences between the two statutes are few. Unlike the Missouri statute, Massachusetts requires the consent of both of the woman's parents. It does, of course, provide an alternative in the form of a suit initiated by the woman in superior court. But in that proceeding, the judge is afforded an absolute veto over the minor's decisions, based on his judgment of her best interests. In Massachusetts, then, as in Missouri, the State has imposed an "absolute limitation on the minor's right to obtain an abortion." id., at 90 (STEWART, J., concurring), applicable to every pregnant minor in the State who has not married.

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The provision of an absolute veto to a judge - or, potentially, to an appointed administrator2 - is to me particularly troubling. The constitutional right to make the abortion decision affords protection to both of the privacy interests recognized in this Court's cases: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." Whalen v. Roe, 429 U.S. 589, 599-600 (footnotes omitted). It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties. In Massachusetts, however, every minor who cannot secure the consent of both her parents - which under Danforth cannot be an absolute prerequisite to an abortion - is required to secure the consent of the sovereign. As a practical matter, I would suppose that the need to commence judicial proceedings in order to obtain a legal abortion would impose a burden at least as great as, and probably greater than, that imposed on the minor child by the need to obtain the consent of a parent.3 Moreover, once this burden is met, the only standard provided for the judge's decision is the best interest of the minor. That standard provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor - particularly when contrary to her own informed and reasonable decision - is fundamentally at odds

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with privacy interests underlying the constitutional protection afforded to her decision.

In short, it seems to me that this litigation is governed by Danforth; to the extent this statute differs from that in Danforth, it is potentially even more restrictive of the constitutional right to decide whether or not to terminate a pregnancy. Because the statute has been once authoritatively construed by the Massachusetts Supreme Judicial Court, and because it is clear that the statute as written and construed is not constitutional, I agree with MR. JUSTICE POWELL that the District Court's judgment should be affirmed. Because his opinion goes further, however, and addresses the constitutionality of an abortion statute that Massachusetts has not enacted, I decline to join his opinion.4

[Footnote 1] By affording such a veto, the Massachusetts statute does far more than simply provide for notice to the parents. See post, at 657 (WHITE, J., dissenting). Neither Danforth nor this case determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto.

[Footnote 2] See ante, at 643 n. 22.

[Footnote 3] A minor may secure the assistance of counsel in filing and prosecuting her suit, but that is not guaranteed. The Massachusetts Supreme Judicial Court in response to the question whether a minor, upon a showing of indigency, may have court-appointed counsel, "construe[d] the statutes of the Commonwealth to authorize the appointment of counsel or a guardian ad litem for an indigent minor at public expense, if necessary, if the judge, in his discretion, concludes that the best interests of the minor would be served by such an appointment." Baird v. Attorney General, 371 Mass. 741, 764, 360 N. E. 2d 288, 301 (1977) (emphasis added).

[Footnote 4] Until and unless Massachusetts or another State enacts a less restrictive statutory scheme, this Court has no occasion to render an advisory opinion on the constitutionality of such a scheme. A real statute - rather than a mere outline of a possible statute - and a real case or controversy may well present questions that appear quite different from the hypothetical questions MR. JUSTICE POWELL has elected to address. Indeed, there is a certain irony in his suggestion that a statute that is intended to vindicate "the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child," see ante, at 639, need not require notice to the parents of the minor's intended decision. That irony makes me wonder whether any legislature concerned with parental consultation would, in the absence of today's advisory opinion, have enacted a statute comparable to the one my Brethren have discussed.

MR. JUSTICE WHITE, dissenting.

I was in dissent in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 94-95 (1976), on the issue of the validity of requiring the consent of a parent when an unmarried woman under 18 years of age seeks an abortion. I continue to have the views I expressed there and also agree with much of what MR. JUSTICE STEVENS said in dissent in that

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case. Id., at 101-105. I would not, therefore, strike down this Massachusetts law.

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But even if a parental consent requirement of the kind involved in Danforth must be deemed invalid, that does not condemn the Massachusetts law, which, when the parents object, authorizes a judge to permit an abortion if he concludes that an abortion is in the best interests of the child. Going beyond Danforth, the Court now holds it unconstitutional for a State to require that in all cases parents receive notice that their daughter seeks an abortion and, if they object to the abortion, an opportunity to participate in a hearing that will determine whether it is in the "best interests" of the child to undergo the surgery. Until now, I would have thought inconceivable a holding that the United States Constitution forbids even notice to parents when their minor child who seeks surgery objects to such notice and is able to convince a judge that the parents should be denied participation in the decision.

With all due respect, I dissent.

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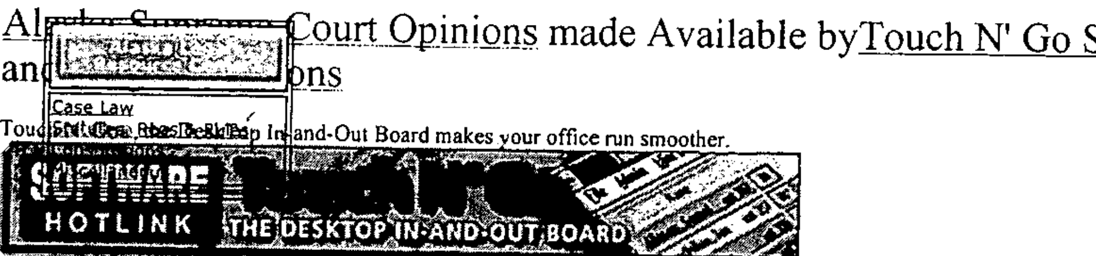

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State v. Planned Parenthood of Alaska (11/02/2007) sp-6184, 171 P3d 577

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THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,	)
	) Supreme Court Nos. S- 11365/11386
Appellant/	)
Cross-Appellee,	) Superior Court No.
	) 3AN-97-06014 CI
v.	)
	) O P I N I O N
PLANNED PARENTHOOD OF	)
ALASKA and JAN WHITEFIELD,	) No. 6184 November 2, 2007
M.D.,	)
	)
Appellees/	)
Cross-Appellants.	)
	)

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan, Judge.

Appearances: Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Appellant and Cross-Appellee. Janet Crepps, Center for

Reproductive Rights, Simpsonville, South Carolina, and Suzanne Novak, Center for Reproductive Rights, New York, New York, for Appellees and Cross-Appellants, and Jeffrey M. Feldman, Feldman & Orlansky, Anchorage, for Appellees and Cross-Appellants, and Cooperating Attorney for the Alaska Civil Liberties Union. Paul Benjamin Linton, Northbrook, Illinois, and Robert Flint, Hartig, Rhodes, Hoge & Lekisch, Anchorage, for Amicus Curiae Alaska State Legislature. Kenneth C. Kirk, Kenneth Kirk & Associates, Anchorage, for Amicus Curiae Family Research Council. Wayne Anthony Ross, Ross & Miner, Anchorage, for Amicus Curiae Americans United for Life. Geoffrey G. Currall, Keene & Currall, Ketchikan, for Amicus Curiae Liberty Legal Institute. Sara Trent, Anchorage, Cooperating Attorney for the Alaska Civil Liberties Union, and Kent A. Yalowitz, Arnold & Porter LLP, New York, New York, for Amicus Curiae Alaska Chapter of the American Academy of Pediatrics. Erica A. Green and Deborah Kovsky-Apap, Wilmer Cutler Pickering Hale & Dorr LLP, Washington, D.C., and Christine Schleuss, Friedman Rubin & White, Anchorage, for Amici Curiae American College of Obstetricians and Gynecologists, Society of Adolescent Medicine, and Physicians for Reproductive Choice and Health. Janell Hafner, Reges & Boone, LLC, Juneau, and Stacey I. Young, Womens Law Project, Pittsburgh, Pennsylvania, for Amici Curiae National Association of Social Workers Alaska Chapter, Alaska Womens Lobby, Alaska Pro-Choice Coalition, National Center for Youth Law, Juvenile Law Center, and Janes Due Process. Debra J. Brandwein, Foster Pepper Rubini & Reeves LLC, Anchorage, for Amicus Curiae Northwest Womens Law Center.

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

FABE, Justice.
CARPENETI, Justice, with whom Matthews, Justice, joins, dissenting.

I. INTRODUCTION

From time to time, we are called upon to decide constitutional cases that touch upon the most contentious moral, ethical, and political issues of our day. In deciding such cases, we are ever mindful of the unique role we play in our democratic system of government. We are not legislators, policy makers, or pundits charged with making law or assessing the wisdom of legislative enactments. We are not philosophers, ethicists, or theologians, and cannot aspire to answer fundamental moral questions or resolve societal debates.1 We are focused only on upholding the constitution and laws of the State of Alaska.

Today, we are once again called upon to decide a case that implicates the controversial issue of abortion; more specifically, we are called upon to decide whether the Parental Consent Act impermissibly infringes upon a minors fundamental right to privacy when deciding whether to terminate a pregnancy.

We decide today that the State has an undeniably compelling interest in protecting the health of minors and in fostering family involvement in a minors decisions regarding her pregnancy.

And contrary to the arguments of Planned Parenthood, we determine that the constitution permits a statutory scheme which ensures that parents are notified so that they can be engaged in their daughters important decisions in these matters. But we ultimately conclude that the Act does not strike the proper constitutional balance between the States compelling interests and a minors fundamental right to privacy.

This is the second time that this case has been before us, and we earlier held that the privacy clause of the Alaska Constitution extends to minors as well as adults and that the State may restrict a minors privacy right only when necessary to further a compelling state interest and only if no less restrictive means exist to advance that interest.2 The States asserted interest in protecting a minor from her own immaturity by encouraging parental involvement in her decision-making process is undoubtedly compelling. But by prohibiting a minor from obtaining an abortion without parental consent, the Act effectively shifts that minors fundamental right to choose if and when to have a child from the minor to her parents. There exists a less burdensome and widely used means of actively involving parents in their minor childrens abortion decisions: parental notification.3 The United States Supreme Court has recognized, in a different context, that notice statutes are not equivalent to consent statutes because they do not give anyone a veto power over a minors abortion decision.4 And many states currently employ this less restrictive approach. Because the State has failed to establish that the greater intrusiveness of a statutory scheme that requires parental consent, rather than parental notification, is necessary to achieve its compelling interests, the Parental Consent Act does not represent the least restrictive means of achieving the States interests and therefore cannot be sustained.

II. FACTS AND PROCEEDINGS

In 1997 the Alaska Legislature passed the Alaska Parental Consent Act (PCA).5 The PCA prohibits doctors from performing an abortion on an unmarried, unemancipated woman under 17 years of age without parental consent or judicial authorization.6 The Act subjects doctors who knowingly perform abortions on minors without the required consent or judicial authorization to criminal prosecution.7 The parental consent requirement can be met through written consent from a parent, guardian, or custodian of the minor.8 The Act also includes a judicial bypass procedure whereby a minor may file a complaint in superior court and obtain judicial authorization to terminate a pregnancy if she can establish by clear and convincing evidence either that she is sufficiently mature and well enough informed to decide intelligently whether to have an abortion or that being required to obtain parental consent would not be in her best interests.9 If the court fails to hold a hearing within five business days after the complaint is filed, the courts inaction is considered a constructive order authorizing the minor to consent to terminate the pregnancy.10

On July 25, 1997, Planned Parenthood, Drs. Jan Whitefield and Robert Klem, and ten unidentified Jane Does filed a complaint in superior court seeking declaratory and injunctive relief. The complaint alleged that the PCA violates state constitutional rights to privacy, equal protection, and due process. On January 7, 1998, the plaintiffs filed a motion for summary judgment. The superior court granted that motion, concluding that the PCA violates the equal protection clause of the Alaska Constitution. The superior court also concluded that the privacy clause of the Alaska Constitution protects minors as

well as adults. However, in light of its equal protection ruling, the superior court did not decide whether the PCA violates the Alaska Constitutions privacy clause.

The State appealed, and on November 16, 2001, we issued our decision in Planned Parenthood I.11 In that case, we concluded that the privacy clause of the Alaska Constitution extends to minors as well as adults and that the State may constrain a pregnant minors privacy right only when necessary to further a compelling state interest and only if no less restrictive means exist to advance that interest.12 We also reversed the grant of summary judgment and remanded the case for an evidentiary hearing to determine whether the PCA actually furthers compelling state interests using the least restrictive means available.13

On October 4, 2002, prior to the evidentiary hearing on remand, the plaintiffs again moved for summary judgment, this time arguing that the PCA violates the constitution by failing to exclude abortions performed in medical emergencies. On January 2, 2003, the superior court denied the motion for summary judgment.

From January 6 to January 24, 2003, the superior court held a bench trial to hear evidence regarding the constitutionality of the PCA. On October 13, 2003, the superior court issued a decision on remand holding that the PCA is unconstitutional because it fails to further compelling state interests using the least restrictive means available. On January 7, 2004, the superior court entered judgment declaring that the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution and enjoining the State from enforcing the Act.

The State now appeals the superior courts judgment. The plaintiffs cross-appeal the superior courts denial of their motion seeking summary judgment based on the absence of a medical emergency exception.

III. STANDARD OF REVIEW

We review the superior courts factual determinations for clear error.14 We review constitutional questions de novo, adopting the most persuasive rule of law in light of precedent, reason, and policy.15 We uphold a statute against a facial constitutional challenge if despite any occasional problems it might create in its application to specific cases, [the statute] has a plainly legitimate sweep.16

IV. DISCUSSION

Under our case law, we begin our analysis in cases such as the one at hand by measuring the weight and depth of the individual right at stake so as to determine the proper level of scrutiny with which to review the challenged legislation.17 If this individual right proves to be fundamental, we must then review the challenged legislation strictly, allowing the law to survive only if the State can establish that it advances a compelling state interest using the least restrictive means available.18 In cases involving the right to privacy, the precise degree to which the challenged legislation must actually further a compelling state interest and represent the least restrictive alternative is determined, at least in part, by the relative weight of the competing rights and interests.19 As we have previously explained, the rights to privacy and liberty are neither absolute nor comprehensive . . . [and] their limits depend on a balance of interests.20

A. The Individual Right at Stake Is Fundamental.

The plaintiffs assert that the PCA burdens minors fundamental right to privacy under article I, section 22 of the Alaska Constitution.21 This section of the constitution maintains that [t]he right of the people to privacy is recognized and shall not be infringed. As we have previously explained, the primary

purpose of this section is to protect Alaskans personal privacy and dignity against unwarranted intrusions by the State.22 Because this right to privacy is explicit, its protections are necessarily more robust and broader in scope than those of the implied federal right to privacy.23

Included within the broad scope of the Alaska Constitutions privacy clause is the fundamental right to reproductive choice. As we have stated in the past, few things are more personal than a womans control of her body, including the choice of whether and when to have children, and that choice is therefore necessarily protected by the right to privacy.24 Of course, our original decision concerning the fundamental right to reproductive choice specifically addressed only the privacy interests of adult women, but because the uniquely personal physical, psychological, and economic implications of the abortion decision . . . are in no way peculiar to adult women,25 its reasoning was and continues to be as applicable to minors as it is to adults.26 Thus, in Planned Parenthood I, we explicitly extended the fundamental reproductive rights guaranteed by the privacy clause to minors.27

In the case at hand, the PCA requires minors to secure either the consent of their parent or judicial authorization before they may exercise their uniquely personal reproductive freedoms. This requirement no doubt places a burden on minors fundamental right to privacy. As such, the PCA must be subjected to strict scrutiny and can only survive review if it advances a compelling state interest using the least restrictive means of achieving that interest.28

B. The States Asserted Interests Are Compelling.

The State asserts that the PCA works, on the most generalized level, to advance two interrelated interests: protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities.29 We agree with the State that these are compelling interests.

Although the Alaska Constitution extends the right to privacy in equal measure to both minors and adults, it is not blind to the unique vulnerabilities and needs that accompany minority. As we noted in Planned Parenthood I, state interests that are inapplicable to adults may sometimes be compelling with regard to minors.30 And this is certainly the case with regard to the States asserted interest in protecting minors from their own immaturity. Lacking in experience, perspective, and judgment, minors often do not possess the capacity to make informed, mature decisions, and are therefore susceptible to a host of pitfalls and dangers unknown in adult life.31 As we have recognized in the past, the State has a special, indeed compelling, interest in the health, safety, and welfare of its minor citizens and may properly take affirmative steps to safeguard minors from their own immaturity.32

Insofar as and to the same extent that the State has an interest in protecting minors, so too does it have an interest in aiding parents to fulfill their parental responsibilities. A minor child is not [a] mere creature of the state,33 and the affirmative process of teaching, guiding, and inspiring34 a minor child is, in large part, beyond the competence of impersonal political institutions.35 Parents, therefore, have an important guiding role to play in the upbringing of their children.36 Indeed, it is the right and duty, privilege and burden, of all parents to involve themselves in their childrens lives; to provide their children with emotional, physical, and material support; and to instill in their children moral standards, religious beliefs, and elements of good citizenship.37 We thus echo the United States Supreme Courts statement that, [u]nder the Constitution, the State can properly conclude that parents . . . who have [the] primary responsibility for childrens well-being

are entitled to the support of laws designed to aid [in the] discharge of that responsibility. 38

C. The PCA Is Not the Least Restrictive Means of Achieving the States Compelling Interests.

Having identified and weighed the rights and interests at stake, we now turn to the task of assessing whether the PCA advances the States compelling interests using the least restrictive means available.

We recognize that the legislature has made a serious effort to narrowly tailor the scope of the PCA by exempting seventeen-year-olds and other categories of pregnant minors from the Acts ban. It is true that the PCA is less restrictive than many other state statutes in terms of the scope of its coverage. But scope is only one of the important criteria that determine the extent to which a parental involvement law restricts minors privacy rights. The method by which the statute involves parents is also central to determining whether the Acts provisions constitute the least restrictive means of pursuing the States ends.

By prohibiting minors from terminating a pregnancy without the consent of their parents, the PCA bestows upon parents what has been described as a veto power over their minor childrens abortion decisions.39 This veto power does not merely restrict minors right to choose whether and when to have children, but effectively shifts a portion of that right from minors to parents. In practice, under the PCA, it is no longer the pregnant minor who ultimately chooses to exercise her right to terminate her pregnancy, but that minors parents. And it is this shifting of the locus of choice this relocation of a fundamental right from minors to parents that is constitutionally suspect. For a review of statutory schemes enacted around the nation reveals a widely used legislative alternative that does not shift a minors right to choose: parental notification.

Currently, fifteen states have parental notification statutes in place.40 Although the precise details of these statutes vary, they all prohibit minors from terminating a pregnancy until their parents have been notified and afforded an appropriate period of time to actively involve themselves in their minor childrens decision-making processes.41 Stated another way, these statutes seek to involve parents, not by giving them veto power, but by giving them notice and time to consult with and guide their daughters through this important decision. As such, although parental notification statutes undoubtedly burden the privacy rights of minors, they do not go so far as to shift a portion of those rights to parents.

Of course, as the dissent emphasizes, the PCA does include a judicial bypass procedure through which some minors may effectively regain the right to reproductive choice by obtaining judicial authorization to forgo parental consent.42 The State argues that judicial bypass is the means by which a girl can relieve herself of the burden of parental consent. (Emphasis in original.) But the State and its supporting amici fail to effectively rebut the trial courts express findings to the contrary. According to the superior courts findings, the PCAs bypass procedures build in delay that may prove detrimental to the physical health of the minor, particularly for minors in rural Alaska who already face logistical obstacles to obtaining an abortion. The trial court found that judicial bypass procedures will increase these problems, delay the abortion, and increase the probability that the minor may not be able to receive a safe and legal abortion. The State has not expressly challenged as clearly erroneous the superior courts findings on this point but dismisses these concerns, arguing that [r]ural

Alaskan girls will pursue bypass on the same trip to the same urban location where they must go to obtain their procedures. But not all minors possess the wherewithal to embark upon a formal legal adjudication during a time of crisis.

Moreover, the inclusion of this judicial bypass procedure does not reduce the restrictiveness of the PCA relative to a parental notification statute. Every state to enact a parental notification regime has opted to include either a judicial bypass procedure similar to the PCAs procedure or an even more permissive bypass procedure.43 As such, the PCAs inclusion of a judicial bypass procedure does not set the PCA apart from or reduce its intrusiveness relative to parental notification statutes.

Ultimately, because the PCA shifts the right to reproductive choice to minors parents, we must conclude that the PCA is, all else being held equal, more restrictive than a parental notification statute. The State has failed to establish that the greater intrusiveness of consent statutes is in any way necessary to advance its compelling interests. In fact, in its briefing before us, the State has not focused on the PCAs benefits as flowing directly from the parental veto power; instead, it has consistently suggested that the PCAs benefits flow from increased parental communication and involvement in the decision-making process. According to the State, the PCA protects minors from their own immaturity by increasing adult supervision; it protects the physical, emotional, and psychological health of minors, [p]articularly in the post-abortion context, [by increasing] parental participation . . . for the purposes of monitoring . . . risks; it ensures that minors give informed consent to the abortion procedure by making it more likely that they will receive counsel that a doctor cannot give, advice, adapted to her unique family situation, that covers the moral, social and religious aspects of the abortion decision; it protects minors from sexual abuse since once appr[]ised of a young girls pregnancy, parents . . . will ask who impregnated her and will report any sexual abuse; and it strengthens the parent-child relationship by increas[ing] parental involvement, parental consultation, and open and honest communication.

These expressed legislative goals increased parental communication, involvement, and protection are no less likely to accompany parental notification than the parental veto power. The dissent suggests that where a minor forgoes judicial bypass, parental consent guarantees a conversation. But it guarantees no more than a one-way conversation and allows parents to refuse to consent not only where their judgment is better informed and considered than that of their daughter, but also where it is colored by personal religious belief, whim, or even hostility to her best interests.44

Notification statutes protect minors by enhancing the potential for parental consultation concerning a [minors] decision.45 In fact, to the extent that parents who do not possess a veto power over their minor childrens abortion decision have a greater incentive to engage in a constructive and ongoing conversation with their minor children about the important medical, philosophical, and moral issues surrounding abortion, a notification requirement may actually better serve the States compelling interests.

In sum then, the PCA does not represent the least restrictive means of achieving the States asserted interests and therefore cannot be sustained. In reaching this decision, we go no further than the Alaska Constitution demands, and merely reaffirm that the State does not strike the proper constitutional balance between its own compelling interests and the fundamental rights of its citizens by adopting an unnecessarily restrictive

statute.

V. CONCLUSION

For the reasons detailed above, we AFFIRM the superior courts decision striking down the Parental Consent Act as a violation of the Alaska Constitutions right to privacy.

CARPENETI, Justice, with whom MATTHEWS, Justice, joins, dissenting.

In 1997, faced with competing interests of the highest constitutional level an underage pregnant girls constitutional right to privacy in deciding whether to terminate her pregnancy, her parents constitutional right (and duty) to protect her best interests, and the states compelling interests in protecting children against their own immaturity the Alaska Legislature carefully crafted the Alaska Parental Consent Act in an effort to recognize and protect all of these interests. That law is fully consistent with United States Supreme Court precedent, yet todays opinion strikes it down. Because this courts rejection of the legislatures thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislatures role in expressing the will of the people, I respectfully dissent.

I. The Constitutional Framework

Before looking at the Parental Consent Act in detail to determine how it balances the strong competing interests involved, it is helpful to consider the analytical framework used by courts in deciding constitutional challenges of the kind involved in this case. In a series of cases, we have established a three-step process. We have first looked to the nature and extent of the individual right that is claimed. If we determine that the right is fundamental, we then examine whether the states interest in burdening the individual right is compelling. If the states interest is compelling, we look to make certain that there is a sufficiently close fit between the goals of the legislation and the means adopted by the state to reach those goals.

The individual right claimed in this case is the fundamental right of an unmarried pregnant minor to privacy in her decision whether to terminate her pregnancy. The compelling interest claimed by the state is multi-faceted, including protecting minors from their own immaturity (by recognizing the parents right (and duty) to guide their childrens upbringing) and protecting the health of minors. If both the individual right is fundamental and the states interest is compelling, the court must decide whether the law is tailored closely enough to achieve its intended purpose.

II. The Alaska Parental Consent Act

The hallmark of the Alaska Parental Consent Act (PCA or the Act) is the remarkable length to which the legislature went in order to accommodate all of the various, and at times competing, interests that are involved when an unmarried teenage (or pre-teen) girl is faced with pregnancy.1 In recognition of the primary role that parents are normally expected to play in the upbringing of their children, and in recognition of the fact that children are generally not considered competent to consent to medical procedures, the Act requires the consent of a parent in order for the child to undergo an abortion.2 In recognition of the fact that divulging her pregnancy to her parents may in some instances be unnecessary or inappropriate because the minor is sufficiently mature and intelligent to decide the question on her own or because her parent or parents have engaged in physical, sexual, or emotional abuse against her (or because obtaining their consent is otherwise not in the childs best interests) the Act provides for a confidential and speedy judicial bypass procedure in which a judge decides whether the minor is competent to decide for herself.3

The legislature engrafted multiple exceptions to the scope of the Act in an effort to create a law that was

specifically targeted, to the greatest extent possible, at the population of underage pregnant girls who would be in greatest need of adult guidance in reaching the decision whether to terminate pregnancy. First, the legislature exempted from the scope of the Act all seventeen-year-old girls.4 The importance of this exemption can hardly be overstated. Studies consistently show that nearly half of all underage abortions are obtained by girls who have reached the age of seventeen.5 Moreover, only one state consent law exempts seventeen-year-olds from its scope,6 and only one state notification law does so.7 This exception also identifies the population of teenage girls most likely competent, by virtue of maturity and experience, to make the decision regarding abortion without adult assistance, and allows them to do so.

Second, the legislature exempted from the scope of the Act four additional classes of minors. Each exemption shows that the legislature was attempting to shape a law that would be applied only to those pregnant girls who would most be in need of adult help. Accordingly, the law does not apply to married minors,8 to minors who have been legally emancipated,9 to minors who have entered the armed services of the United States,10 and to minors who have become employed and self-subsisting.11

Third, in an apparent effort to make certain that the Act would not have coverage over any other underage pregnant girls who were capable of making the decision on their own, the legislature included a catch-all exception to the Act: any who had otherwise become independent from the care and control of [her] parent, guardian, or custodian.12

The legislature next created a judicial bypass procedure to cover those cases of underage pregnancy not covered by these exceptions. The judicial bypass procedure is designed to be confidential, speedy, cost-free to the child, and easy to use. The court system is directed to prepare forms for use by the child13 without charge14 and have them available at every court location in the state: superior court, district court, and magistrate.15 Counsel shall immediately be made available without charge to any minor who seeks judicial bypass16 and the forms shall contain this notification.17 There are no filing fees to be charged18 and no court costs assessed19 against the child.

The proceedings surrounding judicial bypass are strictly confidential: Courts are instructed to conduct all proceedings so as to preserve the anonymity of the child.20 Moreover, the Act specifically directs the court that it may not notify the parents, guardian, or custodian of the child that she is pregnant or seeks an abortion.21 All papers and records pertaining to the matter shall be kept confidential and are not public records under Alaska law.22

In deference to the need for speedy resolution of the consent question in cases where an abortion is sought, the Act provides for extremely short timelines. The court is directed to set the hearing at the earliest possible time and in any event not more than five business days after the complaint is filed.23 The court is directed to enter judgment immediately after the hearing is ended.24 If the hearing is not held by the fifth day after the case is filed, that failure will be considered to be a constructive authorization by the court for the child to consent to an abortion.25 Similarly short deadlines apply to an appeal.26

As to the substance of the inquiry that the judge must make, it is straightforward and simple: The court determines whether the child is sufficiently mature and informed to make the decision to have an abortion.27 (In those cases where the minor has alleged abuse by her parent or guardian, the court determines whether such abuse has occurred.28) If the child is sufficiently

mature to make the decision (or if abuse has occurred and an abortion is in the minors best interest), the court authorizes her to consent to an abortion; if she is not sufficiently mature to decide on her own or if there has not been abuse, the case is dismissed.29

In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parents consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest.

III. Analysis

Application of the three-part test for constitutionality (set out above in the discussion of the constitutional framework) has tended in this case to focus on the third part of the test: whether the means chosen by the legislature are sufficiently narrowly tailored to the goals of the legislation. I agree that this inquiry is the most difficult in this case. But I also believe that failure to focus carefully on the nature of the interests involved can lead to a failure to assess correctly the success of the legislatures effort to tailor the legislation to meet its goals. For this reason, I turn now to each step of the test for constitutionality.

A. The Individual Right To Exercise Autonomy in the Control of Ones Body, and in the Choice to Bear a Child Is Fundamental.

The individual right involved in this case is the right to privacy. While that right is often associated with the maintenance of secrecy or confidentiality with regard to ones affairs (and that is present to some extent in this case), the gravamen of the individuals concerns in this case is the right to exercise autonomy in the control of ones body. In Valley Hospital Association v. Mat-Su Coalition for Choice,30 we relied on the need for a woman to have control of her body, and the choice whether or when to bear children,31 in determining that reproductive rights are fundamental, and that they are encompassed within the right to privacy.32

But it is important to remember that Valley Hospital concerned the rights of adult women. Todays opinion relies on the courts statement in its earlier decision in this case that minors and adults start from the same constitutional footing,33 but it does not meet the promise of that earlier opinion fully to take into account the fact that the persons to whom the statute in this case is directed are children. In holding that [c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority,34 the courts earlier opinion in this case hastened to add:

> Of course this does not mean that evidence of the peculiar vulnerability of children [and] their inability to make critical decisions in an informed, mature manner has no place in determining whether the parental consent or judicial authorization act is constitutional. To the contrary, we have long emphasized the states special interest in protecting the health and welfare of children.[35]

The opinion then explained how this peculiar vulnerability of children was to be taken into account in the constitutional

analysis: [A] statutes relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is compelling. 36 Indeed, in support of its conclusion that minors enjoy a constitutional right to privacy similar to that of adults, this court quoted Justice Marshalls dissent in H.L. v. Matheson37 that, rather than saying the minors privacy right is somehow less fundamental than an adults, the more sensible view is that state interests inapplicable to adults may justify burdening the minors right.38 But when the court looks to the states and parents interests in this case, it treats them in conclusory fashion. A fuller exposition is warranted.

B. The States Interests To Protect Children from Their Own Immaturity and To Protect Parents Rights and Duties To Raise Their Children Are Compelling.

Despite the promise of Planned Parenthood I to take into account the fact that children are involved during step two of the constitutional analysis the step that asks whether an asserted state purpose or interest is compelling the court today quickly passes over this step.

The courts cursory discussion of the nature of the states compelling interests at stake in this case is inconsistent with our case law on the right to privacy; moreover, it deprives the courts later means-to-ends analysis of any context. Let us consider each of these failings in turn.

In Sampson v. State,39 a privacy-based challenge to Alaska law precluding physician-assisted suicide, we set out the importance of carefully examining the nature of the competing interests involved. In upholding the ban on physician-assisted suicide, we said:

> This court has often emphasized the importance of personal autonomy under our constitution. Yet we have also recognized that the rights to privacy and liberty are neither absolute nor comprehensive that their limits depend on a balance of interests. The nature of the balance varies with the importance of the rights actually infringed.[40]

Because the nature of the balance varies with the importance of the rights involved and because in the context of the case before us now pregnant children who are considering abortion there are important rights on both sides of the equation, including the rights of parents to guide their children, it is particularly important that the court look closely at the nature of the states interests in the legislation.

The courts failure to look closely at the nature of the states and parents interests leaves its constitutional balance one-sided. Because the court has not fully and accurately set out the nature of societys compelling interest in the protection of children and of parents right and duty to raise their children, it is impossible to accurately gauge how close the law comes to meeting its objectives. As a detailed look at the states interest shows, it is multi-faceted and is served in many ways by Alaskas Parental Consent Law. It consists of at least two41 separate aspects.

First, society has longstanding and pervasive interests in protecting children from their own immaturity. The United States Supreme Court has repeatedly recognized societys interest in protecting children from their own immaturity. In Hodgson v. Minnesota,42 the Court held: The State has a strong and legitimate interest in the welfare of its young citizens, whose

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immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.43 The Court noted that [t]hat interest, which justifies state-imposed requirements that a minor obtain his or her parents consent before undergoing an operation, marrying, or entering military service, extends also to the minors decision to terminate her pregnancy.44 In Stanford v. Kentucky,45 Justice Brennan noted:

> [M]inors are treated differently from adults in our laws, which reflects the simple truth derived from communal experience that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.
>
> . . . Adolescents are more vulnerable, more impulsive, and less self-disciplined than adults, and are without the same capacity to control their conduct and to think in long-range terms.[46]

State courts too have long recognized that children require protection from their own immaturity. Pennsylvania, for example, has noted that the states strong interest in protecting younger minors from the sexual aggressiveness of minors over sixteen is based on the immaturity and poor judgment of younger minors.47 Similarly, Florida upheld a law prohibiting consensual sexual contact between minors sixteen and older and those under thirteen because the state had a compelling interest in protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity.48

As Justice Matthews set out in his dissent in our earlier consideration of this case, Planned Parenthood I:

> Childrens freedoms have long been constrained in ways that would not be permissible for adults. Constraints on children are imposed in order to protect them, and sometimes society as a whole, from the consequences of their immaturity. Thus children may not exercise the fundamental right to vote. They generally may not make contracts or smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parents consent they may not become licensed drivers or get married or obtain general medical or dental treatment. Alaskas parental consent/judicial bypass act is in the tradition of these constraints on childrens freedoms. . . . The act is designed to ensure that each child makes a decision that is best for her.[49]

The notion that parental consent laws further the state interest of protecting minors from their immaturity is neither novel nor surprising. As a matter of law society demands much of parents; it is expected that they will assist their children in making proper decisions until those children reach adulthood.

Parents of teenagers and younger children are familiar with the ubiquitous permission slips which must be signed before their children may go on a school field trip; and parental permission is routinely required before minors may join a sports team, before an under-seventeen minor may view an R-rated movie, and before a minor may even lift weights at the local gym.50 Parental involvement in the everyday decisions of their children enables parents to continue to help their children develop, even as the children grow older and more independent. The rights and obligations of parents to remain involved is intricately bound up with the rights of children to receive guidance and to be protected from their own immaturity. Courts have long recognized these interests: [T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.51

For an immature pregnant minor, parental involvement is at least as important in the difficult decision concerning abortion as it is in the permission slip activities mentioned in the last paragraph. In Ohio v. Akron Center for Reproductive Health (Akron II),52 a case concerning a parental notification requirement, the United States Supreme Court held that the requirement furthered the states interest in helping minors to make more mature decisions.53 Some minors may hesitate to seek parental advice if not required to by law because they are young and afraid. In those cases where a pregnant minor has been abused or fears an improper parental response, the PCA carves out a judicial bypass procedure whereby the minor may avoid all parental notification. However, it is improper for this court to assume that harmful parental responses will be a likely or typical response for the minors compelled to seek parental consent under the PCA. As Justice Kennedy noted in Akron II, [i]t is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both compassionate and mature.54 Indeed, to prohibit states from ensuring that in most cases young women receive guidance from a parent when making this decision would deny all dignity to the family.55 Similarly, Justice Stevens noted that it is reasonable for a state legislature to conclude that most parents will be primarily interested in the welfare of their children, making the imposition of a consent requirement an appropriate method of giving the parents an opportunity to foster that welfare by helping a pregnant distressed child to make and implement a correct decision.56 Because pregnant minors in Alaska will normally benefit from the involvement of a parent in one of the most critical decisions they can ever make, the PCA furthers the state interests of protecting minors from their immaturity and preserving the rights of parents to raise their children.

The PCA seeks to protect a second compelling interest in abortion cases involving children. In addition to societys interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in the raising of their children. In S.O. v. W.S.,57 we noted that when the state seeks to terminate the parent-child relationship, the result may be the involuntary deprivation of the fundamental natural right of parents to nurture and direct the destiny of their children.58 S.O. relied on and quoted Turner v. Pannick,59 in which Justice Dimond, in commenting on this fundamental right of parents to nurture and direct the upbringing of their children, stated: This is a truth which one discovers by reason, and has the status of knowledge rather than mere opinion.60 He noted that [the family] forms the basic unit of our society and is one of the oldest institutions known to mankind.61

In sum, the norm in American, and Alaskan, life and law is that parents are a childs first and most important resource for assistance in decision-making. For that reason, the states interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents right and duty to guide the upbringing of their children is particularly compelling.

C. The Fit Between the States Interests and the Means Adopted To Reach Them Are Sufficiently Close To Pass Constitutional Muster.

We now reach the third part of the constitutional analysis. In order to survive constitutional scrutiny, the PCA must be narrowly tailored in meeting the states interests. Because the childs privacy interests are fundamental, there must be no less restrictive alternative available to the state.62 As the following shows, the PCA is narrowly tailored to its goals. In addition, the alternatives discussed by the superior court and todays opinion are either more restrictive than the PCA or ineffective at meeting the states interests, or both.

1. The PCA is narrowly tailored.

Before embarking on this analysis, however, it is important to address the majoritys assertion that the PCA bestows upon parents what has been described as a veto power over their minor childrens abortion decisions.63 Indeed, the claim that the PCA gives parents a veto power runs throughout todays Opinion,64 and this supposed veto power may fairly be seen as the fundamental weakness of the PCA in the courts view. But the claim is false as it applies to minors who are sufficiently mature to make the decision, and it relies on quotation of the United States Supreme Court taken out of context. The claim is false because a pregnant minor faced with the abortion decision may decide to obtain an abortion without parental consent by using the judicial bypass procedure.65 The quotation is taken out of context because the case it comes from, Ohio v. Akron Center for Reproductive Health, restated the Supreme Courts clearly established precedent that, in order to prevent another person from having an absolute veto power over a minors decision to have an abortion, a State must provide some sort of bypass procedure if it elects to require parental consent.66 Thus, todays Opinions repeated assertions that the PCA gives parents a veto power over their childs abortion decision is simply not true as applied to children who are sufficiently mature to make the decision. And its implication that the United States Supreme Court would regard the PCA as giving parents a veto power is equally wrong: Because the PCA does provide a bypass procedure,

the Act in the language of the Supreme Court prevent[s] the parent from holding veto power.

The Parental Consent Act is very narrowly drawn to achieve its compelling state interests. To begin, as noted above, the PCA excludes all seventeen-year-olds.67 We have seen that the exclusion of seventeen-year-olds is particularly noteworthy because almost half of minor abortions are performed on seventeen-year-old minors,68 and thus by excluding seventeen-year-olds the legislature almost halved the pool to which the PCA applies. We have also seen that this narrowing of the minors covered by the Act is not arbitrary, but instead is tailored to eliminate those least likely to need the legislation: the most mature of the pregnant minors.

The use of age as a proxy for maturity is fundamental to our legal system and social culture. As the Supreme Court recently noted in Roper v. Simmons,69 the difference in maturity levels between adults and children is evidenced by both common sense and science:

> [A]s any parent knows and as the scientific and sociological studies . . . tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. . . . Even the normal 16-year-old customarily lacks the maturity of an adult. . . . [A]dolescents are overrepresented statistically in virtually every category of reckless behavior. In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.[70]

Age distinctions are not made with an expectation that they perfectly track maturity.71 All minors under age eighteen are prohibited from voting not because it is unfathomable that a seventeen-year-old is capable of responsibly exercising the right to vote, nor is the prohibition based upon the assumption that all adults vote responsibly. Rather, the legal system accepts lack of perfection in meeting the states interests in order to create a feasible, more convenient, and less intrusive system of governance. As Justice Holmes noted in Louisville Gas & Electric Co. v. Coleman:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.[72]

The Alaska Court of Appeals similarly noted in Allam v. State73 that [s]tatutes [that set the age for possession of tobacco, possession of alcohol, age of consent for sexual intercourse, etc.,] and the social policy decisions that underlie them, are within the province of the legislature. There is no legal requirement that the same age of majority apply to all activities and circumstances.74 By exempting seventeen-year-olds from the PCA, the legislature appropriately tailored the legislation to affect the less mature population of pregnant minors.

Significantly, this narrowing of the PCA based on age also makes it less restrictive than every other parental consent

law but one75 and less restrictive than all but one of the notification laws in effect in other states because all the rest apply to seventeen-year-olds,76 as discussed in more detail below.

As noted, the legislature further tailored the PCA by excluding four additional categories of minors: legally emancipated minors,77 married minors,78 minors living independently,79 and minors who are members of the armed services.80 These are hallmarks of maturity in our society. By excluding identifiably mature minors age sixteen and under, the legislature went a long way towards assuring that the legislation would not be over-inclusive. Furthermore, in these respects the PCA is less restrictive than every other states notification laws that do not contain these exceptions.81

The final narrowing of the PCA is derived from the judicial bypass procedure. Although neither the superior court nor this courts majority analyze the bypass procedure under the least restrictive means test, the judicial bypass significantly narrows the effect of the law because it provides a way for mature minors who are not otherwise statutorily exempted to obtain an abortion without parental consent. As Justice Matthews recognized in Planned Parenthood I, the judicial bypass procedure satisfies all the criteria established by the United States Supreme Court in Bellotti v. Baird.82 Indeed, the judicial bypass process was meticulously crafted with the minors need for confidentiality and an expedited decision incorporated into the system. The PCA errs on the side of granting the judicial bypass whenever delay is threatened: If the superior court fails to provide a hearing within five business days of a minor filing the petition, the delay operates as an automatic finding in the minors favor, resulting in a constructive waiver of the consent requirement. Similarly, if the minor loses in the superior court and the hearing on appeal is delayed more than five days after the docketing of the appeal, a constructive order must issue authorizing the minor to undergo the abortion.83

2. The PCA is the least restrictive means to achieve the states compelling interests.

The PCA not only furthers a compelling state interest in a manner narrowly tailored and in compliance with the federal constitution, but it is also the least restrictive means of doing so. The least restrictive means test is properly a difficult burden for the state to meet, as it protects fundamental rights against unnecessary state intrusion. However, it is not an impossible standard for the state to meet. A mere showing that the state might have taken less restrictive action, say, by enacting a notification statute instead, is not sufficient to defeat legislation absent a determination that the less restrictive action would effectively achieve the states compelling interests. Indeed, the least restrictive action that a state may take in every case is not to legislate at all.

In Treacy v. Municipality of Anchorage,84 in upholding the constitutionality of an Anchorage curfew law imposed on minors under age eighteen, we found proposed less restrictive alternatives to be unavailing because they were not effective in meeting the municipalitys compelling interests.85 Alternatives to the PCA which are less restrictive are therefore not bars to the constitutionality of the legislation unless such alternatives are effective in meeting the states compelling interests.

Todays opinion repeatedly proffers the alternative of parental notification rather than parental consent, (an approach followed by only fifteen state legislatures86 in comparison to the twenty-six state legislatures87 that have adopted consent statutes88).

But every one of these parental notification statutes that lacks exceptions for seventeen-year-olds and other mature

minors is more restrictive than Alaskas PCA.89 More importantly, such parental notification statutes fail to achieve the same goals as consent laws, as discussed below.

The majority enthusiastically adopts the notion that a notice statute is less restrictive than the PCA because it does not give parents a veto power. But as shown above, the PCA does not create a veto power because it includes a judicial bypass provision. Moreover, the United States Supreme Court has upheld a parental consent statute containing a judicial bypass procedure but fewer statutory exceptions than those included in Alaskas PCA.90 Indeed, as Justice Matthews noted in Planned Parenthood I, [c]urrently it appears that all members of the United States Supreme Court believe that a judicial authorization procedure that meets the conditions of the second Bellotti case as the PCA does is constitutional.91 In Akron II, which todays opinion cites to support its conclusion that notice statutes are less restrictive than consent statutes, the Court limited its distinction between consent and notification statutes to the central requirement that in order to prevent another person from having an absolute veto power over a minors decision to have an abortion, a State must provide some sort of bypass procedure if it elects to require parental consent.92 The PCA provides such a procedure: judicial bypass.

Indeed, notification laws may present the worst case scenario by posing all the risks of privacy infringements of a consent/bypass statute with fewer of its mitigating effects. What could be further from the productive and supportive conversation that a consent statute aims to produce than the cold reality of parents receiving (perhaps after the abortion) a note in the mail informing them of their daughters pregnancy and decision to abort? It is certainly reasonable for a legislature to conclude that consent statutes are more likely to foster actual conversations and parental involvement rather than the one-way, limited flow of information called for in notification statutes. Thus, the existence of notification statutes in a minority of states should not lead to invalidation of Alaskas consent statute unless it is clear that a notification statute would further the states compelling interests.

3. The legislature could reasonably conclude that parental notification statues are not effective in protecting a pregnant girl against her own immaturity or in protecting her parents right and duty to aid in her upbringing.

Despite todays Opinions rosy assertion that all [notification statutes] prohibit minors from terminating a pregnancy until their parents have been notified and afforded an appropriate period of time to actively involve themselves in their minor childrens decision-making processes,93 it is truly questionable whether many notification statutes accomplish anything in the way of meaningful parental notification. Many do not even require that a parent be notified.

Thus, Delaware, identified by the majority opinion as a notification state, allows notification of a licensed mental health professional to substitute for parental notification.94 Maryland, ostensibly another notification state, allows the physician performing the abortion to dispense with notification to the childs parent if in the physicians judgment the child is mature and capable of giving informed consent or if notification would not be in her best interests.95 West Virginia, another notification state, allows the physician performing the abortion to dispense with notification if another doctor finds the child mature enough to make the decision for herself or that notification would not be in her best interests.96 In all states the waiting period is so short that in many instances it will be largely meaningless.97 Can it really be said that a requirement

that written notification be sent to a childs parent, along with the presumption that notice is effective upon mailing and no waiting period (e.g., Maryland98) or a twenty-four hour waiting period (e.g., West Virginia with actual notice99) or even a forty-eight hour waiting period (e.g., West Virginia with constructive notice100), would in any way further the states interest in protecting the child against her immaturity and lack of judgment or protect the parents role in helping to raise their child? It often will be, in truth, little more than a note sent into the night.

The court asserts that the states compelling interests (it refers to them only as legislative goals) are no less likely to accompany parental notification than parental veto power. 101 Of course, as we have seen, there is no veto power in the PCA. But more importantly, only wishful thinking supports that conclusion. How can a statute that does not even require that parents be notified as in Delaware, which allows notification of a mental health professional enhance the potential for parental consultation? Or a statute that deems notice to be effective upon mailing and requires no waiting period or only a twenty-four hour waiting period? The court optimistically talks of giving [parents] notice and time to consult with and guide their daughters through this important decision,102 but this is not what notification statutes do. The longest waiting period in any current notification statute measured from the time of mailing of the notice is seventy-two hours.103 Most are substantially shorter.104 Under these circumstances, to conclude, as todays Opinion does, that a notification statute provides a better chance than a consent statute that parents will engage in a constructive and ongoing conversation with their minor children about the important medical, philosophical, and moral issues surrounding abortion105 is truly wishful thinking. At least under a consent statute, where the child opts not to seek judicial bypass, there must be a conversation. Under a notification statute, where the child opts not to seek judicial bypass, there is only a mailing. There is little reason to believe that notification statutes are effective in protecting minors from their own immaturity or effective in protecting parents rights (and duties) to help their children negotiate the difficult path to adulthood.

We should heed our admonition in Treacy: In analyzing the argument that a legislative solution is not the least restrictive one, courts must take care to require the challenger to demonstrate that the supposedly less restrictive alternative is actually effective in protecting the states (and parents) compelling interests. The court today fails to show that a notification statute will achieve the States compelling interests. This is because, as we have seen, notification laws are ineffective in so many ways in protecting children from their immaturity and in protecting parents rights and obligations to guide their childrens upbringing. And todays opinion declines even to say whether a parental notification approach would be constitutional.

IV. Conclusion

The Alaska Legislature carefully balanced the constitutional right of an underage pregnant girl to privacy and the states compelling interests in protecting children against their own immaturity and protecting parents constitutional right (and duty) to guide their children to maturity. Because the PCA is the least restrictive alternative which will effectively advance the states compelling interests while protecting the childs constitutional right, we should hold that the superior court erred in invalidating it. I respectfully dissent.

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1 State, Dept of Health & Soc. Servs. v. Planned

Parenthood of Alaska, 28 P.3d 904, 906 (Alaska 2001) (noting that we do not decide philosophical questions about abortion which we, as a court of law, cannot aspire to answer).

2 State v. Planned Parenthood of Alaska, 35 P.3d 30, 41 (Alaska 2001) (Planned Parenthood I).

3 Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 511 (1990) (citing H.L. v. Matheson, 450 U.S. 398, 411 n.17 (1981)).

4 Id.

5 Ch.14, 1-10, SLA 1997.

6 AS 18.16.010(a)(3); AS 18.16.020.

7 AS 18.16.010(c). The Act provides the doctor with an affirmative defense to prosecution and civil liability where compliance with the Act was not possible because an immediate threat of serious risk to the life or physical health of the pregnant minor from the continuation of the pregnancy created a medical emergency necessitating the immediate performance or inducement of an abortion. AS 18.16.010(g). We note that the superior court interpreted this statutory language as broad enough to contain[] an appropriate medical emergency exception.

8 AS 18.16.020(1).

9 AS 18.16.030.

10 AS 18.16.030(c). Similar time limits apply to this courts consideration of a minors appeal from a denied petition. AS 18.16.030(j).

11 35 P.3d 30 (Alaska 2001).

12 Id. at 41.

13 Id. at 46.

14 Grimm v. Wagoner, 77 P.3d 423, 427 (Alaska 2003).

15 Treacy v. Municipality of Anchorage, 91 P.3d 252, 260 (Alaska 2004).

16 Id. at 260 n.14.

17 Ravin v. State, 537 P.2d 494, 497 (Alaska 1975).

18 Planned Parenthood I, 35 P.3d at 41.

19 Cf. Sampson v. State, 31 P.3d 88, 91 (Alaska 2001).

20 Id.

21 Because we conclude that the PCA violates the right to privacy under the Alaska Constitution, we need not address the plaintiffs arguments that the Act also violates the equal protection clause or that the superior court erred in interpreting the Act to include a medical emergency exception.

22 Luedtke v. Nabors Alaska Drilling Inc., 768 P.2d 1123, 1129 (Alaska 1989) (quoting Woods & Rhode, Inc. v. State, Dept of Labor, 565 P.2d 138, 148 (Alaska 1977)).

23 See Ravin, 537 P.2d at 514-15 (Boochever, J., concurring) (reasoning that [s]ince the citizens of Alaska . . . enacted an amendment to the Alaska Constitution expressly providing for a right to privacy not found in the United States Constitution, it can only be concluded that that right is broader in scope than that of the Federal Constitution).

24 Valley Hosp. Assn v. Mat-Su Coalition for Choice, 948 P.2d 963, 968 (Alaska 1997) (internal quotations omitted).

25 Planned Parenthood I, 35 P.3d at 40 (internal quotations omitted).

26 Id. (noting that [d]eciding whether to terminate a pregnancy is at least as difficult, and the consequences of such decisions are at least as profound, for minors as for adults).

27 Id.

28 The dissent appears to liken a minors decision of whether to terminate a pregnancy to decisions about attending school field trips, joining sports teams, viewing R-rated movies, and lifting weights at the gym. But this analogy overlooks the fundamental autonomy at stake in an adolescents control over her own body. And in other important ways, a minors decision to terminate a pregnancy is wholly unlike these decisions the immediacy of the need to address the situation, coupled with the lasting and profound consequences of the decision, make it utterly unlike the day-to-day decisions mentioned by the dissent.

29 More specifically, the State asserts that the PCA aims to (1) ensure that minors make an informed decision on whether to terminate a pregnancy; (2) protect minors from their own immaturity; (3) protect minors physical and psychological health; (4) protect minors from sexual abuse; and (5) strengthen the parent-child relationship.

30 35 P.3d at 41 (quoting Am. Acad. of Pediatrics v. Lungren, 940 P.2d 797, 819 (Cal. 1997)) (stating that a statutes relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is compelling).

31 Bellotti v. Baird, 443 U.S. 622, 635 (1979).

32 See, e.g., Planned Parenthood I, 35 P.3d at 40 (noting that we have long emphasized the States special interest in protecting the health and welfare of children).

33 Bellotti, 443 U.S. at 637 (quoting Pierce v. Socy of Sisters, 268 U.S. 510, 535 (1925)).

34 Id. at 638.

35 Id.

36 H.L. v. Matheson, 450 U.S. 398, 410 (1981).

37 Wisconsin v. Yoder, 406 U.S. 205, 233 (1972).

38 Bellotti, 443 U.S. at 639 (quoting Ginsberg v. New York, 390 U.S. 629, 639 (1968)).

39 Ohio v. Akron Ctr. for Reproductive Health, 497 U.S.

502, 511 (1990) (citing Matheson, 450 U.S. at 511 n.17).

40 Colo. Rev. Stat. Ann. 12-37.5-101 to 107; Del. Code Ann. tit. 24, 1780-1789(B); Fla. Stat. 390.01114; Ga. Code Ann. 15-11-110 to 114; Ill. Comp. Stat. 70/1-99; Iowa Code 135L.3; Kan. Stat. Ann. 65-6701 to 6709; Md. Code Ann., Health-Gen. 20-103; Minn. Stat. 144.343; Mont. Code Ann. 50-20-201 to 215; Neb. Rev. Stat. 71-6901 to 6908; Nev. Rev. Stat. 442.255; NJ Stat. Ann. 9:17A-1.1 to 1.12; S.D. Codified Laws 34-23A-7; W. Va. Code 16-2F-1 to 9.

41 See, e.g., Ga. Code Ann. 15-11-112(a) (prohibiting physicians from performing an abortion on a minor unless the physicians give either 24 hours actual notice, in person or by telephone, to a parent or guardian or twenty-four hours written notice, which is deemed delivered forty-eight hours after mailing); Iowa Code 135L.3(1) (prohibiting physicians from performing an abortion on a minor until at least forty-eight hours prior notification is provided to a parent of the pregnant minor).

42 AS 18.16.030(e)(f) provides that a minor may bypass the PCAs parental consent requirement if a court determines by clear and convincing evidence that she is sufficiently mature and well enough informed to decide whether to have an abortion or that parental consent would not be in her best interests.

43 See, e.g., Md. Code Ann., Health-Gen. 20-103(c)(1) (providing that a physician may perform an abortion without notice to a parent or guardian if, in the professional judgment of the physician[,] . . . [n]otification would not be in the best interest of the minor); W. Va. Code 16-2F-3(c) (providing that parental notification may be waived by a physician, other than the physician who is to perform the abortion, if such other physician finds that the minor is mature enough to make the abortion decision independently or that notification would not be in the minors best interest).

44 State v. Koome, 530 P.2d 260, 265 (Wash. 1975) (holding that parental consent statute violates state constitutional right to privacy); see also Am. Acad. of Pediatrics v. Lundgren, 940 P.2d 797, 816 (Cal. 1997) (holding that parental consent law intrude[s] upon a pregnant minors protected privacy interest under the California Constitution).

45 Matheson, 450 U.S. at 412; see also Planned Parenthood Assn of the Atlanta Area, Inc. v. Miller, 934 F.2d 1462, 1472-74 (11th Cir. 1991) (holding that Georgias notification statute furthered the states interest in protecting immature minors and promoting parental input).

1 In drafting the Alaska Parental Consent Act, the legislature appears to have tracked carefully the requirements for parental consent and parental notification laws set out by the United States Supreme Court in City of Akron v. Akron Ctr. for Reproductive Health, Inc., 462 U.S. 416 (1983); Bellotti v. Baird, 443 U.S. 622 (1979); H. L. v. Matheson, 450 U.S. 398 (1981); Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476 (1983); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52 (1976), partially overruled on other grounds by Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).

2 AS 18.16.020(1).

3 AS 18.16.020(2). In the event that the court fails to act, such failure will be considered to be judicial authorization for the abortion. AS 18.16.020(3).

4 AS 18.16.020.

5 Stanley K. Henshaw & Kathryn Kost, Parental Involvement in Minors Abortion Decisions, 24 Family Planning Perspectives, Sept/Oct. 1992 at Table 1. See also Letter from Susan K. Steeg, General Counsel, Texas Department of Health (May 26, 2004) (stating that of the 3654 minor women who obtained an abortion in Texas in 2002, 1694 or forty-six percent of them were age seventeen); Aida Torres, Jacqueline Darroch Forrest & Susan Eisman, Telling Parents: Clinic Policies and Adolescents Use of Family Planning and Abortion Services, 12 Family Planning Perspectives, Nov/Dec 1980, 284, 287 (forty-four percent of the 1170 unmarried minor abortion patients surveyed were seventeen years old).

6 S.C. Code Ann. 44-41-10(m) (2006).

7 Del. Code Ann. tit. 24 1782(6) (2007).

8 AS 18.16.020.

9 Id. and AS 18.16.090(2)(C).

10 AS 18.16.020, .090(2)(A).

11 AS 18.16.020, .090(2)(B).

12 AS 18.16.020, .090(2)(D).

13 AS 18.16.030(1).

14 Id.

15 AS 18.16.030(n).

16 AS 18.16.030(d). The only exception is that if the child already has counsel. Id.

17 AS 18.16.030(n)(3).

18 AS 18.16.030(n)(1).

19 AS 18.16.030(n)(2).

20 AS 18.16.030(k).

21 AS 18.16.030(h).

22 AS 18.16.030(k).

23 AS 18.16.030(c).

24 Id.

25 Id.

26 AS 18.16.030(j). See also Alaska R. App. P. 220.

27 AS 18.16.030(e).

28 AS 18.16.030(f).

29 AS 18.16.030(e), (f).

30 948 P.2d 963 (Alaska 1997).

31 Id. at 968.

32 Id. at 969.

33 Opinion at 7; State v. Planned Parenthood of Alaska, 35 P.3d 30, 41 (Alaska 2001) (Planned Parenthood I).

34 35 P.3d at 40 (quoting Planned Parenthood of Cent. Mo. v Danforth, 428 U.S. 52, 74 (1976)).

35 35 P.3d at 40 (footnote omitted).

36 Id. at 41 (quoting American Acad. of Pediatrics v. Lungren, 940 P.2d 797, 819 (Cal. 1997)).

37 450 U.S. 398 (1981).

38 Id. at 441 n.32.

39 31 P.3d 88 (Alaska 2001).

40 31 P.3d at 91 (footnotes omitted).

41 The superior court actually identified six compelling state interests in its opinion. They were as follows: (1) State has a compelling interest in protecting minors from their own immaturity. (2) State has a compelling interest in protecting the physical, emotional, and psychological health of minors. (3) State has a compelling interest in ensuring that doctors obtain informed consent from their minor patients contemplating pregnancy related decisions. (4) State has a compelling interest in protecting minors from sexual abuse . . . . (5) The court finds that the state does have many interests, some of them compelling, in fostering and protecting the family structure . . . . (6) This court finds that protecting rights to a civil action is a compelling state interest.

42 497 U.S. 417 (1990).

43 Id. at 444.

44 Id. at 444-45. See also Planned Parenthood Assn of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 490-91 (1983) (A States interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial.); Parham v. J. R., 442 U.S. 584, 603 (1979) (Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 102-04 (1976) (Stevens, J., concurring and dissenting) (minors may not make enforceable bargains, work, or travel where they please, attend exhibitions of constitutionally-protected adult motion pictures, marry, etc.); Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (holding that fourteen-year-olds criminal confession made without advice of adult violated due process because of childs inherent lack of maturity).

45 492 U.S. 361 (1989), overruled by Roper v. Simmons, 543 U.S. 551 (2005).

46 Id. at 395 (Brennan, J., dissenting) (quoting Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime 7 (1978)).

47 Commonwealth v. Albert, 758 A.2d 1149, 1154 (Pa. 2000).

48 J.A.S. v. State, 705 So. 2d 1381, 1386 (Fla. 1998). See also In re E.G., 549 N.E.2d 322, 327 (Ill. 1989) (holding that court should distinguish mature minors from immature minors for purpose of determining right to refuse medical treatment because the State has a parens patriae power to protect those incompetent to protect themselves).

49 35 P.3d at 46-47.

50 Todays Opinion mistakenly asserts that the dissent appears to liken a minors decision of whether to terminate a pregnancy to decisions about attending school field trips, joining sports teams, viewing R-rated movies, and lifting weights at the gym and argues that the decision to terminate a pregnancy is wholly unlike these decisions. (Opinion 10, n.28) The Opinion misses the point entirely: Of course permission-slip decisions do not have the lasting and profound consequences (Opinion 10, n.28) of the abortion decision, and yet the law imposes the necessity of parental consent upon them. If society deems parental consent critical in such lesser matters, should not the parents play a similar role when the consequence to the child are so vastly greater? And in arguing that fundamental autonomy [is] at stake in an adolescents control over her own body, (Opinion 10, n.28) the Opinion ignores that parental consent is required for virtually every other medical procedure involving a child. See Hodgson v. Minnesota, 497 U.S. 417, 423 (1990) (recognizing the common-law requirement of parental consent for any medical procedure performed on minors.).

51 Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

52 497 U.S. 502 (1990).

53 Id. at 519.

54 Id. at 520.

55 Id.

56 Planned Parenthood v. Danforth, 428 U.S. 52, 104 (1976) (Stevens, J., concurring).

57 643 P.2d 997 (Alaska 1982).

58 Id. at 1006.

59 540 P.2d 1051 (Alaska 1975).

60 Id. at 1055 (Dimond, J., concurring).

61 Id. at 1055-56.

62 Planned Parenthood I, 35 P.3d 30, 41 (Alaska 2001).

63 Opinion 12, quoting Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 511 (1990).

64 See, e.g., Opinion at 4 (the Act effectively shifts that minors fundamental right to choose if and when to have a child from the minor to the parents); 4 (veto power); 12 (same); 13 (same); 15 (the PCA shifts the right to reproductive choice to minors parents); 16 (veto power).

65 See AS 18.16.030. The judge in a bypass case must decide whether the child is sufficiently mature and well enough informed to decide intelligently whether to have an abortion. If she is, the court issues an order authorizing her to consent to the procedure without the consent of a parent, guardian, or custodian. AS 18.16.030(e). (If she is not, the court dismisses the case. Id. Presumably, a child found to be insufficiently mature to make such a decision should not make it.)

66 497 U.S. at 510-11 (emphasis added). Moreover, although the reference in todays Opinion to the use of veto power in the United States Supreme Courts opinions in H.L. v. Matheson and Ohio v. Akron Center is technically accurate (in the sense that the term appears in both opinions), it is also misleading. Ohio v. Akron Center, when it referred to Matheson, simply established that notice statutes are not equivalent to consent statutes for the purpose of constitutional analysis. Neither Matheson nor Akron Center directly addressed what types of bypass procedures are capable of curing the constitutionally fatal veto power found in consent statutes without bypass procedures. Instead, both Matheson and Akron Center dealt solely with the constitutionality of parental notification statutes.

67 AS 18.16.020.

68 See supra note 5.

69 543 U.S. 551 (2005).

70 Id. at 569 (internal quotations and citations omitted).

71 Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 104-05 (1976) (Stevens, J., concurring and dissenting) (In all . . . situations [where state legislation seeks to protect minors from the consequences of decisions they are not prepared to make] chronological age has been the basis for imposition of a restraint on the minors freedom of choice even though it is perfectly obvious that such a yardstick is imprecise and perhaps even unjust in particular cases.).

72 277 U.S. 32, 41 (1928) (Holmes, J., dissenting).

73 830 P.2d 435 (Alaska App. 1992).

74 Id. at 438.

75 See S.C. Code Ann. 44-41-10(m) (also defining minors as under the age of seventeen).

76 Delaware appears to be the only exception among notification states. Del. Code Ann. tit. 24, 1782(6) (requiring notification for those under age sixteen). But cf. Kan. Stat. Ann. 65-6701(f) (2006); Md. Code Ann., Health-Gen. 20-103 (2005); Minn. Stat. 144.343 (2005); Mont. Code Ann. 50-

20-203(6) (2005); Neb. Rev. Stat. 71-6901(5) (2006); Nev. Rev. Stat. 442.255 (2005); S.D. Codified Laws 34-23A-7 (2006); Tex. Fam. Code Ann. 33.002 (2007); W. Va. Code 16-2F-2 (2007).

77 AS 18.16.020 (applying the statute only to minors known to be unmarried . . . and unemancipated). The majority opinion notes that a minor must prove by clear and convincing evidence that she is sufficiently mature in order to obtain a judicial bypass, while the standard of proof for legal emancipation is a preponderance of the evidence. Because any minor who has established legal emancipation is already exempted from the scope of the PCA, however, the PCA is not over-broad on this account. Furthermore, it is logical that a minor who cannot prove that she is globally ready to be free from parental supervision may nonetheless be mature on the specific issue of the decision to terminate her pregnancy. This discrepancy in what must be proven negates an easy comparison regarding the burden of proof that a minor must satisfy.

78 Id.

79 AS 18.16.090(2)(B). By its express terms the PCA provides a much broader interpretation of the term unemancipated than Alaskas formal emancipation statute, AS 09.55.590. The term is defined in AS 18.16.090(2):

> unemancipated means that a woman who is unmarried and under 17 years of age has not done any of the following:
> (A) entered the armed services of the United States;
> (B) become employed and self-subsisting;
> (C) been emancipated under AS 09.55.590; or
> (D) otherwise become independent from the care and control of the womans parent, guardian, or custodian.

80 AS 18.16.090(2)(A).

81 Md. Code Ann., Health-Gen. 20-103 (no exception for emancipated minors); Kan. Stat. Ann. 65-6705 (2006) (no exception for unemancipated minors living independently); Minn. Stat. 144.343 (same); Mont. Code Ann. 50-20-201 to 215 (same); Neb. Rev. Stat. 71-6901 to 6908 (same); S.D. Codified Laws 34-23A-7 (same); Tex. Fam. Code Ann. 33.001 to 011 (same); W. Va. Code 16-2F-1 to 9 (same).

82 35 P.3d at 51-52 (Matthews, C.J. , dissenting) (citing to Bellotti, 443 U.S. 622 (1979)) (noting that (1) proceedings must except minor from any parental consent requirements if minor can establish she is mature enough to make abortion decision, or that requiring consent is not in her best interests and (2) proceedings must be completed with anonymity and sufficient expedition).

83 AS 18.16.030(j).

84 91 P.3d 252 (Alaska 2004).

85 Id. at 267.

86 Colo. Rev. Stat. Ann. 12-37.5-101 to 107 (West 2007); Del. Code Ann. tit. 24, 1780 to 1789B; Fla. Stat. 390.01114 (West 2007); Ga. Code Ann. 15-11-110 to 118 (West 2007); 750 Ill. Comp. Stat.Ann. 70/1 to 99 (West 2007); Iowa Code Ann. 135L.3 (West 2007); Kan. Stat. Ann. 65-6701 to 6709; Md. Code

Ann., Health-Gen. 20-103; Minn. Stat. 144.343; Mont. Code Ann. 50-20-201 to 215; Neb. Rev. Stat. 71-6901 to 6908; Nev. Rev. Stat. 442.255; N.J. Stat. Ann. 9:17A-1.1 to 1.12 (West 2007); S.D. Codified Laws 34-23A-7; W. Va. Code 16-2F-1 to 9 (2006). Oklahoma, Texas, and Utah, not counted here, require both notification and consent. Okla. Stat. Ann. tit . 63, 1-740.2 (West 2006); Tex. Fam. Code Ann. 33.001 to .011; Tex. Occ. Code Ann. 164.052(a)(19); Utah Code Ann. 76-7-304, 76-7-304.5 (West 2006).

87 Ala. Code 26-21-1 to 8 (1992); Ariz. Rev. Stat. Ann. 36-2152 (2006); Ark. Code Ann. 20-16-801 to 810 (West 2006); Cal. Health & Safety Code 123450 (West 2007); Idaho Code Ann. 18-609A (West 2007); Ind. Code 16-34-2-4 (West 2006); Ky. Rev. Stat. Ann. 311.720, 311.732 (West 2006); La. Stat. Ann. 40:1299.35.5 (2006); Me. Rev. Stat. Ann. tit. 22, 1597-A (2006); Mass. Gen. Laws ch. 112, 12S (2004); Mich. Comp. Laws Ann. 722.901 to 722.909 (West 2006); Miss. Code Ann. 41-41-53 (West 2006); Mo. Ann. Stat. 188.028 (West 2006); N.C. Gen. Stat. Ann. 90-21.6 to 90.21.10 (West 2006); N.D. Cent. Code 14-02.1 to 03.1 (2005); Ohio Rev. Code Ann. 2919.121 (West 2006); Okla. Stat. Ann. tit. 63, 1-740.2 (West 2006); 18 Pa. Cons. Stat. Ann. 3206 (West 2006); R.I. Gen. Laws 23-4.7-6 (2006); S.C. Code Ann. 44-41-31 (2006); Tenn. Code Ann. 37-10-301 to 308 (2005); Tex. Fam. Code Ann. 33.001 to .011; Tex. Occ. Code Ann. 164.052(a)(19); Utah Code Ann. 76-7-304, 76-7-304.5; Va. Code Ann. 16.1-241(V) (West 2006); Wis. Stat. Ann. 48.375 (West 2005); Wyo. Stat. Ann. 35-6-118 (2006).

88 Three states, Oklahoma, Texas, and Utah, have adopted both consent and notification statutes.

89 See Treacy, 91 P.3d at 267.

90 See Planned Parenthood Assn of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 493-94 (1983).

91 35 P.3d at 51 (Matthews, J., dissenting). It should be noted that since those words were written, Chief Justice John Roberts and Justice Samuel Alito have replaced Chief Justice William Rehnquist and Justice Sandra Day OConnor.

92 497 U.S. 502, 510-11 (1990).

93 Opinion 13.

94 Del. Code. Ann. tit. 24 1783(a).

95 Md. Code. Ann., Health-Gen. 20-103(c)(1)(ii), (iii).

96 W. Va. Code 16-2F-3(c).

97 The waiting periods range between twenty-four hours (Delaware, West Virginia (twenty-four hours after actual notice), Georgia, Kansas, and Utah) and forty-eight hours (West Virginia (forty-eight hours after mailing notice), Iowa, Colorado, Illinois, Minnesota, Nebraska, South Dakota, Texas, Montana).

98 Md. Code. Ann., Health-Gen. 20-103.

99 W. Va. Code. 16-2F-3(a).

100 Id.

101 Opinion 16.

102 Id. at 13.

103 See Ga. Code Ann. 15-11-112(a) (written notice deemed delivered forty-eight hours after mailing; abortion may be performed twenty-fours hours after).

104 See, e.g., Del. Code Ann. tit. 24 1783; Ga. Code Ann. 112(a)(1)(B); Utah Code Ann. 76-7-304(3); W. Va. Code Ann. 16-25-3(a) (all requiring a waiting period of only twenty-four hours).

105 Opinion 16.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT ____________________

In the Matter of ______________________________ (Type or Print Name of Petitioner) Date of Birth ____________________	CASE NO. ____________________ PR PETITION TO BYPASS PARENTAL CONSENT

Clerk's Instructions: This is a confidential matter requiring immediate appointment of counsel and a hearing within 48 hours. No filing fee is required and no court costs may be assessed.

I request that the court issue an order authorizing me to consent to an abortion without asking for the consent of my parent, guardian or custodian. I swear or affirm under penalty of perjury that the following information is true.

1. I am pregnant.
2. I am unmarried, under 17 years of age, and unemancipated.
3. I wish to have an abortion without the consent of a parent, guardian or custodian.
4. Parental consent should not be required because (check all that apply):
   - ☐ a. I am sufficiently mature and well enough informed to decide intelligently whether to have an abortion without the consent of a parent, guardian, or custodian.
   - ☐ b. One or both of my parents or my guardian or custodian has engaged in physical abuse, sexual abuse, or a pattern of emotional abuse against me.
   - ☐ c. It is not in my best interest to require me to obtain the consent of a parent, guardian, or custodian.
5. I ☐ do not have an attorney. I understand the court must appoint one for me.
   ☐ am represented by the following attorney:
   Attorney's Name: ____________________ Telephone ____________________
   Attorney's Address: ____

6. ☐ **I understand that I must contact the court to find out my hearing date and how to contact my attorney if I do not get this information at the time I file this petition. (The hearing will be held within 48 hours after the court receives the petition.)**

7. ☐ I request that I be allowed to participate in the hearing by telephone rather than attending the hearing in person. I understand that I must give the court a telephone number where I can be reached for the hearing and that the court will pay for the call.

_______________________ Date

_______________________ Signature

_______________________ Daytime Telephone (optional)
(If possible, please give a telephone number where court personnel can reach you or leave a message for you.)

NOTARIZATION

Subscribed and sworn to or affirmed before me at ______________________, Alaska on ________________.
(date)

(SEAL)

____
Clerk of Court, Notary Public, or other person authorized to administer oaths.
My commission expires______________

CERTIFICATION

[Complete the following certificate if no notary or other official is available to administer an oath.]

I certify under penalty of perjury that

1. all of the information in this petition is true, and
2. a notary public or other official empowered to administer oaths is not available.

_____________ Date _____________ Place (city) _____________ Signature

AS 18.16.030
AS 09.63.020
Probate Rule 20

Instructions For Requesting Judicial Permission To Bypass Parental Consent

If you are a woman under 17 years old and want to have an abortion in Alaska, you must first get the written consent of one of your parents or your guardian or custodian.[1] Apart from medical emergencies,[2] there are just three exceptions[3] to this Alaska law. You do not need parental consent if:

1. you are emancipated, or
2. you obtain a court order dispensing with parental consent for one of the reasons listed in the statute, or
3. you request the above court order but the court fails to hold the required hearing within five business days, thus "constructively authorizing" the abortion without parental consent.

<u>Emancipation</u>. You are "emancipated" for purposes of the abortion law[4] if any of the following are true: you are (1) married, (2) a member of the armed services of the United States, (3) employed and self-subsisting, (4) emancipated under Alaska Statute 09.55.590[5], or (5) independent from the care and control of your parents, guardian or custodian.

<u>Court Order</u>. The procedure for requesting this court order is described below. Your request will be kept confidential by the court. The court is not allowed to notify your parents or anyone else that you are pregnant or that you want to have an abortion. The court will provide the forms you need for your request and will appoint an attorney to represent you (at state expense) if you do not have an attorney. You will not be charged any fees or court costs.

How To Request A Court Order

To request a court order, do the following:

1. Fill out the attached form P-505, Petition To Bypass Parental Consent. Type or print clearly, using black ink.
    a. Leave the "AT" line at the top of the form blank. The court clerk will fill it in.
    b. On the next line, fill in your name as petitioner and your date of birth.

---

1 AS 18.16.010(a)(3)

2 See AS 18.16.010(g) for what constitutes a "medical emergency."

3 AS 18.16.020

4 AS 18.16.090(2)

5 AS 09.55.590 allows minors who are at least 16 years old to petition the superior court for emancipation. This can usually be done only with the consent of each living parent or guardian of the minor. The minor must be living separate and apart from the minor's parents or guardian, be capable of sustained self-support and be capable of managing his/her own financial affairs.

c. Leave the "CASE NO." line blank. The court clerk will fill it in.

d. In #4, check any of the boxes that apply to your situation.

e. In #5, check the first box if you do not have an attorney. The court will appoint one for you. Check the second box and fill in the information if you have hired your own attorney.

f. In #6, check the box (agreeing to call the court if you do not find out your hearing time and how to contact your attorney when you file your petition). (See #2 below.) Since the court may have no way of contacting you, you need to contact the court to get this information.

g. In #7, check the box if you want to participate in the court hearing by telephone instead of in person. The hearing will be held within 48 hours after you file your petition. You will not have to pay for the telephone call.

h. Your petition must be notarized, so you should wait to date and sign it until you get to the court clerk's office where a clerk can notarize it for you. If you do not plan to file your petition in person, see the discussion about notarization in paragraph 3 below.

i. If possible, please fill in a telephone number where court personnel can call you or leave a message for you. The court may need to contact you, for example, if the time of the hearing has to be changed. If you do not have a telephone number where the court can call you, you do not have to fill this in.

2. Bring your filled out petition to the clerk's office at your local court and tell the clerk you want to file it. The clerk will ask you to sign it under oath and will notarize it for you (at no charge). Please bring a photo ID (for example, your driver's license) with you because the clerk needs to see identification in order to notarize your petition. The clerk will ask you to wait a few minutes while the clerk schedules your court hearing and assigns an attorney to represent you. The clerk will give you a Notice form (P-510) with this information on it.

3. If there is no court in your community (or if you do not want to use the local court), you can mail or fax your petition to the nearest superior court. Addresses and fax numbers are listed on page 4. Before faxing or mailing the petition, you need to get it notarized locally by a notary public or postmaster. If there is no notary public or postmaster available, you must sign and date the petition and fill out the "Certification" section at the bottom.

   If you fax the petition, call the court to make sure they received it and to find out your hearing date and who your attorney will be.

   If you mail the petition, call the court and tell the clerk that you have mailed a petition. Ask the clerk how to find out the date and time of your hearing and how to contact your attorney.

4. Contact your attorney <u>immediately</u>. Because the hearing will be held so soon (within 48 hours), your attorney will need to talk to you as soon as possible.

5. Attend the court hearing. You can participate by telephone if you need to do so. To do this, you must give the court or your attorney a telephone number where the court can reach you at the time of the hearing.

   The hearing will be confidential (not open to the public).

6. At or immediately after the hearing, the court will issue an order granting or denying your request.

   If your request is denied, you can appeal this decision. Your court-appointed attorney will continue to represent you in the appeal. Form P-520, Notice of Appeal, should be used to file the appeal. This form is available at all court locations.

Constructive Authorization

If the superior court fails to hold a hearing on your request within five business days (not counting holidays and weekends) after you file your petition, the law[6] allows you to consent to the abortion without first obtaining the consent of one of your parents. If you need proof that no hearing was held, you can get a certificate from the court stating this. Your attorney can help you get the certificate.

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6 AS 18.16.030(c)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT_______________

In the Matter of

____
(Type or Print Name of Petitioner)

Date of Birth_______________

CASE NO.___________________PR

NOTICE AND ASSIGNMENT
RE PETITION TO BYPASS
PARENTAL CONSENT

NOTICE OF HEARING

Assigned Judge:_______________________________

Hearing Date & Time:_______________________________
(within 48 hours after petition is filed)

APPOINTMENT OF ATTORNEY

☐ The Office of Public Advocacy is appointed to represent you.

Attorney's Name:_______________________________

Attorney's Address:_______________________________

Attorney's Phone:_______________________

You should contact the attorney as soon as possible.

_______________________ _______________________
Date Clerk

Clerk's Certificate

The above information was given to

☐ Petitioner ☐ in person ☐ by telephone ☐ _______________

on _______________ _______________
(date) (time)

☐ Petitioner's attorney on_______________ by ☐ fax ☐ personal delivery
(date)

Clerk:___________

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT________________

In the Matter of

____
(Petitioner's Name)

Date of Birth________________

CASE NO.________________PR

ORDER ON REQUEST TO BYPASS PARENTAL CONSENT

FINDINGS

Hearing Held:________________ Present Were:________________

The court finds by clear and convincing evidence that

☐ the petitioner is sufficiently mature and well enough informed to decide intelligently whether to have an abortion.

☐ one or both of the petitioner's parents or the petitioner's guardian or custodian has engaged in physical abuse, sexual abuse or a pattern of emotional abuse of the petitioner.

☐ it is not in the best interest of the petitioner to require her to obtain the consent of her parents, guardian or custodian.

ORDER

It is therefore ordered

☐ Petitioner is authorized to consent to the performance or inducement of an abortion without the consent of a parent, guardian or custodian.

☐ The petition is denied because the court is unable to make any one of the findings required by AS 18.16.030(e)-(g). Petitioner has the right to appeal this decision to the supreme court. Notice of Appeal form P-520 is available at the court. The attorney appointed to represent the petitioner will continue to represent the petitioner during the appeal.

________________ Date

________________ Superior Court Judge

________________ Type Judge's Name

I certify that on________________
a copy of this order was faxed or handed to petitioner's attorney/petitioner.

Clerk:________________

Recommended for approval.

____
Master Date

IN THE SUPREME COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of

____
(Name of Appellant)

____

Supreme Court Case No.__________
Superior Court Case No.__________

NOTICE OF APPEAL
RE PETITION TO BYPASS
PARENTAL CONSENT

Instructions to trial court clerks: This notice of appeal may be filed in any district or superior court, or directly with the clerk of the appellate courts. If it is filed in a district or superior court, the clerk must immediately call the clerk of the appellate courts for instructions.

Instructions to supreme court clerks: This is a confidential matter requiring immediate action by the supreme court. No filing fee is required. See Appellate Rule 220 for the procedure that must be followed when one of these appeals is filed.

Appellant appeals from the order of the superior court denying her request for authorization to consent to an abortion without obtaining the consent of a parent, guardian or custodian. A copy of the superior court's order is attached.

☐ Appellant waives the right to oral argument.

_______________________ Date

_______________________ Signature of Appellant's Attorney

Attorney's Name:__________

Address:__________

Telephone:__________

Fax:__________

If filed by fax, appellant's attorney should call the court to confirm that the Notice of Appeal has been received. Supreme Court Fax: 264-0878. Supreme Court Phone: 264-0609.

Probate Rules, Rule 20

WEST'S ALASKA STATUTES ANNOTATED
ALASKA COURT RULES
PROBATE RULES
PART III. PROTECTIVE PROCEEDINGS

Current with amendments received through 8/22/2008

Rule 20. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion

(a) Petition. An action for an order authorizing a minor under age 17 to consent to an abortion without the consent of a parent, guardian, or custodian is commenced by filing a petition. The petition must be under oath and must include the information required by AS 18.16.030(b). The petitioner is not required to provide an address or telephone number. Blank petition forms will be available at all court locations and will be mailed or faxed to a petitioner upon request. No fee will be charged for this service or othe services provided to a petitioner.

(b) Filing. The petition may be filed in any district or superior court location in person, by mail, or by fax. No filing fee will be charged. If a petition is filed in a district court location, the clerk or magistrate shall immediately notify the clerk of the nearest superior court and fax the petition to that court, unless the local judicial officer has been appointed as a master to conduct these proceedings.

(c) Appointment of Counsel. If the petitioner is not represented by a private attorney, the clerk shall appoint the Office of Public Advocacy to represent the petitioner. The clerk shall immediately notify the Office of Public Advocacy of the appointment.

(d) Expedited Hearing. Upon receipt of the petition, the court shall schedule a hearing to be held within 48 hours, including weekends and holidays, after the petition is filed. At the hearing, the court shall follow the procedure specified in AS 18.16.030(e)-(g). Upon request, the petitioner will be allowed to participate telephonically at court system expense.

(e) Findings and Order. The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by clear and convincing evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the supreme court.

***1051** (f) Constructive Order. If the court fails to hold a hearing within five days after the petition is filed, the presiding judge of the judicial district, or another judge designated by the presiding judge, shall issue a certificate stating that (1) no hearing was held within five business days after the petition was filed; and (2) under AS 18.16.030(c), the failure to hold a hearing constitutes a constructive order of the court authorizing the minor to consent to an abortion without the consent of a parent, guardian, or custodian. A certificate should not be issued if the hearing was not held because it was postponed at the petitioner's request or because the petitioner failed to appear at the hearing.

(g) Confidentiality. Petitions filed under AS 18.16.030 and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion or from disclosing this information to any member of the public.

(h) Appeal. A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the notice of appeal has been filed.

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The procedure for appeals is governed by Appellate Rule 220. This rule supersedes the appeal procedure established by AS 18.16.030(j).

[Adopted effective July 31, 1997.]

REFERENCES

CROSS REFERENCES

AS 18.16.030

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Rules of Appellate Procedure, Rule 220

WEST'S ALASKA STATUTES ANNOTATED
ALASKA COURT RULES
RULES OF APPELLATE PROCEDURE
PART II. PROCEDURE ON APPEALS AS OF RIGHT

Current with amendments received through 8/22/2008

Rule 220. Judicial Bypass Appeals

(a) Scope. This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age 17 to bypass parental consent to an abortion under AS 18.16.030. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule. It also supersedes the procedure for bypass appeals established by AS 18.16.030(j).

(b) Jurisdictional Limitation. This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Appellate Rule 202.

(c) Notice of Appeal.

(1) A minor may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. The notice of appeal may be filed in person, by mail, or by fax, and must be accompanied by a copy of the order from which the appeal is taken. No filing fee will be charged. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the appeal has been filed.

(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(3) Blank notice of appeal forms will be available at all court locations and will be mailed or faxed to a minor upon request. No fee will be charged for this service or other services provided to a minor in an appeal under this rule.

(d) Record on Appeal. The record on appeal consists of the superior court file, including all papers and exhibits filed in the superior court, and, unless otherwise ordered, a recording of the proceedings before the superior court. The clerk of the appellate courts shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the trial court shall immediately transmit the record to the supreme court by overnight mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.

*656 (e) Brief. A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal.

(f) Oral Argument. Unless the minor waives the right to oral argument in the notice of appeal, oral argument will be held within 72 hours, including weekends and holidays, after the notice of appeal is filed. Upon request, the minor will be allowed to participate telephonically at court system expense.

(g) Disposition. The court shall enter an order stating its decision immediately after oral argument or, if oral argument has been waived, within three days after the date the notice of appeal is filed. The court may issue an opinion explaining the decision at any time following entry of the order.

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(h) Constructive Order. If the court fails to enter an order within five days after the date the clerk of the appellate courts receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within five days after the appeal was docketed; and (2) under AS 18.16.030(j), the failure to enter an order constitutes a constructive order of the court authorizing th minor to consent to an abortion without the consent of a parent, guardian, or custodian. For purposes of AS 18.16.030(j), an appeal i deemed to be docketed on the date the clerk of the appellate courts receives the record on appeal.

(i) Confidentiality. Documents and proceedings in an appeal under this rule are confidential. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(j) Attorney. If the minor is not represented by an attorney, the clerk of the appellate courts shall appoint the Office of Public Advocacy to represent the minor in the appeal. If the Office of Public Advocacy was appointed to represent the minor in the trial court, the appointment continues through the appeal.

(k) Filing Defined. For purposes of this rule only, a document is deemed filed on the date it is received by the district court, the superior court, or the clerk of the appellate courts if the appeal is filed directly with the clerk.
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[Adopted effective July 31, 1997.]

HISTORICAL NOTES

NOTE

Under AS 18.16.030(j), the failure to enter a judgment in the appeal within five days after the appeal is docketed constitutes a constructive order of the court authorizing the appellant to consent to an abortion without the consent of a parent, guardian, or custodian.

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from Dr. Jan Whitfield

ACOG *Statement of Policy*

As issued by the ACOG Executive Board

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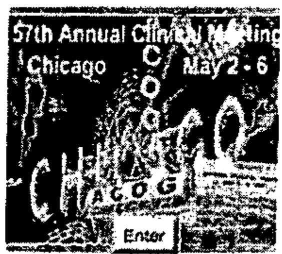

ABORTION POLICY

The following statement is the American College of Obstetricians and Gynecologists' (ACOG) general policy related to abortion, with specific reference to the procedure referred to as "intact dilatation and extraction" (intact D & X).

1. The abortion debate in this country is marked by serious moral pluralism. Different positions in the debate represent different but important values. The diversity of beliefs should be respected.
2. ACOG recognizes that the issue of support of or opposition to abortion is a matter of profound moral conviction to its members. ACOG, therefore, respects the need and responsibility of its members to determine their individual positions based on personal values or beliefs.
3. Termination of pregnancy before viability is a medical matter between the patient and physician, subject to the physician's clinical judgment, the patient's informed consent and the availability of appropriate facilities.
4. The need for abortions, other than those indicated by serious fetal anomalies or conditions which threaten maternal welfare, represents failures in the social environment and the educational system.

   The most effective way to reduce the number of abortions is to prevent unwanted and unintended pregnancies. This can be accomplished by open and honest education, beginning in the home, religious institutions and the primary schools. This education should stress the biology of reproduction and the responsibilities involved by boys, girls, men and women in creating life and the desirability of delaying pregnancies until circumstances are appropriate and pregnancies are planned.

   In addition, everyone should be made aware of the dangers of sexually transmitted diseases and the means of protecting each other from their transmission. To accomplish these aims, support of the community and the school system is essential.

   The medical curriculum should be expanded to include a focus on the components of reproductive biology which pertain to conception control. Physicians should be encouraged to apply these principles in their own practices and to support them at the community level.

   Society also has a responsibility to support research leading to improved methods of contraception for men and women.

5. Informed consent is an expression of respect for the patient as a person; it particularly respects a patient's moral right to bodily integrity, to self-determination regarding sexuality and reproductive capacities, and to the support of the patient's freedom within

caring relationships.

A pregnant woman should be fully informed in a balanced manner about all options, including raising the child herself, placing the child for adoption, and abortion. The information conveyed should be appropriate to the duration of the pregnancy. The professional should make every effort to avoid introducing personal bias.

6. ACOG supports access to care for all individuals, irrespective of financial status, and supports the availability of all reproductive options. ACOG opposes unnecessary regulations that limit or delay access to care.
7. If abortion is to be performed, it should be performed safely and as early as possible.
8. ACOG opposes the harassment of abortion providers and patients.
9. ACOG strongly supports those activities which prevent unintended pregnancy.

The College continues to affirm the legal right of a woman to obtain an abortion prior to fetal viability. ACOG is opposed to abortion of the healthy fetus that has attained viability in a healthy woman. Viability is the capacity of the fetus to survive outside the mother's uterus. Whether or not this capacity exists is a medical determination, may vary with each pregnancy and is a matter for the judgment of the responsible attending physician.

Intact Dilatation and Extraction

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

ACOG believes the intent of such legislative proposals is to prohibit a procedure referred to as "intact dilatation and extraction" (Intact D & X). This procedure has been described as containing all of the following four elements:

1. deliberate dilatation of the cervix, usually over a sequence of days;
2. instrumental conversion of the fetus to a footling breech;
3. breech extraction of the body excepting the head; **and**
4. partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X. Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy.

The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6%. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these

were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother.

Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. **The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.**

Approved by the Executive Board
General policy: January 1993
Reaffirmed and revised: July 1997
Intact D & X statement: January 1997
Combined and reaffirmed: September 2000
Reaffirmed: July 2004
Reaffirmed: July 2007

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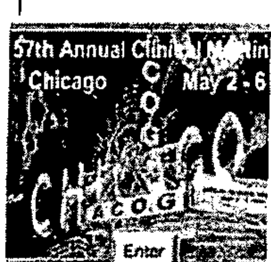

ACOG
Committee on Adolescent Health Care

Committee Opinion

[PDF format]

Number 330, April 2006

Evaluation and Management of Abnormal Cervical Cytology and Histology in the Adolescent

ABSTRACT: The management of abnormal cervical cytology in adolescents differs from that for the adult population in many cases. Certain characteristics of adolescents may warrant special management considerations. It is important to avoid aggressive management of benign lesions in adolescents because most cervical intraepithelial neoplasia grades 1 and 2 regress. Surgical excision or destruction of cervical tissue in a nulliparous adolescent may be detrimental to future fertility and cervical competency. Care should be given to minimize destruction of normal cervical tissue whenever possible. A compliant, health-conscious adolescent may be adequately served with observation in many situations.

Background

The past decade has seen a remarkable increase in the knowledge of the natural history of cervical dysplasia, the role of human papillomavirus (HPV) in cervical cancer, and the development of new technologies for cervical cancer screening, specifically HPV testing and liquid-based cytology. This new information prompted the American Cancer Society (ACS) to develop new guidelines pertaining to cervical cancer screening (1). Based on the natural history data and the rarity of cervical cancer in the population of women younger than 21 years, the ACS recommendations for initial Pap testing changed, and the new criteria have been endorsed by the American College of Obstetricians and Gynecologists (ACOG) (2). Adolescents should undergo their first Pap test approximately 3 years after the onset of vaginal intercourse or no later than age 21 years. The decision about the initiation of cervical cytology screening in an adolescent patient should be based on the clinician's assessment of risks,

This document reflects emerging clinical and scientific advances as of the date issued and is subject to change. The information should not be construed as dictating an exclusive course of treatment or procedure to be followed.

The College wishes to thank Richard Guido, MD, and Abigail English, JD, for their assistance in the development of this document.

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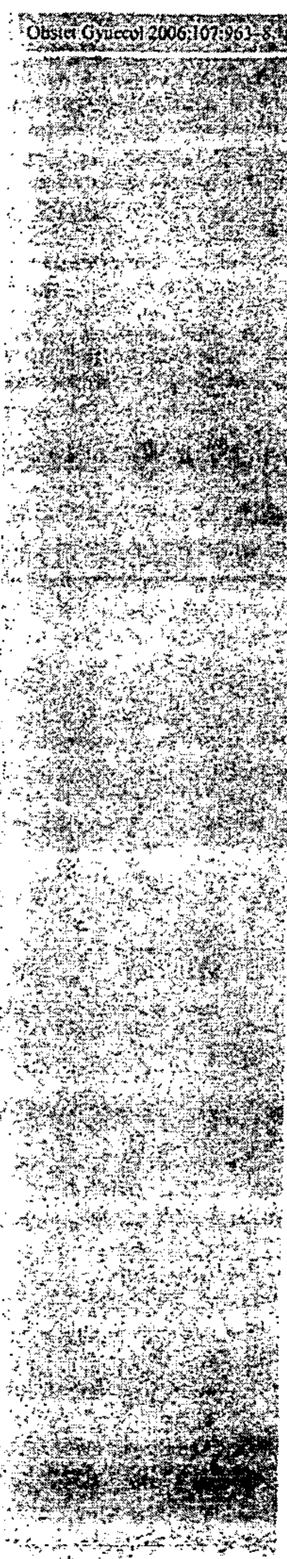


including 1) age of first sexual activity, 2) behaviors that may place the adolescent patient at greater risk for HPV infection, and 3) risk of noncompliance with follow-up visits. Obtaining a complete and accurate sexual history, therefore, is critical (3).

The new information also prompted ACOG to develop new guidelines on the management of abnormal cervical cytology and histology (4). Some of these guidelines are unique for adolescents. The objectives of this Committee Opinion are to 1) highlight when the management of abnormal cervical cytology in adolescents differs from that for the adult population and 2) identify characteristics of adolescents that may warrant special considerations. It is important to avoid aggressive management of benign lesions in adolescents because most cervical intraepithelial neoplasia (CIN) grades 1 and 2 regress. Surgical excision or destruction of cervical tissue in a nulliparous adolescent may be detrimental to future fertility and cervical competency. Care should be given to minimize destruction of normal cervical tissue whenever possible. A compliant, health-conscious adolescent may be adequately served with observation in many situations.

Natural History of Human Papillomavirus

Most women infected with HPV are asymptomatic. The virus is detected by an abnormal Pap test result, HPV test result, or the presence of clinically evident genital warts, and most likely will resolve without treatment. In natural history studies of adolescents with newly acquired HPV infection, the average length of detectable HPV is 13 months. In most adolescent patients with an intact immune system, an HPV infection will resolve within 24 months (5). Further evidence that the HPV infection will resolve without treatment comes from the high rates of resolution of CIN 1 and CIN 2, 70% and 50% respectively (6–9).

Managing Abnormal Cervical Cytology in Adolescents

The new guidelines provided by ACOG address the therapy of cytologic and histologic abnormalities. These guidelines are based on best evidence when possible and expert opinion when limited data are available. For some but not all of the abnormalities, the guidelines have specific recommendations for care of the adolescent population that may differ from recommendations for adults and are summarized in Table 1. The following recommendations are unique to the adolescent population and address the clinical situations that can be managed by cytologic follow-up, HPV testing, colposcopy, or a combination of these approaches. A positive HPV test result refers to the presence of high-risk HPV DNA as determined by Hybrid Capture II. Testing for low-risk HPV types has no role in cervical cancer prevention.

Management Considerations

Atypical Squamous Cells of Undetermined Significance

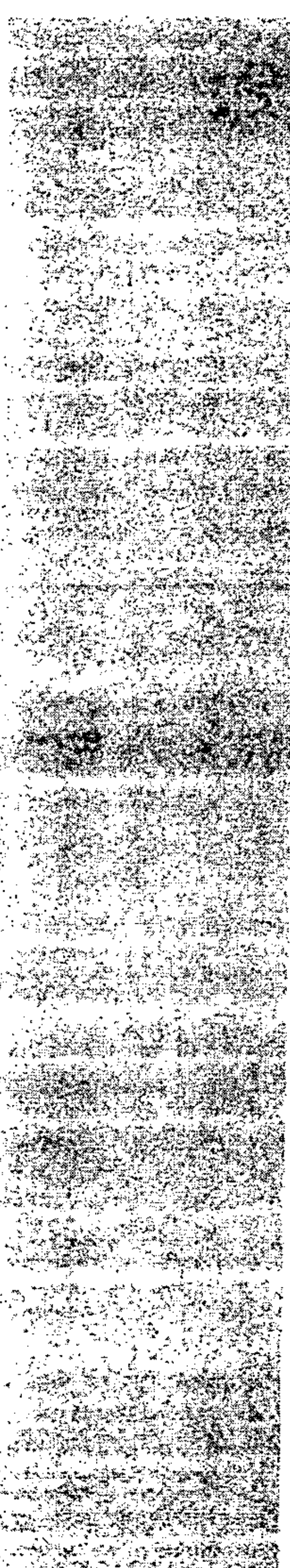
Atypical squamous cells of undetermined significance (ASC-US) is a cytologic abnormality that in many cases identifies a woman harboring HPV infection. In the adolescent population, the prevalence of HPV in ASC-US will be higher than its prevalence in the older population. The risk of invasive cancer in adolescents approaches zero, and the likelihood of HPV clearance is very high. The preferred method of triage for patients with ASC-US who have undergone liquid-based cytologic screening is testing for high-risk HPV and, for those with a positive test result, triage to colposcopy. The ACOG guidelines address the high rate of HPV clearance by allowing less expensive alternative care than immediate colposcopy for adolescents with ASC-US and a positive high-risk HPV test result. Adolescents with atypical squamous cells and high-risk HPV-positive results may be monitored with cytology twice at 6-month intervals or a single high-risk HPV test at 12 months. If repeat cytology test results are abnormal, or there is evidence of persistent HPV, colposcopy should be performed. These alternatives are equally sensitive for the detection of CIN 2, CIN 3, or cervical cancer; avoid the expense of colposcopy and biopsy; and allow for the clearance of CIN and HPV (10). Immediate colposcopy is an acceptable alternative for the management of the adolescent who tests positive for ASC-US and HPV. Adolescents with ASC-US who have an HPV test result negative for high-risk HPV DNA should have a Pap test in 12 months.

Low-Grade Squamous Intraepithelial Lesions or Atypical Squamous Cells: Cannot Exclude High-Grade Squamous Intraepithelial Lesions

The Atypical Squamous Cells of Undetermined Significance/Low-Grade Squamous Intraepithelial Lesions Triage Study (ALTS) has demonstrated that the patients with the cytologic report of low-grade squamous intraepithelial lesions (LSIL) and ASC-US behave in a very similar manner with regard to the clearance of HPV and the risk for developing CIN 2, CIN 3, or cervical cancer. Because of the similarity in natural history of these two reports, the ACOG recommendations for treatment of LSIL are identical to those for ASC-US-positive HPV. Adolescents with an LSIL test result can be monitored by repeat cytology at 6-month intervals or by a high-risk HPV test in 12 months. These individuals should undergo colposcopy for any cytologic abnormality or the persistence of HPV infection at 1 year. Immediate colposcopy is an acceptable alternative for adolescents with LSIL Fig.1).

No studies specifically address atypical squamous cells: cannot rule out high-grade squamous intraepithelial lesions (ASC-H) in adolescents. Because of a lack of specific evidence and the higher rate of CIN 2, CIN 3, and cervical cancer in individuals with ASC-H, the adolescent with ASC-H should undergo immediate colposcopic evaluation.

High-Grade Squamous Intraepithelial Lesions



High-grade squamous intraepithelial lesions (HSIL) are a significant cytologic abnormality that requires colposcopic evaluation because of a much higher rate of histologically confirmed CIN 2, CIN 3, or cervical cancer. Colposcopy with endocervical assessment is the recommended treatment for adult and adolescent women with HSIL. In the adult population, ACOG guidelines include a "see and treat" alternative for individuals with HSIL using a loop electrosurgical excision procedure (LEEP). Although this is an acceptable alternative in the adult, it should be avoided in the adolescent population. A significant number of adolescents with HSIL will have CIN 2 on biopsy. Because of the high rate of resolution of CIN 2 in adolescents and the low rate of cervical cancer, adolescents with biopsy-confirmed CIN 2 with adequate colposcopy and normal histology test results on endocervical assessment may be monitored without intervention. The specific method of follow-up should be individualized by the health care professional. A reasonable approach to the follow-up could be either cytology or colposcopy at 4–6-month intervals.

Postcolposcopy Diagnosis of CIN 1 or Less in an Adolescent With HSIL Cytology

Because interobserver variability is most pronounced in younger women (11), the risk of invasive cancer is extremely low, and the likelihood of spontaneous resolution of CIN 1 or CIN 2 is high, follow-up with colposcopy and cytology at 4–6 months may be undertaken (12), as long as the colposcopy is adequate and the endocervical assessment is negative. Excision is an acceptable alternative to colposcopic follow-up, but it is known to increase the risk of cervical stenosis and preterm labor.

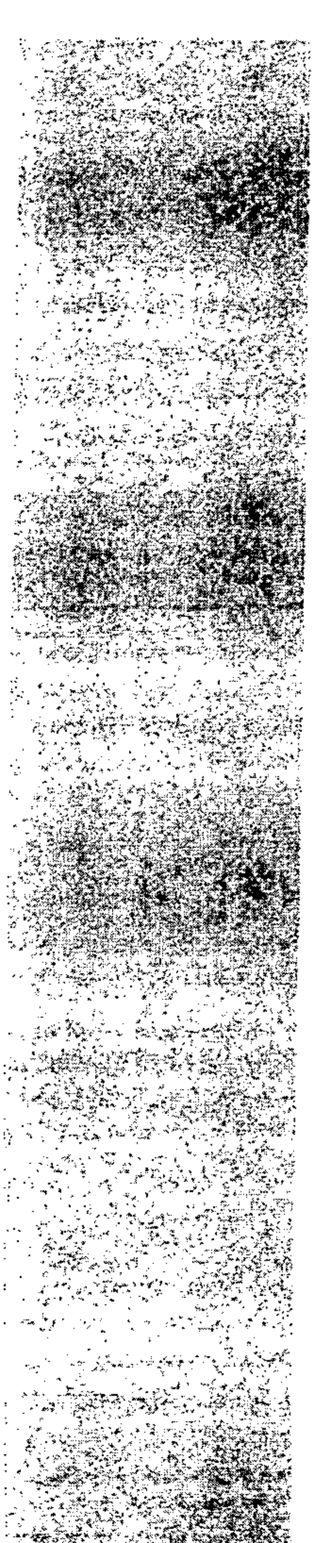
Atypical Glandular Cells

The Bethesda 2001 system for reporting cytologic abnormalities separates atypical glandular cells (AGC) into "not otherwise specified" (NOS) and "favor dysplasia." The cytology report further classifies the abnormalities based on the probable location of the cell of origin (endocervix, endometrium, or unknown). The prevalence of AGC cytology in the adolescent population is very low, and most of these abnormalities will arise from the squamous component of the cervix (13). Because of the rare nature of this diagnosis, a gynecologist with expertise in managing cervical dysplasia should manage cases of AGC cytology in the adolescent. The adolescent with AGC should undergo a colposcopy and endocervical sampling. Endometrial sampling would not be used in most adolescents unless they are morbidly obese, they have abnormal uterine bleeding or oligomenorrhea, or there is a suspicion of endometrial cancer.

Treatment of Dysplasia in Adolescents

Cervical Intraepithelial Neoplasia 1

Depending on the time from HPV exposure to evaluation, the



adolescent who is infected may have a normal cervix, a mildly abnormal cervix, or biopsy-confirmed CIN 1. Assuming that CIN 2 or greater has been ruled out by colposcopy, prospective studies of an adult population demonstrate that the risk of CIN 2 or greater developing over a 2-year period is 10% (10). In the adolescent population, the rate of resolution of CIN 1 is extremely high (greater than 85%). Therefore, management without therapy is the preferred recommendation for CIN 1 (14). This approach not only reduces the cost of delivering care to the adolescent but also avoids some of the potential risks of therapy, such as an increased rate of cervical stenosis, premature rupture of membranes, and preterm labor (15). The American College of Obstetricians and Gynecologists specifically states, "Observation provides the best balance between risk and benefit and should be encouraged" (4). Cervical intraepithelial neoplasia 1 in adolescents should be monitored using a protocol of either repeat cytologic testing at 6 and 12 months or of HPV DNA testing at 12 months. Colposcopy should then be performed for any abnormal cytology results or for positive high-risk HPV DNA results.

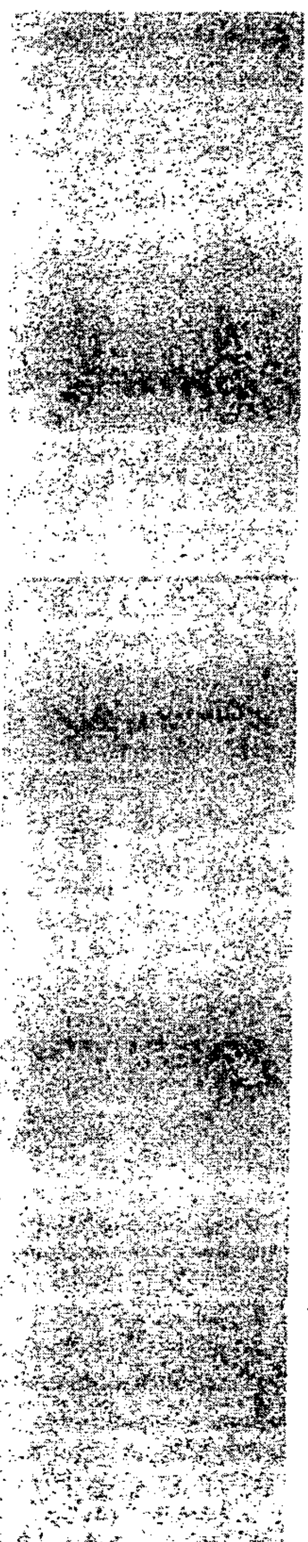
For those few individuals who require therapy for CIN 1, a variety of options are available. Randomized prospective clinical trials have demonstrated that cryotherapy, laser therapy, and LEEP are equally effective interventions for the treatment of CIN 1 (16). When therapy is required, the type of intervention is based on the geometry of the cervical lesion as well as the clinical recommendations of the clinician who is caring for the patient. Care should be taken to remove the least amount of cervical tissue that is necessary to eradicate the lesion.

Cervical Intraepithelial Neoplasia 2

Cervical intraepithelial neoplasia 2 is a significant abnormality that has classically required therapy. A variety of studies, including the ALTS trial, have demonstrated that this lesion may have a significant rate of resolution (up to 40%) in adults. This rate of resolution is suspected to be higher in adolescents. Based on these data and expert opinion, CIN 2 can be managed in adolescents with either observation or ablative or excision therapy. The adolescent patient who is monitored without therapy should be an individual deemed to be reliable regarding follow-up and have a good understanding of the nature of the abnormality and its risks. Follow-up can be individualized, with colposcopy or cytology every 4–6 months being a very conservative approach.

Cervical Intraepithelial Neoplasia 3

Cervical intraepithelial neoplasia 3 is a significant cervical abnormality. Despite the fact that cervical cancer is very rare in the adolescent population, the natural history of CIN 3 in this population has not been examined. Therapy is recommended for all women with CIN 3. Randomized prospective clinical trials have demonstrated that cryotherapy, laser therapy, and LEEP are equally effective interventions for the treatment of CIN 3. In one of



the largest follow-up studies of women having undergone outpatient ablative therapy of CIN, four cases of microinvasive cervical cancer and five cases of frankly invasive cancer were subsequently diagnosed among 3,783 women (17). Because of these considerations, some authors have recommended that excision be used for the management of biopsy-confirmed CIN 3, especially for large lesions that are at increased risk of having microinvasive or occult invasive carcinoma. The type of intervention is based on the geometry of the cervical lesion as well as the clinical recommendations of the health care provider.

Special Considerations for Colposcopy

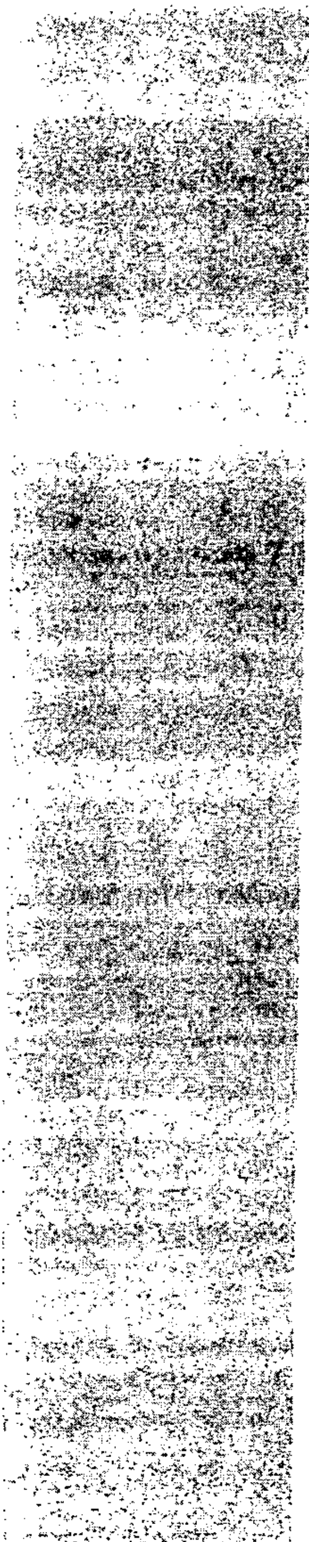
Consent

The minor undergoing a colposcopic examination represents a unique situation in that the abnormal Pap test result frequently is obtained during confidential screening for sexually transmitted diseases (STDs) or during counseling for contraception. Both interactions frequently occur without the knowledge of a parent or guardian.

Minors undergoing a colposcopic examination might find it helpful to have parental involvement for the procedure. However, colposcopic examinations are considered evaluation for STDs, and minors generally are allowed to consent for diagnosis of STDs (18). For that reason, parental consent, although preferred, should not be required. If parental consent is not obtained, consent for the examination should be obtained from the minor and indicated in the medical record.

The issues regarding parental consent for biopsy or therapy for cervical dysplasia are more complicated. The need for consent depends on whether the biopsy or therapy is considered part of STD evaluation and treatment and on the specifics of state law. Even if the minor legally can consent, the law may not ensure confidentiality. Some states allow minors to consent for STD care but give the health care provider discretion to disclose information to parents, particularly if it is necessary to protect the minor's health (18).

Biopsy and therapy for cervical dysplasia are more invasive than a colposcopic examination and carry a higher risk of complication. They also are likely to generate a bill, which can compromise confidentiality. These issues need to be considered when determining whether parental consent should be obtained, even if it is not legally required, before providing biopsy or therapy for a minor. Medical care providers throughout the United States provide such care without parental consent under the umbrella of the treatment of STDs. Any health care provider who delivers such care should be fully informed of their state laws and established local standards of care.

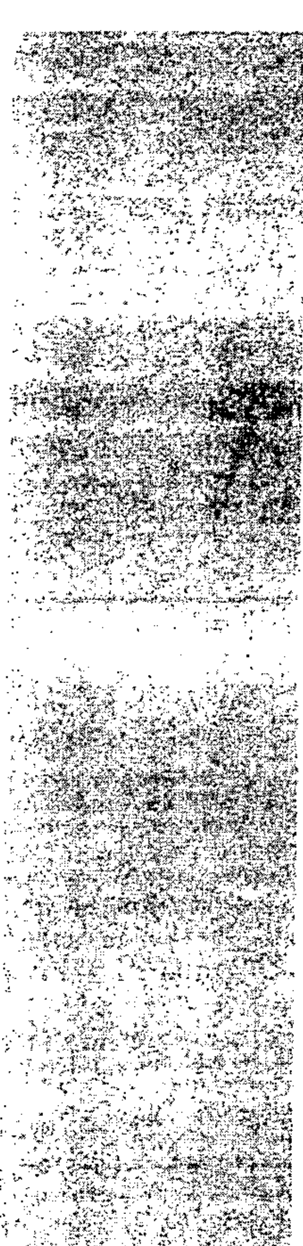


Screening for Sexually Transmitted Diseases

The adolescent population represents an at-risk population for cervical infection, specifically chlamydia and gonorrhea. Little evidence exists to support the routine screening of the cervix for chlamydia and gonorrhea before performing a colposcopy. Screening for STDs should be based on the ACOG guidelines for screening adolescents who are sexually active (19, 20).

References

1. Saslow D, Runowicz CD, Solomon D, Moscicki AB, Smith RA, Eyre HJ, et al. American Cancer Society guideline for the early detection of cervical neoplasia and cancer. American Cancer Society. CA Cancer J Clin 2002;52:342–62.
2. Cervical cytology screening. ACOG Practice Bulletin No. 45. American College of Obstetricians and Gynecologists. Obstet Gynecol 2003:102:417–27.
3. Cervical cancer screening in adolescents. ACOG Committee Opinion No. 300. American College of Obstetricians and Gynecologists. Obstet Gynecol 2004;104:885–9.
4. Management of abnormal cervical cytology and histology. ACOG Practice Bulletin No. 66. American College of Obstetricians and Gynecologists. Obstet Gynecol 2005;106:645–64.
5. Woodman CB, Collins S, Winter H, Bailey A, Ellis J, Prior P, et al. Natural history of cervical human papillomavirus infection in young women: a longitudinal cohort study. Lancet 2001;357:1831–6.
6. Results of a randomized trial on the management of cytology interpretations of atypical squamous cells of undetermined significance. ASCUS-LSIL Triage Study (ALTS) Group. Am J Obstet Gynecol 2003;188:1383–92.
7. A randomized trial on the management of low-grade squamous intraepithelial lesion cytology interpretations. ASCUS-LSIL Triage Study (ALTS) Group. Am J Obstet Gynecol 2003;188:1393–400.
8. Human papillomavirus testing for triage of women with cytologic evidence of low-grade squamous intraepithelial lesions: baseline data from a randomized trial. The Atypical Squamous Cells of Undetermined Significance/Low-Grade Squamous Intraepithelial Lesions Triage Study (ALTS) Group. J Natl Cancer Inst 2000;92:397–402.
9. Cox JT, Schiffman M, Solomon D. Prospective follow-up suggests similar risk of subsequent cervical intraepithelial neoplasia grade 2 or 3 among women with cervical intraepithelial neoplasia grade 1 or negative colposcopy and directed biopsy. ASCUS-LSIL Triage Study (ALTS) Group. Am J Obstet Gynecol 2003;188:1406–12.
10. Guido R, Schiffman M, Solomon D, Burke L. Postcolposcopy management strategies for women referred with low-grade squamous intraepithelial lesions of human papillomavirus DNA-positive atypical squamous cells of undetermined significance: a two-year prospective study. ASCUS-LSIL Triage Study (ALTS) Group. Am J Obstet Gynecol 2003;188:1401–5.



11. Kato I, Santamaria M, De Ruiz PA, Aristizabal N, Bosch FX, De Sanjose S, et al. Inter-observer variation in cytological and histological diagnoses of cervical neoplasia and its epidemiologic implication. J Clin Epidemiol 1995;48:1167–74.
12. Hellberg D, Nilsson S, Valentin J. Positive cervical smear with subsequent normal colposcopy and histology—frequency of CIN in a long-term follow-up. Gynecol Oncol 1994;53:148–51.
13. Raab SS. Can glandular lesions be diagnosed in pap smear cytology? Diagn Cytopathol 2000;23:127–33.
14. Moscicki AB, Shiboski S, Hills NK, Powell KJ, Jay N, Hanson EN, et al. Regression of low-grade squamous intra-epithelial lesions in young women. Lancet 2004;364:1678–83.
15. Sadler L, Saftlas A, Wang W, Exeter M, Whittaker J, McCowan L. Treatment for cervical intraepithelial neoplasia and risk of preterm delivery. JAMA 2004;291:2100–6.
16. Mitchell MF, Tortolero-Luna G, Cook E, Whittaker L, Rhodes-Morris H, Silva E. A randomized clinical trial of cryotherapy, laser vaporization, and loop electrosurgical excision for treatment of squamous intraepithelial lesions of the cervix. Obstet Gynecol 1998;92:737–44.
17. Pearson SE, Whittaker J, Ireland D, Monaghan JM. Invasive cancer of the cervix after laser treatment. Br J Obstet Gynaecol 1989;96:486–8.
18. English A, Kenney KE. State minor consent laws: a summary. 2nd ed. Chapel Hill (NC): Center for Adolescent Health & the Law; 2003.
19. Sexually transmitted diseases in adolescents. ACOG Committee Opinion No. 301. American College of Obstetricians and Gynecologists. Obstet Gynecol 2004;104:891–8.
20. Harel Z, Riggs S. On the need to screen for Chlamydia and gonorrhea infections prior to colposcopy in adolescents. J Adolesc Health 1997;21:87–90.

Resources

Guidelines on management of women with histological abnormalities. ASCCP Consensus Guidelines. American Society for Colposcopy and Cervical Pathology. Hagerstown (MD): ASCCP; 2003. Available at: http://www.asccp.org/consensus/histological.shtml. Retrieved November 18, 2005.

Guidelines on management of women with cytological abnormalities. ASCCP Consensus Guidelines. American Society for Colposcopy and Cervical Pathology. Hagerstown (MD): ASCCP; 2002. Available at: http://www.asccp.org/consensus/histological.shtml. Retrieved November 18, 2005.

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ACOG *Statement of Policy*

As issued by the ACOG Executive Board

STATEMENT ON PROVIDING EFFECTIVE CONTRACEPTION TO MINORS

The never-married, never-pregnant, sexually involved female has not yet been reached with effective contraception. The laws of some states indirectly prohibit this service for minors and thereby prevent the gynecologist from serving them or place the physician in legal jeopardy if he does so.

The American College of Obstetricians and Gynecologists believes that:

1. The unmarried female of any age whose sexual behavior exposes her to possible conception should have access to the most effective methods of contraception.

2. In order to accomplish this, the individual physician, whether working alone, in a group or in a clinic, should be free to exercise his best judgment in prescribing contraception and therefore, the legal barriers which restrict his freedom should be removed.

3. These restricting legal barriers should be removed even in the case of an unemancipated minor who refuses to involve her parents. A pregnancy should not be the price she has to pay for contraception. On the other hand, in counseling the patient, all possible efforts should be made to involve her parents.

4. The contraceptive services should be offered whenever possible in a broad spectrum counseling context which would include mental health and venereal disease.

5. Every effort should be made to include male partners in such services and counseling.

Approved by the Executive Board
May 1971
Reaffirmed July 1987

To: Lindsay Holmes
From: Jackie Cason
Date: Friday, March 13, 2009

Dear Representative Holmes,

Though I gave oral public testimony on HB35 on Wed. 3/11/09, many legislators had already left the room. I am writing as well so that my story might inform the judiciary committee's decisions on this important legislation, and I hope you'll hear me out. The saddest part of my story is that it is an ordinary one. I am a survivor of child sexual abuse, and my story is the story of 1 in 5 young girls/women. I hope you will listen to it as a representative anecdote for many young women who experience similar abuse. (http://www.sciencefriday.com/pages/2005/May/hour1_051305.html. I will attach a recent article that suggests 20% of females are sexually abused.)

I grew up in a very ordinary family. My dad was the blue-collar breadwinner, and my mom remained at home all the way up passed my high school years. They were loving and attentive, interested in my life, not perfect, but I always knew they loved me. In spite of that, I was molested for 4-5 years, starting when I was 11 and had been menstruating for less than a year, so I was only recently passed from being a girl into a woman.

You might ask yourself, why didn't my parents or my family know? How do these things happen in ordinary families? Do all cases of abuse happen in families like the Pilgrims? My sister was working nights, doing piecework for Bell Helmets, putting fiberglass on motorcycle helmets. It was hard and dirty work. My parents were buying new property and developing it with five houses, still trying to run a business as usual. Everyone was occupied, and I was going to my sister's in the afternoon to help babysit her kids and get dinner started, before their dad came home from work. As a preteen, I was filling in the gap between the day shift and the swing shift as so many families do. You can imagine the rest, and it went on for years at different times. I was very shy, lacked some self-esteem, and felt physically incapable of sharing the secret.

How DO these things happen? You should realize that sexual predators are intelligent. They can spot weak and vulnerable victims for their purposes. They can gain access because they are trusted members of families. (He worked for my dad and was around frequently). Predators seek shy, less secure young people and then give them positive attention and flatter them frequently. These predators may groom their prey for months or years and will take advantage of a girl's natural self-consciousness about her emerging sexuality and will lead her to believe that her family would reject her if she told the secret. And victims sometimes believe and fear rejection. But mostly, it would be the feelings of shame that silence victims. This kind of story happens all the time, in unlikely places, to twenty-percent of the children, primarily females.

On the lucky side, at least I didn't get pregnant because the predator had already had a vasectomy. But pregnancy could happen to someone else in this all too ordinary scenario.

Had I gotten pregnant, could I have told my parents? I don't think so. You know, I've often played out alternative "what-if" scenarios, and I've asked what would have happened if I'd told. On the one hand, it might have saved my sister from many more years of domestic violence, which escalated after my dad died. I wonder if my dad would have killed him, literally. My dad was a hunter and had ready access to guns and the ability to use them decisively. Who wouldn't understand the passion that could drive a father to murder the man who was psychologically abusing one daughter and molesting a younger one? You might even want to acquit him of his revenge, but he wouldn't have been acquitted.

I couldn't tell my sister because her husband was the one molesting me. I couldn't tell my brothers because, I don't know, we just didn't talk about stuff like that. I might have gone to my middle sister who was 5 years older, but she was going through her own growing pains. Planned Parenthood or an organization like that might have been my only option.

Even now, I am uncomfortable talking or writing about this.

I come before you today healed, but not completely whole. The damage done to my spirit is permanent. But still, I am well enough to pursue happiness and a fulfilling life. I selected a mate who is generous and kind, I've been married 23 years, and I'm most proud of my three sons. Most importantly, I speak openly with them about human sexuality. They have attended the Our Whole Lives program, and we try to be sure the conversation stays open.

However, if I had borne a child from that horrific episode in my life, I would have been reminded of those many days and nights every time I looked that child in the eye. It would have harmed me further to force me to tell my parents, because I could not have brought myself to tell them. I would have waited, until I was past the first trimester. I would have delayed acting until it was too late. Though I'd like abortion to be rare, I think it should happen as early as possible in a situation like this. I might even have committed suicide. Though I can't be certain what I would have done, I can tell you that I discovered my cervix when I was 13. I didn't know what it was, and in my ignorance I imagined it to be a cancerous tumor that would certainly kill me by the time I was 18. The sad part is that I saw the justice in that. I thought that I deserved to die.

What would have changed my experience? Not HB35, because I never got pregnant. What might have enabled me to confide in my parents, who would have protected me from further assault? They might have reached me, and I might have reached out to them if they had begun a conversation about sexuality much earlier in life, a conversation free of shame and embarrassment. I would have known not only that what was happening was wrong but that I had recourse. I might have gone running into their arms, and they would never have considered rejecting me. I know that now. I didn't know that then. But I might also have seen my father spend his latter days in prison, at least a 50-50 chance I'm sure. My mom MIGHT have been able to stop him, but he could be violently tempered at times, and this would have been one of them.

If the state is going to compel a conversation in the event of a crisis pregnancy, then the state should go all the way and compel a lifelong conversation about healthy sexuality, age appropriate of course. Insist that parents accompany their minor children to human sexuality night at the community council or the local school. Force them to communicate, but don't lead them to believe that they can get away with near-silence on the topic and then rely on the state to force a conversation after it's too late. That might have saved me, and it might save young girls from being like me. It might empower them to embrace their sexuality as part of who they are, not feel shame, and allow them to grow comfortable talking about their bodies and the physiological changes that occur naturally through life. Who knows, they might even grow up to become healthy senior citizens who enjoy a sex life without shame. We're never too old to learn.

I know you are likely to vote against this legislation, but because you are my representative and on the judiciary committee, I wanted to write to your directly to ask you to emphasize my testimony, even though many had already left the room when I told my story.

Thank you for listening.

Jackie Cason

The Science of Child Sexual Abuse
Jennifer J Freyd; Frank W Putnam; Thomas D Lyon; Kathryn A Becker-Blease; et al
Science; Apr 22, 2005; 308, 5721; ProQuest Education Journals
pg. 501

PSYCHOLOGY

The Science of Child Sexual Abuse

Jennifer J. Freyd,[1*] Frank W. Putnam,[2] Thomas D. Lyon,[3] Kathryn A. Becker-Blease,[4] Ross E. Cheit,[5] Nancy B. Siegel,[6] Kathy Pezdek[7]

Child sexual abuse (CSA) involving sexual contact between an adult (usually male) and a child has been reported by 20% of women and 5 to 10% of men worldwide (*1–3*). Surveys likely underestimate prevalence because of underreporting and memory failure (*4–6*). Although official reports have declined somewhat in the United States over the past decade (*7*), close to 90% of sexual abuse cases are never reported to the authorities (*8*).

CSA is associated with serious mental and physical health problems, substance abuse, victimization, and criminality in adulthood (*9–12*). Mental health problems include posttraumatic stress disorder, depression, and suicide (*13, 14*). CSA may interfere with attachment, emotional regulation, and major stress response systems (*15*). CSA has been used as a weapon of war and genocide and is associated with abduction and human trafficking (*2*).

Much of the research on CSA has been plagued by nonrepresentative sampling, deficient controls, and limited statistical power (*16*). Moreover, CSA is associated with other forms of victimization (*17*), which complicates causal analysis of its role in adult functioning. However, associations in larger scale community and well-patient samples have been confirmed after controlling for family dysfunction and other risk factors (*18, 19*), in longitudinal investigations that measure pre- and post-CSA functioning (*20*), and in twin studies that control for environmental and genetic factors (*12, 21*).

Most CSA is committed by family members and individuals close to the child (*1*), which increases the likelihood of delayed disclosure (*22*), unsupportive reactions by caregivers and lack of intervention (*8, 23*), and possible memory failure [(*24, 25*), compare (*26*)]. These factors all undermine the credibility of abuse reports, yet there is evidence that when adults recall abuse, memory veracity is not correlated with memory persistence (*27, 28*). Research on child witness reliability has focused on highly publicized allegations of abuse by preschool operators and has emphasized false allegations rather than false denials (*29, 30*). Cognitive and neurological mechanisms that may underlie the forgetting of abuse have been identified (*31–33*).

Scientific research on CSA is distributed across numerous disciplines, which results in fragmented knowledge that is often infused with unstated value judgments. Consequently, policy-makers have difficulty using available scientific knowledge, and gaps in the knowledge base are not well articulated. We recommend interdisciplinary research initiatives and a series of international consensus panels on scientific and clinical practice issues related to CSA. This can promote (i) increased inclusion of CSA education in the curriculum in medical and mental health fields; (ii) improved education of the public, the media, and professionals who work with alleged CSA victims; (iii) greater visibility and improved dissemination of CSA research; (iv) increased focus on CSA by researchers in a range of disciplines; and (v) improved cost-benefit analyses of intervention, including prevention efforts.

We call on researchers from social science, medical, and criminal justice fields to gather better information on the prevalence (*34*), causes, consequences, prevention, and treatment of CSA. A 1996 report from the Department of Justice (*35*) estimated rape and sexual abuse of children to cost $1.5 billion in medical expenses and $23 billion total annually to U.S. victims. Whereas $2 is spent on research for every $100 in cost for cancer, only $0.05 is spent for every $100 dollars in cost for child maltreatment (*36*). The National Child Traumatic Stress Network is a federally funded network of 54 sites providing community-based treatment to children and their families exposed to a wide range of trauma. The network should be expanded to address the enormous public health consequences of child trauma, and supported to develop new forms of treatment. Even creation of a new Institute of Child Abuse and Interpersonal Violence within the NIH would be justified on the basis of the emotional and economic cost of these problems.

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References and Notes

1. D. Finkelhor, *Future Child.* 4, 31 (1994).
2. World Health Organization (WHO), *World Report on Violence and Health* (WHO, Geneva, 2002); available at www.who.int/violence_injury_prevention/violence/world_report/.
3. R. M. Bolen, M. Scannapieco, *Soc. Serv. Rev.* 73, 281 (1999).
4. D. M. Fergusson, L. J. Horwood, L. J. Woodward, *Psychol. Med.* 30, 529 (2000).
5. J. Hardt, *J. Child Psychol. Psychiatry* 45, 260 (2004).
6. C. S. Widom, S. Morris, *Psychol. Assess.* 9, 34 (1997).
7. *Child Maltreatment Report 1990* [to 2002] (U.S. Department of Health and Human Services, Washington, DC, 2003); reports from 1995 to 2002 are available at www.acf.hhs.gov/programs/cb/publications/cmreports.htm
8. R. F. Hanson *et al.*, *Child Abuse Neglect* 23, 559 (1999).
9. C. S. Widom, *Child Abuse Neglect* 18, 303 (1994).
10. F. W. Putnam, *J. Am. Acad. Child Adolesc. Psychiatry* 42, 269 (2003).
11. D. M. Fergusson, L. J. Horwood, M. T. Lynskey, *J. Am. Acad. Child Adolesc. Psychiatry* 34, 1365 (1996).
12. E. C. Nelson *et al.*, *Arch. Gen. Psychiatry* 59, 139 (2002).
13. B. E. Molnar, S. L. Buka, R. C. Kessler, *Am. J. Public Health* 91, 753 (2001).
14. B. E. Molnar, L. F. Berkman, S. L. Buka, *Psychol. Med.* 31, 965 (2001).
15. M. D. De Bellis *et al.*, *J. Clin. Endocrinol. Metab.* 78, 249 (1994).
16. J. Briere, *J. Consult. Clin. Psychol.* 60, 196 (1992).
17. J. G. Noll *et al.*, *Interpers. Violence* 18, 1452. (2003).
18. C. L. Battle *et al.* *Personal. Disord.* 18, 193 (2004).
19. R. Roberts, T. O'Connor, J. Dunn, J. Golding, ALSPAC Study Team, *Child Abuse Neglect* 28, 525 (2004).
20. S. Boney-McCoy, D. Finkelhor, *J. Consult. Clin. Psychol.* 64, 1406 (1996).
21. S. Dinwiddie *et al.*, *Psychol. Med.* 30, 41 (2000).
22. D. W. Smith *et al.*, *Child Abuse Neglect* 24, 273 (2000).
23. D. M. Elliott, J. Briere, *Behav. Sci. Law* 21, 261 (1994).
24. J. J. Freyd, *Betrayal Trauma* (Harvard, Cambridge, MA, 1996).
25. J. J. Freyd, A. P. DePrince, E. L. Zurbriggen, *J. Trauma Dissoc.* 2 (3), 5 (2001).
26. G. Goodman *et al.* *Psychol. Sci.* 14, 113 (2003)
27. C. J. Dalenberg, *J. Psychiatry Law* 24, 229 (1996).
28. L. M. Williams, *J. Trauma. Stress* 8, 649 (1995).
29. S J. Ceci, M. Bruck, *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony* (American Psychological Association, Washington, DC, 1995).
30. T. D. Lyon, *Cornell Law Rev.* 84, 1004 (1999).
31. M. C. Anderson et al., *Science* 303, 232 (2004).
32. A. P. DePrince, J. J. Freyd, *Psychol. Sci.* 15, 488 (2004).
33. H. Sivers, J. Schooler, J. J. Freyd, in *Encyclopedia of the Human Brain*, V. S. Ramachandran, Ed. (Academic Press, San Diego, CA, 2002), vol. 4, pp. 169–184.
34. For example, the Bureau of Justice Statistics collects data on crimes against people aged 12 and older.
35. T. R. Miller, M. A. Cohen, B. Wiersema, *Victim Costs and Consequences: A New Look* (U.S. Department of Justice, Washington, DC, 1996).
36. F. W. Putnam, in *The Cost of Child Maltreatment: Who Pays?* K. Franey, R. Geffner, R. Falconer, Eds. (Family Violence and Sexual Assault Institute, San Diego, CA, 2001), pp. 185–198.

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2858

Jane Pierson

From: Christopher Clark [cgcalaska@yahoo.com]

Sent: Friday, February 27, 2009 8:38 AM

To: Tim Barry; John Bitney; Shannon Devon; Peter Fellman; Linda Hay; Crystal Koeneman; Paul Labolle; Karen Lidster; Tom Maher; John Manly; Rynnieva Moss; Jane Pierson; Chris Wyatt

Subject: Daily News: History of parental consent law in Alaska

History of parental consent law in Alaska

Published: February 27th, 2009 03:38 AM
Last Modified: February 27th, 2009 03:44 AM

1997: Passed by Legislature, became law over veto by then-Gov. Tony Knowles. Challenged immediately. Never went into effect. What it did: Required girls younger than 17 to get a parent's or judge's permission before obtaining an abortion.

1997: Appealed by ACLU, Planned Parenthood and local doctors.

1998: Superior Court Judge Sen Tan rules the law unconstitutional. The state appeals.

2001: Alaska Supreme Court orders Judge Tan to hear testimony and decide if the law furthers **"a compelling state interest" using the "least restrictive means"** available. This is a standard balancing test used to decide if something is important enough to the state that it should be allowed even if it might infringe on a citizen's rights.

2003: Superior Court trial held as ordered.

2003: Judge Tan rules the law does not meet the **compelling state interest-least restrictive** means test. He ruled it unconstitutional under the **equal protection and privacy clauses** of the Alaska Constitution.

2004: The state appealed Tan's ruling to the Alaska Supreme Court.

2005: Oral argument before the Supreme Court

2007: In a 3-2 vote, the Supreme Court rules the law unconstitutional on privacy grounds.

Changes in Alaska Supreme Court:

The votes to overturn the parental consent law in 2007 were cast by Justices Dana Fabe, Alex Bryner and Robert Eastaugh.

Justices Walter Carpeneti and Warren Matthews voted to uphold it.

The current make-up of the court: Fabe and Eastaugh remain on the bench.

Bryner has been replaced by Palin appointee Daniel Winfree.

Carpeneti remains on the bench. **Matthews will soon be replaced by an upcoming Palin appointment.**

Source: Anchorage Daily News. Associated Press, ACLU

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on HB 35, dated 3-9-09
bill/subject

Dear Legislators:

My name is Patricia Anker and I live in Anchorage - District 423.

Thank you for taking public testimony regarding HB 35.

I understand this bill will be heard in the House Judiciary Committee this coming Monday, Wednesday and Friday.

Please vote **YES** on this bill and support parental rights as they provide for, support, educate, and love their children. They - the parents - are, after all, responsible in every way for the well-being of their children - they certainly should have the information they need to guide their children in all areas.

Thank You,
Patricia K. Anker

Signed:

From: John and Patti Anker [ankzam@gci.net]
Sent: Sunday, March 08, 2009 12:35 AM
To: LIO Anchorage
Subject: HB35 Notice and Consent for Minor's Abortion

Address

Phone No.

Charleston Daily Mail
DAILYMAIL.COM

41°
Friday March 13, 2009 2:05 pm » More weather Feels like 41°
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Statehouse News

Parental Rights on Tanning Beds

Wednesday March 11, 2009

Bill would require minors to get parental consent to use tanning beds

by Michelle Saxton
Daily Mail Capitol Reporter

CHARLESTON, W.Va. – Teenagers wanting a bronze, sun-kissed look in a pinch may have to get written consent from their parents before heading to the tanning salon under a bill pending with West Virginia lawmakers.

Senate Bill 488 would require parents or legal guardians to sign a statement granting permission for children under 18 who want to use a tanning facility. In cases where a child was under 14, parents or guardians would have to accompany them.

"There is so much skin cancer, and we know that tanning beds contribute," said Sen. Ron Stollings, a physician. "It's an add-on over years."

Stollings, D-Boone, introduced the bill last week. It is pending in the Senate Judiciary Committee.

"From a business standpoint we don't want to close anybody down," said Stollings, whose district also includes Logan, Lincoln and part of Wayne counties. "We just want to make people aware of the risks.

"People are still going to go to the tanning bed, but at least we're trying to raise awareness that it's not a benign process," he said. "It's not like we don't know it's an issue or not - the studies are there. The more UV radiation you get, the more increased risk for skin cancer."

Signed consent forms would be valid for one calendar year and would state that "the parent or legal guardian has read and understood the warnings given by the tanning facility, and that they consent to the minor's use of the tanning device and agree that the minor will use protective eyewear," the bill says.

"It's a wonderful step in the right direction," said Erin Mulvey, communications director for the Skin Cancer Foundation in New York. The foundation ultimately hopes tanning salons will be illegal for minors, she said, and it is working to encourage young women and others to stop tanning through its Go With Your Own Glow public awareness campaign.

"The reason we feel so strongly is because of the direct link to skin cancer," Mulvey said. "We just want people to be healthy and take care of your skin.'

It is projected that more than 62,000 Americans were diagnosed in 2008 with melanoma, the deadliest form of skin cancer, according to American Cancer Society estimates. The estimated figure for new cases of melanoma in West Virginia last year is 440, according to the Skin Cancer Foundation.

Skin damage or burns can occur if you are careless, whether out in the sun or in a tanning bed, but salons provide a controlled environment where tanning time is monitored, some businesses say.

"At any age it's very bad for your skin to get a bad sunburn," said Krystle Smith, who co-owns Hot Spot Tanning in Charleston. "If parents are more involved, their children are more apt to be safe about it."

Hot Spot Tanning is among West Virginia salons that already require parental permission for minors.

Toni Richardson, who co-owns the salon with Smith, her daughter, has had parents sign for their children since starting the business in 1999.

"I think the bill is a great idea," Richardson said.

Richardson remembers one customer who had previously gone to a different tanning

facility without her parents' knowledge, stayed too long under the tanning device and got burned.

"I think that if her parents were aware maybe the mother would have said, 'Don't stay so long,' " Richardson said. "I do have a couple of parents that do that."

"It's important that parents know everything their children are doing," she said. "There's a lot of controversy on tanning. I think that the parents need to make the decision whether to let their children tan or not."

Advertiser

11 Comments on "Bill would require minors to get parental consent to use tanning beds"

Post a comment

Posted By: **morning sick...** (19 hours ago) ΔReport Abuse

Hey teach...why don't you just make sure Johnny can read, write and add on an 8th grade level when they graduate High School like you've been doing and stop trying to save everyone from themselves by trampling on our civil liberties to push your socialist goodt two shoe utopian agenda.

Posted By: **unreal** (10 00am 03-12-2009) ΔReport Abuse

I have had a member of my family pass with skin cancer and I still think this is the stupidest thing I have heard of...parents should know what their children do and do not need the government requiring it. I worried more about whether the young kids will have a job here in our state when they graduate than how many lay in the tanning beds. Heck what next make the parents sign a parental consent for the kids to go outside when the sun is shining?

Posted By: **WVTEACH** (8:46am 03-12-2009) ΔReport Abuse

Morning Sick - I guess you do not think skin cancer in an issue? The risk of cancer increases immensely if you start tanning early. Girls are tanning as early as middle school now. Think of the damage that will be done before they graduate college. Whether you want to believe it or not this is a MAJOR PROBLEM. I'm sure if you had someone in your family die from skin cancer you would think differently about this bill. BTW - In West Virginia we have something called Content Standards and Objectives. That is what teachers use to guide their teachings.

Posted By: **morning sick...** (6:58am 03-12-2009) ΔReport Abuse

WVTEACH....I am so glad I do not have children in the public schools because public education is "child abuse". I would not want you indoctrinating my child with your "common sense"

More Comments ▾

Adopted! 3/27/09

AMENDMENT 5

Amended amendment Adopted

OFFERED IN THE HOUSE FINANCE COMMITTEE

By REP. GARA

TO: HB 35

1. Page 2, lines 27:

   Following "death":

   Insert "or serious risk to the minor's physial health"

2. Page 2, lines 28-30:

   Delete all text.

2863