No. SC01-843

IN THE SUPREME COURT OF FLORIDA

NORTH FLORIDA WOMEN'S HEALTH AND COUNSELING SERVICES, INC.; et al.,

Petitioners,

v.

STATE OF FLORIDA; FLORIDA DEPARTMENT OF HEALTH; et al.,

Respondents.

On Appeal from The First District Court of Appeal,
First District, State of Florida
(Case Numbers 1D00-1983, 1DO0-2106)

AMICUS CURIAE BRIEF BY LIBERTY COUNSEL ON BEHALF OF CHRISTIAN MEDICAL ASSOCIATION, CATHOLIC MEDICAL ASSOCIATION AND AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS/GYNECOLOGISTS

Teresa Stanton Collett*
Professor of Law
South Texas College of Law
1303 San Jacinto
Houston, Texas 77002-7000
(713) 646-1834

Mathew D. Staver
Florida Bar # 0701092
Erik W. Stanley
Florida Bar #0183504
LIBERTY COUNSEL
210 East Palmetto Avenue
Longwood, Florida 32750
(407) 875-2100
(407) 875-0770 FAX

Counsel for Amicus Curiae

*Application for Admission *Pro Hac Vice* Filed

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Cases

Florida Statutes

Other Statutes

Other Authorities

INTEREST OF AMICI

Amicus curiae Christian Medical Association (CMA) was founded in 1941 and today represents over 14,000 members, with active members in Florida. Membership is comprised primarily of practicing physicians representing the entire range of medical specialties. Members share a common commitment to the principles of Biblical faith and the integration of these principles with professional practice. This organization views such principles as essential to protecting the lives and best interests of patients, the conscientious practice of medicine according to long-standing Hippocratic and religious principles, and to preserving the public respect accorded to physicians as guardians of health and life.

Amicus curiae Catholic Medical Association is an association of physicians who seek to integrate their understanding of the teachings of the Roman Catholic Church into their professional lives. The membership supports the involvement of parents in a minor's decision to obtain an abortion.

Amicus curiae American Association of Pro-Life Obstetricians/ Gynecologists ("AAPLOG") is an organization of 2,500 members and associates, including a number of members practicing in Florida. AAPLOG is committed to reaffirming the physician's role as caregiver for both the mother and her unborn child, and is recognized by the American College of Obstetricians and Gynecologists as a special interest group within the college. AAPLOG recognizes that the Florida Supreme Court's decision in this case will impact medical practice in Florida and supports the statutory mandate for parental notice of a minor's decision to obtain an abortion.

STATEMENT OF THE CASE AND FACTS

Amici curiae adopt the Statement of the Case and Facts set forth in the Answer Brief filed by the State.

SUMMARY OF THE ARGUMENT

The Florida Parental Notice of Abortion Act serves the state's compelling interest in protecting the health and safety of minors through insuring the involvement of parents in the decisions of girls experiencing unplanned pregnancies. Similar laws have been passed in forty-two states, and are currently being enforced in well over half the United States with no reliable evidence of the ominous effects threatened by Plaintiffs. In those few cases where minors are sufficiently mature and well-informed to forego parental involvement, or where it is in their best interest to do so, the Florida law, like the law in other states, provides for a quick, confidential proceeding in which a judge can insure that the minor is not being coerced and has been provided adequate information to make a mature and well-informed choice. Such proceedings, like parental involvement, insure that minor has received a realist description of the risks attendant to abortion as well as those attendant to continuing her pregnancy.

The Florida Constitutional Right to Privacy does not prohibit this narrowly tailored attempt to insure that a minor faced with an unexpected pregnancy receives the support and guidance provided by parents in almost every case, while she struggles with this important and often life-transforming decision. Amici urges this Court to affirm the opinion of the District Court and uphold the constitutionality of this Act.

ARGUMENT

I.

THE FLORIDA PARENTAL NOTICE OF ABORTION ACT CONSTITUTIONALLY BALANCES THE INTERESTS OF MINORS, FAMILIES, AND THE STATE.

Florida legislators, like a majority of legislators in forty-two other states,[1]

---

[1] See ALA. CODE §§ 26-21-1 to-8 (1992 & Supp. 1999); ALASKA STAT. §§ 18.16.010-030 (Michie 1998); ARIZ. REV. STAT. ANN. § 36-2152 (West 1993 & Supp. 1999); ARK. CODE ANN. §§ 20-16-801 to-808 (Michie 2000); CAL. HEALTH & SAFETY CODE § 123450 (West 1996 & Supp. 1999); COLO. REV. STAT. ANN. §§ 12-37.5-101 to-108 (West Supp. 1999); CONN. GEN. STAT. ANN. § 19(a)-601 (West 1997); DEL. CODE ANN. tit. 24, §§ 1780-1789B (1997); GA. CODE ANN. §§ 15-11-110 to-118 (Harrison 1998); IDAHO CODE § 18-609(6) (Michie 1997); 750 ILL. COMP. STAT. 70/1-70/99 (West 1999); IND. CODE ANN. §§ 16-18-2-267, 16-34-2-4 (West 1997); IOWA CODE ANN. §§ 135L.1-8 (West 1997 & Supp. 2001); KAN. STAT. ANN. § 65-6705 (1992 & Supp. 1999); KY. REV. STAT. ANN. § 311.732 (Michie 1995 & Supp. 2000); LA. REV. STAT. ANN. § 40:1299.35.5 (West 1992 & Supp. 2000); ME. REV. STAT. ANN. tit. 22, § 1597-A (West 1992 & Supp. 1999); MD. CODE ANN., HEALTH-GEN. § 20-103 (Michie 2000); MASS. ANN. LAWS ch. 112, § 12s (Law. Co-op. 1991 & Supp. 2000); MICH. STAT. ANN. §§ 25.248 (101)-(109) (Law. Co-op. 1999 & Supp. 2000); MINN. STAT. ANN. § 144.343 (West 1998); MISS. CODE ANN. §§ 41-41-51 to-63 (1993 & Supp. 1998); MO. ANN. STAT. §§ 188.015, 188.028 (West 1996 & Supp. 2000); MONT. CODE ANN. §§ 50-20-201 to-215 (1999); NEB. REV. STAT. §§ 71-6901 to- 6909 (1996); NEV. REV. STAT. §§ 442.255-.257 (2000); N.J. STAT. ANN. §§ 9:17A-1 to-1.12 (West 1993 & Supp. 2000); N.M. STAT. ANN. §§ 30- 5-1 to-3 (Michie 2000); N.C. GEN. STAT. §§ 90-21.6 to .10 (1999); N.D. CENT. CODE §§ 14-02.1 to 03.1 (1997); OHIO REV. CODE ANN. § 2919.12 (Anderson 1996); 18 PA. CONS. STAT. ANN. § 3206 (West 1983 & Supp. 2000); R.I. GEN. LAWS § 23-4.7-6 (1996); S.C. CODE ANN. §§ 44-41-30 to-37 (Law. Co-op. 1985 & Supp. 1999); S.D. CODIFIED LAWS § 34-23A-7 (Michie 1994 & Supp. 1999); TENN. CODE ANN. § 37-10-301 to-304 (1996 & Supp. 1999); TEX. FAM. CODE ANN. § 33.001-.004 (Vernon Supp. 2000); UTAH CODE ANN. § 76-7-304 (1999); VA. CODE ANN. § 16.1-241(D) (Michie 1999); W. VA. CODE §§ 16-2F-1 to-8 (1998); WIS. STAT. ANN. § 48.375 (West 1997); WYO. STAT. ANN. § 35-6-118 (Michie 1999).

Courts have permanently enjoined implementation of six state statutes in the face of claims of state or federal constitutional infirmity. See *Planned Parenthood of Rocky Mountain Services Corp. v. Owens*, 107 F.Supp.2d 1271, 1280 (D. Colo. 2000) (medical emergency exception in parental notice statute impermissibly narrow); *Glick v. McKay*, 616 F. Supp. 322, 327 (D. Nev. 1985), aff'd, 937 F.2d 434 (9th Cir. 1991);

reasonably assume "that minors [seeking abortions] will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart."[2] Based upon this assumption, the Legislature passed the Florida Parental Notice of Abortion Act (the "Act") requiring physicians to notify a minor's parent or guardian 48 hours prior to performing an abortion on the minor. § 390.01115(4) Fla. Stat. (1999). Plaintiffs filed suit challenging the constitutionality of the Act on the basis that it violated a minor's right to privacy, to equal protection of the laws, and to due process.

At the conclusion of a two-week trial, testimony established that parental involvement improves the quality of medical care received by minors responding to

---

American Acad. of Pediatrics v. Lungren, 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); *Planned Parenthood of Central New Jersey v. Farmer*, 762 A.2d 620 (N.J. 2000) (parental notification law with judicial waiver violates state constitution); *Zbaraz v. Ryan*, No. 84 C 771 (Ill. Supreme Ct. refused to issue rules implementing Ill. Stat.); *Wicklund v. State*, No. ADV-97-671 (Mont. Dist. Ct. Feb. 25, 1999) (parental notification law violated state constitution) *available at* http://www.mtbizlaw.com/1stjd99/WICKLUND_2_11.htm. The New Mexico statute was ruled unconstitutional by the state attorney general. N.M. Ag. Op. 90-19, 1990 WL 509590. Enforcement of the parental laws in Arizona and Florida, while upheld as constitutional by lower courts, are stayed pending disposition of appeals regarding their constitutionality. The Arizona federal district court upheld the constitutionality of the Arizona parental consent law on August 8, 2001. *Planned Parenthood of Southern Arizona v. Lawall,* No. CV 00-386-TUC-RCC (D. Ariz. filed Aug. 9, 2001). A local newspaper, however, reports that enforcement of the law has been stayed pending the outcome of an appeal of the decision. Carol Sowers, *Judge Stays Abortion Law, Appeal Challenges Consent Measure*, THE ARIZONA REPUBLIC, Sept. 15, 2001 at A1, *available at* http://www.arizonarepublic.com/special12/articles/0915abortion15.html. In Alaska, the state supreme court has reversed a trial court determination that the parental consent law violates the state constitution, and returned the case to trial court in order to allow the state the opportunity to establish that the law serves compelling state interests by narrowly tailored means. *State v. Planned Parenthood of Alaska*, 2001 WL 1448754 at *10 (Alaska 2001)

2 *Planned Parenthood v. Casey*, 505 U.S. 833 at 895 (1992) (O'Connor, J., plurality opinion).

unplanned pregnancies (TR, pp. 347-48, 408-411; Greene Aff., ¶6-8; Trial Transcript, pp. 1035-42, 1062), reduces teen pregnancies (Trial Transcript pp. 1217-25), enhances family unity (TR 507-21, Figley Aff. ¶10, 13), and facilitates the protection of minors from sexual exploitation by adults (Trial Transcript pp. 297, 927-36, 1227-1230, 1314-1317, 1435, 1439). It was also established that minors retain ultimate decisional authority over whether to continue or terminate their pregnancies under the Act, since a parent need not consent to the minor's abortion. Notwithstanding these showings, the trial court ruled that the Act violated the minor's right to privacy as articulated by the members of this Court in *In re T.W.*, 551 So.2d 1186 (Fla. 1989). The District Court reversed, finding that the State had established that the Act was narrowly tailored to achieve the state's compelling interest in the protection of the health and safety of its minor citizens. Plaintiffs have perfected this appeal of that ruling.

II.

PARENTAL NOTICE DOES NOT OFFEND THE MINOR'S RIGHT TO PRIVACY ARTICULATED IN *IN RE T.W.*

In *In re T. W.*, 551 So.2d 1186 (Fla. 1989) four justices of this Court declared the 1988 Florida parental consent law unconstitutional. This case is not dispositive of the current appeal because, unlike the consent law at issue in *In re T. W.*, under the current Act the minor retains full decisional authority over whether to continue or terminate her pregnancy. The United States Supreme Court has recognized that notification laws do not give parents the legal authority to prevent their daughter's abortion. In *Hodgson v. Minnesota* Justice Stevens observed, "Although the Court has held that parents may not exercise 'an absolute, and possibly arbitrary, veto' over that decision [by a minor to terminate her pregnancy], it has never challenged a State's

reasonable judgment that the decision should be made after notification to and consultation with a parent."[3]

To the extent that the right to privacy found in Art. 1 §23 of the Florida Constitution establishes a minor's right to decide whether to abort or continue a pregnancy, this right is not diminished by parental notification under the Act. The minor retains full decisional authority under the Act. After a parent is notified, the Act creates no legal impediment to the performance of an abortion upon a minor who has given her informed consent. Testimony at trial by Plaintiff's expert, Dr. Stanley Henshaw, established that over 90% of the parents who are notified of their daughters' intentions to obtain abortions come to support their daughters' decisions. Trial Transcript, p. 922. Unlike the parental consent law at issue in *In re T.W.*, parental notification imposes no obligation on the abortion provider to defer to the parent's objection in those rare cases, where the minor's parent opposes the abortion. Thus the Act creates no practical or legal barriers to performance of the abortion after a parent has been notified.

III.

PARENTAL INVOLVEMENT LAWS RESULT IN SUBSTANTIALLY MORE PARENTS KNOWING OF THEIR DAUGHTERS' DECISION TO OBTAIN ABORTIONS.

The state of Florida does not maintain official statistics regarding the number of teen abortions. However, it is possible to estimate the number, based on the proportion of abortions obtained by minors in other states.[4] Assuming Florida mirrors

---

3 *Hodgson v. Minnesota*, 497 U.S. 417, 445 (1990) (citation omitted).

4 This is the method used by the Plaintiff's expert, Stanley Henshaw, both at trial

the national experience, 36% of teenagers, ages fifteen through seventeen, will abort their pregnancies, 56% will carry the pregnancy to term, and 8% will miscarry.[5] In 2000, there were 9,176 births to Florida residents under the age of 18.[6] This would suggest that there were 16,386 pregnancies, 5,899 abortions, and 1,311 miscarriages among this same age group. This estimate of teen abortions is substantially lower than the estimate of 8,000 provided by Plaintiff's expert, Dr. Henshaw, at trial on the basis of national statistics for 1996.[7] but higher than the estimate of 4,952 obtained by utilizing the numbers attributed to Florida in an article authored by the same expert.[8]

(Trial Transcript, pp. 377,379) and in his article *Teenage Abortion and Pregnancy Statistics by State, 1996*, 32 Fam. Planning Perspectives 272 (2000) *available at* www.agi-usa.org/pubs/journals/3227200.pdf.

5 Stanley K. Henshaw & Dina J. Feivelson, *Teenage Abortion and Pregnancy Statistics by State, 1996*, 32 Fam. Planning Perspectives 272, 275 (2000) *available at* www.agi-usa.org/pubs/journals/3227200.pdf.

> In 1996, pregnancies among adolescents ended in about 492,000 births, 264,000 abortions, and 125,000 miscarriages. As was the case for pregnancy rates, older teenagers' birthrate (86 per 1,000) was 2.5 times that of younger teenagers (34 per 1,000). Similarly, the abortion rate among women aged 18-19 (45 per 1,000) was 2.4 times the rate among 15-17 year-olds (19 per 1,000). Thus, the abortion ratio is similar for the two age-groups-34 abortions per 100 abortions plus live births for older teenagers and 36 per 100 of younger ones. In other words, on the national level the decision to end a pregnancy or carry it to term does not vary greatly by age within the teenage years.

Id.

6 Florida Vital Statistics Annual Report 2000, Chart B-2, *available at* www9.myflorida.com/planning_eval/vital_statistics/00vitals/births.pdf.

7 Stanley Henshaw (Trial Transcript, pp. 377,379).

8 In Stanley K. Henshaw & Dina J. Feivelson, *Teenage Abortion and Pregnancy Statistics by State, 1996*, 32 Fam. Planning Perspectives 272 (2000) *available at* www.agi-usa.org/pubs/journals/3227200.pdf, the authors estimate that there were 16,840 abortions performed on Florida women, ages 15-19 in 1996. Accepting the authors' finding that the abortion rate among women aged 18-19 was 2.4 times the rate among 15-17 year-olds, only 4,952 of the 16,840 abortions in 1996 would have

Dr. Henshaw also testified that his research revealed only sixty percent of minors seeking abortions have informed a parent, absent a parental involvement law.[9] If accurate, this would mean that between 1,980 to 3,200 Florida minors obtained abortions without parental knowledge or involvement in 2000. Experience in other states suggests that implementation of the Florida Parental Notice of Abortion Act would dramatically increase the number of parents who know of their daughters' intentions to undergo abortions, and would reduce the number of teen pregnancies and abortions overall.[10]

Texas provides a recent example of a state implementing a law similar to the Act at issue in this litigation. Texas law requires abortion providers notify a parent forty-eight hours prior to performing an abortion on a minor.[11] The year prior to implementation of the Texas Parental Notification Act, there were 4,721 abortions performed on minors in Texas.[12] A study provided to state legislators by the Texas Family Planning Association indicated that 69% of Texas minors informed a parent prior to obtaining abortions before the law was enacted.[13] The first year after

---

involved minors ages 15 to 17.

9 Stanley Henshaw (Trial Transcript, pp. 905).

10 Trial Transcript, pp. 1217-24; Defense Exhibits 90A-2, 90A-3, 90A-4, and 90A-5.

11 TEX. FAM. CODE §33.002 (Vernon Supp. 2000).

12 *See* Texas Dept. of Health, Bureau of Vital Statistics, Table 14B - Reported Pregnancies, Births, Fetal Deaths, and Abortions, Women Age 13-17 - Texas, 1999 at http://www.tdh.state.tx.us/bvs/stats99/ANNR_HTM/99t14b.HTM

13 *See Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (Apr. 19, 1999) (submission of Texas Family Planning Association). Of the

implementation of the Act, the number of pregnancies experienced by minors declined from 26,117 to 24, 665[14] and abortions declined from 4,721 to 3,830.[15]

While no official statistics regarding the number of judicial bypass proceedings are available, the Texas Department of Health accumulates statistics regarding the number of abortions on minors and the number of payments to attorney *ad litems* in judicial bypass proceedings.[16] Based on the number of claims for payment, even assuming that every application for bypass was granted, it appears that 95% of all minors in Texas now notify a parent prior to the performance of an abortion.[17] This

---

245 minors obtaining abortions at Planned Parenthood of Dallas 67% involved a parent. Of the 131 minors obtaining abortions at Planned Parenthood of Houston 67% involved a parent. Of the 23 minors obtaining abortions at Planned Parenthood of San Antonio 91% involved a parent. Of the 22 minors obtaining abortions at Planned Parenthood of Central Texas 73% involved a parent. Of the 21 minors obtaining abortions at Planned Parenthood of West Texas 76% involved a parent. *Id*. During the survey period 305 of the 442 minors obtaining abortions involved a parent. After passage of the Texas Parental Notification Act, 424 would have involved a parent.

14 *Compare* Texas Dept. of Health, Bureau of Vital Statistics, Table 14B - Reported Pregnancies, Births, Fetal Deaths, and Abortions, Women Age 13-17 - Texas, 1999 http://www.tdh.state.tx.us/bvs/stats99/ANNR_HTM/99t14b.HTM and Texas Dept. of Health, Bureau of Vital Statistics, Table 14B - Reported Pregnancies, Births, Fetal Deaths, and Abortions, Women Age 13-17 - Texas, 2000.

15 *Compare* Texas Dept. of Health, Bureau of Vital Statistics, Table 14B - Reported Pregnancies, Births, Fetal Deaths, and Abortions, Women Age 13-17 - Texas, 1999 at http://www.tdh.state.tx.us/bvs/stats99/ANNR_HTM/99t14b.HTM and Texas Dept. of Health, Bureau of Vital Statistics, Table 33 – Resident Induced Termination of Pregnancy, Texas 2000 at http://www.tdh.state.tx.us/bvs/stats00/ANNR_HTM/00t33.HTM.

16 Texas law requires the appointment of an attorney ad litem in every bypass proceeding. TEX. FAM. CODE §33.003 (Vernon Supp. 2000).

17 The Texas Parental Notification Act took effect January 1, 2000. On January 28, 2001, a Houston newspaper article quoted a lawyer working with the Texas Civil Liberties Union as stating that during 2000 "the state has paid more than $125,000 for lawyers representing 172 girls who have taken their cases to court." *Group Offers Online Abortion Aid/Web Site Guides Underage Girls Who Want Legal Permission*,

represents up to a 26% increase in parental involvement over the rate of involvement prior to passage of the Texas Parental Notification Act.

This experience is mirrored by that of Idaho. Idaho recently implemented a one-parent consent requirement prior to the performance of an abortion.[18] Based upon the reporting required under that law,[19] only two of the fifty-eight abortions obtained by minors in Idaho were pursuant to a judicial bypass order from September 1, 2000, when the reporting requirement went into effect, through August 31, 2001.[20] Fifty-four abortions were performed after obtaining parental consent. One minor was legally emancipated, and did not need parental consent, and one report did not indicate the nature of the consent obtained prior to performance of the abortion.[21] After

---

HOUS. CHRON., Jan. 28, 2001 at 3. This number is slightly lower than the annual average of 180 judicial bypass proceedings that can be derived from the Texas Department of Health statistics reflecting payment of 225 orders for attorney ad litem fees during the fifteen month period from January 1, 2000, to April 1, 2001. Email communication from Susan Steeg, General Counsel, Texas Department of Health, to Teresa S. Collett, (April 2, 2001).

Preliminary data from the Texas Department of Health indicates that there were 3,830 abortions performed on minors in Texas. *See* Texas Dept. of Health, Bureau of Vital Statistics, Table 33 – Resident Induced Termination of Pregnancy, Texas 2000 at http://www.tdh.state.tx.us/bvs/stats00/ANNR_HTM/00t33.HTM. Assuming that all abortion providers are complying with the law, and taking into account the statement of the Texas Department of Health that no certificates of abortions performed without parental notification due to emergency circumstances as defined under TEX. FAM. CODE §33.002 (a)(4) (Vernon Supp. 2000) had been received as of April 1, 2001, 3,650Texas minors should have had parents notified. This means that 95% of the Texas parents now know of their daughter's decision and therefore are able to help them respond to the unplanned pregnancy.

18 Idaho Code § 18-609A (2000).

19 18 Idaho § 18-609A(4).

20 Email communication from Janet M. Wick, Vital Statistics Unit of the Idaho Department of Health and Welfare, to Teresa S. Collett, October 10, 2001.

21 *Id*.

implementation of the Idaho parental involvement law, ninety-three percent of the minors obtained parental consent.[22]

The Florida Parental Notice of Abortion Act seeks to achieve a similar level of parental involvement in Florida minors' decisions to abort their pregnancies.

IV.

PARENTAL INVOLVEMENT LAWS HAVE NOT RESULTED IN HARM TO MINORS.

Plaintiffs and supporting amici, Physicians for Reproductive Choice and Health and Society for Adolescent Medicine ("PRC"), seek to persuade this Court that implementation of the Act "could have devastating consequences" to minors. PRC brief at 25, see also Plaintiffs-Petitioners' Amended Initial Brief at 15-16. This is a phantom fear. Parental involvement laws are on the books in over two-thirds of the states, some for over twenty years, and there is no evidence that these laws have led to an increase in illegal abortions.[23] Similarly, no case has established that these laws

---

[22] Alabama's and Indiana's one-parent consent statutes seem equally successful in promoting parental involvement. "In 1999, there were 1,015 records of women under age 18 with written permission and 12 with court ordered permission. These were occurrence data and reflect abortions that were performed in Alabama. They may or may not have been to Alabama residents." E-mail communication to Teresa S. Collett from K. Chapman, Alabama Dept. of Public Health, May 25, 2001.

"In Indiana's most populous county, for instance, from mid-1985 to mid-1991, only four minors asked the juvenile court for bypasses. In the state's second most populous county, over the same six year period, only one minor requested a bypass." Note, Steven F. Stuhlbarg, *When is a Pregnant Minor Mature? When is an Abortion in her Best Interests? The Ohio Supreme Court Applies Ohio's Abortion Parental Notification Law: In re Jane Doe 1, 566 N.E.2d 1181 (Ohio 1991)*, 60 U. CIN. L. REV. 907 at 929-30 (1992).

[23] *See Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (1999) (statement of Jamie Sabino, J.D., testifying that there had been no increase in the number of illegal abortions in Massachusetts since the enactment of the statute in 1981). Opponents of the Hyde amendment pressed similar claims before

lead to parental abuse or to self-inflicted injury.[24]

V.

IN THOSE RARE CASES WHERE PARENTAL NOTIFICATION IS UNDESIRABLE, JUDICIAL BYPASS PROVIDES A SAFE, EFFECTIVE ALTERNATIVE.

The Act provides for an expeditious and confidential judicial bypass of notification in those few instances in which the minor is sufficiently mature to decide whether to terminate her pregnancy without parental involvement, parental notification is not in the best interest of the minor, or there is evidence of child abuse or sexual

---

Congress. After implementation of abortion funding restrictions, the Center for Disease Control surveyed healthcare facilities in the District of Columbia and fourteen states to determine whether the restrictions increased self-induced or illegal abortion.

> This investigation revealed that the restriction of public funds for abortion did not cause enough Medicaid-eligible women to choose non-physician-induced or self-induced abortion for us to detect such an occurrence through our hospital reporting system. The small number of complications (10) after illegally induced abortions did not occur in women reported to be Medicaid recipients. These data support the inference that Medicaid-eligible women in non-funded states are not resorting to self-induced or non-physician-induced abortions to any sizable degree.

Center for Disease Control, *Abortion Surveillance* 17 (Sept. 1977). See also Heather Boonstra and Adam Sonfield, *Rights without Access: Revisiting Public Funding of Abortion for Poor Women*, 3 GUTTMACHER REPORT 10 (2000) (concluding "there is little demographic impact from recourse to illegal or self-induced abortion").

[24] A 1989 memo prepared by the Minnesota Attorney General regarding Minnesota's experience with its parental involvement law states that "after some five years of the statute's operation, the evidence does not disclose a single instance of abuse or forceful obstruction of abortion for any Minnesota minor." *Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (1999). Testimony before the Texas House of Representatives on the Massachusetts' experience with its parental consent law revealed a similar absence of unintended, but harmful, consequences. Ms. Jamie Sabino, chair of the Massachusetts Judicial Consent for Minors Lawyer Referral Panel, could identify no case of a Massachusetts' minor being abused or abandoned as a result of the law. *Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (1999).

abuse of the minor by one or both of her parents or her guardian. § 390.01115(4) Fla. Stat. (1999).[25]

Plaintiffs' have sought to characterize bypass hearings as burdensome and harmful to teens. Plaintiffs-Petitioners' Amended Initial Brief at 22-25. Yet a survey of Massachusetts cases filed between December 1981 and June 1985 found that every minor that sought judicial authorization to bypass parental consent received it, with one exception.[26] The average hearing lasted only 12.12 minutes, and "more than 92 percent of the hearings [were] less than or equal to 20 minutes."[27] Based upon a review of bypass petitions filed in Minnesota from August 1, 1981, to March 1, 1986,

---

25 To date, the United States Supreme Court has explicitly declined to rule on the question of whether a judicial bypass process is required to preserve the constitutionality of notification statutes, absent a case presenting such a statute. "This case [does not] determin[e] 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." *Lambert v. Wicklund*, 117 S. Ct. 1169, 1171 (1997), *citing Bellotti*, 443 U.S. at 654 n.1 (Stevens, J. concurring in judgment). *See also Planned Parenthood of the Blue Ridge v. Camblos*, 155 F.3d 352, 361-67 (4th Cir. 1998) for an extensive review of Supreme Court precedent on this issue.

Lower federal courts are split on this issue The U.S. Court of Appeals for the Eleventh Circuit has never ruled on this question. The most recent and thorough opinion on the issue held that bypass was not required in all notification statutes. *Planned Parenthood of the Blue Ridge v. Camblos*, 155 F.3d 352 (4th Cir. 1998). However the U.S. Courts of Appeals for the 6th, 7th, and 8th circuits have ruled to the contrary. *Akron Ctr. for Reproductive Health v. Slaby*, 854 F.2d 852 (6th Cir. 1988) *rev'd sub nom* on other grounds; *Ohio v. Akron Ctr. for Reproductive Health*, 497 U.S. 502 (1990); *Indiana Planned Parenthood Affiliates Ass'n Inc. v. Pearson*, 716 F.2d 1127, 1131-32 (7th Cir. 1983); *Planned Parenthood, Sioux Falls Clinic v. Miller*, 63 F.3d 1452 (8th Cir. 1995), cert. denied *sub nom Janklow v. Planned Parenthood Sioux Falls Clinic*, 517 U.S. 1174 (1996).

26 Susanne Yates & Anita J. Pliner, *Judging Maturity in the Courts: the Massachusetts Consent Statute*, 78 Am. J. Pub. Health 646, 647 (1988).

27 *Id*. at 648. The brevity of the hearings was confirmed by the testimony of Plaintiffs' witness, Ms. Jamie Sabino, who testified that bypass hearings in Massachusetts last fifteen minutes. Trial Transcript pp. 85-86.

a federal trial court determined that of the 3,573 bypass petitions filed, six were withdrawn, nine were denied, and 3,558 were granted.[28]

The trial court's concerns that such hearings "can be embarrassing and intimidating" to minors (R. v. XIV, p. 2201-2202) do not outweigh the State's compelling interest in protecting the health and safety of immature or ill-informed minors who cannot seek the counsel of their parents. In the absence of parental or judicial involvement, the guidance of such minors is often left to the men who impregnated them,[29] and the abortion providers who stand to profit only from a decision to abort.[30]

---

[28] *Hodgson v. State of Minnesota*, 648 F.Supp. 756 at 765 (D.Minn 1986).

[29] Henshaw and Kost in a 1992 survey of 1500 minors having abortions reported that for girls 15 and under, if the parents did not know of the abortion, a boyfriend was involved in the decision to have an abortion in 93% of the cases. Testimony of Peter Uhlenberg, Trial Transcript, p. 1229. Boyfriends are the most likely people trying to persuade a minor to obtain an abortion. In states without parental involvement laws, a minor's boyfriend is three times more likely to be involved in the decision to obtain an abortion than the minor's father. Testimony of Stanley Henshaw, Trial Transcript pp. 930-34.

[30] Testimony of Eric Harrah, TR 245-46. This conflict of interest was acknowledged in a case involving regulation of abortion clinics by a Texas physician who currently performs abortions in a clinic and at his office:

> In general, Hansen agreed that the requirement that freestanding abortion clinics be licensed and regulated by the state has done some good in deterring "individuals who would establish corner clinics, multistate clinics, and be interested only in it for a remunerative basis." When non-physicians own abortion clinics, Hansen said, he sees the possibility that quality medical care may be sacrificed to the "bottom line."

Women's Med. Ctr. of N.W. Houston v. Archer, 159 F. Supp.2d 414 at 425 (S.D. Tex. 1999) aff'd in part rev'd in part 248 F.3d 411 (5th Cir. 2001) (court's summary of testimony by Dr. Fred Hansen). The court also summarizes the of testimony by Dr. Tad Davis, expressing similar concerns. *Id*. at 428.

VI.

ABORTION IS NOT THE ONLY REASONABLE RESPONSE TO AN UNPLANNED TEEN PREGNANCY.

Plaintiffs have attempted to characterize abortion as a safe procedure, in contrast to what they would persuade this Court is the perilous condition of pregnancy.[31] In doing so, they have disregarded the uncertainty surrounding the rate of complications accompanying abortion, the well-documented risks attendant to abortion, and the substantial safety of childbirth today.

A. The Rate Of Abortion-Related Complications Is Uncertain.

Plaintiffs assert that "[t]he risk of a woman developing any post-abortion complication is very low."[32] This assertion requires accurate and comprehensive data regarding abortion-related complications. Such data simply are not available. "The primary limitation of many U.S. studies is that they use data on average characteristics of abortion patients, rather than directly matching records, and they rely on complicated algorithms and corrections that introduce opportunities for measurement error."[33] Reliance upon statistical manipulation is necessary because of the substantial underreporting of complications.

"The abortion reporting systems of some countries and states in the United States include entries about complications, but these systems are generally considered

---

31 Plaintiffs-Petitioners' Amended Initial Brief, pp. 5-11.

32 Plaintiffs-Petitioners' Amended Initial Brief, p. 5

33 J. Richard Udry, *A Medical Report Linkage Analysis of Abortion Underreporting*, 28 FAMILY PLANNING PERSPECTIVES, 228 (1996) *available at* <www.agi-usa.org/pubs/journals/2822896.html>.

to underreport infections and other problems that appear some time after the procedure was performed."[34] Underreporting of abortion-related complications is due, in part, to the fact that the vast majority of abortions occur in abortion clinics.[35] Women typically have no pre-existing relationship with an abortion provider,[36] and only about one-third return to the provider for a post-operative exam.[37] The failure to

---

[34] Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective in* A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS at 20 (Maureen Paul et al., eds. 1999). Mr. Henshaw provided an affidavit on behalf of the plaintiffs in this case. For additional evidence of the incomplete nature of abortion statistics, *see* Haishan Fu et al., *Measuring the Extent of Abortion Underreporting In the 1995 National Survey of Family Growth*, 30 FAMILY PLANNING PERSPECTIVES 128 (1998) *available at* <www.agi-usa.org/pubs/journals/3012898.html>; Alan Guttmacher Institute, *Issues in Brief: The Limitations of U.S. Statistics on Abortion* (1997) *available at* <www.agi-usa.org/pubs/ib14.html>; and Audrey F. Saftlas et all, *Pregnancy-Related Morbidity* in CDC's Public Health Surveillance for Women, Infants, and Children, *From Data to Action: CDC's Maternal & Child Health Monograph 1994* at 137, *available at* <www.cdc.gov/nccdphp/drh/datoact/pdf/rhow10.pdf> ("no nationally representative data about legal abortion-related morbidity have been available or collected since the 1970's").

[35] "93% of U.S. abortions are performed in clinics or doctors' offices."Alan Guttmacher Institute, *Facts In Brief: Induced Abortions* (2000) *available at* www.agi-usa.org/pubs/fb_induced_abortion.html.

[36] *State of Florida Department of Health v. North Florida Women's Health and Counseling Service*, 2001 WL 111037 at n. 2 (Fla. App. 1 Dist., Feb 9, 2001).

> On the other hand, evidence at trial showed, the physician-patient relationship is often attenuated in the abortion context, almost to the point of non-existence. *Cf. Planned Parenthood v. Danforth*, 428 U.S. 52, 91, 96 S. Ct. 2831, 49 L. Ed.2d 788 (1976) ("It seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place."). Abortion patients ordinarily see their physicians only once or twice, very briefly. Most of their interaction is with the clinic's staff. Physicians performing abortions often perform several in the space of a single hour.

Id.

[37] Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health*

return for post-operative exams precludes discovery of post-abortion complications by abortion providers. When treated by other healthcare providers, women often refuse to acknowledge prior abortions.[38] In cases involving women who acknowledge having obtained an abortion, healthcare providers often have no duty to report abortion complications,[39] and may fail to identify complications as abortion-related in medical records for fear of compromising the secrecy that the patient may desire.[40]

B. The Risks Attendant To Abortion Are Numerous And Substantial.

Testimony before the trial court identified several risks related to abortion including hemorrhage,[41] infection,[42] incomplete abortion,[43] perforation of the uterus,[44] unrecognized ectopic pregnancy,[45] future infertility and pregnancy loss,[46] increased risk of breast cancer,[47] and post-abortion trauma.[48] A medical text on induced

---

Perspective in A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS at 20 (Maureen Paul et al., eds. 1999). *Cf.* Richard S. Moon, *Why I Don't Do Abortions Anymore,* MEDICAL ECONOMICS 61(Mar. 4, 1985).

38 Haishan Fu et al., *Measuring the Extent of Abortion Underreporting In the 1995 National Survey of Family Growth*, 30 FAMILY PLANNING PERSPECTIVES 128 (1998) *available at* <www.agi-usa.org/pubs/journals/3012898.html>.

39 Testimony of Renee Mitchell, TR 183 (noting that Florida does not require reporting of abortion-related complications).

40 See Aultman Aff. ¶30.

41 TR 344, 406-07.

42 *Id*.

43 *Id*.

44 *Id*.

45 *Id*.

46 *Id*.

47 Brind Aff., ¶¶ 1-5, and Joel Brind, et al. *Induced Abortion as an Independent Risk*

abortion lists additional risks of abortion as sterility, hysterectomy, injury to the bowel and/or bladder, the need for abdominal surgery to correct an injury, cervical injury, anesthesia complications, amniotic fluid embolism, and cervical cancer.[49]

These risks can be divided into immediate complications which, if experienced, will occur during or within three hours of the abortion; delayed complications which

---

Factor for Breast Cancer: A Comprehensive Review and Analysis, 50 J. EPIDEMILOGY & COMMUNITY HEALTH 481; and Nancy Kreiger, *Exposure, Susceptibility, and Breast Cancer Risk: A Hypothesis Regarding Exogenous Carcinogens, Breast Tissue Development, and Social Gradients, Including Black/White Differences in Breast Cancer Incidence*, 13 BREAST CANCER RESEARCH AND TREATMENT 205 (1989). *See generally* John Kindley, *The Fit Between the Elements for an Informed Consent Cause of Action and the Scientific Evidence Linking Induced Abortion with Increased Breast Cancer Risk*, 1998 WIS. L. REV. 1595 (1998).

[48] Testimony of Dr. Aultman, TR 413, Testimony of Dr. Moorhead, TR 414, Greene Aff. ¶ 6, and Speckhard Dep. P. 154-55. See also Anna Glasier, *Counseling for Abortion, in* MODERN METHODS OF INDUCING ABORTION 112 (David T. Baird et al. eds., 1995).

> In the USA, it is estimated that 20% of women suffer from severe feelings of loss, grief and regret. These feelings may progress to anger (at herself and at her partner), or to depression and even obsession. These feelings are more likely to arise in women who: lack social support; whose decision to terminate the pregnancy is in conflict with their family or their religious beliefs; who feel they were pressurized into having an abortion; who have abortion because of fetal anomaly; and who are very young or have a very late abortion.

Id at 117. S*ee also Carol* J. Rowland Hogue et al., *Answering Questions About Long Term Outcomes, in* A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS 217, 225 (Maureen Paul et al. eds., 1999) and Jo Ann Rosenfeld, *Emotional Responses to Therapeutic Abortion*, 45 AM. FAM. PHYSICIAN 137, 138 (1992). Additional sources are collected and discussed in Thomas R. Eller, *Informed Consent Civil Actions for Post-Abortion Psychological Trauma*, 71 NOTRE DAME L. REV. 639 (1996). For cases involving claims of psychological injury *see Edison v. Reproductive Health Servs.*, 863 So.2d 621 (Mo. Ct. App 1993), and *Showery v. State*, 678 S.W.2d 103 (Tex. App.—El Paso 1984, writ ref'd).

[49] *See* David A. Grimes, *Sequelae of Abortion*, *in* MODERN METHODS OF INDUCING ABORTION 95, 99-100 (David T. Baird et al. eds., 1995).

will manifest themselves after three hours but within twenty-eight days of the procedure; and late complications which will only become recognizable later.[50] Immediate complications include uterine perforation, hemorrhage, unrecognized ectopic pregnancy, cervical injury, anesthesia complications, and amniotic fluid embolism.[51] The most common delayed complications are infection and incomplete abortion. [52] Late complications include sterility and other reproductive sequelae,[53] as well as emotional distress.[54]

Until recently, surgical abortions by suction curettage during the first trimester were generally considered safer than "medical" abortions induced through the use of various drugs.[55] However, new drug combinations have been developed that may minimize many of the adverse side effects experienced by women seeking medical abortions in the 1970's and 80's.[56] Plaintiffs' have suggested that the Act is deficient, in part, because it may cause delays which deprive a minor of the opportunity to select

---

50 Id. at 98.

51Id. at 98-101.

52 Id. at 101.

53 Id. at 102-03.

54 Id. at 103-4.

55 See David A. Grimes, *Sequelae of Abortion* in *Modern Methods of Inducing Abortion* 95-111 at 95 (David T. Baird et al. eds., 1995). "In the first trimester, suction curettage remains the gold standard against which other methods should be compared. While prostaglandins can successfully induce medical abortions, the incidence of incomplete abortion, severe pain, nausea and vomiting are usually prohibitive. . . . In contrast, medical abortion with mifepristone plus prostaglandin has been shown to have very low complication rates." Id.

56 Charlotte Ellertson & Carolyn Westhoff, *Procedure Selection* in Maureen Paul, et al., eds., *A Clinician's Guide to Medical and Surgical Abortions* (1999).

a “medical” or chemically induced abortion.[57] However, at this point in time in the United States, medical abortions remain the subject of research protocols with many practical questions still unanswered.[58] The uncertainty surrounding the effect of this method on minors makes it particularly important that parents be informed of their daughter’s decision.

To protect the minor from adverse effects of delayed complications it is critical that both she and her parents be able to recognize any symptoms or warning signs. For example, infection is "one of the more common complications of abortion".[59] Two recognized experts on abortion have described infection and its gravity in the following terms:

> The risk of death from postabortion sepsis [infection] is highest for young women, those who are unmarried, and those who undergo procedures that do not directly evacuate the contents of the uterus. . . . A delay in treatment allows the infection to progress to bacteremia, pelvic abscess, septic pelvic thrombophlebitis, disseminated intravascular coagulophy, septic shock, renal failure, and death.[60]

---

57 Plaintiffs-Petitioners’ Amended Initial Brief, p. 22 n.7.

58 For example, American women obtaining a medical abortion typically self-administer the drugs and experience the abortion at home. In Europe, the drugs are only administered in a clinical setting to allow medical intervention if a woman begins to experience adverse side effects. Charlotte Ellertson & Carolyn Westhoff, *Procedure Selection* in Maureen Paul, et al., eds., *A Clinician's Guide to Medical and Surgical Abortions* (1999) at 65.

59 Grimes, supra n. 57, at 101.

60 Phillip G. Stubblefield and David A. Grimes, *Current Concepts: Septic Abortions*, New England J. Med. 310 (Aug. 4, 1994). Dr. Stubblefield provided expert testimony in *Carhart v. Stenberg*, 11 F.Supp. 2d 1099, 1116 (D. Neb. 1998) (Dr. Stubblefield most persuasive and helpful expert). Dr. Grimes has written extensively on abortion procedures, and is one of four editors of the most recent medical text dealing with induced abortion. Maureen Paul, et al., eds., *A Clinician's Guide to Medical and Surgical Abortions* (1999).

The warning signs of infection typically begin within the first 48-96 hours after the abortion. These include fever, pain, pelvic tenderness, and elevated white blood count.[61] Caught early, most infections can be treated successfully with oral antibiotics.[62] Ignored and left unattended, the girl's future fertility, and even her life, are at risk.[63]

Testimony of emergency treatment related to post-operative abortion complications persuaded the District Court to uphold the Act:

> The State proved that appropriate aftercare is critical in avoiding or responding to post-abortion complications. Abortion is ordinarily an invasive surgical procedure attended by many of the risks accompanying surgical procedures generally. If post-abortion nausea, tenderness, swelling, bleeding, or cramping persists or suddenly worsens, a minor (like an adult) may need medical attention. A guardian unaware that her ward or a parent unaware that his minor daughter has undergone an abortion will be at a serious disadvantage in caring for her if complications develop. An adult who has been kept in the dark cannot, moreover, assist the minor in following the abortion provider's instructions for post-surgical care. Failure to follow such instructions can increase the risk of complications. As the plaintiffs' medical experts conceded, the risks are significant in the best of circumstances. While abortion is less risky than some surgical procedures, abortion complications can result in serious injury, infertility, and even death.[64]

Without the knowledge that their daughters have had abortions, parents are incapable of insuring that their children obtain routine post-operative care or of

---

61 E. Steve Lichtenberg, et al.,*Abortion Complications: Prevention and Management* 206 in Maureen Paul, et al., eds., *A Clinician's Guide to Medical and Surgical Abortions* (1999).

62 Id.

63 Phillip G. Stubblefield and David A. Grimes, *Current Concepts: Septic Abortions*, New England J. Med. 310 (Aug. 4, 1994).

64 *State of Florida Department of Health v. North Florida Women's Health and Counseling Service*, 2001 WL 111037 at *6 (Fla. App. 1 Dist., Feb 9, 2001).

providing an adequate medical history to physicians called upon to treat any complications that may arise. The first omission may allow complications such as infection, perforation, or depression, to continue untreated. The second omission may be lethal. When parents don't know that their daughter had an abortion, ignorance prevents swift and appropriate intervention by emergency room professionals responding to a life-threatening condition.

C. Pregnancy And Childbirth Are Remarkably Safe Today.

The vast majority of women today experience healthy and safe pregnancies. This is due in large part to the medical advances of the twentieth century and the public commitment to prenatal and postnatal care. In contrast to the uncertainty surrounding the rate of abortion complications, prenatal care has been proven to enhance the well being of pregnant women.

> At the beginning of the 20th century, for every 1000 live births, six to nine women in the United States died of pregnancy-related complications, and approximately 100 infants died before age 1 year. From 1915 through 1997, the infant mortality rate declined greater than 90% to 7.2 per 1000 live births, and from 1900 through 1997, the maternal mortality rate declined almost 99% to less than 0.1 reported death per 1000 live births (7.7 deaths per 100,000 live births in 1997).[65]

Improved obstetric education and childbirth delivery practices have eliminated many risks of pregnancy.[66]

Many of the remaining risks are preventable by proper prenatal care.

---

[65] Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Center for Disease Control, *Achievements in Public Health 1900-1999: Healthier Mothers and Babies*, 48 MORTALITY & MORBIDITY WEEKLY REPORT 849 (visited Nov. 5, 2001) *available at* <www.cdc.gov/epo/mmwr/preview/mmwrhtml/mm4838a2.htm>.

[66] *Id*.

> Primary prevention of maternal deaths, such as those associated with ectopic pregnancy and some cases of infection and hemorrhage is possible. However, some complications that can occur during pregnancy cannot be prevented (e.g., pregnancy-induced hypertension, placenta previa, retained placenta, and thromboembolism). Nevertheless, more than half of all maternal deaths can be prevented through early diagnosis and appropriate medical care of pregnancy complications.[67]

Teen mothers who adopt good dietary habits, take vitamins, avoid smoking, drugs and alcohol, and promptly obtain prenatal care experience no greater problems with their pregnancies than adult mothers.[68] Some reports even suggest that such teens may even experience healthier pregnancies than those of older women.[69]

A study encompassing all Texas women giving birth to their first child in 1995 shows that teen mothers are less likely to give birth prematurely than mothers of thirty-plus years.[70] Their babies are less likely to be underweight (less than 2500 grams) at birth than those of mothers' forty-plus years, and only slightly more likely than babies

---

67 Center for Disease Control, *Maternal Mortality 1992-1996*, 47(34) MMRW Weekly 705-705, *available via the Internet at* http://www.cdc.gov/epo/mmwr/preview/mmwr.html/00054602.htm

68 E. Hopkins, *Pregnancy Complications Not Higher in Teens*, OB-GYN News, vol. 15, no. 10, May 1980.

69 Of thirteen common complications of labor and delivery, mothers age 10-19 consistently ranked below other age groups, with the exception of seizures during labor and precipitous labor. Of all first time mothers giving birth in Texas in 1995, teen mothers had the lowest percentage of premature ruptures of the membranes, placenta previa, prolonged labor, breech birth or malpresentation, and cephalopelvic disproportion. Their experience rate of hemorrhaging ("other excessive bleeding"), placenta abruption, and cord prolapse were no higher than any other age group and equal to the lowest percentage of any age group. Monica Smoot, *Delayed Childbearing: Increased Maternal Age at First Birth and its Association with Labor and Delivery Outcomes*, www.tdh.state.tx.us/hcqs/bvs/bvs.htm .

70 Table 4 in *Delayed Childbearing*, n. 71 supra.

born to mothers age thirty to thirty-nine.[71] Teens were less likely than any other age group to have twins or other multiple births, with the complications related to multiple births.[72] Less than one percent of all babies born to teen mothers suffered from any of the twenty-two congenital anomalies that may afflict newborns tracked by the study.[73] On average, teen mothers and their babies fared better than mothers of thirty-plus years and their babies, and almost as well as mothers in their twenties and their children. This was true, even though teen mothers as a group were found to often delay seeking prenatal care until the later in the pregnancy,[74] and when they did obtain care, it is more likely to be inadequate.[75]

D. Adolescent Childbearing Does Not Destine Women To Low Educational Achievement.

Plaintiffs' suggest that teen mothers are destined to be high school drop-outs.[76] Although this assumption has some historical basis because in the past pregnant teens

---

71 Table 5 in *Delayed Childbearing*, n. 71 supra.

72 Table 6 in *Delayed Childbearing*, n. 71 supra.

73 Table 10 in *Delayed Childbearing*, n. 71 supra.

74 Of all first-time mothers age 10-19 in 1995, 64.6% obtained prenatal care in the first trimester, 27.2 began in the second trimester, 5.5% delayed until the third trimester, and 2.6 % received no prenatal care at all. Teens delay seeking prenatal care much longer than older women. Id. A study of 533 pregnant teens under the age of eighteen, obtaining care at the Adolescent Obstetrics Clinic at the University of Texas Medical Branch at Galveston, revealed that 47% enter prenatal care after the first twelve weeks of gestation. Constance M. Wiemann et al., *Factors Associated with Adolescents' Risk of Late Entry into Prenatal Care*, 29 Family Planning Perspectives 273 (1997).

75 Monica Smoot, *Delayed Childbearing: Increased Maternal Age at First Birth and its Association with Labor and Delivery Outcomes*, www.tdh.state.tx.us/hcqs/bvs/bvs.htm.

76 Plaintiffs-Petitioners' Amended Initial Brief, p. 9.

had to delay continuing their education,[77] now pregnant girls and young mothers are encouraged to stay in school.[78] The commitment by the state of Florida to this goal is evidenced by the fact that school districts are now required to make teenage parent programs available to every pregnant or parenting student.[79] Schools are required to accommodate the needs of these students through curricular modification and more liberal policies on absenteeism. The law also requires that ancillary services, including "child care, health care, social services, parent education and transportation" be provided.[80] The effect of this and similar changes throughout the country is evidenced by the results of a recent study which found that childbearing before the age of eighteen had no effect on the educational attainment for white women, and only decreased schooling for black women by one year. [81]

---

77 See Fla. AG Op. 059-187 (1959)(discussing ability of school board to exclude pregnant students on individual basis).

78 Section 232.01(c) Fla. Stat. provides "Student who become or who have become married and students who are pregnant shall not be prohibited from attending school."

79 Section 230.23166 Fla. Stat.

80 Section 230.23166(c) Fla. Stat.

81 Daniel H. Klepinger et al., *Adolescent Retility and the Educational Attainment of Young Women*, 27 Fam. Plan. Perspectives 23 (Jan./Feb. 1995) *available via the Internet at* http://www.agi-usa.org/pubs/journals/2702395.html ("For whites, having a child before age 20 reduced schooling by 2.8 years. However, having a child before age 18 (an event experienced by less than 7% of the sample) had no significant effect. Among blacks, a birth before age 18 was associated with a decrease in schooling of one year. Among both blacks and Hispanics, a birth before age 20 had a significant negative effect -- reducing educational attainment by nearly three years for each group. Our results do not suggest that childbearing before the usual age of high school completion creates a major obstacle for educational attainment for young white women but, since most teenage childbearing in this group occurs at age 18 or 19, our sample includes very few early childbearers.")

CONCLUSION

The District Court properly found that the state has a compelling interest in insuring the ability of parents to fulfill their duty to "stay alert to their minor children's medical needs, and to secure appropriate medical assistance if they are able to do so."[82] The Florida Parental Notice of Abortion Act is a narrowly tailored means of providing parents the requisite knowledge to assist their minor daughters who face unplanned pregnancies. The historical experience in other states with similar laws has proven that parental involvement facilitates medical care for minors, and assists in protecting minors from adult sexual misconduct. For the foregoing reasons, this Court should affirm the decision of the District Court of Appeal.

---

82 2001 WL 111037 at *6.

Respectfully submitted this _____ day of January, 2002.

Teresa Stanton Collett*
Professor of Law
South Texas College of Law
1303 San Jacinto
Houston, Texas 77002-7000
(713) 646-1834

_____
Mathew D. Staver
Florida Bar # 0701092
Erik W. Stanley
Florida Bar #0183504
LIBERTY COUNSEL
210 East Palmetto Avenue
Longwood, Florida 32750
(407) 875-2100
(407) 875-0770 FAX

Counsel for Amicus Curiae

*Application for Admission *Pro Hac Vice* Filed

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above has been forwarded as indicated below this_____ day of January, 2002, to the following counsel of record:

Bebe J. Anderson — By U. S. Mail
Julie Rinkelman
The Center for Reproductive Law & Policy
120 Wall Street, 18th Floor
New York, NY 10005

Dara Klassel — By U.S. Mail
Planned Parenthood Federation of America, Inc.
810 Seventh Avenue
New York, NY 10019

John J. Rimes — By U.S. Mail
Office of the Attorney General
Administrative Law Section
PL-01, The Capitol
Tallahassee, FL 32399-1050

Randall C. Marshall — By U.S. Mail
American Civil Liberties Union Foundation of Florida
4500 Biscayne Boulevard, Suite 340
Miami, FL 33137-3227

Julie Sternberg — By U.S. Mail
Louise Melling
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York NY 10004

Jody Ratner — By U.S. Mail
Center for Reproductive Law and Policy
120 Wall Street, 14th Floor
New York, New York 10005

Richard E. Johnson — By U.S. Mail
314 West Jefferson Street
Tallahassee, FL 32301-1608
Representing Center for Reproductive Law and Policy

Carol Banta By U.S. Mail
Heather Jones
Wilmer Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
representing Physicians for Reproductive Health & Society

_____
ATTORNEY

CERTIFICATE OF TYPE SIZE AND STYLE

I HEREBY CERTIFY that the foregoing Amicus Brief was prepared using Times New Roman font, size 14 and that the Brief meets the requirements of Fla. R. App. P. 9.210.

_____
ATTORNEY