MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on January 23, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, Vice Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. "Dick"Pinsoneault, John Harp and Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: Chairman Crippen noted the large number of people in attendance for Senate Bill 164 and announced that it would be held last so that those present for Senate Bill 134 would not be held for a long period of time.

HEARING ON SENATE BILL 134

Presentation and Opening Statement by Sponsor: Senator Richard Manning of Great Falls, representing District 18 opened the hearing reading a written opening statement. (See Exhibit 1)

List of Testifying Proponents and What Group they Represent:

John Ortwein, Montana Catholic Conference
Sue Fifield, Montana Low Income Coalition
Mignon Waterman, Montana Association of Churches
Judith Carlson, Montana Association of Social Workers
Brenda Nordlund, Montana Women's Lobby
Jim Smith, Human Resource Development Council
Christine Deveny, League of Women's Voters of Montana

List of Testifying Opponents and What Group They Represent:

There were none.

Testimony:

John Ortwein said that his work includes working with programs for low income groups in an attempt to wipe out the cycle of poverty. He said he felt that Senate Bill 134 was a positive step in breaking that cycle and urged the passage of the bill. (See Exhibit 1 A)

Sue Fifield read written testimony into the record. (See Exhibit 2)

Mignon Waterman read written testimony into the record and urged passage of the bill. (See Exhibit 3)

Judith Carlson agreed with previous testimony and urged support of the bill.

Brenda Nordlund spoke in support of the bill.

Jim Smith asked to be recorded as a proponent. He said he had worked on the subcommittee for the past 18 months to come up with legislation that will rearrange the incentives and disincentives that exist in our current welfare system. He felt the bill would help people get off welfare.

Christine Deveny said the League of Women Voters wished to be on the record of the bill and urged its passage.

Questions From Committee Members: Senator Beck asked if there was a fiscal note for the bill. Senator Manning stated there was none as yet, but felt there probably would be one. Senator Crippen urged the sponsor to get one at his earliest convenience.

Closing by Sponsor: Senator Manning closed the hearing, saying the bill was drafted along federal guidelines and felt the this and the other bills resulting from the Joint Interim Subcommittee on Welfare had been well drafted and that he was proud to have his name listed as sponsor.

HEARING ON SENATE BILL 164

Before the hearing began, Senator Crippen addressed the large crowd in attendance, asking that courtesy be granted to all testifying and said he would appreciate an orderly hearing.

Presentation and Opening Statement by Sponsor: Senator Tom Rasmussen of Helena, representing District 22, said the essence of the bill was that parental notice by a physician must be received before an abortion could be performed on a minor. Procedures for judicial bypass were also provided. He felt that present law obviously contained a defect, as all other medical procedures concerning minors required parental consent. This procedure, he said had more potential for more psychological and physical damage than any other medical procedure. He felt the requirement would contribute to the stability and closeness of the family unit which would contribute to the strength of the nation. He announced that Bryan Asay would review the bill and that Mr. Natelson from the University of Montana Law School would address the constitutional issues.

List of Testifying Proponents and What Group they Represent:

Brian Asay, Montana Family Coalition
Robert Natelson, Associate Professor, UM Law School, representing himself
Paul Olson,
Father Jerry Lowney, Diocese of Helena
Joelle Betty, self
Traci Dodson, self
Mary Doubek, Eagle Forum and self
Rose DuShane, President, Montana Right to Life
Jill Guthrie, Montana Right to Life
Rev. Alan Maki, Ravalli County Right to Life

List of Testifying Opponents and What Group They Represent:

Nancy Lien Griffin, Montana Women's Lobby
Jim Reynolds, American Civil Liberties Union
Carolyn Clemens, lawyer, self
Randi Hood, lawyer, self
Michael Sherwood, Montana Trial Lawyers Association
Rev. George Harper, self
Dr. Clayton McCracken, M.D.
Mary Jane Fox, National Association of Social Workers
Willa Craig, self and Blue Mtn. Women's Clinic
Joselyn Wilkinson, self
Carrie L. Garber, self
Maggie Davis, League of Women Voters of Montana

Joseph Moore, Montana Rainbow Coalition
Leona Tolstad, self

Testimony:

Bryan Asay, stated that most of the bill, when enacted would become part of the Abortion Control Act. He stated that Montana law provided for a minor to affirm or disaffirm contracts. He told the committee of exceptions in law when minors do not have to have parental consent for medical treatment i.e. a married minor, a minor with a communicable disease, a minor needing and asking for drug treatment, a minor needing emergent medical treatment, a minor requesting an abortion. This bill, he stated, would require parental notification for abortion. He reviewed and explained specific points covered by the bill: Forty-eight hour notice given to parents by doctor, an emancipated minor may give her own permission, judicial by-pass, court decision giving permission, assistance given minor in filling out petition, hearing on petition, counselling, Supreme Court appeal. He said that Senator Rasmussen had proposed some amendments which were not substantative but which would clarify the law. (See Exhibit 4) He explained the amendments.

Robert Natelson read written testimony into the record. (See Exhibit 5)

Dr. Paul Olson gave written testimony before the committee. (See Exhibit 6)

Fr. Jerry Lowney distributed written testimony to committee members. (See Exhibit 7) He stated that in working with young people, he found that medical assistance was not available without parental permission and found state law incomprehensible in allowing abortions without parental permission. He urged support of the bill, commenting on the trauma of post-abortion syndrome.

John Ortwein, agreed with previous testimony and urged support of the bill. (See Exhibit 8)

Joelle Betty, read testimony to the committee in support of the bill. (See Exhibit 9)

Traci Dodson read testimony into the record. (See Exhibit 10)

Mary Doubek said she was against abortion, urged support of the bill and distributed written articles on different types of abortion methods to members of the committee. (See Exhibit 11)

Rose DuShane said her group did not feel the bill was strong enough, but urged support.

Jill Guthrie told the story of a girl who experienced an abortion and later attempted suicide. She felt that parental notification would have eliminated some of the post-abortion trauma suffered by the girl.

Rev. Alan Maki (Exhibit 12) supported the bill.

Nancy Lien Griffin read testimony into the record opposing the bill. (Exhibit 13)

Jim Reynolds distributed copies of a booklet entitled "Parental Notice Laws", printed by the ACLU. (See Exhibit 14) He said he opposed the bill because it placed a burden on a minor who wants an abortion. The bill provides absolute privacy for an 18-year old, but a 17-year old would have to have parental permission or go before a strange lawyer and a judge, giving the most intimate details of her life. He said the 48-hour notice was flawed, in addition to the 5-day court hearing notice and imposed excessive delay to the procedure. He reviewed the bill, explaining what he felt were unconstitutional provisions. He said Montana had hundreds of dysfunctional families and that the

need for abortion often occurred in these families. These children, he stated, cannot go to their parents for permission or counselling. He said there would, unquestionably, be constitutional challenge to the bill should it pass.

Carolyn Clemens opposed the bill for the reasons in the written testimony left with the committee secretary. (See Exhibit 15)

Randi Hood presented written testimony to the committee opposing the bill. (See Exhibit 16)

Michael Sherwood opposed the language in Section 7 concerning immunity and proposed an amendment. (See Exhibit 17)

Rev. George Harper said the bill was not fair to everyone, nor was it equally unfair. He asked what was so different between an abortion of a 17-year, 11-month-old and an 18-year, 1-day old girl. He was concerned with the privacy and dignity issues as well. (See Exhibit 18) He felt the Bill of Rights were violated by the bill and opposed it.

Clayton McCracken, board certified pediatrician, with a masters in public health, with a specialty in maternal and child health, performs abortions, he stated. He urged committee members to read the findings of Judge Donald Alsop, Chief U. S. District Judge of the U. S. District Court in Minnesota, Third Division. He provided these for the committee. (See Exhibit 19) He also read written testimony to the committee (see Exhibit 20). He also provided a story entitled: "Anne's Story" to the committee for further information on the subject (see Exhibit 21).

Mary Jane Fox, presented written testimony (see Exhibit 22).

Willa Craig presented testimony to committee members opposing the bill. (See Exhibit 23)

Joselyn Wilkinson opposed the bill. (See Exhibit 24)

Carrie Garber, a student at MSU, opposed the bill and presented written testimony. (See Exhibit 25)

Margaret Davis presented the League of Women Voters opposition to the bill. (See Exhibit 26)

Diane Sands presented written testimony to the committee in opposition to the bill. (See Exhibit 27.)

Joseph Moore presented written testimony opposing the bill. (See Exhibit 28)

Leona Tolsted felt the bill would cause backroom abortions. She felt young girls who become pregnant should not be forced to have babies when they are not physically or mentally able to care for them.

Questions From Committee Members: Senator Pinsoneault asked Dr. McCracken how he felt about the 13-year-old needing parental permission for an abortion. Dr. McCracken felt that a younger girl would be more inclined to involve her parents, and said he would encourage that, or if not, at least some responsible adult who knew the girl.

Senator Pinsoneault asked Carolyn Clemens if she thought any law would affect the incest situation. Ms. Clemens said the prosecutors office could prosecute for a felony. Senator Pinsoneault asked if she didn't already have the discretion to file a felony. She answered in the affirmative, but said it was not consistent across the state.

Senator Mazurek asked Jim Reynolds if any parental notification violated the right of privacy. Mr. Reynolds said he had not researched the constitutionality issue regarding other parental notifications. Senator Mazurek asked why parental consent should not be necessary in this instance when it is required for other medical care. Mr. Reynolds said statute already allows giving contraceptives and birth control information. Pregnancy does not usually involve parental consent, he said, and neither should an abortion. If this bill is placed in law, the ACLU will certainly bring a challenge, he stated. He said the right to bear or not to bear a child is in the fundamental right to privacy.

Senator Yellowtail said he was interested in the judicial bypass and the confidentiality issue. He asked Brian Asay if the judicial bypass was centered on the parental notification issue. Mr. Asay said that provision would allow the mature minor to give her own consent. If it is in the best interest of the minor, the judge will give consent, he said. Senator Yellowtail asked if the bill dealt with consent or notification. Mr. Asay apologized and agreed with the term notification. He said notification would not be

required under the terms of the bypass procedure.

Senator Yellowtail said the bill stipulated that the minor or the parental guardian could make the application. Why, he said, did the parental guardian become named in the bill. Mr. Asay said that portion of the bill came from the Missouri statute which was used as a standard. Mr. Natelson agreed that the word parent should not be in the bill, but could be amended to "guardian guiding the minor in litigation for the minor".

Senator Mazurek asked if Mr. Natelson was aware that the 48-hour waiting period had been struck down by the U.S. Supreme Court. Mr. Natelson said there were two kinds of waiting periods: One was called a cooling-off period where a person who has decided to have an abortion must wait a certain time to determine if she really wants one. That type has not been struck down, when applicable to adult women. The second kind is to effectuate the purposes of consultation, he said, and they apply only to minors. The Seventh Circuit struck it down but the Eighth Circuit sustained such a law. The U. S. District Court in the Sixth Circuit also sustained such a law, he stated, in a decision that was not addressed on appeal. He also commented that the right of privacy also applied to parents in directing and guiding their children.

Senator Mazurek asked about court delay for petitioning in a county where the judge only comes every two weeks. Doug Kelly said he didn't see that as any problem, as the judges were flexible and not too far away.

Closing by Sponsor: Senator Rasmussen asked the proponents in the gallery to stand and he thanked them for coming. He said that nineteen states have parental consent laws, rather than parental notification laws. Other states have notification laws similar to this bill, he said. Most people, he felt, would like to see fewer abortions. He said that Minnesota has seen a 40% drop in abortions since the law has been enacted. He said that until 1973, the right to life of the unborn child was allowed in the United States. He hoped the bill would be passed giving the unborn children the right to life. He closed the hearing.

ADJOURNMENT

Adjournment At: 12:15 p.m.

Senator Bruce D. Crippen, Chairman

BDC:rj

minrj.123

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date Jan. 23, 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 1-23-89
BILL NO. SB 134

TESTIMONY OF SENATOR RICHARD MANNING

SPONSOR, SENATE BILL NO. 134

Mr. Chairman and members of the Senate Judiciary Committee:

I am Senator Richard Manning of Great Falls, representing Senate District 18. I am the principal sponsor of Senate Bill 134, which you have before you today.

Senate Bill 134 is a bill that was unanimously requested by the Joint Interim Subcommittee on Welfare, which I served on this past interim. The Joint Interim Subcommittee on Welfare was formed by the 1987 Montana Legislature to conduct an interim legislative study of welfare in Montana, as requested by House Joint Resolution No. 53. Senate Bill 134 is one of eleven bills that the Subcommittee has proposed to the 1989 Legislature to reform welfare in Montana.

Senate Bill 134 is intended to provide greater financial incentives for General Relief Assistance recipients to work or to seek additional employment.

Recipients of General Assistance in Montana have, for the most part, lacked available incentives to work. Until recently, if a recipient earned income from employment, the state reduced his General Assistance grant $1 for each $1 of earnings -- in short, the recipient was working for nothing, because he did not gain financially through his work effort since the state deducted

all his earnings from the amount of benefits provided to him.

This situation has been only modestly improved with enactment of House Bill 581, which I cosponsored during the 1987 legislative session. The 1987 law allows General Assistance recipients to retain the first $50 of earnings each month. However, the law requires the state to deduct all remaining earned income in calculating the amount of the recipient's General Assistance grant. Thus, under present law, the recipient still incurs a dollar-for-dollar reduction in benefits after the first $50 is disregarded.

The Joint Interim Subcommittee on Welfare, in its final report to the Legislature, states that "The current system seems certain to discourage GA recipients from seeking employment, because it does not allow recipients to improve their situation through increased work after the first $50 is earned. In addition, the system may even cause some recipients not to report earned income, thereby leading them to commit fraud."

To correct this problem, the Subcommittee submits to you Senate Bill 134. Senate Bill 134, as introduced, would:

(1) Apply a "30 and 1/3" earned income disregard rule for the treatment of employment income, the same as under the state AFDC Program. The "30 and 1/3" income disregard would allow GA recipients to keep the first $30 plus 1/3 of the remainder of countable earned

income, over a period of 4 months, as a financial incentive for recipients to work.

(2) Provide extended state medical assistance for 1 month to persons who lose eligibility for General Assistance because of income from employment.

(3) Eliminate the income spenddown requirement for persons whose income exceeds the General Assistance income standard, thereby allowing such persons to qualify for state medical assistance if their monthly income does not exceed a separate medical income standard that is currently used to determine the amount of the income spenddown. [The current income spenddown requires that a person first incur medical expenses equal to the difference between the General Assistance income standard and the medical income standard before the state will provide medical assistance to a needy person who has is not eligible for General Assistance.]

Senate Bill 134 would apply only to the 12 counties where the state has assumed financial and administrative responsibility for public assistance programs.

Overall, it is hoped that Senate Bill 134 will:

(1) Increase the employment and earnings of welfare recipients, thereby decreasing the costs of General Assistance;

(2) Reward welfare recipients who choose to work; and

(3) Prevent welfare dependency by encouraging welfare recipients to work.

We, the Joint Interim Subcommittee on Welfare, respectfully urge that when this committee has considered Senate Bill 134 that it report the bill with a "DO PASS" recommendation.

Mr. Chairman, I reserve the right to close.

SENATE JUDICIARY
EXHIBIT NO. 1 - A
DATE 1-23-89
SUBMITTED BY SB 134

Montana Catholic Conference

January 23, 1989

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am John Ortwein representing the Montana Catholic Conference.

The Montana Catholic Conference has worked with many low-income groups and programs during the last several years to assist individuals and families break the cycle of poverty. The Church in this State has set up aid to the needy programs and helped fund low-income groups through the Campaign for Human Development. We have found that setting up soup kitchens and providing Christmas baskets to those in need do very little to help people break out of this cycle of poverty.

We have also found that individuals want to work but do not want to jeopardize their financial security to do so. The present system with the $50 income disregard does not allow for those on General Assistance to attempt to better themselves. Senate Bill 134 with the 30 and 1/3 income disregard is a much needed step to help the poor gain independence from the welfare system.

We urge your support of SB 134.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

CARE & SHARE

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 1-23-89
BILL NO. SB 134

MONTANA LOW-INCOME COALITION

P.O. BOX 1029
HELENA, MONTANA 59624
(406) 449-8801
(406) 443-0012

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF SENATE BILL 134

BY SUSAN FIFIELD, DIRECTOR , MONTANA LOW INCOME COALITION

Mr. Chairman and Committee Members:

My name is Sue Fifield and I'm the Director of the Montana Low Income Coalition MLIC is a member based grassroots coalition of low income groups and other groups around the state who are concerned about social justice issues. We have over 6000 members in Montana.

MLIC deals with issues concerning the very people who will be effected by S.B. 134. We commend the efforts of the sponsor of this bill and this committe for taking a positive and realistic look at the needs of Montana citizens who are the most destitute. By allowing a greater earned income disregard in the manner stated in Section 1 lines 1 through 25 on page 2, General Relief Assistance recipients will have a greater incentive to accept work that may be parttime or temporary. The current method of figuring earned income is a disincentive because if a G.A. recipient takes a spot job or temporary work and makes more than the amount allowed, they will lose their assistance 2 months ahead rather than the following month that they worked. They will have no means of support even though they did work at what was available and reported their earnings honestly. The "30 & 1/3" disregard will encourage General Assistance recipents to accept the work that is available.

It has been our experience that most people on public assistance would prefer to work, if work was available to them, and if by working, even at a spot job they weren't punished but rather offered positive encouragement. With the 30 and 1/3 disregard we will be offering them the incentive to move off the system and into gainful employment. People will seek jobs more diligently, be anxious to improve their skills and increase their job performance.

SENATE JUDICIARY
EXHIBIT 2, p. 2
DATE 1-23-89
BILL NO. SB 134

Lastly we would like to commend this bill for addressing the medical assistance issue. Many General Assistance Recipients have medical needs which could be barriers to their employment. We are thinking especially those with emotional handicaps who would be able to work if they could continue to recieve medical help.

Again we would like to commend the committee and Senator Manning in their efforts on addressing positive incentives for employment and we urge you to give this bill a "Do Pass". Thank you.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 1-23-89
SB134

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

WORKING TOGETHER:

American Baptist Churches of the Northwest

Christian Churches of Montana (Disciples of Christ)

Episcopal Church Diocese of Montana

Evangelical Lutheran Church in America Montana Synod

Presbyterian Church (U. S. A.) Glacier Presbytery

Presbyterian Church (U. S. A.) Yellowstone Presbytery

Roman Catholic Diocese of Great Falls - Billings

Roman Catholic Diocese of Helena

United Church of Christ Mt.-N. Wyo. Conf.

United Methodist Church Yellowstone Conference

January 23, 1989

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am Mignon Waterman of Helena and I represent the Montana Association of Churches.

The Montana Association of Churches urges you to continue to remove disincentives to employment that low income Montanans encounter. We believe most individuals truly want to work but at the same time they must consider the financial well-being of their families. Senate Bill 134, with the 30 and 1/3 income disregard, will encourage receipients to work additional hours and to move off of general assistance.

Also, because county officials and low income individuals are already familiar with the 30 and 1/3 formula because it is used in the AFDC program, it should be easily understood and applied.

We applaud the study and research that the interim legislative committee did in this areas and we urge your support of SB134.

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 1-23-89
BILL NO. SB 164

Amendments to Senate Bill No. 164
First Reading Copy

Requested by Senator Rasmussen
For the Committee on Judiciary
Prepared by Greg Petesch
January 23, 1989

1. Title, line 8.
Following: ";"
Strike: remainder of line 8 through ";" on line 9
Insert: "AND"
Following: "41-1-405,"
Strike: "50-20-108"
Insert: "50-20-107"

2. Title, line 10.
Following: "50-20-109, MCA"
Strike: remainder of line 10 through " MCA"

3. Page 1, line 16.
Following: "physician"
Insert: "or his agent"
Following: "gives"
Insert: "at least"

4. Page 1, line 23.
Following: "."
Insert: "The time of delivery of constructive notice is considered to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing."

5. Page 2, line 21.
Following: "shall"
Insert: "thereafter"

6. Page 3, line 25.
Following: line 24
Strike: "or"

7. Page 7, line 6 through page 8, line 5.
Strike: section 11 in its entirety
Insert: "**Section 11.** Section **50-20-107**, MCA, is amended to read:
"**50-20-107. Written notice to spouse ~~or parent~~ required.** ~~(1)~~ No abortion may be performed upon any woman in the absence of~~:~~
~~(a) the~~ written notice to her husband, unless her husband is voluntarily separated from her~~;~~
~~(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.~~
~~(2) Violation of this section is a misdemeanor~~. "

(over)

Jan. 23, 1989

TESTIMONY

of

Robert G. Natelson

Associate Professor of Law

University of Montana

TO MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

I

INTRODUCTION

My name is Robert G. Natelson, and I am associate professor of law at the University of Montana. I am here to testify in favor of S.B. 164, a bill that would require parental notice before an abortion could be performed on an unemancipated, immature, unmarried child.

I shall be speaking solely to the constitutionality of the measure, not to its wisdom. My primary thesis will be that this bill is not only consistent with the state and federal constitutions, but actually furthers abortion/choice goals as those goals are defined by the U.S. Supreme Court. Indeed, I believe the court's current position encourages, almost mandates, the states to enact bills such as this one designed to assist the abortion choices of minors.

Before I begin the substantive part of my discussion, I should say that I represent the views of no one but myself. I do

not, of course, speak for the law school or for the University of Montana. I do not belong to any pro- or anti-abortion group. My views did not have a religious origin; I was raised in a secular manner and do not belong to any organized church or other congregration. My own personal history has been as a pro-choice advocate who came to appreciate the medical, historical, and other evidence and gradually became pro-life.

II

Two Ways of Approaching the Constitutional Question

There are two approaches that one can take to the question of the federal constitutionality of this bill. I shall argue only for the second approach. However, I would like to outline the first approach, for it is a respectable position, and some of you may choose to adopt it.

The first approach -- the one I am not arguing for here -- runs something like this: Roe v. Wade[1] is only a symptom of a deeper problem with the U.S. Supreme Court. That problem is that for the last few decades the court's constitutional adjudication has not been carried out in a principled manner. Principled adjudication involves interpreting the Constitution according to its text and the circumstances behind the adoption of the text -- just as we interpret a statute or any other legal document. For the first 160 years of American history, that is how the federal courts usually adjudicated, although of course there were

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1. . 410 U.S. 113 (1973).

exceptions.[2]

Advocates of this approach would point out that in the last few decades, the court's constitutional adjudication has not been principled; technically, it has not been adjudication at all. Rather, the court is engaged in active policy making. Because the court's policy preferences reflect not the constitution but the political opinions of the judges, decisions vary from year-to-year, and abrupt reversals are common. Moreover, this policy making has turned constitutional law into a numbers game. Many abortion decisions, for example, are decided by margins like 5-4 and 6-3, or even 3-2-4 or 4-2-3, and multiple opinions are extremely common. Most of these multiple opinions have no more than transitory importance.

Now, according to this analysis, if this is how the court is going to behave, you as legislators simply ought to do what you think is right and let the chips fall where they may. The response of the U.S. Supreme Court is just too hard to predict.[3]

Now, I admit I find this approach tempting. Certainly as a legal historian, I was disturbed by the manner in which the Roe v. Wade court misstated history for essentially political

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2. . Arguably the exceptions included economic substantive due process. On the differences between traditional adjudication and the federal courts' more recent practices, see, e.g., C. Wolfe, The Rise of Modern Judicial Review (1984)

3. . This approach to judging is, of course, a form of usurpation. Alexander Hamilton suggested that the resistance to federal usurpation ought to come from the state governments. The Federalist, No. 17.

purposes.[4] Yet this is not the approach I shall argue for here. It is not necessary to do so, because I believe that whatever the problems there may have been with the initial holding in Roe v. Wade, in the cases following that decision, the court has not been entirely without principle -- that despite continued fragmentation of the court, it is possible to discern one important, fairly consistent policy underlying all of the abortion decisions. And that policy is virtually identical to the policy behind this bill.

III

Policy of Roe v. Wade and Its Progency.

The 14th amendment to the U.S. Constitution provides that "No state... shall deprive any person of ... liberty...without due process of law." According to the U.S. Supreme Court, the right to privacy is part of the "liberty" protected by the 14th Amendment. Included in the right to privacy are several other rights, notably marital privacy and the right of parents to control the upbringing of their children.[5] In Roe v. Wade, the

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4. . For example, the court professed to find a paucity of pre-1850 abortion statutes, but neglected to mention the then pervasive state control of sexual conduct generally. It also carefully avoided properly quoting Blackstone, who held that abortion was a "heinous misdemeanor." Roe v. Wade, 410 U.S. at 135; 138-41. Cf. 1 W. Blackstone, Commentaries *129-30. On the multitude of anti-abortion laws at the time the 14th amendment was adopted, see Rehnquist (dissenting), 410 U.S. at 174-75.

5. . Griswold v. Connecticut, 381 U.S. 479 (1965) [marital privacy, which also recognized as fundamental Meyer v. Nebraska, 262 U.S. 390 (1923) (child rearing) and Pierce v. Society of Sisters, 268 U.S. 510 (1924) (controlling education of children].

U.S. Supreme Court included in the federal right to privacy the right of a woman to freely decide as to whether to terminate a pregnancy or give birth to the child.[6]

Observe that the right recognized is not, strictly speaking, the "right to obtain an abortion." It is the right to freely decide either to bear the child or to kill it and the right to carry out that decision.

A consistent motif in Roe and the line of cases after Roe is the motif of the "informed decision." State actions that inhibit the informed decision -- such as excessive paperwork, state intimidation, and spousal vetos -- have been consistently struck down.[7] State actions that further the cause of informed decision -- such as informed consent statutes, written consent requirements, and consultations with family and the attending physician -- have generally been encouraged.[8] As the Supreme

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The right of a person to rear and control the education of his child was recognized as part of the right of privacy in Roe v. Wade, 410 U.S. 113, 153 (1973). See also Douglas, J. (concurring opinion, at 211) and H.L. v. Matheson, 450 U.S. 398, 410 (1981) (extensive citations).

6. . 410 U.S. at 153.

7. . E.g. Doe v. Bolton, 410 U.S. 179 (hospital committee review of all abortions); Bellotti v. Baird, 443 U.S. 622 (1979) (parental veto without protections against arbitrary decision); City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983) (biased and incorrect information provided to mothers considering abortion); Thornburgh v. American College of Obstetricians and Gynecologists, 106 S.Ct. 2169 (1986) (state intimidation); Planned Parenthood v. Danforth, 428 U.S. 52 (1976)(spousal consent).

8. . Planned Parenthood v. Danforth, 428 U.S. 52 (1976)(informed, written, consent); Doe v. Deschamps, 461 F.Supp. 682 (D. Mont. 1976) (sustaining Montana informed consent law);

Court pointed out in one case,

> The decision to abort, indeed, is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.[9]

On several occasions, the court has been faced with the question of how a minor can truly give the kind of informed, free decision the court wishes to protect. Some minors are unusually mature, and are capable of making the abortion decision on their own. But the Supreme Court recognizes that many or most pregnant minors do not have that capacity -- that is, in fact, why the state classifies them as minors.[10]

The Supreme Court's solution for the immature, unemancipated minor is as follows: She can better give informed consent if she first consults with her parents. If for some reason her parents are not suitable for that purpose, a judge, in an expedited judicial proceeding, acts in their place.

A key to understanding the Supreme Court's position is to understand that the court sees no inconsistency between the

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Roe v. Wade, supra, 410 U.S. at 165; City of Akron, supra, at 462 U.S. at 427 (medical consultation). On family consultations, see generally infra.

9. . Danforth, supra, 428 U.S. at 67 (emphasis added).

10. . As Justice Powell pointed out in Bellotti v. Baird, 443 U.S. 622 (1979), when an unemancipated child is making the decision, furthering the constitutional policy of informed consent requires adjustments because of "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." 443 U.S. at 634.

privacy right of parents to direct the upbringing of their children and the privacy right of minors to an informed decision. That is because the court believes that parental input is a prerequisite to an informed decision by an unemancipated, immature minor.

Justice Powell, who for years represented an important swing vote on the court on the abortion issue, put it this way:

> 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 participation in a free society meaningful and rewarding.[11]

In another case, Justice Stewart wrote, in wording subsequently accepted by the whole court, that

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

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11. . Bellotti v. Baird, 443 U.S. at 638-39.

from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.[12]

The states have experimented with several ways for involving the parents in the abortion decisions of their unemancipated children, and the Supreme Court has upheld two of these methods. One method is parental consent; the other is parental notice. Under the consent approach, the parents may, after considering the best interests of their daughter, override her decision to proceed with the abortion.[13] Under the notice approach -- the method adopted by this bill -- the parents are notified of the impending abortion and may make their opinions known, but the final decision on whether to obtain the abortion is made by the child.[14] Under both methods, the child seeking the abortion may bypass her parents by obtaining court permission to do so -- either on the grounds that she is mature enough to make the decision herself or on the grounds that it would be in her best interests not to notify her parents. The expedited judicial procedure set forth in this bill has been copied almost verbatim from a Missouri procedure explicitly approved by the U.S. Supreme

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12. . Planned Parenthood v. Danforth, 428 U.S. 52, 91 (1976) (Stewart, J., concurring). This wording was adopted by the whole court in H.L. v. Matheson, 450 U.S. 398, 409-10 (1981) and in City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 427 n.10 (1983))

13. . Planned Parenthood A'ssn of Kansas City v. Ashcroft, 462 U.S. 476 (1983)

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

Court in 1983.[15]

In summary, my point is that by enacting this bill, the legislature would be expressing no interest at odds with the policies behind Roe v. Wade and its successor decisions. It would, in fact, be furthering the court's goals by pre-tested and constitutionally-validated methods. Although I think a compelling state interest for this bill could be demonstrated, I do not believe it is necessary to do so. This is because one must demonstrate a compelling state interest only when a measure restricts a fundamental right. If the repeated assurances of the Supreme Court are to be relied upon, this bill does not restrict fundamental privacy rights; this bill promotes the free and informed exercise of those rights.

IV

Montana Constitution.

What I have said about the effect of this bill in promoting the right of privacy under the U.S. Constitution is obviously relevant to the right of privacy under the Montana Constitution, assuming that the Montana right of privacy includes the right to an abortion. However, my own study of the legislative history of the Montana right of privacy convinces me that it does not protect abortion at all

Like you, I have seen and heard many allegations that the

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15. . Planned Parenthood A'ssn of Kansas City v. Ashcroft, 462 U.S. 476 (1983).

Montana right to privacy is broader than the federal right. But those allegations are only partially correct.[16] Actually, the Montana privacy right is broader than the federal right in some respects, but narrower in others.

The Montana right of privacy must be understood in the context of the time it was adopted. That was in 1972, during the Nixon administration, when many people, rightly or wrongly, believed that official surveillance of individual citizens was increasing. At that time there was widespread fear that existing federal privacy protection might be reduced by the government or by the courts.

My own review of the sometimes confusing convention transcripts convinces me that most of the delegates believed that they were inserting into the constitution the federal and state rights of privacy as they existed in 1972. By placing the existing rights in the Montana Constitution, the delegates hoped to prevent their repeal. Thus, the report of the Bill of Rights Committee, which drafted the privacy section, explained the need to insert the right in the Constitution because of "the increasing concern expressed nationwide that the sphere of individual privacy is in danger of eclipse in an advanced

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16. . For example, the annotator to Montana Code Annotated introduces the note on the case of State v. Sierra, 692 P.2d 1273 (Mont. 1985) with the statement, "Privacy Right More Expansive than Federal Provision," but all the case holds is that the Montana privacy right is broader than the Fourth Amendment to the U.S. Constitution as construed by the U.S. Supreme Court after adoption of the Montana Constitution.

technological society."[17]

Also, the individual delegates had a pretty good idea of what the content of the privacy right was -- it was essentially the right of privacy as it existed under then-current federal and state law. The committee chairman, Delegate Dahood, told the convention, "The right of privacy is recognized within the law, [and] has been amply defined in case after case within the common law area."[18]

Now, at the time Delegate Dahood spoke, Roe v. Wade had not been decided. There was no federal privacy right to an abortion, and no right to an abortion in Montana. Montana abortion laws were among the strictest in the nation -- forbidding all abortion except to save the life of the mother.[19] No one suggested in the convention debates that the new constitution would have any effect on this situation, even though the abortion issue was on people's minds in 1972.

The delegates cited three cases as examples of the right of privacy they were trying to protect. None of these had anything to do with abortion. There was a Montana case on the use of illegally obtained evidence and another one on the physical

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17. . Transcript at 632. Most of the discussion centered around issues of electronic surveillance and interception of information. Convention Transcript, at 1681ff.

18. . Transcript at 1682. One or two comments by Delegate Campbell suggest that he considered the right of privacy to be an expandable right (at 1851), but the essence of his remarks also is that without an express right of privacy, the courts might chip away at existing rights.

19. . R.C.M. 1947 §§ 94-401, 402.

invasion of a couple's home.[20] The third case was Griswold v. Connecticut,[21] a U.S. Supreme Court decision that had said nothing about abortion but that cited two earlier Supreme Court cases for the proposition that the right of parents to control the upbringing of their own children was a fundamental right, and part of the right to privacy. In fact, the convention delegates' repeated references to Griswold lends powerful support to this bill.

Interestingly enough, when a court finally did strike down the restrictive Montana abortion law in 1973, it did so exclusively on federal constitutional grounds. The court deciding that case did not even mention any claim made under the Montana Constitution.[22] I should add that, insofar as I have been able to determine, the Montana Supreme Court has never held that the Montana right of privacy impedes state regulation of abortion.[23]

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20. . State v. Brecht, 157 Mont. 264, 485 P.2d 47 (Mont. 1971); Welsh v. Roehm, 125 Mont. 517, 241 P.2d 816 (1952).

21. . 381 U.S. 479 (1965).

22. . Doe v. Woodahl, 360 F.Supp. 20 (D. Mont. 1973).

23. . Claims that the Montana Supreme Court has ruled on abortion are incorrect. For one such claim, see Missoulan, 1/22/88, p. 5, cols. 1-2 (letter to editor opposing parental notice). A federal court did strike down a Montana spousal notice requirement under federal law in Doe v. Deschamps, 461 F.Supp. 682 (D. Mont. 1976), but found that the plaintiff did not have standing to challenge the parental notice provision.

In Deschamps, the court invalided the spousal notice provision because (a) the statute did not prescribe the method of giving notice and (b) did not provide for constructive notice. However, S.B. 164 has a constructive notice provision, and the U.S. Supreme Court has since sustained a Utah statute that did

Perhaps I should summarize my conclusions on the state right of privacy as follows: The state right is broader than the federal right in that state courts cannot reduce the level of privacy protection below the level recognized in 1972.[24] The right probably can be applied to protect citizens from surveillance technologies and forms of government regulation unknown in 1972.[25] But the Montana right of privacy is narrower than the federal right in that it cannot be applied to upset then-existing laws and regulations unless it can be demonstrated that the Constitution was intended to change them. Although in 1972 many people thought state prohibition of abortion was a bad idea, there was no indication that the new constitition was intended to affect that situation in any way.

Next, it remains to say something on Article II, § 15, the provision protecting the civil rights of minors. That provision does not create new rights -- it merely extends existing state

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not specify the precise method of giving notice. H.L. v. Matheson, 450 U.S. 398 (1981).

24. . See, e.g., State v. Sierra, 692 P.2d 1273 (Mont. 1985), declining to follow the post-1972 cases of Illinois v. Lafayette, 462 U.S. 640 (1983) and South Dakota v. Opperman, 428 U.S. 364 (1976).

25. . Convention Transcript, Delegate Campbell, at 1681. Delegate Campbell's remarks at id. 1851 against "eliminating other areas [of privacy] in the future which may be developed by the court" occasionally are cited by those who favor a more expansive view of the privacy right. However, Delegate Campbell made those remarks in arguing for a draft of the privacy right broader than the then-current federal right -- a draft the Convention rejected. Delegate Ask successfully argued against the Campbell proposal precisely because it exceeded the federal privacy right. Id. at 1852.

rights to minors. We have seen that abortion is not among these existing state rights. Even if it were, however, we have also seen that the prevailing judicial view is that parental input furthers privacy rights, it does not impede them.

I examined the convention's discussion on this constitutional provision, also. The transcript makes absolutely clear that laws, such as this proposed bill, designed to protect minors from their own improvidence by restricting their social privileges, would continue to be constitutional.[26]

V

Miscellaneous Points

Finally, I have some observations on technical aspects of the bill that I shall not cover in my oral testimony, but that are examined in the Addendum to my written testimony. The most significant conclusion in my Addendum is that it is important that the 48 hour notice period and the notification of both parents be retained, and that both clauses are entirely constitutional.

Thank you very much for your attention.

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26. . The main concern of the sponsors of §15 seems to have been with abuses in the way the criminal courts were treating minors. Constitutional Convention Transcript at 1751-52.

ADDENDUM

Following are some technical observations on S.B. 164. This is not a complete list. Other suggestions have been made to one of the bill's sponsors.

I would suggest that S.B. 164 be amended to allow notice to be given by the minor, the physician, or the minor's or physician's delegatees. This would bring the notice requirement into conformity with a recent 6th Circuit federal case.[27]

I suggest retention of the 48 hour notice period, because, as Justice Marshall once observed, such a period is necessary to make parental consultation meaningful.[28] One federal circuit has, mistakenly, I believe, held notice periods unconstitutional, but several later, and better reasoned, cases have sustained them.[29] I believe the Supreme Court would sustain them, too.

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27. . Akron Center for Reproductive Health v. Slaby, 854 F.2d 852 (6th Cir. 1988).

28. . H.L. v. Matheson, 450 U.S. 398, 444 (1981)(Marshall, J. dissenting). See also Akron Center for Reproductive Health v. Rosen, 633 F. Supp. 1123, 1139 (N.D. Ohio 1986), affirmed on other grounds, 854 F.2d 852 (6th Cir. 1988), holding that without a waiting period notice "would be an empty formalism with no practical effect if the abortion could proceed before the parental consultation could take place...." This should be a 48 hour rather than a shorter period to enable parents to adjust to the news that their daughter wants an abortion and formulate their views on the matter.

29. . Cases sustaining them include Akron Center for Reproductive Health v. Rosen, 633 F.Supp. 1123 (N.D. Ohio 1986), affirmed on other grounds sub nom. Akron Center for Reproductive Health v. Slaby, 854 F.2d 852 (6th Cir. 1988); Hodgson v. Minnesota, 853 F.2d 1452 (8th Cir. 1988). The one case contra, which I believe was mistaken, was Zbaraz v. Hartigan, 763 F.2d 1532 (7th Cir. 1985), affirmed without opinion by an equally divided court, 108 S.Ct. 479 (1987). However, there were reasons for the affirmance other than the notice period.

Moreover, I would suggest retention of the requirement that both parents be notified. This recognizes Supreme Court doctrine that the constitutional right of authority over one's children extends to both parents -- even noncustodial parents -- and not just to the parent who happened to be notified.[30]

Finally, I would suggest that this bill become effective only upon adoption of the rules governing the expedited judicial procedures.[31]

In the Montana Legislative Council's Legal Memorandum on this bill, the author takes the Hodgeson court to task for choosing not to follow Zbaraz. The Memorandum states that Zbaraz "cited the plethora of federal and Supreme Court decisions that have have held that a waiting period unconstitutionally burdens a minors right to have an abortion." (page 9).

This statement is in error. As the dissent in Zbaraz points out, 763 F.2d at 1554, all but of the precedents cited by the Seventh Circuit in Zbaraz involved notice periods applicable to adults. The lone exception was an earlier Seventh Circuit case, Indiana Planned Parenthood v. Pearson, 716 F.2d 1127 (7th Cir. 1983).

The Eighth Circuit was correct in not following the Seventh Circuit, because the Seventh Circuit's approach differs significantly from the principles underlying Supreme Court adjudication in this area. Moreover, since the 4-4 summary affirmance in Zbaraz, Justice Kennedy has joined the court. An intimation of his views on the abortion question can be obtained by his concurrence with the O'Connor-Rehnquist-Scalia-White anti-abortion majority in Bowen v. Kendrick, 108 S.Ct. 2562 (1988), an Establishment Clause case in which he voted to sustain the constitutionality of a federal program to, inter alia, encourage adoption over abortion. On the question of a notice period, Justice Stevens might very well join the majority.

30. . For the rights of both partners, see Eisenstadt v. Baird, 405 U.S. 438, 453 (1972). For cases in which two-parent notices were sustained, see H.L. v. Matheson, 450 U.S. 398 (1981) and Hodgson v. Minnesota, 853 F.2d 1452 (8th Cir. 1988).

31. . This would be prudent, if not required. See Zbaraz v. Hartigan, 763 F.2d 1532 (7th Cir. 1985), affirmed without opinion by an equally divided court, 108 S.Ct. 479 (1987). Cf. Planned Parenthood A'ssn of Kansas City v. Ashcroft, 462 U.S. 476 (1983).

Exh 6

Testimony Before Senate Subcommittee
Montana State Legislature
1/23/89

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 1-23-89
BILL NO. SB 164

RE: Senate Bill # 164

Bill Sponsor: Tom Rassmusen

Testimony of Paul A. Olson, PhD
Marriage & Family Counselor/Educator Proponent

I have worked as a family counselor/educator for the past 15 years here in the state of Montana. Many times during those 15 years women have requested my help in working through the pain, confusion, guilt, uncertainty and remorse of a past abortion. (Parenthetically, it should be noted, on the other hand, that not one woman in fifteen years of counseling has requested help to work through the trauma of going full term and giving up a baby for adoption.) Two things seem almost always to stand out in the experience of a woman who had an abortion as an adolescent:

1. She expected the whole ordeal to be over on the day of her abortion only to discover she was left to struggle with an array of unexpected emotions.

2. She believed she had no alternative to abortion.

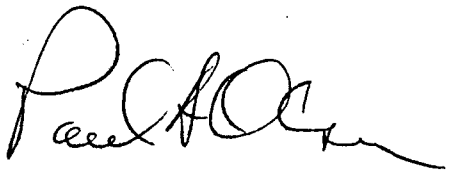
In short, trying to decide what to do about being pregnant as a teenager was experienced as the toughest decision of her life and she continues to struggle with the ramifications of that decision now in adulthood, especially if her choice was to abort.

The position now taken by the legislature of Montana is this: If a teenage girl needs a routine operation to have her apendix out, or a minor surgical procedure such as having her ears pierced, she should rely upon the care and guidance of her parents. However, if she has to deal with a much more serious issue of to have or not to have an abortion, she should rely upon the advice and assistance of someone other than her parents. Her parents are not to be trusted in dealing with complex emotions and the exploration of alternatives.

It is nothing less than insidious arrogance to believe that legislators, doctors, counselors and other helping professionals are superior to a child's own parents in assisting her through the most difficult decision of her life! Will the state of Montana continue to say parents are helpful in the smaller matters of child rearing but irrelevant in the weightier matters?

I stand here this morning to say it is my experience and professional judgement that no one, no doctor, no legislator, no counselor, no agency can do a better job of helping a young girl deal with life than her own parents. No one truly loves and cares for that young girl more than her parents in nearly every instance. Yes, some parents may need help in effectively communicating their love. They may need help in dealing with their own behavior and emotions when they find their child is with child, but to tell them they are uneeded is an unabashed assault on the family. I recognize there are instances where an adolescent informing her parents she is pregnant would be dangerous for that child and the child of the child, but this bill makes adequate provision for just such unusual circumstances.

Finally, a basic principle of psychology is that expectations shape behavior. If the state of Montana tells parents they are not responsible for helping thier child make one of the most difficult decisions of adolescence, and, on the other hand, tells adolescents they are not accountable to their parents in the weightier matters of life, we can expect to see more irresponsible parents and more teens ignoring the consequences of their own behavior. Right now, the legislature of the State of Montana must accept the responsibility for, inadvertantly, I hope, dealing an insidious blow to the family in our state.



Exh 7

SENATE JUDICIARY
EXHIBIT NO. 7 pg 1
DATE 1-23-89
BILL NO. SB 164

If I have spoken out for David Keith in order to be consistent regarding human life and to be consistent with the gospel, I am called even moreso to speak out for the lives of the totally innocent, and totally voiceless 1.6 million unborn who are killed by abortion each year.

If we are ever to instill a respect for life in our country, we must be consistent.

If we are to win over those who do not accept our views, we must approach them in the spirit of Christ and of the gospel. We must not sound moralistic and condemning. We must approach them with love and with mercy. If we are to convince those who do not accept the gospel or Christ, we must convince them with our lives--lives lived according to the gospel, with love, and never with violence. We must be consistent with the gospel message.

Last week, I testified in support of two Senate bills dealing with the death penalty. In doing so, I pointed out the irony and inconsistency in our legal system. One bill, Senate Bill #106, would postpone the execution of a pregnant mother until the birth of the unborn child. I support that bill as at least saving the unborn child in such an instance. However, I noted to the committee that if it becomes law, the State of Montana will be protecting such an unborn child in that instance at the same time thousands of other unborn children are killed legally each year. That is inconsistent.

Last week, I also testified in support of one provision of Senate Bill #108. This bill protect the executioner involved in carrying out a death sentence in our name by keeping the identity

annonymous. Although I oppose the death penalty itself, I told the committee that such an executioner should be shielded as, I believe, even if the executioner volunteers for the position, that person will suffer untold stress at a later time when the realization of his or her part in directly taking a human life comes home to the person. I cited the realization that has afflicted many Vietnam veterans in what we call "the Vietnam Stress Syndrome". I have dealt with many such cases in counseling. I have also dealt with many cases of "Post-abortion Stress Syndrome". Let me describe what occurs by way of example with cases from my counseling experience.

The first case I will call "Betty". Betty came to me as a student in a class I taught. Betty was 19, from a "good" Catholic family of 8 children. Betty became pregnant. She and her Christian boyfriend were afraid and bewildered. She was afraid to tell her parents and even afraid to approach a priest. Betty went to a "planned parenthood" counseling service and was convinced by the "counselor" that in the best interests of her, her boyfriend, and the child it would be best to abort the child. Betty followed that advice. Several months later Betty came to me. Betty was under emotional trauma. Every time she saw a child, the impact of what she had done came home to her. The guilt was overwhelming. Through counseling with me and dealing sacramentally with a priest Betty was able to face her guilt and experience God's forgiveness. Her boyfriend also required counseling. In a separate but similar case a young man, Bob, came to me after he

has, to this date--three and a half years later--not been able to fully rid himself of his guilt and he calls me frequently.

If we were successful in overturning Roe vs Wade and ending all abortions tomorrow, we will be dealing with the Betty's and Bob's for years to come. We must allow the Betty's and the Bob's to experience Christ's love and mercy in us so that we can minister to them--either before or after an abortion. That is consistent with respect for life. That is consistent with the gospel of Jesus Christ!

For me to be consistent, today I must testify in support of Senate Bill #168 requiring parental notification for minors considering abortion. I can't help pointing out, once again, the inconsistency in our laws. This past week our youth group went on a ski trip. Last summer, I was spiritual director at Legendary Lodge, a youth camp. In both instances, if one of the youngsters were to break a leg or cut an arm, the adult staff would not be able to obtain emergency medical care for that minor unless we had a parental consent. On the other hand, if one of the girls on the ski trip or at Legendary Lodge asked to have an abortion, legally we would be able to have the unborn child in her womb killed. Is that consistent? Does that support family life?

We must be consistent. We believe in scripture. We believe in Christ. Thus, we are called to respect and uphold the dignity of all human life,

male and female,

children, as well as adults,

If we respect the dignity of human life for the unborn, we must be consistent. We must oppose abortion. And, if we are consistent, we will support efforts to provide pre-natal care so that other unborn children do not die before or after birth.

If we respect the dignity of human life for children, we must consider the one in four children born into poverty in our nation each day. We must consider the 100,000 homeless children. We must consider the children in other nations who die because their governments cut back on immunizations to pay back loans to American banks.

If we respect the digniity of each human life, we must support dignity for the poor, for the homeless, for the 37 million Americans without access to basic medical care and another 30-40 million without adequate medical insurance. Our American Catholic bishops and Pope John Paul have spoken out consistently regarding these as life issues. Yet we are the only industrialized nation in the world outside of South Africa without a national health care plan. We rank 19th in infant mortality behind such countries as China and Mexico.

To truly respect life requires that human life comes before material gain or loss, human life life comes before our tax dollars, human life comes before our convenience or pleasure.

We are called to respect the dignity of human life without the qualifications of the liberals or the conservatives of our day, but completely, totally.

Over 21 million unborn have been aborted since 1973 decision. We must uphoold dignity of human life. We must oppose abortion. We must provide for the Betty's, options for them when they become pregnant, we must not condemn them, Christ would never did that. We must welcome them back, but we must provide opportunities for them to have children, for adoption, to provide pre-natal and post natal care.

If we stand for the dignity of human life, we must support the Betty and the Bob's in America both before and after they get into "trouble". We must reach out to the young people in our society. We must ask why so many of our young people have turned to suicide. Suicide is the leading cause of death among Native American male teenagers. Just as homicide is the leading cause of death among Black male youths. And among white males the leading cause of death is a car accidents, most likely involving alcohol and/or drugs. These are life issues.

If we respect human life and follow the gospel, we will be concerned about the victims of Aids, we will be concerned about the disabled, we will be concerned about the homeless, about poverty and jobs. The 25th Chapter of the Gospel of Matthew tells us that we will be judged according to what we do for the least of our brothers and sisters. These are life issues. These are Christian issues.

If we respect human life, we will be concerned about our elderly and the quality of their lives. We will be concerned about the increasing tendency by Americans to accept euthanasia.

If we accept the gospel of Christ, we will be consistent. We will not say we are opposed to abortion, but not be concerned about the increase in nuclear weapons that could destroy all life while money is diverted from health care, housing and nutrition.
If we respect life, we will oppose abortion.
If we respect life, we will extend ourselves to the unwed mother.
If we respect life, we will do what we can to aid children who are born, perhaps through opening our homes through adoption, through foster care, more likely by opening our pocket books to provide for prenatal, postnatal and other health and related services.

We are called to be witnesses to the world and to build the kingdom of God. We are being called today to challenge both political parties. Neither of the two major political parties is consistent in supporting human life issues. Many of you are active in one or the other party. All of us must decide how we will change the values of our society and thus each of the political parties on all of the human life issues.
That may take political action. It may involve becoming active at the precinct, county, state or national political levels to change party platforms in the future. What ever our course, we must be consistent, respecting <u>all</u> life and living the gospel of

mercy and love, of non-violence. We must listen to the voice of Christ. We should hear that voice of Christ in the voiceless, the voice of Christ in the unborn, the voice of Christ in the children, the voice of Christ in the unwed mother or single parent, the voice of Christ from the poor, the homeless, the Aids victim, the disabled, those whose lives are threatened by war. And hearing those voices, we must act.

For not to decide is to decide.

Fr Jerry Lowney
Support of SB 164

SENATE JUDICIARY
EXHIBIT NO. 7.0.8
DATE 1-23-89
BILL NO. SB 164

From Breakfast Talk at Jorgenson 0730 Am 1/23/89

Good morning!

As was stated, I am Fr. Jerry Lowney of St. Helena's Cathedral. I was ordained a priest last June. Prior to that I was a college professor. I am a sociologist with a considerable background in counseling and have been involved in Youth ministry in my church for over 26 years.

Most of you probably know that my church has consistently opposed abortion and stood for the right to life for the unborn for many centuries. Many of you have heard that this is a part of the "consistent ethic of life" that is increasingly emphasized by the Catholic hierarchy. The Catholic Church maintains that every human life is sacred. In the 1st Chapter of Genesis, we hear that God made human's in His likeness--"male and female he made them". Jesus Christ took on human form and, through His death and resurrection, has further dignified and uplifted human nature. There are no exceptions!--<u>all</u> human life is sacred. The "consistent ethic of life" demands that we protect and foster human life from beginning to end, from the womb to the tomb. In the words of Cardinal Bernardin "it is like a seamless garment; either it all holds together or eventually it all falls apart."

I uphold the teachings of my Church. I embrace the consistent ethic of life.

Many of you know me as the priest involved in the David Keith case. I did so from an ethic based on the sacredness of all human life and consistent with what I believe to be the message of Christ in the gospels, the message of love, of mercy and forgiveness.

SENATE JUDICIARY
EXHIBIT NO 7, 2, 9
DATE 1-23-89
BILL NO. SB 164

I am Fr. Jerry Lowney, associate pastor of St. Helena's Cathedral.

I wish to speak in support of Senate Bill #164.

I believe in a consistent ethic of human life. For this I have opposed the death penalty. I support the dignity of human life, and for this reason I have worked on behalf of the homeless. I support the dignity of human life and, for this reason, I oppose abortion.

I have had to counsel a number of young women who suffer from "Post Abortion Syndrome" with guilt and trauma after their decision

I find the present laws totally inconsistent. This past weekend, I was one of the chaperones for our Church Youth Group on a ski trip. Last summer, I was spiritual director at Legendary Lodge, a youth camp operated by the Diocese of Helena. In each of these situations, if one of the youngsters were to break an arm or cut a leg, the adult staff would be unable to obtain ~~emergency~~ medical care for the minor without parental consent. How ironic and inconsistent it is that if one of the same youngsters wanted to have an abortion, the staff could bring the minor to a hospital to have the abortion done with no parental notification whatsoever.

Senators, this is inconsistent. We must support human life and we must support the family.

SENATE JUDICIARY
EXHIBIT NO 8
DATE 1-23-89
BILL NO SB164

Montana Catholic Conference

January 23, 1989

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am John Ortwein, Director of the Montana Catholic Conference. As such I serve as the liaison between the two Roman Catholic Bishops of the State of Montana in matters of public policy.

In the Bellotti v. Baird case heard before the United States Supreme Court in 1979, the Court stated the following: The unique role in our society of the family requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. Minors often lack the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them. Parents are entitled to the support of laws designed to aid discharge of their responsibility.

Evidence reveals that the medical, emotional and psychological consequences of abortions on children can be extremely detrimental. Even if a child chooses an abortion, parents are often the only ones who possess medical information which may be needed prior to an abortion and the only ones to ensure that their daughter receives adequate support and follow-up care after an abortion. The Conference believes that parental notification is in the best interests of the child.

We urge this committee to pass Senate Bill 164.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

Ex 9

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 1-23-89
BILL NO. 1/23 SB 164

NAME: Joelle Betty

ADDRESS: 512 Benton, Missoula, Mt. 59801

PHONE: 549-2234

REPRESENTING WHOM? self and teens across Montana

APPEARING ON WHICH PROPOSAL: SB 164 Parental Notification Bill

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: My name is Joelle Betty. I am a fifteen year old high school student in Missoula. I am here in support of the Parental Notification Bill.

I believe that parents have the right and responsibility to know what their underaged children are going through. As a teenager, I value and respect the opinions of my parents in all decisions that I make.

You, as the lawmakers of this state, have always held parents legally responsible for the actions of their parents. The Notification Bill that you are discussing today will continue this relationship. When parents are left out of major decisions like abortion, it breaks down family unity.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

When I am a parent, as I hope to be someday, I don't want my child going outside the family for advice on such a major decision as an abortion. I do not want impersonal counselors coming between the trust and communication that's part of a parent/child relationship.

It is a known fact that after an abortion /

takes place, there can be complications. If a teenager does decide to have an abortion, she needs to know her family will be there to go through her troubles with her. If her parents are allowed to discuss the situation of her pregnancy with her and if indeed an abortion is agreed upon, then they will all be in a much better position to help and comfort her with any mental, physical, or emotional problems that come as a result of the abortion.

Dr. Anne Speckard, of Virginia, did a study on the feelings of 10,000 women who had undergone abortions ten years previous. Ninety-six percent of the women stated they deeply regretted having the abortion. This shows that abortion is not an issue to be taken lightly. The consequences need to be carefully weighed and the abortion counselor should not be the only influence on a frightened, anxious teenager.

Thank-you,

Joelle Betty

SENATE JUDICIARY

EXHIBIT NO. 10

DATE 1-23-89

NAME: Traci Dodson DATE: BILL NO. SB 164

ADDRESS: Missoula

PHONE:

REPRESENTING WHOM? Self + teens across america (montana)

APPEARING ON WHICH PROPOSAL: SB-164 Parental Notification

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: Hello, my name is Traci Dodson + I am a high school student from missoula + I truly appreciate the opportunity that I have to come + speak to you today. I know you all have a very difficult decision to make, The Bill has alot of issues you as a legislative really need to look at. I am here to present why this bill should pass. Some people may tell you that this bill is a threat + detrement to the health of a minor. others will say it ruins the confidence between a doctor + their patient. Yet in both their views we are forgetting someone that really needs a say in the minors decision — the parent. Under montanas present laws, Parents have no rights in the decision of their daughters abortion. Yet in other areas a patient has the right, the responsibility, and even the obligation both

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

legally, + morally to protect and help guide their teens in the decisions they face. In a hospital emergency room attendants must have consent from parents to treat their daughter for even minor emergencies! But the most ironic example is that parents must sign a consent form for a minor girl to get her ears pierced, yet do not even have to be even notified of an abortion procedure! what does this say about

(over)

our societies morals? There may be a small number of minors who will not want to tell their parents because of violence in the home, incest, rape or drug & alcohol abuse.

Some will also say that the Law cannot force good communication in the home between families. But the way I see it Parents should not be excluded because of fear of reaction. Parents may react out of concern for the child - not desire of harm. We seem to forget that the majority of families truly want the best for their own child. Abortion or not: the parent should be informed. The US Supreme court has on at least 5 occasions ruled that parents have the right to rear their children and that parental consultation is necessary to protect minors against their "peculiar vulnerability" and that the state has an obligation to protect these rights!

So according to the highest court in our country ... Parental notification is constitutional, and it is right!

Thank you

Exh 11

SENATE JUDICIARY
EXHIBIT NO. 11, p.1
DATE 1-23-89
BILL NO. SB 164

WITNESS STATEMENT

NAME Mrs Mary E Doubek BILL NO. 164
ADDRESS 7645 N. Montana Ave DATE 01/23/89
WHOM DO YOU REPRESENT? Myself / Eagle Forum / families / mothers / the Unb
SUPPORT ✓ OPPOSE _____ AMEND _____
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.
Comments: I think the "exceptions" make this bill self defeating since a daughter can still abort without notification. forbid legalized abortion & classify it as murder!

Please keep government out of the private life of the family and allow parents to rear their children & function as the primary, basic unit of society. Those who are fortunate to have parents should be allowed to have the benefits that should be theirs.

Parents should be notified of such a tremendous step which their children are considering.

Parents plan so many steps - moves, jobs, birthday parties, education, illness, weddings etc -- why deal them out of their right to be notified of their child's impending abortion.

I am totally against abortion - the killing of the unborn but I am also against performing abortion without the awareness & knowledge of the parents. They should be notified so they can at least have the opportunity to explain the situation & devastating results of the action not only for their unborn baby but for the one who is having the abortion. I call it child molestation against the parents to perform

CS-34

this abortion. The ones who help the woman to obtain the abortion get to speak to advise & the parents are left out in the cold.

Although I am totally against abortion, I say do notify the parents & give them a chance to speak & advise their own children.

Please vote for SB 164 & help the family.

SENATE JUDICIARY
EXHIBIT NO. 11, P. 3
DATE 1-23-89
BILL NO. SB 164

THE U.S. SUPREME COURT HAS RULED IT'S LEGAL TO KILL A BABY...

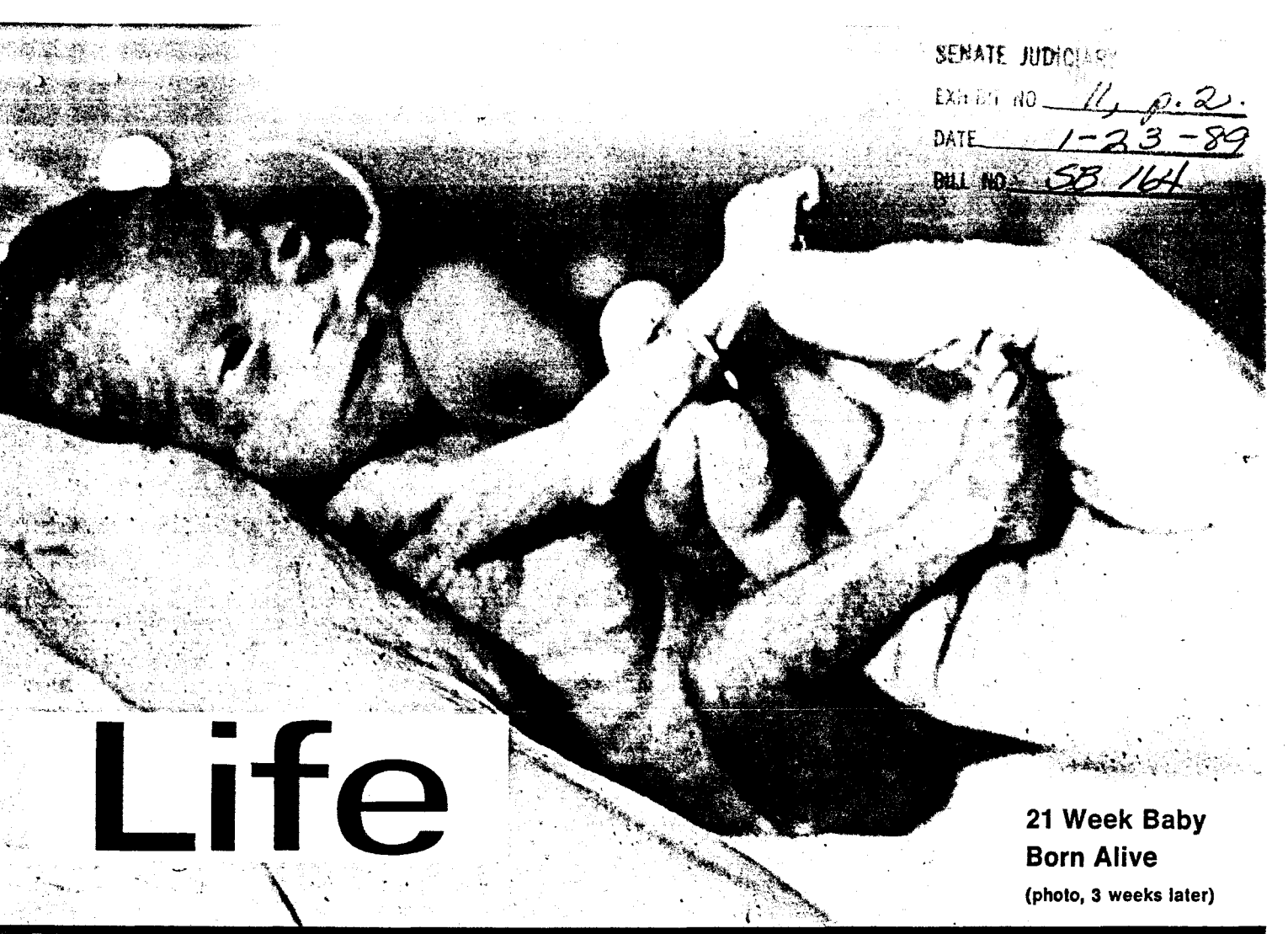
of this age
8 WEEK LIVE BABY IN SAC.

or this age
14 WEEK LIVE BABY IN SAC.

or this age
28 WEEK LIVE BABY

The only requirement is that:
— the baby still lives inside the mother.
— the mother wants the baby killed.
— the doctor is willing to do the killing.

SENATE JUDICIARY
EXHIBIT NO 11, p. 2.
DATE 1-23-89
BILL NO SB 164



Life

21 Week Baby
Born Alive
(photo, 3 weeks later)

or

Death

21 Week Baby
Killed by Abortion

SENATE JUDICIARY
EXHIBIT NO. 12, p 1
DATE 1-23-89
BILL NO. SB 164

WITNESS STATEMENT

SB-

NAME Rev. Alan Mabi BILL NO. 164

ADDRESS Box 92 Darby MT DATE 1-23-89

WHOM DO YOU REPRESENT? Ravalli Co. Right to Life

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Mr. Chairman + committee members: My name is Rev. ____ from Darby, MT. I'm in very simple terms, Comments: The issue today, is Not abortion, per se; it is parental rights + what is in the best interest of our daughters + our families. Any opponent to this bill is saying, essentially, that some other person, male or some doctor has the right to Know + the right to counsel my minor-aged daughter, and that I don't even have the right to know what's going on. But my 13 yr. old daughter doesn't have to LIVE with them after the abortion — and I don't even KNOW that there's something to deal with + help my daughter with if I don't even KNOW there's been an abortion.

Who has legal custody of my daughter and her welfare? the doctor, the abortion clinic or the parent? With Bill SB-164, the parent will at least be notified! That only makes sense; anything else is NON-sense — that is the only point to be made here today. On this day, we're not even dealing with whether abortion is right or wrong — we're dealing with "Does the parent have the right to be notified of what's going to go on with their minor daughter's body?" Yes — they need the right to know. That right needs to be honored. I urge you as a parent + as a minister to please pass SB-164 in its original form.

CS-34

MONTANA WOMEN'S LOBBYIST FUND

SENATE JUDICIARY
EXHIBIT NO. 13, p.1
DATE 1-23-89
BILL NO. SB 164

P.O. Box 1099 Helena, MT 59624 406/449-7917

Nancy Lien Griffin
Testimony in Opposition to S.B. 164

Mr. Chairman, Members of the Committee:

Let's be honest aboutthis bill. This is not a bill to promote family communication. This is a not a bill to help teenagers. This is a bill to chip away at a woman's right to choose.

This legislation requires a pregnant and desparate teenager to violate her right to privacy by jumping through hoops set up only to make an abortion impossible to get legally.

Judicial bypass does not stop abortions--it only harasses those teens that can's tell their parents about pregnancy. In Minnesota and Massachusetts, two states with judicial bypass, neighboring states without judicial bypass procedures have seen corresponsding rises in the number of abortions on MA and MN minors.

The vast majority of Americans continue to strongly support a woman's right to choose abortion. The American View Points poll in 1988 says 78% of Americans feel abortion is a private matter and the government should not be inmolved. Only 10% believe that abrotion should be illegal under all circumstances. A Columbia University poll say 88% of Americans support the right to choose and a Gallop poll listed the numbers at 80%.

Perhaps a lesson can be learned from the failure of the German state in 1945. The Germans attempted to legislate a perfect world and assumed then a perfect world would exist. The success of American has been to prove that government doesn't work that way.

This is America--and a woman is free to choose when and if to have a child. I find it inconsistent that the same politicians which oppose government intervention in our business and personal lives, think this issue is somehow different.

The real question, gentlemen, is--Is there a compelling reason for government to become involved in this area of our personal lives. All this business about life and when flesh becomes spirit is a metaphysical one and best left to our churches and our personal consciences.

As a high school teacher and guidance counselor I had the extreme good fortune to become quite close with a group of what I consider to be typical Montana teenagers. They were a great bundh of kids and I for one think our future is in very good hands. Please don't underestimate today's teens.

Teenagers today receive a lot of pressure about sex. I encourage parents to turn off the TV, sayno to Friday night videos, find the library card and break out the skis. The trouble is, however, there are a lot of kids out there with parents who don't say "no" or aren't around to say "no, or can't affortd skis. There are as many family situations as there are families. The laws you pass here will effect all Montana families and all Montana teenagers.

I'm not here today pleading for most of my students only for those girls that can't tell Mom and Dad the words, "I'm pregnant and I need your help." Doesn't it stand to reason with that kind of a heavy load these girls would consult with Mom and Dad if they could.

What we need is prevention of pregnancy, not punishment for becoming pregnant.

The Montana Women's Lobby urges a vote of do no pass for SB 164.

Committee on Adolescence

Adolescent Pregnancy

There is a continuing nationwide concern regarding the high prevalence of adolescent/teenage/school-aged pregnancy. The terms adolescent pregnancy, teenage pregnancy, and school-aged pregnancy all have been applied to pregnancy at an age and/or developmental stage that is considered premature or inappropriate, especially with respect to outcome. Whereas fertility is determined by biologic factors, the impact of pregnancy and its consequences have biologic, psychosocial, and environmental determinants. The term "adolescence" is applied to the period of psychosocial development from childhood to adulthood that corresponds to chronologic ages 10 or 12 to 21 years. Adolescent pregnancy has different implications for the 18- or 19-year-old high school graduate who is married or planning marriage than for the 13- or 14-year-old middle school student who may be beginning the process of adolescence. Although recognizing this broad spectrum, the Committee on Adolescence has chosen the term "adolescent pregnancy" for this and related statements. Our primary concern is the individual in early to middle adolescence (younger than the age of 18 years) who is biologically and/or psychosocially immature, and for whom pregnancy is, often unplanned, if not unwanted.

Explanations for the high prevalence have ranged from inadequate sex education to sexual promiscuity. In this statement current research data will be reviewed and relevant information will be provided so that pediatricians and others responsible for the health care of adolescents can appreciate the implications and consequences of adolescent sexual activity and early childbearing.

This statement has been approved by the Council on Child and Adolescent Health.

The recommendations in this statement do not indicate an exclusive course of treatment or procedure to be followed. Variations, taking into account individual circumstances, may be appropriate.

SEXUAL ACTIVITY

The current problems resulting from teenage pregnancy cannot be appreciated fully without understanding adolescent sexual behavior and the secular changes that have taken place. From 1900 to the early 1960s, sexual behavior in the unmarried teenage population changed. A review of the earlier literature indicates a tenfold increase in the incidence of sexual intercourse among single teenage girls during this period.[1] The evolution in attitudes toward adolescent sexuality that became apparent during the 1960s has resulted in both an earlier onset of sexual intercourse and an emergence of similar rates of sexual activity for older male and female adolescents. These changes in sexual behavior involve all segments of society in the United States.[2,3]

The younger the adolescent, the more sporadic and generally infrequent is the level of sexual activity. Sexual intercourse by 12-year-old girls living in intact households is unusual.[2] Exceptions may include incestuous experiences. However, more than 70% of 19-year-old women have engaged in sexual intercourse.[3] Adolescents tend to confine their sexual relationships to a single partner in a "monogamous" relationship of varying duration.[2,3]

The use of contraception among adolescents is erratic and is not widespread, although it has increased within the last few years.[3,4] Results of several studies have indicated that more than one half of the girls and three fourths of the boys interviewed had risked pregnancy by having unprotected intercourse at least once.[5] Adolescents fail to use adequate contraception for a variety of reasons. The younger the adolescent, the less likely he or she is to use adequate contraception.[2] Because of the decreased effective use of contraception, fertility rates for sexually active adolescents are high.

PREGNANCY

Since 1945, the pregnancy rates for 15- to 19-year-old girls have paralleled those for all women of childbearing age. A sharp increase in pregnancy

rates occurred after World War II, reached a peak between 1955 and 1960, and then began to decline. Birth rates decreased from 97 to 53 live births per 100,000 teenage girls between 1957 to 1982.[6] The National Center for Health Statistics reports a continuing decline in birth rates among all females of reproductive age except those younger than 15 years of age. The actual number of live births to 15- to 19-year-old girls has been relatively constant during this period because the number of adolescent girls has nearly doubled.

Births among nonmarried young adults have declined, but among adolescents they have increased; 89% of births to girls 15 years of age and younger are out of wedlock compared with 34% of births to girls 19 years old.[6]

HEALTH IMPLICATIONS

Early prenatal care is associated with a more favorable outcome for both mother and infant.[7] Pregnant adolescents, however, are likely to enter prenatal care late in their pregnancy. A critical survey of the adverse health consequences of adolescent pregnancy reveals only one major age-related complication: a greater frequency of low birth weight infants. All other potential ill effects of adolescent pregnancy, except possibly preeclampsia, appear to be dependent on socioeconomic status rather than age itself.[8]

The reported incidence of low birth weight infants born to adolescents ranges from 6% to 20%. Data from different centers confirm a higher rate of low birth weight infants among girls younger than 15 years of age.[9]

The higher incidence of low birth weight infants and the unfavorable outcome of these infants appear to be the major childbearing hazards of adolescent pregnancy. One suggested cause of low birth weight babies is small maternal size due to early biologic maturation.[10] Other risk factors (such as socioeconomic status; poor nutrition; use of alcohol, tobacco, and other drugs; and sexually transmitted infections) are not age related but often are correlated with early sexual intercourse and pregnancy. The degree of contribution of biologic and other factors to the health-associated risks of adolescent pregnancy warrants further study.[6,9] Health and developmental consequences for the infants born to adolescent mothers relate in part to premature birth and low birth weight but also to low maternal age, limited maternal education, and low socioeconomic status. Difficulty in obtaining and/or paying for prenatal care may further compromise pregnancy in young teenagers and increase the risk of adverse consequences.

Most adolescent mothers will encounter little medical difficulty during their pregnancies and their children will develop normally. Nonetheless, the younger the mother, the greater the risk of the health-associated consequences of pregnancy cited before. Delaying the first pregnancy until the late teenage years or early 20s substantially diminishes these risks.

PSYCHOSOCIAL CONSIDERATION

The pregnant adolescent, who has not yet completed her own development, frequently is subjected to several unfavorable psychosocial hazards. She usually is economically dependent, is forced to interrupt her schooling, and is frequently deserted by the father of her baby. The anger and distress engendered in some families by pregnancy in a young, unmarried daughter makes it apparent that these girls bear a significant social burden. The postponement of childbearing would improve most of the adverse factors for both the adolescent mother and her infant.

Guidelines for counseling the pregnant adolescent are contained in the AAP statement, "Counseling the Adolescent About Pregnancy Options."[11] Strategies for improving the outcome for adolescent mothers, fathers, and their infants are presented in the AAP statement, "Care of Adolescent Parents and Their Children."[12]

In conclusion, adolescent sexual intercourse and subsequent pregnancy are pressing contemporary concerns. Society can resolve these issues only through open discussion, adequate training of health care personnel, a more effective delivery and funding of health care and health education, and, finally, continued research.

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Committee on Adolescence

Counseling the Adolescent About Pregnancy Options

Sexuality is part of adolescent development, but some of its consequences, including premature sexual intercourse, pregnancy, and sexually transmitted diseases, have emerged as major health concerns for pediatricians. One million adolescent girls are estimated to become pregnant annually, and one third of these pregnancies end in abortion. The frequency with which pediatricians may encounter issues of pregnancy and abortion is high, and the reality of having to deal with these problems must be appreciated.[1,2]

The Committee on Adolescence has prepared this statement with three guiding principles: (1) it should represent an unbiased guide to Academy Fellows faced with the problems of adolescent pregnancy and abortion; (2) none of the options offered will be universally preferred by either patients or physicians and, indeed, all carry the potential for patient disability; (3) the pediatrician, the adolescent patient, and other concerned individuals must be given adequate freedom of action to achieve their cumulative working decision.

The pediatrician should examine his or her own attitudes and beliefs about sexuality in the adolescent. Feelings about premarital sex, pregnancy, and abortion are personal, individual, and deeply rooted. Pediatricians and other health professionals must refrain from allowing their own sexual and moral standards to interfere with optimal care. For pediatricians who wish to counsel young people but lack the experience or confidence, there are numerous regional and national educational opportunities to learn about counseling teenagers. Some pediatricians may wish to participate in preceptorship training with professionals knowledgeable concerning pregnancy counseling. If pediatricians decide not to counsel their teenage patients about sexual matters such as pregnancy and abortion, they have a responsibility to refer their patients to counseling facilities experienced and sensitive to the needs of adolescents.

IDENTIFICATION

Identification of pregnancy is the initial task. Early identification is important both to the teenager who decides to continue her pregnancy and therefore benefits from prompt entry into prenatal care and to the teenager who elects to terminate her pregnancy. Pregnancy symptoms, particularly in the younger adolescent, may be vague and nonspecific. The pediatrician cannot always rely on the menstrual or sexual history of the patient to diagnose pregnancy. Denials may exist to such a degree that the teenager even deludes herself into thinking that pregnancy could not be the cause of her symptoms, even when it is obvious to all.

The physical diagnosis of pregnancy is dependent on the finding of an enlarged uterus during abdominal, pelvic, or rectal examination. The fetus may be detected by the examiner either by fetal movement or by fetal heart auscultation, or both.

Laboratory testing is essential to making an early diagnosis, and test results will become positive prior to the appearance of physical signs. The most accurate laboratory test available is a serum β-subunit human chorionic gonadotropin assay, which may show positive results as early as several days after conception. Currently available monoclonal human chorionic gonadotropin urine pregnancy tests are accurate and not costly, and some tests may show positive results before the first missed period. An equivocal result from either test would suggest the need to repeat the testing in 1 week. If questions remain regarding uterine size or the existence of a pregnancy, obstetrical consultation and ultrasonography may be arranged. Concurrent with pregnancy evaluation, testing for sexually transmitted diseases should be performed.[3]

This statement has been approved by the Council on Child and Adolescent Health.

The recommendations in this statement do not indicate an exclusive course of treatment or procedure to be followed. Variations, taking into account individual circumstances, may be appropriate.

PEDIATRICS (ISSN 0031 4005).

COMMUNICATION

The second issue to be confronted by the pediatrician is how to convey the information about the existence of a pregnancy. This information should always be given in a personal and private setting, preferably not by telephone. Adolescent patients of minority age in many states have legal rights protecting their privacy regarding the diagnosis and treatment of pregnancy, and information should not be offered to anyone, including the patient's parents, without the patient's permission. It is hoped that the pediatrician will be able to persuade the adolescent, particularly the younger adolescent, to include her parents or other adult surrogates, as well as the baby's father, in a full discussion of the issue. All nurturing and supportive people, such as social workers or clergy, can then be mobilized to assist in the solution of this problem.

MANAGEMENT

The third, and the most critical issue, is a discussion with the adolescent concerning her plans for the pregnancy. All other responsible parties permitted by law may be included in the discussion. Three basic options are available: (1) Continuing the pregnancy, keeping the child, and (a) raising the child together with the father, as a family unit; (b) raising the child with the help of other family members: or (c) raising the child alone, as a single parent. (2) Continuing the pregnancy and relinquishing the infant for adoption. (3) Having an abortion.

All of these options should be explored. Their discussion should be open, informative, and nonpreemptory. Low income should not deprive an individual of any alternative. The patient should be encouraged to consider these options and return for as many visits as may be needed to reach a decision; however, she should understand the expedient nature of her decision. She should be encouraged to include her family and the father of the baby in these counseling sessions. (If reluctant to reveal identity of the father, the possibility of sexual abuse or incest should be considered.) When a tentative decision is reached, clarification of that decision with additional support and counsel should be offered. The unique knowledge of the pediatrician as professional, friend, and counselor may shed considerable light on the difficult choices facing the adolescent and may help make the final decision more appropriate for each patient.

If the patient decides to continue the pregnancy, the pediatrician should suggest immediate and appropriate obstetrical care. Guidelines for care of the pregnant adolescent can be found in the American College of Obstetricians and Gynecologists' booklet "Adolescent Perinatal Health—A Guidebook for Services."[4] A pediatrician can facilitate entry of the teenager into the health care system by referring her directly to an obstetrician or local/regional facility known to have adequate standards for managing both the emotional and medical aspects of pregnancy.

An important option for the pediatrician to discuss with the adolescent is the possibility of adoption. The pediatrician should be familiar with the available medical, legal, and counseling resources in the community regarding adoption to facilitate appropriate referral.

If abortion is the choice, the pediatrician needs to be aware of the various abortion techniques appropriate for different periods of gestation, the consequences of the methods of therapy, and pertinent local laws and available services. A general discussion of abortion and its complications for the adolescent is available for the interested pediatrician.[5] When abortion counseling is in conflict with the physician's moral code, this should be explained to the patient. It is also important that the physician respect the adolescent's moral decision and legal right to terminate her pregnancy and not impose any barriers to health services from another source.

Ideally, pregnant teenagers should be referred to physicians or counselors knowledgeable and experienced in the problems and options for pregnant adolescents. Also, it is important for the pediatrician to follow-up the patient to ensure that there has been no adverse outcome to the referral or the termination process and to discuss the prevention of future unintended pregnancy.

Any pregnancy, wanted or unwanted, is a sensitive area of concern for all women, particularly the adolescent. A warm and accepting environment in which the adolescent feels sufficiently secure to explore her own feelings about pregnancy and its consequences is essential. Both premature parenthood and abortion may have serious and long-term consequences. It is important to ensure continuing help and support, irrespective of the decision made by the patient concerning her pregnancy.

COMMITTEE ON ADOLESCENCE, 1986–1988
S. Kenneth Schonberg, MD, Chairman (1987–1988)
Joe M. Sanders, Jr, Chairman, MD (1986–1987)
Roberta K. Beach, MD
Richard R. Brookman, MD
Richard R. Brown, MD
John W. Greene, MD
Elizabeth McAnarney, MD

Liaison Representative
Phillip Goldstein, MD, American College of Obstetricians and Gynecologists

AAP Section on Adolescent Health
George Comerci, MD
Mary-Ann B. Schafer, MD

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Parental Consent for Abortion: Impact of the Massachusetts Law

VIRGINIA G. CARTOOF, PHD, AND LORRAINE V. KLERMAN, DRPH

Abstract. This study assessed the impact of Massachusetts' parental consent law, which requires unmarried women under age 18 to obtain parental or judicial consent before having an abortion. Data were analyzed on monthly totals of abortions and births to Massachusetts minors prior to and following the April 1981 implementation of the law. Findings indicate that half as many minors obtained abortions in the state during the 20 months after the law went into effect as had done so previously. More than 1,800 minors residing in Massachusetts traveled to five surrounding states during these 20 months to avoid the statute's mandates. This group accounts for the reduction in in-state abortions. A small number of minors (50 to 100) bore children rather than aborting during 1982, perhaps because of the law. Findings suggest that this state's parental consent law had little effect on adolescent's pregnancy-resolution behavior. (*Am J Public Health* 1986; 76:397–400.)

Introduction

During the decade following the legalization of abortion, large numbers of adolescents elected to terminate their pregnancies rather than to give birth. Between 1973 and 1980, adolescent abortions increased 86 per cent, from 201,327 to 375,213.[1] In 1977, 53 per cent of pregnant women under age 15 had abortions, as did 39 per cent of 15 to 17 year olds, and 35 per cent of 18 and 19 year olds.[2] In 1978, 24 out of every 1,000 White teenagers and 51 out of 1,000 teenagers of other races had abortions, up from 14 and 25 per 1,000, respectively, in 1973.[3] As the number of adolescent abortions rose over the decade, births to women under age 20 declined, and birth rates decreased substantially each year.

For most young adolescents, access to abortion without parental consent has been readily available. In a survey conducted in 1979–80, only 38 per cent of freestanding clinics and 48 per cent of hospitals required that parents consent to or be notified of a minor daughter's abortion.[4] In the absence of policies regarding parental consent, about half the adolescent population choose to involve their parents in a planned abortion.[4–8]

Despite the practices of abortion facilities and the observed behavior of pregnant teenagers, public opinion has not supported the notion that young adolescents should have access to an abortion without their parents' involvement. A 1983 Garth poll indicated that only 29 per cent of registered voters believed that minor women (generally those under age 18) should be allowed to have abortions without their parents being notified by the attending physician.[9] Six years earlier (in 1977), a Gallup poll had found that even among Americans who had positive attitudes toward abortion, only 46 per cent supported the idea that abortions should be available to minors on their own consent.[9]

Paralleling these trends, anti-abortion legislators and lobbyists have pressured for the passage of state laws regulating and restricting young women's access to abortion. Their efforts have been most successful in the enactment of parental consent and/or notification statutes which require that the parents of a minor woman consent to or be notified of a planned abortion. In some instances the permission of a probate or Superior Court judge may be substituted for parental involvement, or physicians may be allowed to make individual exceptions. The age range of those who are subject to these laws varies as well, with some states targeting those under age 18 while others focus on those under age 16.

Eighteen states have enacted parental consent and/or notification laws since 1973, and, while some of these statutes have been struck down because of their failure to include constitutional safeguards to minors' rights to access to abortion, 12 laws were in effect in mid-1985.* Additional state legislatures across the United States are expected to consider and pass bills requiring parental or judicial involvement with young adolescents' decision-making around abortion.

This article summarizes the findings of a study of the effects of one such law, first passed by Massachusetts in 1974, and then again in 1980, after six years of legislative and judicial debate that reached all the way to the US Supreme Court (*Bellotti v. Baird*, 443 U.S. 62, 1979). Finally, implemented in April 1981, the law requires that unmarried women under age 18 obtain the notarized or in-person consent of both their parents, or of a Superior Court judge before having an abortion. If judicial consent is sought, the Court must find a minor to be mature enough to make her own decision to abort, or that an abortion would be in her best interest.[12]

Methods

Data were collected from the Massachusetts Department of Public Health on the number of abortions to minors and non-minors in the state each month during the period from August 1977 (the first month that Massachusetts' abortion data collection system was in place) through 1982. Additional monthly data on the number of Massachusetts minors who obtained abortions in five surrounding states (New Hampshire, Rhode Island, Connecticut, Maine, and New York) during 1980, 1981, and 1982 were collected. The number of births to minor women in Massachusetts each month during the years between 1970 and 1982 were also obtained. These data were examined for trend, and analyzed statistically using Box and Jenkins' univariate time series method.[13,14]

In addition, interviews were held with abortion clinic counselors and administrators in order to approximate the proportion of minors choosing each consent option after the law went into effect.

Address reprint requests to Virginia G. Cartoof, PhD, Boston University, School of Social Work, 264 Bay State Road, Boston, MA 02215. Dr. Klerman is Professor of Public Health, Department of Epidemiology and Public Health, Yale School of Medicine, New Haven, CT. This work was done at the Florence Heller School for Advanced Studies in Social Welfare, Brandeis University, Waltham, MA. This paper, submitted to the Journal July 8, 1985, was revised and accepted for publication October 11, 1985.

*Parental consent statutes are in effect in Louisiana, Massachusetts, North Dakota, Rhode Island and Utah; and have been enjoined in Kentucky, Missouri, and Pennsylvania. Parental notification laws are in effect in Arizona, Idaho, Maryland, Minnesota, Montana, Utah and W. Virginia; and have been enjoined in Illinois, and Nevada.[10,11]

women will be influenced by expanding numbers of their peers to leave Massachusetts in search of an abortion, largely because of the parental consent law.

The evidence regarding births to minors since the law's implementation is not quite as definitive. Both the annual total and the annual rate of these births indicate a small increase in 1982, the equivalent of about 50 to 100 births, over the previous year. While additional analysis would be required to determine definitively the cause of this increase, the possibility that the parental consent law was a contributing factor cannot be ruled out.

While advocates of parental consent laws support the concept in the name of family unity, enhanced communication between parents and their children, protection of young adolescents who are unable to make mature decisions, and a reduction in the rate of abortion among them, there is little evidence that this law is having those effects. Massachusetts minors continue to conceive, abort, and give birth in the same proportions as before the law was implemented.

ACKNOWLEDGMENTS

This paper was prepared for presentation at the 113th Annual Meeting of the American Public Health Association, Washington, DC, November 17–21, 1985.

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New Film Guide on Human Rights Published

Anne Gelman and Milos Stehil, editors of *Human Rights Guide*, provide a useful reference for over 400 films and videotapes on human rights which can be rented or loaned in the United States. The guide is cross-indexed by subject area, geographic region, country, and title. It lists feature length films, shorts, documentaries, and fictionalized narrative films. In addition, the guide describes the length and content of the films, identifies the producers, and advises on the procedures to rent the films.

According to the editors, the guide's scope is international and the film subjects reflect the human rights standards provided in the Universal Declaration of Human Rights and other international covenants. Subject headings include repression, imprisonment and torture, death penalty, labor issues, refugees, and social and economic relations.

The editors excluded certain categories of films because they failed to conform to universal concepts of human rights, or because good texts already existed on those topics. Films on nuclear war, child abuse, and the US civil rights movement, for example, are not included in the guide.

Human Rights Guide may be purchased from the publisher Facets Multi Media, 1517 Fullerton, Chicago, IL 60614 for $7.50 postpaid ($6.95 cover price).

Astute marketing on the part of one New Hampshire facility, owned by a single physician, may have had an additional effect on these trends. This doctor began advertising in the 1982 Yellow Pages of metropolitan areas along the northern Massachusetts border, stating "consent for minors not required." In 1982, this facility performed a monthly average of twice as many abortions on Massachusetts' minors (27) as in 1981 (14).

In order to determine the extent to which minor abortions in Massachusetts were affected by the parental consent law, 65 monthly observations of abortions to minors in Massachusetts (August 1977 through December 1982) were analyzed using time series analysis. This analysis indicated the presence of a statistically significant intervention at the 46th month of the series, May 1981, the first full month after the law's implementation.

A second analysis of the law's impact was conducted on minor abortions in Massachusetts and in the five neighboring states described above, to determine the extent to which minors who did not obtain abortions in Massachusetts were represented by the 1,872 minor abortions performed in these states during the 20 months following implementation. When monthly observations of out-of-state abortions to Massachusetts minors were added to monthly totals of in-state abortions for the period May 1981 through December 1982, the significant residual found earlier at the 46th observation no longer occurred.

The limitation of this analysis is that complete data on out-of-state abortions to Massachusetts minors is unavailable for the 45 months prior to the law's implementation. While anecdotal data from this study indicate that a small number of such abortions did occur, national data on out-of-state abortions suggest that twice as many out-of-state minors came to Massachusetts for that reason.[15] Presumably, the flow of these minors into the state diminished appreciably when the law was implemented. We conclude that the effect of the omission of out-of-state abortions to Massachusetts minors in the preintervention period is compensated for by the inclusion of in-state abortions to non-Massachusetts minors during these 45 months.

A third analysis predicted the occurrence of Massachusetts abortions to minors in the absence of the parental consent law during the first 20 months the law was in effect. Table 2 presents a comparison of actual (in-state and out-of-state) abortions obtained by Massachusetts minors and those predicted by the model for these 20 months. The predicted observations in Table 2 are not intended as precise forecasts, nor can they be compared month-for-month with actual observations, as both contain a margin of error. Foremost among sources of error is the fact that abortions are obtained in Massachusetts between the 8th and 24th weeks of pregnancy. Nevertheless, totals of the two columns are close enough to lead to the conclusion that the vast majority of minors who would have had abortions in Massachusetts were it not for the parental consent law are accounted for by the 1,872 minors who went out of state for their abortions.

Annual totals of births and birth rates of under 18 year-old women residing in Massachusetts increased slightly from 1970 to 1972, fluctuated somewhat from 1973 through 1975, and then began decreasing gradually through 1981. In 1982, there was a slight, but hardly important increase: 0.1 births per 1,000 women ages 12 through 17 years. Table 3 summarizes these data.

Time series analysis of births to minor women in Massachusetts indicate that the parental consent law may have had a very slight impact on the number of babies born to this population in 1982. Had the rate of decline continued in 1982 at the same pace as it had in the previous 10 years, the total for 1982 would have been reduced by between 50 and 100 births. Other demographic shifts may be responsible for the rise, however, including increased numbers of Latino adolescents in the Massachusetts population, a group that experiences high rates of childbearing.

TABLE 2—A Comparison of Actual and Predicted Observations of Abortions to Massachusetts Minors, May 1981–December 1982

Month/Year	Actual In-State	Actual Out-of-State	Actual Totals	Predicted Totals
1981				
May	226	69	295	306
June	229	86	315	368
July	248	112	360	321
August	253	120	373	385
September	240	99	339	281
October	247	108	355	314
November	193	70	263	282
December	215	67	282	277
1982				
January	244	100	344	328
February	238	93	331	320
March	263	107	370	341
April	226	86	312	315
May	212	91	303	291
June	217	112	329	315
July	246	108	354	327
August	223	101	324	394
September	210	94	304	300
October	244	86	330	314
November	223	75	298	283
December	256	88	344	279
TOTALS	4,653	1,872	6,525	6,341

TABLE 3—Massachusetts Resident Births and Birth Rates among Women Ages 12 through 17, 1970–82

Year	Number of Births	Rate per 1000 Women Ages 12 through 17
1970	2,929	9.4
1971	3,036	9.8
1972	3,268	10.6
1973	3,216	10.5
1974	3,087	10.1
1975	3,022	10.3
1976	2,736	9.3
1977	2,626	8.9
1978	2,570	8.8
1979	2,550	8.9
1980	2,471	8.4
1981	2,449	8.3
1982	2,478	8.4

SOURCES: Massachusetts Department of Public Health, Health Statistics; 1970 and 1980 Census of the Population, General Population Characteristics—Massachusetts.

Discussion

These analyses indicate that the major impact of the Massachusetts parental consent law has been to send a monthly average of between 90 and 95 of the state's pregnant minors across state lines in search of an abortion. This number represents about one in every three minor abortion patients living in Massachusetts. More minors went out of state in 1982 than in 1981, suggesting wider knowledge and acceptance of out-of-state abortions by this population. If this trend continues, an ever-increasing proportion of young

TABLE 1—Number of Abortions to Women Ages 18 and Over, and 17 and Under in Massachusetts: 1978–1982

Year	No. Abortions by Age (years)	
	18 and over	17 and under
1978 total	36,113	4,632
Monthly average	3,009	386
1979 total	38,845	5,221
Monthly average	3,237	435
1980 total	38,901	5,113
Monthly average	3,242	426
1981 total	37,672	3,370
January–April average	3,385	380
May–December average	3,017	231
1982 total	37,573	2,802
Monthly average	3,131	234

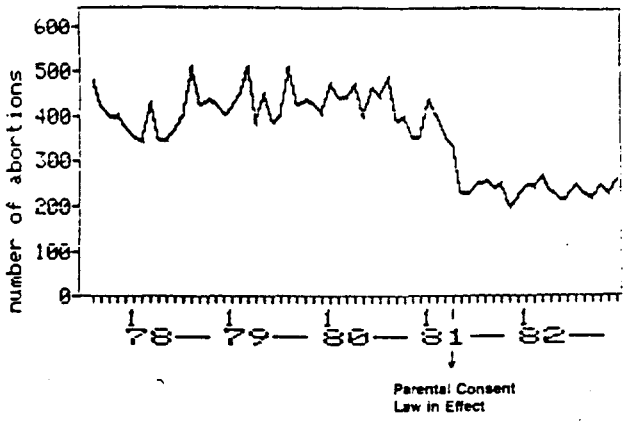

FIGURE 1—Abortions in Massachusetts to Minors, 1977–82

Results

Abortions among women ages 18 and over in the state of Massachusetts increased each year between 1978 and 1980. Yearly totals began declining during 1981 and continued to decline in 1982. The adult population's use of abortion seems to have reached its "ceiling" in early 1981 and to have begun a gradual decline during the next 20 months.

Annual totals and monthly averages of women ages 17 and under who obtained abortions in Massachusetts increased between 1978 and 1979 then decreased in 1980. The monthly average continued declining during the first four months of 1981, just prior to the effective date of the parental consent law. The decline in the frequency of abortions to minors in the state that occurred in 1980 appears to have presaged a similar decline in abortions to women over age 18 that began in 1981 (see Table 1). During the 45 months prior to the law's implementation, an average of 412 minor women had abortions in the state.

On April 23, 1981, Massachusetts' parental consent law was implemented. Beginning in May of that year, and continuing through 1982, a monthly average of 233 women under age 18 had abortions in Massachusetts. The decline occurred abruptly and as soon as the law went into effect: 226 minor abortions were performed in May, the first full month that the law was in effect, the lowest number of these abortions performed in the state in any of the 45 months since data were first collected. This level was maintained, with little variation, for the next 20 months. As compared to the 45 months prior to the law's implementation, the monthly average for these 20 months represents a decline of 43 per cent, from 412 to 233 (See Figure 1). The possibility that these numbers may be deflated in part because of underreporting by individual physicians must be acknowledged. Physicians' liability to suit by the non-consenting parents of a minor abortion patient, we suspect, keeps such underreporting to a minimum.

According to abortion clinic personnel, about 75 per cent of the minors who remain in-state to terminate their pregnancies have parental consent, and the rest (about 50 girls a month) obtain consent from a Superior Court judge.

Prior to implementation of the parental consent law, few Massachusetts women of any age went to out-of-state facilities for their abortions: in 1980, only about 1,398 women did so, 3 per cent of the state's abortion patients.[15] During the four months that preceded implementation of the parental consent law (January through April 1981), an average of only 29 Massachusetts women under age 18 obtained abortions each month in four neighboring states: New York, New Hampshire, Connecticut, and Rhode Island (no data are available for the state of Maine before April 1981). None of these states had passed or implemented a parental consent law prior to or during this period. More than half of these out-of-state abortions were performed in Rhode Island, but Connecticut, New Hampshire, and New York also served between one and seven Massachusetts minors each of these months.

During May 1981, the first full month that the Massachusetts law was in effect, the number of minors who obtained out-of-state abortions jumped to 69, an increase of 130 per cent over the average of the first four months of 1981. From May through December 1981, a total of 731 Massachusetts women under age 18 had abortions in five surrounding states: Rhode Island (342, or 47 per cent of the total), New Hampshire (286, or 39 per cent), Connecticut (41, or 6 per cent), Maine and New York (31 apiece, or 4 per cent of the total each). During the last eight months of 1981, an average of 91 minors left Massachusetts for an abortion each month, or 300 per cent more than in the preceding four months. That figure increased to 95 a month during 1982, for a total number of out-of-state abortions of 1,141 in that year, bringing the 20-month (post-implementation) total to 1,872 and the monthly average to 94.

In addition to the monthly increase in 1982 over 1981, other new trends developed in that year in the distribution of Massachusetts minor abortion patients to other states: Connecticut and New Hampshire each captured an increased proportion of the total number (up 1.4 per cent and 6 per cent, respectively); and New York, Rhode Island, and Maine saw decreased proportions (down 1 per cent, 8 per cent, and 2 per cent, respectively). At least two identifiable factors seem to be responsible for these shifts between 1981 and 1982. The first is that Rhode Island began implementing its version of a parental consent law (only one parent's consent is required) in September 1982. As soon as that state's law went into effect, the flow of Massachusetts minors to Rhode Island diminished from an average of 40 a month (January through August 1982) to an average of only 12 a month (September through December). At the same time, Connecticut's share of Massachusetts minor abortion patients increased from four to 14 a month, and New Hampshire's from 42 to 53 a month. It is clear that the distribution of minor women in states other than their home state is dramatically and immediately affected by the presence of a parental consent law.

SENATE JUDICIARY
EXHIBIT NO. 14
DATE 1-23-89
BILL NO. SB 164

PARENTAL NOTICE LAWS

THEIR CATASTROPHIC IMPACT ON TEENAGERS' RIGHT TO ABORTION

ACLU
Reproductive Freedom Project

EX 15

SENATE JUDICIARY
EXHIBIT NO. 15
DATE 1/23/09
BILL NO. SB 164

NAME: CAROLYN Clemens

ADDRESS: 1901 E 6th Helena

PHONE: 443-3619

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 164

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: For 7 1/2 years, I have worked as a Dep. Co Atty, prosecuting Criminals and handling Cases involving abused & neglected Children. I have several serious concerns about this bill, despite my general agreement that parents & Children should be able to discuss these problems: 1) Many, many of these minors come from such dysfunctional families that parents cannot be located, & giving notice, if parents are located, can cause severe abuse to the minor. 2) There is no confidentiality provision for the Court proceedings; 3) minors do not have the resources nor the wherewithal

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

to get themselves into the ct. system, which is required for the judicial by-pass; 4) depending on the philosophical bent of the prosecutor in each county, cases will not be uniformly prosecuted statewide; 5) Are minors going to be forced to reveal confidences in cases such as incest which result in pregnancy? 6) will minors be forced to testify against their doctors in felony prosecutions? 7) Most parents, who are the subject of abuse & neglect actions taken by the county attorney, are parents who started having children while they were minors. Experience in my office shows that unwanted pregnancies become unwanted children - often victims of abuse & neglect; Teen-agers are, for the most part, not capable of parenting. 8) will the county attorney decide what is "reasonable Effort" by a doctor to notify the parents?

9) will the county attorney prosecute the minor if she lies about who her parents or guardians are for purposes of notice?

9) will judges run as pro-choice or pro-life?

Ex 16.

SENATE JUDICIARY
EXHIBIT NO. 16
DATE 1-23-89
SB 164

NAME: RANDI M. HOOD DATE: JAN 23 1989

ADDRESS: 1401 JEROME HELENA MT

PHONE: 443 5556

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB164

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: I am an attorney and public defender representing many juveniles. I recognize that many minors come from dysfunctional families — families where parents are physically or sexually abusive, alcoholic or chemically dependent. To force a pregnant minor to inform this sort of parent of the abortion choice is against the interest of the minor and may jeopardize the minor's safety. The proposal will not make dysfunctional families functional or supportive. The bypass procedure would not be available to many minors who find judicial proceedings intimidating and to be avoided. Additionally, who is going to pay the costs of this judicial proceeding — the attorney, guardian ad litem and expert testimony that seems to be required. There are no protections for confidentiality and privacy for the minor.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY
EXHIBIT NO. 17, p.1
DATE 1-23-89
BILL NO. SB 164

SENATE BILL NO. 164

TESTIMONY OF MICHAEL J. SHERWOOD, MTLA --January 23, 1989
Opposing the bill because of language contained in section 7 regarding immunity.

The language found in Section 7 of the Bill would prevent, arguably, a suit for wrongful death by a parent or guardian even in the extreme case of gross negligence or in a situtation where the doctor's or health care provider's actions were outside of the scope of the consent given. I have proposed an amendment to resolve this potential problem and still retain immunity for a health care provider from any suit stemming from an allegation of improper consent.

Michael J. Sherwood

SENATE JUDICIARY
EXHIBIT NO. 17, P.2
DATE 1-23-89
BILL NO. SB 164

Proposed amendments to Senate Bill No. 164
Michael Sherwood, MTLA

Page 5, Line 16:

Strike: "personal injury of"

Add: "battery upon"

Page 5, Line 19:

Instert between the words "8]" and "and":

" and within the scope of any consent granted pursuant to section 5"

EXHIBIT NO. 18

DATE 1-23-84

NAME: George Harper DATE: ~~Jan. 23, 84~~

BILL NO.

ADDRESS: 38 Cloverview, Helena

PHONE: 449-8788

REPRESENTING WHOM? Myself

APPEARING ON WHICH PROPOSAL: 164

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: will present testimony.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Ex 19

SENATE JUDICIARY
EXHIBIT NO. 19, p.1
DATE 1-23-89
BILL NO. SB 164

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

JANE HODGSON, M.D.; ARTHUR HOROWITZ, M.D.; MICHELLE ROE, ALICE ROE, DIANA ROE, NADINE T., JANET T., and ELLEN Z. individually and on behalf of all other persons similarly situated; LAUREN Z.; MEADOWBROOK WOMEN'S CLINIC, P.A., PLANNED PARENTHOOD OF MINNESOTA, a nonprofit Minnesota corporation, MIDWEST HEALTH CENTER FOR WOMEN, P.A., a nonprofit Minnesota corporation; WOMEN'S HEALTH CENTER OF DULUTH, P.A., a nonprofit Minnesota corporation,

Plaintiffs,

v.

THE STATE OF MINNESOTA; RUDY PERPICH, as Governor of the State of Minnesota; HUBERT H. HUMPHREY, III, as Attorney General of the State of Minnesota,

Defendants.

3-81 CIV 538

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

AMERICAN CIVIL LIBERTIES UNION FOUNDATION by JANET BENSHOOF, Esq., RACHEL PINE, Esq. and SUZANNE LYNN, Esq. of New York, New York, appeared on behalf of plaintiffs.

MASLON, EDELMAN, BORMAN & BRAND by WILLIAM PENTELOVITCH, Esq. of Minneapolis, Minnesota, appeared on behalf of plaintiff Planned Parenthood of Minnesota.

HUBERT H. HUMPHREY, III, Attorney General of the State of Minnesota by JOHN GALUS, Special Assistant Attorney General and PETER M. ACKERBERG, Special Assistant Attorney General, St. Paul, Minnesota, appeared on behalf of defendants.

FILED [illegible] 6 [illegible] 3
FRANCIS E. DOSAL, CLERK
ENTERED NOV 6 1986

The above-entitled matter came before the court for trial from February 10, 1986, until March 13, 1986, and for argument on June 11, 1986. Having considered the evidence and being fully advised in the premises, the court makes the following:

FINDINGS OF FACT

I. INTRODUCTION

1. Plaintiffs Jane Hodgson, M.D., and Arthur Horowitz, M.D., are licensed physicians engaged in the practice of obstetrics and gynecology, including the performing of abortions, in Minnesota.

2. Plaintiff Meadowbrook Women's Clinic, P.A., provides birth control, abortions and related medical services to its patients, including unemancipated minor women under the age of 18 at a medical facility located in St. Louis Park, Minnesota.

3. Plaintiff Planned Parenthood of Minnesota provides birth control, abortions and related medical services to its patients, including unemancipated minor women under the age of 18, at a clinic located in St. Paul, Minnesota.

4. Plaintiff Midwest Health Center for Women provides birth control services, abortions, and related medical services to its patients, including unemancipated minor women under the age of 18, at a clinic located in Minneapolis, Minnesota.

5. Plaintiff Women's Health Center of Duluth, P.A., provides birth control services, abortions, and related medical services to its patients, including unemancipated minor women under the age of 18, at a clinic located in Duluth, Minnesota.

6. Plaintiff Alice Roe was a 16-year old unemancipated minor and seven weeks pregnant at the commencement of this action. Alice Roe asserts that she was at that time mature and that notification of her parents of her desire to have an abortion would not have been in her best interests.

7. Plaintiff Michelle Roe was a 15-year-old unemancipated minor who was pregnant at the commencement of this action. Michelle Roe asserts that she was at that time mature and that notification of her parents of her desire to have an abortion would not have been in her best interests.

8. Diane Roe was a 16-year-old unemancipated minor and eight weeks pregnant at the commencement of this action. Diane Roe asserts that she was at that time mature and that notification of her parents of her desire to have an abortion would not have been in her best interests.

9. Plaintiff Nadine T. was a 16-year-old unemancipated minor and pregnant as of the time of the filing of the amended complaint in this action. Nadine T. asserts that she was at that time mature and that notification of her parents of her desire to have an abortion would not have been in her best interests.

10. Plaintiff Janet T. was a 16-year-old unemancipated minor and pregnant as of the time of the filing of the amended complaint in this action. Janet T. asserts that she was at that time mature and that notification of her father of her desire to have an abortion would have not been in her best interests.

11. Ellen Z. was a 17-year-old unemancipated minor and pregnant as of the time of the filing of the amended complaint in this action. Ellen Z. asserts that she was then mature and that notification of her father of her desire to have an abortion would not have been in her best interests.

12. Plaintiffs Alice Roe, Michelle Roe, Diane Roe, Nadine T., Janet T., and Ellen Z. represent a class composed of pregnant minors who assert that they are mature and that notification of one or both of their parents would not be in their best interests.

13. Lauren Z. is the mother of plaintiff Ellen Z. Lauren Z. asserts that notification of Ellen Z.'s father of Ellen Z's desire to have an abortion would not have been in Ellen Z.'s best interests.

14. Defendants are the State of Minnesota, its Governor and its Attorney General.

15. In 1981, the Legislature of the State of Minnesota enacted Minn. Laws 1981, ch. 228, codified as Minn. Stat. § 144.343 (2)-(7). The statute was to become effective August 1, 1981.

16. Subdivision 2 of the statute generally requires physicians or their agents to attempt with reasonable diligence to notify the parents of an unemancipated minor under the age of 18 at least 48 hours before performing an abortion. Subdivision 3 defines "parent" as both parents if both are living, one parent if only one is living or if the second one cannot be located through

reasonably diligent effort, or the guardian or conservator if the pregnant woman has one. Subdivision 4 of the statute provides that the statutory notice requirement does not apply when the parents have consented to the abortion, when prompt action is needed to preserve the life of the minor, or when the minor reports that she is a victim of sexual or physical abuse or neglect as defined in Minn. Stat. § 626.556. Subdivision 5 subjects anyone performing an abortion in violation of Minn. Stat. § 144.343 (2)-(7) to criminal penalties and civil liability.

17. Subdivision 6 of the statute provides, in the alternative, that if subdivision 2 is ever enjoined by judicial order, then the same notice requirement shall be effective together with an optional procedure whereby an unemancipated minor may obtain a court order permitting an abortion without notice to her parents upon a showing that she is mature and capable of giving informed consent to an abortion or, if she is not mature, that an abortion without notice to her parents nevertheless would be in her best interests.

18. In their amended complaints, plaintiffs seek a declaratory judgment that Minn. Stat. § 144.343 (2)-(7) violates the constitutions of the United States and the State of Minnesota and seek a permanent injunction against its enforcement. More particularly, plaintiffs claim that the statute violates their due process rights, both on its face and as applied; that the statute violates the equal protection clause; and that the statute violates the due process, privacy and equal protection provisions of

Article 1 of the Minnesota Constitution and also constitutes the delegation of administrative power to Minnesota state courts in violation of article 3 of the Minnesota Constitution.

19. Before the statute took effect on August 1, 1981, plaintiffs sought a temporary restraining order and preliminary injunction against the statute.

20. On July 31, 1981, the court temporarily restrained enforcement of subdivision 2 of the statute, but denied plaintiffs' motion for an order temporarily restraining enforcement of subdivision 6. On March 22, 1982, the court preliminarily enjoined subdivision 2 but denied a preliminary injunction of subdivision 6. By virtue of these two rulings, the parental notification requirement and the judicial bypass option of subdivision 6 went into effect on August 1, 1981, and have remained in effect since that date.

21. By memorandum order of January 23, 1985, the court granted in part and denied in part defendants' motion for partial summary judgment as to all of plaintiffs' claims concerning the judicial bypass procedure of subdivision 6. Specifically, the court granted partial summary judgment for defendants by dismissing all of plaintiffs' state constitutional claims on jurisdictional grounds and by ruling that, on its face, the judicial bypass procedure in subdivision 6 does not violate the constitutional equal protection and due process rights of pregnant

minors. The court concluded, however that plaintiffs should have the opportunity of a trial to prove their allegations that subdivision 6 is being applied unconstitutionally.

II. AVAILABILITY OF ABORTION SERVICES IN THE STATE OF MINNESOTA

22. Abortion services are less accessible in Minnesota than in the country as a whole. In Minnesota, 94% of the counties, or 82 out of 87 counties, have no readily available abortion provider. In 1982, 44% of women in Minnesota ages 15-44 lived in a county with an abortion provider as compared to 72% of the same group in the country as a whole.

23. Access to information about abortion services in outstate Minnesota is comparatively limited. Many second trimester patients come from counties with no abortion providers and thus with no media advertising or listing in telephone books for abortion services.

24. Abortions are performed in only four public and nine private hospitals in Minnesota, and then only if a staff doctor requests it. There are only two hospitals where a patient can walk in and obtain an abortion: Hennepin County Medical Center and St. Paul-Ramsey. Virtually all of Minnesota's abortion providers are located in the two major metropolitan areas of the state: Duluth and Minneapolis-St.Paul. Many women have to travel long distances to obtain abortion services.

25. The transportation problems facing women seeking abortion in Minnesota are illustrated by the experiences of those attending the Women's Health Center Clinic in Duluth. The Health

Center serves women from 24 counties in Minnesota, 14 counties in Wisconsin, 4 counties in Michigan and the Canadian province of Ontario. Some of the women served by the Health Center drive six to seven hours to get to the clinic. Airline flights are not available from some areas. Bus service from some areas is infrequent, requiring some women to spend the night in Duluth.

Having to travel long distances creates barriers to obtaining services. These barriers include increased cost, particularly if lodging is required; delayed pregnancy diagnosis and delayed treatment of post-abortion complications; jeopardized privacy of women away from home; and more hazardous travel during winter.

Nearly 30% of all abortions performed in Minnesota in 1982 were obtained by women who lived outside the Twin Cities metropolitan area, an increase of 20% since 1976. The farther a women has to travel to obtain an abortion, the less likely she is to obtain one.

26. Women of all ages in Minnesota have abortions later in their pregnancies than in the United States as a whole. In 1981, 9.5% of women having abortions in the United States had second trimester abortions, while 13.5% of all women obtaining abortions in Minnesota did so in their second trimester. In 1982, 15% of women from outside the metropolitan area who had abortions did so during the second trimester as compared with only 10% of metro area women.

27. The cost of an abortion increases with gestational age because the procedure becomes more difficult and requires more

skill on the part of the doctor. The Meadowbrook Clinic has the following fee schedule: under 12 weeks gestation, $225; 12-14 weeks, $275; 14-16 weeks, $395; 16-18 weeks, $450; 18-19 weeks, $550; and 19-21 weeks, $650. After 21 weeks, Meadowbrook refers patients to St. Paul-Ramsey Hospital where a later abortion (22 weeks) costs $1600-1800; or to Wichita, Kansas, where a late abortion (up to 24 weeks) costs $2000 cash. None of these fees includes the cost of transportation or lodging. Minnesota will fund abortions for indigent women only if the pregnancy is the result of rape or incest, or if continuing the pregnancy would endanger the life of the woman.

28. Unfavorable publicity surrounding the abortion procedures and delivery of services has dissuaded some physicians from performing abortions. For example, the Women's Health Center in Duluth has been unable to contract local physicians to perform abortions. The Center has had to import physicians from small communities some distance from Duluth. Physicians are also concerned about the bombings of clinics and doctors' offices. Consequently, some physicians refer their abortion patients elsewhere.

III. APPLICATION OF MINN. STAT. § 144.343 IN MINNESOTA, AUGUST 1, 1981, TO MARCH 13, 1986.

A. Compliance with Bellotti v. Baird, 432 U.S. 622 (1979)

1. Legal Standard

29. Minnesota Statutes § 144.343 (6) provides:

> (c)(i) If such a pregnant woman elects not to allow the notification of one or both of her parents or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform

> the abortion if said judge determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant woman is not mature, or if the pregnant woman does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parents, guardian, or conservator would be in her best interests and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant woman's best interests would be served thereby.

30. With the exception of a hearing occurring shortly after enactment of § 144.343, judges in Minnesota have faithfully applied the standards set forth in subdivision 6. Those judges who consider themselves unable to faithfully apply this standard have consistently refused to hear bypass petitions.

31. Courts hearing bypass petitions regularly appoint guardians ad litem and provide appointed counsel to assist minors participating in bypass proceedings.

32. Judges, public defenders, and guardians ad litem do not adhere to a single interpretation of either the "maturity" or "best interests" standard. However, the variation in interpretation of these standards does not exceed that typical of verbally expressed legal standards. Moreover, these differences of interpretation do not produce different results in actual bypass proceedings.

2. Expedition

33. Courts in Hennepin, Ramsey, and St. Louis Counties schedule bypass hearings on a regular basis. When necessitated by pressing need, these courts will hear a number of petitions

greater than that normally scheduled for a single day. These courts also have in place procedures for hearing bypass petitions outside of normal business hours on an emergency basis.

34. Two or three days commonly elapse between a minor's first contact with the court and the hearing on her petition. A delay of this duration creates an increased medical risk to an abortion patient, albeit small in magnitude, and may increase the emotional tension attendant upon the judicial proceeding. Moreover, this delay sometimes combines with scheduling difficulties of a minor or her clinic to produce a longer delay. Thus, the delay in the judicial bypass system as executed by courts in the metropolitan counties is burdensome to minor petitioners. However, this delay and its resultant burden are unavoidable and do not reflect a systemic failure to provide a judicial bypass option in the most expeditious practicable manner.

35. Although the court systems of the non-metropolitan areas have had less frequent occasion to apply the judicial bypass procedures than Hennepin, Ramsey, and St. Louis County courts, these court systems are acquainted with the statute and have applied it conscientiously when called upon to do so.

36. Courts of non-metropolitan counties called upon to hear bypass petitions generally have complied with their statutory obligation to advise petitioners of their right to appointed counsel and to provide such counsel upon request. These courts also generally have appointed guardians ad litem to assist petitioners.

37. Despite conscientious efforts to provide an expeditious court bypass option in non-metropolitan areas, a number of counties are not served by a judge who is willing to hear bypass petitions. A minor in one of these counties must travel to another county, most commonly a metropolitan county, to obtain an expeditious hearing of her petition. Although burdensome, this necessity also does not reflect a systemic failure to provide a judicial bypass option in the most expeditious practicable manner.

38. On August 13, 1981, the Supreme Court of Minnesota issued an order directing that all petitions under subdivision 6 should initially be filed in and considered by the county courts throughout the state or, in the cases of Hennepin and Ramsey Counties, in the juvenile division of the district court of those two counties. In the same order, the Minnesota Supreme Court directed that all appeals should be on the record to a judge of the district court, including the district courts of Hennepin and Ramsey counties.

39. In an amended and supplemental order effective July 1, 1984, the Supreme Court of Minnesota provided that in a unified judicial district, an order denying a petition pursuant to the judicial bypass procedure shall be appealable on the record to two district court judges and if there be a division between those judges, the order denying the petition should stand.

40. No minor has been unable to obtain an expeditious appeal of an order denying her bypass petition.

44. The experience of going to court for a judicial authorization produces fear and tension in many minors. Minors are apprehensive about the prospect of facing an authority figure who holds in his hands the power to veto their decision to proceed without notifying one or both parents. Many minors are angry and resentful at being required to justify their decision before complete strangers. Despite the confidentiality of the proceeding, many minors resent having to reveal intimate details of their personal and family lives to these strangers. Finally, minors are left feeling guilty and ashamed about their lifestyle and their decision to terminate their pregnancy. Some mature minors and some minors in whose best interests it is to proceed without notifying their parents are so daunted by the judicial proceeding that they forego the bypass option and either notify their parents or carry to term.

Some minors are so upset by the bypass proceeding that they consider it more difficult than the medical procedure itself. Indeed, the anxiety resulting from the bypass proceeding may linger until the time of the medical procedure and thus render the latter more difficult than necessary.

2. Two Parent Notice Requirement

45. A minor who chooses not to go to court to avoid notifying her parents must notify both parents, if they are living, unless the second one cannot be located through reasonably diligent effort. The statute makes no exception for a non-custodial parent who is divorced or separated from the custodial parent, or

3. Anonymity

41. Judges, public defenders, guardians ad litem, and court personnel involved in bypass proceedings are aware that Minn. Stat. § 144.343 (6) requires that bypass proceedings be kept strictly confidential. Those involved in the proceedings take steps to insure confidentiality, including destroying interview notes, holding hearings in judges' chambers rather than in open court, and referring to petitioners by first name only. In addition, public defenders and courts have departed from normal routines when adhering to the routine would have threatened confidentiality.

42. The record discloses that the confidentiality of minors electing the judicial bypass option has been breached only in a small number of isolated cases.

B. Burdens Imposed by Minn. Stat § 144.343 (2)-(7)

1. Judicial Bypass Procedure

43. As discussed above, scheduling practices in Minnesota courts typically require minors to wait two or three days between their first contact with the court and the hearing on their petitions. This delay may combine with other factors to result in a delay of a week or more. A delay of this magnitude increases the medical risk associated with the abortion procedure to a statistically significant degree. Even a shorter delay may push the minor into the second trimester, when the abortion procedure entails significantly greater costs, inconvenience, and medical risk.

for a parent who never married the custodial parent. No exception is made in the case of a parent, custodial or not, whom the minor considers likely to react abusively to notification, unless the minor is willing to declare that she is a victim of sexual or physical abuse.

46. If a minor declares that she is the victim of sexual or physical abuse, Minn. Stat. § 144.343 (4)(c) obligates the recipient of this information to report it to the local welfare agency, police department, or the county sheriff pursuant to Minn. Stat. § 626.556 (3). This obligation binds counselors and physicians at abortion clinics. The welfare agency must report the information to the law enforcement agency, and vice versa. Minn. Stat. § 626.556 (3).

47. Minors who are victims of sexual or physical abuse often are reluctant to reveal the existence of the abuse to those outside the home. More importantly, notification to government authorities creates a substantial risk that the confidentiality of the minor's decision to terminate her pregnancy will be lost. Thus, few minors choose to declare they are victims of sexual or physical abuse despite the prevalence of such abuse in Minnesota, as elsewhere.

48. In practice, the requirement that the minor notify both parents, if living, affects many minors in single parent homes who have voluntarily notified the custodial parent. No exception is made, for example, in the case of a non-custodial parent who for years has exhibited no interest in the minor's development. No

exception is made for parents likely to react with psychological, sexual or physical violence toward either the minor or the custodial parent. Minors in such circumstances must notify the non-custodial parent, or else go to court for authorization to proceed without notifying the non-custodial parent. Notification of an abusive or even a disinterested absent parent may reintroduce that parent's disruptive or unhelpful participation into the family at a time of acute stress. Alternatively, going to court to seek authorization introduces a traumatic distraction into the family relationship at a stressful juncture. The emotional trauma attending either option tends to interfere with and burden the parent-child communication the minor voluntarily initiated with the custodial parent.

49. The two parent notification requirement also affects minors in two parent homes who voluntarily have consulted with one parent but not with the other out of fear of psychological, sexual, or physical abuse toward either the minor or the notified parent. Here, too, the minor must choose either to notify the second parent or to endure the court bypass procedure. Once again, the emotional trauma attending either option tends to interfere with and burden the parent-child communication the minor voluntarily initiated with the custodial parent.

50. Instances, such as those described above, in which the requirement that the minor notify both parents of her decision interferes with and burdens parent-child communication voluntarily initiated by the minor are not uncommon. Approximately 20-25% of

minors who go to court for authorization are accompanied by one parent or indicate that they have already consulted with one parent.

3. Forty-Eight Hour Waiting Period

51. Minors who elect to notify one or both parents by written notice, including those whose parents refuse to sign acknowledgment forms despite having been told of their daughters' decision, must wait until 48 hours after actual or constructive delivery of written notice. Constructive delivery of mailed notice occurs at noon on the regular mail delivery day following mailing. Thus, Minn. Stat. § 144.343 delays effectuation of a minor's decision to terminate her pregnancy by at least 48 hours and more commonly by 72 hours.

52. This statutorily imposed delay frequently is compounded by scheduling factors such as clinic hours, transportation requirements, weather, a minor's school and work commitments, and sometimes a single parent's family and work commitments. In many cases, the effective length of the delay may reach a week or more.

53. Delay of any length in performing an abortion increases the statistical risk of mortality and morbidity. The increase in risk becomes statistically significant when the length of delay reaches one week. Moreover, even delays of less than one week may push a woman into the second trimester. Second trimester procedures entail significantly greater costs, inconvenience, and risk.

C. Results of Bypass Proceedings, August 1, 1981, to March 1, 1986

54. The parties agreed to submit statistics reflecting disposition of bypass petitions filed in Minnesota from August 1, 1981, to March 1, 1986, in the form of tables compiling information obtained by affidavit from court officials in each Minnesota county. The table summarizing these statistics by judicial district is appended hereto.

55. During the period for which statistics have been compiled, 3,573 bypass petitions were filed in Minnesota courts. Six petitions were withdrawn before decision. Nine petitions were denied and 3,558 were granted.

56. Anomalous circumstances surrounded several of the petitions which were denied. Three denials occurred in Hennepin County. The Honorable Allen Oleisky, Judge of the Hennepin County District Court, Juvenile Division, recalls denying two of the more than one thousand petitions he has heard. One of these petitions was brought by a minor who did not actually wish to have an abortion, but rather to marry her boyfriend. Judge Oleisky denied the petition in order to assist the minor in effectuating this desire by shifting responsibility for preventing the abortion from the minor to the court. The second denial involved a minor whom the judge determined was being coerced into having an abortion by her parents. After determining the minor did not actually wish to have an abortion, Judge Oleisky denied the petition.

The Honorable Gerald G. Martin, County Court Judge for the St. Louis County Family and Juvenile Court, granted all but one of the 225 or 226 petitions he heard during the period for which statistics were compiled. The petition Judge Martin denied was submitted by a rather immature 14 year old who was accompanied to court by her mother. The minor's father had been out of contact with the minor and her mother for more than seven years. Rather than proceed to the best interests inquiry, Judge Martin denied the petition because he was certain a notice mailed to the father's last known address would not reach him.

57. The single denials occurring in Anoka, Mower, and Lyon Counties each occurred in the first petition brought in those respective counties. The Nobles County Court denied one of the two petitions brought there to date. A comparison to the experience in the metropolitan counties, where the courts have heard large numbers of petitions and granted nearly all, suggests that some or all of the denials occurring in non-metropolitan counties are due more to the courts' unfamiliarity with the judicial bypass statute than to the petitioners' immaturity or best interests. For example, the Anoka County Court denied the first petition brought before it and then granted each of the 19 petitions heard during the remainder of the period for which statistics were compiled.

D. Effectuation of State Interests

1. Asserted State Interests

58. The Minnesota legislature had several purposes in mind when it amended Minn. Stat. § 144.343 in 1981. The primary pur-

pose was to protect the well-being of minors by encouraging minors to discuss with their parents the decision whether to terminate their pregnancies. Encouraging such discussion was intended to achieve several salutory results. Parents can provide emotional support and guidance and thus forestall irrational and emotional decision-making. Parents can also provide information concerning the minor's medical history of which the minor may not be aware. Parents can also supervise post-abortion care. In addition, parents can support the minor's psychological well-being and thus mitigate adverse psychological sequelae that may attend the abortion procedure.

59. The court finds that a desire to deter and dissuade minors from choosing to terminate their pregnancies also motivated the legislature. Testimony before a legislative committee considering the proposed notification requirement indicated that influential supporters of the measure hoped it "would save lives" by influencing minors to carry their pregnancies to term rather than aborting.

2. Testimony as to Beneficial Effect of Minn. Stat. § 144.343

a. Judicial Bypass/Notice Requirement

60. The court heard testimony of judges who collectively have adjudicated over 90 percent of the parental notification petitions filed since August 1, 1981. None of these judges, on direct or cross examination, identified a positive effect of the law.

Honorable Allen Oleisky has heard over 1,000 parental notification petitions. He characterizes his function as "a routine clerical function on my part, just like putting my seal and stamp on it." Moreover, he believes that the statute dissuades some minors from having abortions because of the fear of going to court in a distant city.

Honorable Gerald Martin stated that he doesn't "perceive any useful public purpose to what [he is] doing in these cases;" moreover, he finds the court experience difficult for minors. "I think they find it a very nervewracking experience," he testified.

Honorable Neil Riley testified that he saw no beneficial effects of the statute and further that he sympathized with "the predicament" the minors were in.

Honorable William Sweeney testified, "I know as a judge you would like to think your decisions are important, that you are providing some - you are doing some legitimate purpose. What I have come to believe ... [is] that really the judicial function is merely a rubber stamp. The decision has already been made before they have gotten to my chambers. The young women I have seen have been very mature and capable of giving the required consent."

He further testified that "the level of apprehension that I have seen contrasted with even the orders for protection, which is a very intense situation, very volatile, and the custody questions, is that the level of apprehension is twice what I normally see in court.... You see all the typical things that you would see with somebody under incredible amounts of stress, answering

monosyllabically, tone of voice, tenor of voice, shaky, wringing of hands, you know, one young lady had her - her hands were turning blue and it was warm in my office...."

Mr. Paul Garrity, who adjudicated the same bypass petitions while a judge in Massachusetts, believed that the Massachusetts law accomplished nothing. "It just gives these kids a rough time. I can't think it accomplishes a darn thing. I think it basically erects another barrier to abortion." Further, he felt going to court was "absolutely" traumatic for minors. "You know, it was just -- it was just another thing at a very, very difficult time in their lives," he said.

61. Clinic counselors, who participate on a daily basis in the law's implementation, are of a similar mind. Paula Wendt has counseled or supervised the counselling of more than 3,000 minors since the law went into effect. She concludes from her conversations with both parents and minors that the law has not promoted family integrity or communication. The law has, more than anything, disrupted and harmed families.

On the basis of her experience, Tina Welsh concludes that the law has not benefitted intra-family communication. A minor's unplanned pregnancy is a crisis which is not conducive to an attempt to build good family communications. Ms. Welsh does not believe that the law helps teenagers make a better decision about whether have an abortion or continue the pregnancy. Requiring a

minor to tell either her parents or a judge about her pregnancy and the reasons she wants an abortion makes no beneficial contribution to the minor's decision.

62. The public defenders who participate in bypass proceedings believe that the law serves no beneficial purpose. Its sole function, in their view, is to create a hurdle and impose additional stress upon the young women. Similarly, the guardians ad litem do not perceive a beneficial purpose to their participation in the process.

63. In most cases, minors seeking judicial authorization to terminate their pregnancies without informing their parents have already made up their minds before coming to court. Thus, judges, public defenders, and guardians ad litem find they impart no information and provide no counseling in the course of the bypass proceeding. Neither does the court system refer minors to their parents for guidance and support, as is demonstrated by the overwhelming rate of approval. At most, the bypass proceeding furthers the state's interest in providing minors with guidance and emotional support only insofar as the abortion clinics have expanded their counseling of minors at the insistence of judges who hear the petitions. Counselors and administrators from the major Minnesota clinics testified, however, that counseling of minors going to court and that of minors who do not differs merely in that the former are counseled about the court process and the latter are not.

64. Minors who seek authorization in Minnesota courts for confidential abortions tend to be above average in intelligence, education, and personal motivation. They also tend to be ambitious and concerned about the effect their decision will have on their futures.

65. Minnesota courts have denied only an infinitesimal proportion of the petitions brought since 1981. This fact indicates that in Minnesota immature, non-best interest minors rarely seek judicial authorization to terminate their pregnancies without parental involvement. Such minors either inform their parents, obtain an abortion outside Minnesota, or carry the pregnancy to term.

Dr. Gary B. Melton suggested two partial explanations for this phenomenon. First, comparisons of personality functioning between adolescents who abort and those who carry to term generally show more adaptive, healthier functioning in the former group. Adaptation, in turn, marks a level of psychological and emotional development colloquially referred to as "maturity." Second, a minor's desire to maintain a measure of privacy of information about her personal matters is an important indication of individuation, a principal developmental task of adolescence. Indeed, defendants' witness Dr. Vincent Rue testified that teenagers in the early stage of adolescence are much more likely to discuss a pregnancy than are teenagers in the mid-phase of adolescence who typically would desire more privacy, and teenagers in the latter stages of adolescence who would be the most private,

and insist upon confidentiality. Adult women, in Dr. Rue's view, would be most insistent upon maintaining the confidentiality of their decision. Therefore, while there may be "no logical relationship between the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion," H. L. v. Matheson, 450 U.S. 398, 408 (1981), some relationship does exist between the decision to abort in privacy and the capacity for mature judgment concerning the wisdom of this decision. Consequently, a regulation that affects only minors who have elected to terminate their pregnancies and to do so in privacy tends inevitably to reach only mature minors and immature minors driven to this choice by their own best interests. Such a regulation will fail to further the State's interest in protecting immature, non-best interest minors.

66. Dr. Jane Hodgson, a leading practitioner in the field of obstetrics and gynecology, has given Minnesota's parental notification law considerable thought. She concludes, "I honestly think there is no benefit whatsoever." The law has created "nothing but problems" for her teenage patients. Testimony by plaintiffs' other expert witnesses, each of unquestionably high standing in his or her respective field, corroborates this opinion. For example, Dr. Stephen Butzer testified, on the basis of his clinical experience, that when knowledge of an adolescent's pregnancy or abortion is inadvertently communicated to one or both parents, the effect of the communication on the family or relationship between adolescent and parents is "almost universally negative."

67. Defendants offered the court no persuasive testimony upon which to base a finding that Minnesota's parental notification law enhances parent-child communications, or improves family relations generally. Dr. Vincent Rue possesses neither the academic qualifications nor the professional experience of plaintiffs' expert witnesses. More importantly, his testimony lacked the analytical force of contrary testimony offered by plaintiffs' witnesses. Dr. Richard T. F. Schmidt does not practice medicine in Minnesota, has never performed an abortion, and does not regularly counsel minors who wish to obtain abortions. Therefore, his testimony is less persuasive than the contrary testimony of witnesses closer in each of these respects to the issue before the court.

The court did not expect defendants to establish that in every case Minnesota's parental notification law protects pregnant minors, promotes parent-child communication, and improves family relations generally. Defendants did establish that notification can serve these interests in individual cases. Defendants failed, however, to establish that the law promotes these values more than it undermines them. Five weeks of trial have produced no factual basis upon which the court can find that Minn. Stat. § 144.343 (2)-(7) on the whole furthers in any meaningful way the State's interest in protecting pregnant minors or assuring family integrity.

b. Two Parent Requirement

68. National statistics reveal that approximately one out of every two marriages ends in divorce. There is no testimony in the trial of this case indicating that the divorce rate in Minnesota differs from the national average. To the contrary, clinic experience indicates that only 50% of minors in the state of Minnesota reside with both biological parents. This figure is corroborated by one study indicating that 9% of minors in Minnesota live with neither parent, 33% live with only one parent and thus 42% do not live with both biological parents.

69. Studies indicating that family violence occurs in two million families in the United States substantially underestimate the actual number of such families. In Minnesota alone, reports indicate that there are an average of 31,200 incidents of assault on women by their partners each year. Based on these statistics, state officials suggest that the "battering" of women by their partners "has come to be recognized as perhaps the most frequently committed violent crime in the state" of Minnesota. These numbers do not include incidents of psychological or sexual abuse, low-level physical abuse, abuse of any sort of the child of a batterer, or those incidents which are not reported. Many minors in Minnesota live in fear of violence by family members; many of them are, in fact, victims of rape, incest, neglect and violence. It is impossible to accurately assess the magnitude of the problem of

family violence in Minnesota because members of dysfunctional families are characteristically secretive about such matters and minors are particularly reluctant to reveal violence or abuse in their families. Thus the incidence of such family violence is dramatically underreported.

70. Divorce or separation usually impairs family communication severely. The non-custodial parent often has very little communication with the child. In addition, communication between divorced or separated spouses frequently is marked with the kind of hostility and angry vindictiveness that characterized the divorce or separation.

The effect of compelling an adolescent to share information about her pregnancy and abortion decision with both parents in a divorced or separated situation can be harmful. The non-custodial parent often will reintegrate with the family in a disruptive manner. The adolescent may be perplexed as to why the non-custodial parent should become an important factor in her life at this point, especially when the parent previously has paid her oittle attention and offered little support. Moreover, the testimony revealed no instances in which beneficial relations between a minor and an absent parent were reestablished following required notification. Therefore, the minor may suffer disappointment when an anticipated reestablishment of her relationship with the absent parent does not occur, as is most likely given the trying circumstances under which communication is renewed.

Involuntary involvement of the second biological parent is especially detrimental when the minor comes from an abusive, dysfunctional family. Notification of the minor's pregnancy and abortion decision can provoke violence, even where the parents are divorced or separated. Studies have shown that violence and harrassment may continue well beyond the divorce, especially when children are involved.

The reaction of the custodial parent to the requirement of forced notification is often one of anger, resentment and frustration at the intrusion of the absent parent. Frequently, the custodial parent fears that the absent parent will use the notification to threaten the custody rights of the custodial parent. Furthermore, a mother's perception in a dysfunctional family that there will be violence if the father learns of the daughter's pregnancy is likely to be an accurate perception.

71. Twenty to twenty-five percent of the minors who go to court either are accompanied by one parent who knows and consents to the abortion or have already told one parent of their intent to terminate their pregnancy. The vast majority of these voluntarily informed parents are women who are divorced or separated from spouses whom they have not seen in years. Going to court to avoid notifying the other parent burdens the privacy of both the minor and the accompanying parent. The custodial parents are angry that their consent is not sufficient and fear that notification will bring the absent parent back into the family in an intrusive and abusive way.

72. Minors who ordinarily would notify one parent may be dissuaded from doing so by the two-parent requirement. A minor who must go to court for authorization in any event may elect not to tell either parent. In these instances, the requirement that minors notify both biological parents actually reduces parent-child communication.

c. 48 Hour Waiting Period

73. Some period of mandatory delay between the time of actual or constructive notification of the minor's parent and the abortion itself would reasonably effectuate the State's interest in protecting pregnant minors. A waiting period may allow parents to aid, counsel, advise, and assist minors in determining whether to undergo an abortion or to provide the physician with information which may be relevant to the medical judgments involved.

74. The interest effectuated by the State's 48 hour waiting period could be effectuated as completely by a shorter waiting period. Therefore, to the extent the waiting period exceeds that necessary to allow parents to consult with minors contemplating abortion, it fails to further the State's interest in protecting pregnant minors.

CONCLUSIONS OF LAW

Plaintiffs attack the constitutionality of Minn. Stat. § 144.343 on several fronts. First, plaintiffs contend that § 144.343, subd. 2 is facially unconstitutional because it fails to afford minors the opportunity to obtain a judicial or administrative waiver of the statute's notification requirement. See

Planned Parenthood Ass'n of Kansas City v. Ashcroft, 462 U.S. 476 (1983) (Ashcroft); Bellotti v. Baird, 432 U.S. 622 (1979) (Bellotti II). Second, plaintiffs contend that even with the judicial bypass procedure of subd. 6 incorporated as subd. 2(c) by virtue of this court's temporary restraining order of July 31, 1981, § 144.343 (2)-(7), as applied in Minnesota, unduly burdens the fourteenth amendment due process rights of pregnant minors. Even if § 144.343 (2)-(7) is not unconstitutional in its entirety, plaintiffs contend that the statute's requirement that minors notify both parents except when one parent is dead or the minor is unable to locate a parent with reasonable diligence, § 144.343 (2), (3), is unconstitutional. Finally, plaintiffs contend the 48-72 hour waiting period imposed upon minors who choose to notify one or both of their parents in writing, see Minn. Stat. § 144.343 (2)-(4), is unconstitutional because it impermissibly burdens a minor's right to choose abortion.

Noting "a requirement unduly burdensome in operation will be struck down even if not clearly invalid on its face," see Planned Parenthood League of Massachusetts v. Bellotti, 641 F.2d 1006, 1011 (1st Cir. 1981), this court denied defendant's motion for summary judgment with respect to plaintiffs' as applied due process challenge to § 144.343 (2)-(7). Hodgson v. Minnesota, Civ. No. 3-81 538 slip op. at 11 (Jan. 23, 1985). The court found that dispute existed with respect to material issues of fact including the confidentiality of the judicial bypass procedure, delays and inconvenience, and lack of access to the courts in

rural counties. This list of material facts was not all inclusive. Hodgson, slip op. at 10. Therefore, the action proceeded to trial upon these issues and others.

I. STANDARD OF REVIEW

Every woman has the fundamental right to terminate her pregnancy free from unwarranted government intrusion. Roe v. Wade, 410 U.S. 113 (1973); see Thornburgh v. American College of Obstetricians and Gynecologists, ___ U.S. ___, 106 S.Ct. 2169, 2178 (1986) (specifically reaffirming Roe v. Wade); City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 420 (1983) (Akron) (similar). The right to choose abortion rather than childbirth is "not unqualified and must be considered against important state interests in regulation." Roe v. Wade, 410 U.S. at 154. Rather, the right protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy. Maher v. Roe, 432 U.S. 464, 473-74 (1977).

A state regulation that burdens an individual's right to decide to terminate her pregnancy by substantially limiting her access to the means of effectuating that decision is subject to strict judicial scrutiny. Carey v. Population Services International, 431 U.S. 678, 688 (1977). Such a burden is imposed by a regulation that places an obstacle, absolute or otherwise, in the path of one seeking to exercise the protected right. Maher v. Roe, 432 U.S. 464, 472 (1977).

The term "undue burden" does not accurately describe the magnitude of interference necessary to trigger heightened judicial scrutiny. The Supreme Court has squarely rejected this analysis as "wholly incompatible with the existence of the fundamental right recognized in Roe v. Wade." Akron, 462 U.S. at 419-21 n. 1. Indeed, the Court's traditional three tiered constitutional analysis exists to provide the courts a value-neutral framework by which to test the constitutionality of legislative enactments. Determining whether a burden is "undue" as a threshold inquiry would leave available to judges no standard for making this determination but their individual assessment of a statute's worth. Cf. Mississippi University for Women v. Hogan, 458 U.S. 713, 724 n. 9 (1982) ("[W]hen a classification expressly discriminates on the basis of gender, the analysis and level of scrutiny applied to determine the validity of the classification do not vary simply because the objective appears acceptable to individual Members of the Court. While the validity and importance of the objective may effect the outcome of the analysis, the analysis itself does not change."). Thus the term "undue burden" as used, for example, in Maher, 432 U.S. at 473-74, refers to the ultimate constitutional issue under heightened judicial scrutiny, rather than the threshold requirement for triggering such scrutiny. Charles v. Carey, 627 F.2d 772, 777 (7th Cir. 1980); Planned Parenthood of Rhode Island v. Board of Medical Review, 598 F. Supp. 625, 630 n. 2 (D.R.I. 1984).

Regulations imposing a constitutionally significant burden on the free exercise of a protected right, including the right to choose to terminate one's pregnancy, must be supported by a compelling state interest. Akron, 462 U.S. at 427; Roe v. Wade, 410 U.S. at 155. Such a regulation must also be narrowly drawn to express only the legitimate state interests at stake. Carey v. Population Services International, 431 U.S. 678, 686, 688 (1977).

Constitutional rights do not mature and come into being only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights. Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976) (Danforth). See Bellotti II, 433 U.S. at 633; Carey v. Population Services International, 431 U.S. at 693. Similarly, the burdens imposed by state regulation of abortion are no different for minors than for adults. Zbaraz v. Hartigan, 763 F.2d 1532, 1536 (7th Cir. 1985), appeal docketed, No. 85-673 (U.S. Oct. 16, 1985); see Bellotti II, 443 U.S. at 642 ("[T]he potentially severe detriment facing a pregnant woman 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."). Therefore, the degree of burden that triggers heightened judicial scrutiny depends in no way upon whether the regulation applies to minor or adult women.

The Supreme Court, however, long has recognized that a State has somewhat broader authority to regulate the activities of

children than of adults. Danforth, 428 U.S. at 74. This broader authority derives from 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. Thus the difference between abortion statutes which regulate adults and those which regulate only minors is that the latter may be justified by a significant state interest that is not present in the case of an adult. Zbaraz v. Hartigan, 763 F.2d at 1536. See Akron, 462 U.S. at 427 n. 10; Carey v. Population Services International, 431 U.S. at 693 n. 15; Danforth, 428 U.S. at 75. In addition, the State is not constitutionally bound to employ the least burdensome method of effectuating its interests. Indiana Planned Parenthood Affiliates Ass'n, Inc. v. Pearson, 716 F.2d 1127, 1133 (7th Cir. 1983) (Pearson). Compare Pearson with Carey v. Population Services, 431 U.S. at 688 (state regulation burdening the right of adult women to terminate their pregnancies must "be narrowly drawn to express only the legitimate state interests at stake.") Instead, the state regulation must be rationally calculated to serve the state's significant interests. Planned Parenthood of Rhode Island v. Board of Medical Review, 598 F. Supp. 625, 640 (D.R.I. 1984).

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 interests of the

minor. Bellotti II, 443 U.S. at 640. Therefore, a State's interest in protecting immature minors will sustain the requirement of consent, either parental or judicial. Akron, 462 U.S. at 439. But even the State's interest in encouraging parental involvement in their minor children's decision to have an abortion must give way to the constitutional right of a mature minor or an immature minor whose best interests are contrary to parental involvement. Id. at 427 n. 10; Planned Parenthood of Rhode Island v. Board of Medical Review, 598 F. Supp. at 640. See Bellotti II, 443 U.S. 649.

Even under the less rigorous standard applicable to regulations burdening the rights of minor women to obtain an abortion, the burden of demonstrating a connection between the regulation and the asserted state policy falls on the state. Carey v. Population Services International, 431 U.S. at 696, 696 n. 22; Pearson, 716 F.2d at 1133. Neither a bare assertion that the burden is connected to a significant state policy, Carey, 431 U.S. at 696, nor sentiment or folklore, In re Gault, 387 U.S. 1, 21-22 (1967), will satisfy this burden.

Minnesota Statute § 144.343 (2)-(7) requires minors either to notify their parents of their desire to obtain an abortion, or to obtain the judicial waiver of this requirement. The statute does not require parental consent or a waiver of parental consent. The parties agreed in response to a question from the court that the constitutional analysis applicable to notice requirements does not differ from that applicable to consent requirements. Moreover,

despite the contrary suggestions of individual Members of the Supreme Court, see Akron, 462 U.S. at 469 (O'Connor, J., dissenting); H.L. v. Matheson, 450 U.S. 338, 421 (Stevens, J., concurring), the court concludes that it is "parental involvement" that an emancipated or mature minor must have an opportunity to avoid, without regard to whether that "involvement" takes the form of notification or consent. See Akron, 462 U.S. at 427 n. 10; Pearson, 716 F.2d at 1132. See also Bellotti II, 443 U.S. at 647 (statute unconstitutional because, inter alia, it failed to provide every minor an opportunity to "go directly to a court without first consulting or notifying her parents").

II. Minn. Stat. § 144.343 (2)

Subdivision 2 of § 144.343 prohibits performing an abortion upon an unemancipated minor, or upon a woman for whom a guardian or conservator has been appointed because of a finding of incompetency, until at least 48 hours after written notice of the pending operation has been delivered to the minor's parents or guardian or conservator. By its order of July 31, 1981, this court temporarily restrained defendants from enforcing the provisions of Minn. Stat. § 144.343 (2) because the court found it probable that plaintiffs would be successful in their challenge to subdivision 2. As a result of this restraining order, subdivision 6 of § 144.343 took effect. This subdivision provides that subdivision 2 shall be enforced as though the judicial bypass provisions of subdivision 6 were incorporated as paragraph c of subdivision 2. Subdivision 6 further provides that if the court's

temporary injunction is ever stayed or dissolved, or otherwise ceases to have effect, subdivision 2 shall have full force and effect, without being modified by the addition of the substitute paragraph, and the substitute paragraph shall have no force or effect until or unless an injunction or restraining order is again in effect.

A State choosing to encourage parental involvement in their minor child's decision to have an abortion must provide an alternative procedure through which a minor may demonstrate that she is mature enough to make her own decision or that the abortion is in her best interests. Akron, 462 U.S. at 430 n. 10; see Bellotti II, 443 U.S. at 643-44. 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 a physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Bellotti II, 443 U.S. at 643; Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976).

The Bellotti II court set forth the following requirements:

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

443 U.S. at 643-44. A statute that fails to provide such an alternative to a consent or notification requirement imposes an undue burden upon the exercise by minors of the right to seek an abortion. Id., at 647.

Without the judicial bypass option of subdivision 6, Minn. Stat.§ 144.343 (2) would unduly burden the exercise by minors of the right to seek an abortion. There are parents who would obstruct, and perhaps altogether prevent, the minor's efforts to exercise this right. Bellotti, 443 U.S. at 647. Young, pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct an abortion. Id.; Indiana Planned Parenthood Affiliates Ass'n, Inc. v. Pearson, 716 F.2d 1127, 1132 (7th Cir. 1983). The interests of the State, and of these parents, must give way to the constitutional right of a mature minor or of an immature minor whose best interests are contrary to parental involvement. See, e.g., Akron, 428 n. 10. Therefore, the court concludes that it must permanently enjoin defendants from enforcing Minn. Stat. § 144.343 (2) as unmodified by subdivision 6.

III. Constitutionality of Minnesota's Parental Notification Law

Plaintiffs contend that Minn. Stat. § 144.343 (2)-(7) is unconstitutional as applied because it interferes with and burdens minors in the exercise of their constitutional rights and defendants have failed to demonstrate that the statute is necessary, narrowly drawn, and that it is accomplishing significant state

interests. Defendants respond that plaintiffs' position improperly asks this court to disregard controlling Supreme Court precedent. In view of the fact that the relevant legal standards governing the constitutionality of parental notification requirements are not in dispute, see Akron, 462 U.S. at 439, defendants contend that the scope of this court's inquiry properly is restricted to determining whether the statute complies with the guidelines set forth by the Bellotti II plurality and subsequently approved by majority of the Supreme Court in Planned Parenthood Ass'n of Kansas City v. Ashcroft, 462 U.S. 476 (1983).

Plainly, it is within neither the power nor the desire of this court to overrule Supreme Court precedent. E.g., Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 533, 535 (1983); Jaffree v. Board of School Commissioners, 459 U.S. 1314, 1316 (Powell, Circuit Justice 1983). Nevertheless, the court is mindful that:

> Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry . . . and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.

United States v. Carolene Products Co., 304 U.S. 144, 153 (1938) (Citations omitted); see New Jersey Citizen Action v. Edison Township, 797 F.2d 1250, 1260 (3d Cir. 1986). Compare Wisconsin Action Coalition v. City of Kenosha, 767 F.2d 1248 (7th Cir. 1985) (ordinance limiting hours of solicitation held invalid) with City of Watseka v. Illinois Public Action Council, 796 F.2d 1547 (7th Cir. 1986) (conducting de novo analysis of validity of similar

ordinance). If the court properly may inquire into whether a change has occurred in the factual basis upon which the constitutionality of a statute depends, then surely an inquiry into the existence of a particular state of facts assumed but never demonstrated is at least equally proper. To this court's knowledge, it is the first ever to examine a parental notification or consent substitute statute in actual operation. See, e.g., Akron 462 U.S. 425 (enforcement of ordinance enjoined before its effective date); Planned Parenthood Ass'n of Kansas City v. Ashcroft, 483 F. Supp. 679, 683 (W.D.Mo. 1980) (statute at issue in Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, enjoined on day after becoming effective); Bellotti II, 443 U.S. at 645 n. 25 (because appellees successfully sought to enjoin Massachusetts from putting statute into effect, there existed an "absence of any evidence as to the operation of judicial proceedings under § 12s."). Initiation of the factual inquiry mandated by the Carolene Products court lies squarely within the province of a federal district court. Therefore, this court heard testimony and has made findings of fact with respect to plaintiffs' allegation that Minn. Stat. § 144.343 (2)-(7) is not rationally related to the State's asserted interests.

Plaintiffs' as applied challenge to the constitutionality of Minn. Stat. § 144.343 (2)-(7) proceeded at trial on two levels. Plaintiffs' more limited challenge attacked the sufficiency of Minnesota's compliance with the Bellotti II guidelines for establishing an alternative procedure whereby authorization for the abortion can be obtained. See Bellotti II, 443 U.S. at 643-44.

Plaintiffs' broader challenge attacked the assumption, implicit in the Bellotti II and Ashcroft decisions, that a notification or consent requirement imposed in conjunction with an appropriate alternative bypass procedure would serve the State's interest in protecting pregnant minors without unduly burdening the right of mature or best interests minors to obtain an abortion.

The bulk of the testimony at trial related to whether requiring pregnant minors either to notify their parents of their desire to terminate their pregnancies or to go to court to obtain a waiver of the notification requirement actually furthers the State's interest in protecting pregnant minors. The court heard testimony of at least 37 witnesses who spoke to this issue. Only two of these witnesses related facts and expressed opinions from which a court could draw a reasonable inference that the statute does young women more good than harm. Neither of these witnesses, Dr. Vincent Rue or Dr. Richard T.F. Schmidt, has any direct contact with minors affected by Minn. Stat. § 144.343 (2)-(7). Neither witness counsels minors on a regular basis concerning the decision whether to terminate a pregnancy, neither witness performs abortions, and neither witness sees minors who have had abortions on a regular basis.

Of the remaining witnesses who spoke to the issue whether Minn. Stat. § 144.343 effectuates the State's interest in protecting pregnant minors, all but four of these are personally involved in the statute's implementation in Minnesota. They are

judges, public defenders, guardians ad litem, and clinic counselors. None of these witnesses testified that the statute has a beneficial effect upon the minors whom it affects. Some testified the law has a negligible affect upon intra-family communication and upon the minors' decision-making process. Others testified the statute has a deleterious affect on the well-being of the minors to whom it applies because it increases the stress attendant to the abortion decision without creating any corresponding benefit. Thus five weeks of trial have produced no factual basis upon which this court can find that Minn. Stat. § 144.343 (2)-(7) on the whole furthers in any meaningful way the state's interest in protecting pregnant minors or assuring family integrity.

The court has considered the possibility that the statute's existence encourages immature, non-best interest minors to tell their parents, and that this intangible effect is not amenable to proof at trial. The court does not believe this to be the case. First, several witnesses who testified at trial were involved in providing abortions to minors both before and after the enactment of Minn. Stat. § 144.343 (2)-(7). These witnesses could have testified as to a change in the level of parental participation occurring at about the time of the statute's effective date. Although these and other witnesses testified that a sizable proportion of minors seeking an abortion in Minnesota voluntarily

notify at least one parent of their intention, none testified that this proportion changed at or around the effective date of the Minnesota parental notification law.

Furthermore, the testimony indicates that the sort of independent self-assessment by the minor of her own maturity suggested by this scenerio actually does not occur as a result of the statute. Although the major abortion providers in Minnesota inquire into a minor's maturity in the course of the informed consent process, abortion providers do not decline to assist minors because of their immaturity with any frequency. To the contrary, the testimony revealed the major providers tend to resolve any doubts as to a minor's maturity by referring her to the judicial bypass system. These minors are almost universally successful in obtaining judicial waivers. Thus there appears to be little self-selection among those minors who come to the clinics initially without both parents. Instead, any self-selection as to maturity occurring among pregnant minors appears to be a result of the natural maturation process, rather than an effect of Minn. Stat. § 144.343 (2)-(7). As described in finding of fact number 65, the desire on the part of minors to retain their privacy with respect to the abortion decision is, at least in part, a result of the maturation process. Therefore, it does not appear Minn. Stat. § 144.343 (2)-(7) has any greater beneficial effect upon immature minors than it does upon mature minors and minors whose best interests are not served by notification.

In view of the foregoing, the court finds as a matter of fact that Minn. Stat. § 144.343 (2)-(7) fails to serve the State's asserted interest in fostering intra-family communication and protecting pregnant minors. This is not a case in which the State merely has failed to demonstrate that the challenged statute employs the alternative means of effectuating its interest that is least burdensome upon the rights of the affected individuals. See Indiana Planned Parenthood Affiliates Ass'n, Inc. v. Pearson, 716 F.2d 1127, 1134 (7th Cir. 1983) (state is not constitutionally required to provide the least burdensome alternative to notification.). Similarly, this is not a case in which the legislature has utilized a yardstick that is imprecise or even unjust in particular cases. See H. L. v. Matheson, 450 U.S. 398, 425 (1981) (Stevens, J., concurring) (over-inclusiveness of parental-notice requirement does not undercut its validity). Instead, Minn. Stat. § 144.343 (2)-(7) imposes the substantial burden of obtaining a judicial waiver of the parental notification requirement upon a group of minors composed almost entirely of either mature minors or minors whose best interests are not served by notification. This substantial burden is not justified by the state's interests in encouraging intra-family communication and protecting immature minors because Minn. Stat. § 144.343 (2)-(7) fails to further either of those interests in any meaningful way. When, as here, the state's asserted interest fails to justify the burden imposed upon pregnant minors by an abortion regulation, the Supreme Court has invalidated such regulations as unduly burdensome upon the

rights of pregnant minors. Bellotti II 443 U.S. 622, 651 (1979); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 75 (1976).

This court does not, however, write on a clean slate in determining the constitutionality of Minnesota's parental notification statute. The Supreme Court carefully delineated the elements of the alternative procedure states must employ if they wish to require parental consent or notification prior to abortion. Bellotti II, 443 U.S. at 643-44. Although the Court's discussion of the necessary alternative procedure appears in a plurality opinion and at least arguably was unnecessary to the decision in the Bellotti II case, the Supreme Court left no doubt as to its commitment to the Bellotti II procedure in Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476 (1983). Noting its statement in Akron that the relevant legal standards with respect to parental-consent requirements are not in dispute, 462 U.S. at 439, the Court treated a challenge to the constitutionality of Missouri's consent/bypass statute as an issue purely of statutory construction. Ashcroft, 462 U.S. at 491. Because the Missouri statute at issue could fairly be construed to comply with the Bellotti II requirements, it avoided any constitutional infirmities. Id. at 493.

Because no court has had occasion to consider the actual effect of a consent/bypass or notification/bypass statute in operation, plaintiffs contend the issue now before this court is far more complex than the statutory interpretation issue addressed

by the Ashcroft court. Indeed, it appears to this court that the prophecy with which Mr. Justice Stevens closed his concurrence in Bellotti II is fulfilled.[1] Nevertheless, this court is bound by applicable Supreme Court precedent. E.g., Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 534 (1983); Jaffree v. Board of School Commissioners, 459 U.S. 1314 (Powell, Circuit Justice 1983). This court has made factual findings as to the effect of Minnesota's parental notification law as it affected the minors to whom it applied between its effective date in 1981 and trial in 1986. Were this court writing on a clean slate, it could not uphold the constitutionality of Minn. Stat. § 144.343 (2)-(7) under the intermediate scrutiny appropriate in challenges to regulations that burden the fundamental rights of minors. But it is not this court's place to determine the assumptions upon which the Supreme Court based its holdings in Bellotti II and Ashcroft. Nor is it this court's place to determine whether the facts actually demonstrated at trial comport or conflict with any assumptions the Supreme Court may have made. The Supreme Court directs that this court's inquiry be limited instead to an issue purely of statutory construction: whether Minnesota provides a judicial alternative that is consistent with established legal standards. Ashcroft, 462 U.S. at 491-92.

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[1] In arguing that the Bellotti II case presented the Supreme Court no occasion to render an advisory opinion on the constitutionality of the alternative procedure recommended in Justice Powell's plurality opinion, Justice Stevens predicted "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 Justice Powell has elected to address." 433 U.S. at 656 n. 4 (Stevens, J., concurring).

Minnesota Statute § 144.343 (2)-(7) satisfies these legal standards. The court has found that Minn. Stat. § 144.343 (6) correctly directs courts hearing bypass petitions to conduct the inquiry required by the Bellotti II court. Although the language of the Minnesota statute with respect to maturity varies slightly from that of the Bellotti II decision, the requirement that the woman be "mature and capable of giving informed consent to the proposed abortion" is the functional and legal equivalent of the Supreme Court's requirement that the minor be "mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes." See Bellotti II, 443 U.S. at 643.

Arguably, however, the statute's requirement that the court inquire in the case of an immature minor "whether the performance of an abortion upon her without notification of her parents, guardian, or conservator would be in her best interests" differs from the Court's inquiry whether "the desired abortion would be in her best interests. See id. at 644. Indeed, testimony indicates that some Minnesota courts consider whether the abortion itself is in the minor's best interests, while others examine whether avoiding parental involvement in the minor's decision, whatever it may be, is in the minor's best interests. This court, however, perceives that the former inquiry imposes the greater burden upon the minor in terms of what she must demonstrate before proceeding without involving her parents. Because the Supreme Court's language approves the imposition of this more restrictive standard,

this court concludes that the practice of some Minnesota courts of interpreting Minn. Stat. § 144.343 (6) to require a less intrusive and less burdensome inquiry does not violate the legal standards set forth in Bellotti II and approved in Ashcroft.

The court further finds that judges who hear the bypass petitions in Minnesota faithfully apply the standards set forth in Minn. Stat. § 144.343 (6), and those judges who consider themselves unable to faithfully apply the standard have consistently refused to hear bypass petitions. Furthermore, the court finds that Minnesota courts have established procedures to assure the minors' anonymity, and to expedite both the initial hearing and any subsequent appeal. Finally, the court finds that the delays which do attend the bypass proceedings in practice, although burdensome to minor petitioners, do not reflect a systemic failure to provide a judicial bypass option in the most expeditious, practicable manner. Accordingly, the court concludes that the judicial bypass procedure created by Minn. Stat. § 144.343 (6), as presently executed by Minnesota courts and the other offices that participate in the bypass proceedings, complies with the procedural requirements set forth in Bellotti II and approved in Ashcroft. Therefore, the court must reject plaintiffs' challenge to Minnesota's notification/bypass requirement as a whole.

IV. Two Parent Notification Requirement

Subdivision 3 of Minnesota Statute § 144.343 identifies the individuals entitled to notification as "both parents of the pregnant woman if they are both living, one parent of the woman if

only one is living or if the second cannot be located through reasonably diligent effort, or the guardian or conservator if the pregnant woman has one." Plaintiffs contend the statute's two parent notice requirement unduly burdens the exercise by minors of the right to seek an abortion. The court finds that this requirement places a significant burden upon pregnant minors who do not live with both parents. Particularly in these cases, notification of an abusive, or even a disinterested, absent parent has the effect of reintroducing that parent's disruptive or unhelpful participation into the family at a time of acute stress. Similarly, the two parent notification requirement places a significant obstacle in the path of minors in two parent homes who voluntarily have consulted with one parent but not with the other out of fear of psychological, sexual, or physical abuse toward either the minor or the notified parent. In either case, the alternative of going to court to seek authorization to proceed without notifying the second parent introduces a traumatic distraction into her relationship with the parent whom the minor has notified. The anxiety attending either option tends to interfere with and burden the parent-child communication the minor voluntarily initiated with the custodial parent.

The State has the burden of demonstrating that its interest in encouraging parental consultation justifies the burden imposed upon pregnant minors by the statute's two parent notification requirement. See, e.g., Carey v. Population Services International, 431 U.S. 678, 696, 696 n. 22 (1977); Pearson, 716

F.2d at 1133. The Supreme Court has concluded that the requirement of obtaining both parents' consent does not unconstitutionally burden a minor's right to seek an abortion "[a]t least when the parents are together and the pregnant minor is living at home." Bellotti II, 443 U.S. at 649. When all three live together, both the father and mother have an interest--one normally supportive--in helping to determine the course that is in the best interests of the daughter. Id. This court concludes, however, that a regulation requiring notification of both parents even when the nuclear family unit either has broken apart or never formed is not reasonably designed to further the State's interest in protecting pregnant minors.

To the contrary, the court finds that the regulation adversely affects communication voluntarily initiated with one parent in a large number of cases. Indeed, 20 to 25% of minors seeking judicial authorization to proceed with an abortion without parental notification are accompanied to court by one parent, or at least have obtained the approval of one parent. In these cases the necessity either to notify the second parent despite the agreement of both the minor and the notified parent that such notification is undesirable, or to obtain a judicial waiver of the notification requirement, distracts the minor and her parent and disrupts their communication. Thus the need to notify the second parent or to make a burdensome court appearance actively interferes with the parent-child communication voluntarily initiated by the child, communication assertedly at the heart of the State's

purpose in requiring notification of both parents. In these cases, requiring notification of both parents affirmatively discourages parent-child communication. Thus the court concludes that this requirement fails to further the State's interest. Because "state restrictions inhibiting privacy rights of minors are valid only if they serve any significant state interest," Carey v. Population Services, 431 U.S. at 693; Danforth, 428 U.S. at 75, the court must enjoin defendants from enforcing the two parent notification requirement of Minn. Stat. § 144.343.

V. Waiting Period

Minnesota Statute § 144.343 (2) prohibits performing an abortion upon an unemancipated minor until at least 48 hours after written notice of the pending operation has been delivered to the minor's parents. The notice may be delivered personally to the parent by the physician or his agent, or notice may be made by certified mail addressed to the parent at his usual place of abode, with constructive delivery occurring at 12:00 noon on the next day upon which regular mail delivery takes place, subsequent to mailing. Thus minors in Minnesota who choose to notify their parents in writing of their determination to obtain an abortion must wait at least 48 hours, and more commonly approximately 72 hours, between initiating the notification process and the abortion itself.

Lower courts have split on the issue of the constitutionality of mandatory waiting periods imposed upon minor women seeking abortion. Some courts, including this one, have found that a

reasonable period of notice is permissible to allow parents to aid, counsel, advise, and assist their minor daughter in connection with the determination to undergo abortion or to provide the physician with information which may be relevant to the medical judgments involved. Akron Center for Reproductive Health v. Rosen, 633 F. Supp. 1123, 1138-39 (N.D.Ohio 1986); Hodgson v. Minnesota, Civ. No. 3-81-538, slip op. at 5 (D.Minn. March 22, 1982). The Rosen court concluded that the notification requirement which the Supreme Court explicitly upheld for immature minors in Matheson would be an empty formalism with no practical effect if the abortion could proceed before parental consultation could take place. 633 F. Supp. at 1139.

The Seventh Circuit Court of Appeals has invalidated an Illinois statute requiring pregnant minors to wait 24 hours between notifying their parents and obtaining an abortion. Zbaraz v. Hartigan, 763 F.2d 1532 (7th Cir. 1985), appeal docketed, No. 85-673 (U.S. Oct. 16, 1985). The Zbaraz court based its decision upon its conclusion that the mandatory waiting period placed a direct and substantial burden on women who seek to obtain an abortion, and that the waiting requirement did not significantly further the State's interest in promoting consultation when combined with the notification requirement because the notification requirement itself adequately promotes the State's interest. 763 F.2d at 1537-38. The court further concluded that the statutory alternatives to the mandatory waiting period, such as having both parents accompany the minor to the place the abortion will be

performed or having both parents submit signed, notarized statements indicating they have been notified, do not redeem the statute. Id. at 1538. The Seventh Circuit based its decision in large part upon its prior decision in Indiana Planned Parenthood Affiliates Ass'n, Inc. v. Pearson, 716 F.2d 1127 (7th Cir. 1983). There the court upheld a mandatory waiting period to the extent it delayed the abortion for the purpose of effecting constructive notice. Id. at 1142-43. Requiring delay after notification has been effected, however, is impermissible. Id.; see Zbaraz, 763 F.2d at 1538.

The Eighth Circuit Court of Appeals three times has affirmed district court decisions that a mandatory 48 hour waiting period, applicable to adult and minor women alike, is unconstitutional. See Women's Services, P.C. v. Thone, 690 F.2d 667, 668-69 (8th Cir. 1982), vacated and remanded for further consideration sub nom. Kerrey v. Women's Services, P.C., 462 U.S. 1126 (1983); Planned Parenthood Ass'n of Kansas City v. Ashcroft, 655 F.2d 848, 866 (8th Cir. 1981), aff'd 462 U.S. 476 (1983); Women's Services, P.C. v. Thone, 636 F.2d 206, 210 (8th Cir. 1980), vacated for further consideration sub nom. Thone v. Women's Services, P.C., 452 U.S. 911 (1981). The state of Missouri did not appeal the Eighth Circuit's decision in Ashcroft invalidating the statute's 48 hour waiting period.

This court agrees with the district court for the Northern District of Ohio that a notification requirement would be an empty formalism without practical effect if the abortion could proceed

before the parental consultation could take place. See Rosen, 633 F. Supp. at 1139. However, the waiting period must effectuate actual consultation without unduly burdening the opportunity of pregnant minors to obtain an abortion. In view of the logistical obstacles facing Minnesota women who live in counties without a regular provider of abortion services, the court believes a 48 hour waiting period is excessively long. Travel to an abortion provider, particularly in winter from a rural area in Minnesota, can be a very burdensome undertaking. A requirement that a minor either bear this burden twice or spend up to three additional days in a city distant from her home cannot be justified by the State's interests in encouraging parental consultation, because a shorter waiting period would effectuate that interest as completely. Therefore, the court concludes that if a minor chooses to notify her parent by certified mail as provided in Minn. Stat. § 144.343 (2)(b), the State properly may deem delivery to occur at 12:00 noon on the next day on which regular mail delivery takes place, subsequent to mailing. The State further may impose some reasonable waiting period subsequent to delivery of notification during which consultation may occur. Under conditions presently existing in Minnesota, however, 48 hours is an unreasonable waiting period. Therefore, the court will enjoin defendants from enforcing the 48 hour waiting period imposed by Minn. Stat. § 144.343 (2).

VI. Severability

Defendants contend that the two parent notification requirement and the 48 hour waiting period, which the court today holds unconstitutional, should be severed from the remainder of Minn. Stat. § 144.343 (2)-(7).

Subdivision 7 of Minnesota's parental notification statute provides:

> If any provision, word, phrase or clause of this section or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or application of this section which can be given effect without the invalid provision, word, phrase, clause or application, and to this end the provisions, words, phrases, and clauses of this section are declared to be severable.

This language clearly evinces the legislature's intent that any unconstitutional portions of Minnesota's parental notification statute amenable to severance should be severed.

Subdivision 7 creates a "presumption of divisibility" and places "the burden . . . on the litigant who would escape its operation." Carter v. Carter Co., 298 U.S. 238, 335 (1936) (Cardozo, J.). See Regan v. Time, Inc., 468 U.S. 641, 643 (1984); Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 932 (1983). Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law. See Regan 468 U.S. at 653; Chadha, 462 U.S. at 932. Severance is improper, however, if

the offending language is "inseparably intertwined" within a subsection of the law. Women's Services, P.C. v. Thone, 636 F.2d 206, 210 (8th Cir. 1980), vacated for further consideration on other grounds sub nom. Thone v. Women's Services P.C., 452 U.S. 911 (1982).

The 48 hour waiting period in Minn. Stat. § 144.343 (2)-(7) is severable from the remainder of the statute. Excising the words "at least 48 hours after" from subdivision 2 does not disable the statute from reasonably effectuating the legislature's intent. Accordingly, the court holds that this language is severable from the remainder of Minn. Stat. § 144.343. See Zbaraz v. Hartigan, 463 F.2d 1532, 1545 (7th Cir. 1985), appeal docketed, No. 85-673 (U.S. Oct. 16, 1985).

The language of subdivision 3 defining "parent" as "both parents of the pregnant woman if they are both living, one parent of the pregnant woman if only one is living or if the second cannot be located through reasonably diligent effort, or the guardian or conservator if the pregnant woman has one" is inseparably intertwined within Minn. Stat. § 144.343 (2)-(7). The Minnesota legislature would not have enacted a statute requiring notification of a minor's parents prior to the abortion without identifying the individuals entitled to such notice. More importantly, the remainder of the statute cannot be given effect without the offending language. See Minn. Stat. § 144.343 (7).

In addition, this court is ill-situated to determine what alternative definition the legislature would employ to remedy the

constitutional infirmity identified in this decision. For example, the legislature may determine that requiring notice only to one parent is the functional equivalent of requiring notice to both in families enjoying healthy communication, while requiring notice only to one parent permits the notified parent in an intact but dysfunctional family to exercise his or her judgment concerning the wisdom of notifying the other parent. Alternatively, the legislature may determine that notification of both parents is appropriate when the parents are together and the pregnant minor is living at home. See Bellotti II, 443 U.S. at 649. Other options also may suggest themselves to the legislature. Any of these choices, however, would leave Minn. Stat. § 144.343 (2)-(7) with little resemblance to the program actually intended by the Minnesota legislature. See Thornburgh v. American College of Obstetricians and Gynecologists, ___ U.S. ___, ___, 106 Sup. Ct. 2169, 2181 (1986); City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 472 (1983) (O'Connor, J., dissenting). Therefore, the definition of parent contained in Minn. Stat. § 144.343 (3) is not severable from the remainder of the statute. The court must enjoin defendants from enforcing Minn. Stat. § 144.343 (2)-(7) in its entirety.

ORDER

Upon the foregoing, the evidence presented at trial, the submissions and arguments of the parties, and the record as presently constituted,

APPENDIX

Petitions
Abortion Notification Statute
Minnesota Statutes § 144.343, Subd. 6,
1981 Supplement
August 1, 1981 to March 1, 1986

No. of Counties	No. of Petitions Filed	No. of Petitions Granted	No. of Petitions Withdrawn	No. of Petitions Denied	No. of Petitions Appealed	No. of Petitions Affirmed	No. of Petitions Reversed
7	78	77	1				
1	793	793					
11	52	51		1			
1	2331	2331		3			
15	4	1	1	2	1	1	
4	279	278		1			
10	7	5	2				
13	2	2					
17	6	6					
8	35	34	2	2			
87	3,573	3558	6	9	1	1	

IT IS ORDERED That Minn. Stat. § 144.343 (2)-(7) be and the same hereby is declared unconstitutional.

IT IS FURTHER ORDERED That the Clerk enter judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED That Minn. Stat. § 144.343 (2)-(7) is unconstitutional.

IT IS FURTHER ORDERED That defendants be and the same hereby are permanently enjoined from enforcing the provisions of Minn. Stat. § 144.343 (2)-(7).

IT IS FINALLY ORDERED That the following injunction shall issue without security:

IT IS ORDERED, ADJUDGED, AND DECREED That defendants are permanently enjoined from enforcing the provisions of Minn. Stat. § 144.343 (2)-(7).

DATED: November 6, 1986.

DONALD D. ALSOP
Chief U. S. District Judge

SENATE JUDICIARY
EXHIBIT NO. 20
DATE 1-23-89
BILL NO. SB 164

Testimony against Senate Bill 164, "AN ACT REQUIRING PARENTAL NOTICE BY A PHYSICIAN BEFORE HE PERFORMS AN ABORTION ON A MINOR..."

Clayton H. McCracken, M.D., M.P.H.
3227 Country Club Circle
Billings, MT

The cardinal rule of adolescent health care is to respect the adolescent's right to privacy.

As a physician who provides abortions, I would prefer that a minor's parents not only be aware that she is having an abortion but be a part of the process.

One can not provide adequate health care to an adolescent unless she is willing to to share with you both information and her concerns. This working relationship is based on trust. The cardinal rule of adolescent health care is not to share information with anyone, including the adolescent's parents, without her permission.

Minors are counselled to involve parents and most do involve at least one parent.

There are a multitude of reasons why some minors believe they cannot. Some are unable to cope with the circumstances around the pregnancy and her parents at the same time. Some fear they will push a depressed or alcoholic parent beyond the breaking point. Often her parents' marriage is strained and dissolving. Many justifiably fear her parents' abusive and punitive reaction.

Many pregnant minors are living with only one parent who is struggling to make a go of it.

The minor has a better sense of how her parents will react than anyone else — counselor, physician or judge.

Compared to continuing a pregnancy, an abortion is a very safe procedure. However for every week the abortion is delayed the risk of complications and of death increases. Notifying both parents or going through a judicial process will delay the timing of the abortion, thereby exposing an young woman to unnecessary risks.

I am most concerned about delaying the procedure once the patient has firmly made her decision to have an abortion.

The consequences of teenage pregnancy are well documented. In 1987 in Yellowstone County one 17 year old hemorrhaged at delivery and had to have

Sen. Clayton
McCracken

SENATE JUDICIARY
EXHIBIT NO. 21
DATE 1-23-89
BILL NO. SB 164

Anne's Story:
A Minor Who Chose Not To Involve Her Parents
In Her Decision To Have An Abortion

As we were doing the abortion procedure Anne talked confidently about her future plans. She would marry as soon as she graduated from high school. She emphasized though that she planned to attend college. During her senior year in high school she would take special courses that the school offered in child rearing. Then in college she would study how to help handicapped children. Her self confidence and determination was remarkable for a seventeen year old.

Anne is a young woman who chose not to tell her parents that she was pregnant and having an abortion.

Her current solidness belies her troubled past. She is only a junior in high school. During the sixth grade she was held back. That year she was in emotional turmoil, her parents were separated and going through divorce procedures. She first had intercourse when she was fourteen. She became drunk at a party and someone took advantage of her. Last year she ran away from her mother and stepfather. Her mother had now remarried. The counselor at her school got her into a program for runaway girls. She, her mother and her stepfather attended several counseling sessions and things became better in her household.

At the present matters at home are again intolerable for Anne. The stepfather has not worked in three years. Her mother works a day job and is looking for night work to support the family.

Why wasn't Anne using contraception. She and her partner were using condoms. Whether or not they were using a condom at the time she became pregnant we do not know. She had previously used birth control pills, a more reliable contraceptive, but one day her stepfather was going through her things, found the pills and threw them out.

How did Anne get money for the abortion? She called her real dad, told him that she needed $235, and he sent it without asking why; but, perhaps knowing why.

Who counselled Anne? When Anne suspected that she was pregnant she went to a pregnancy counselling center for a free pregnancy test. The pregnancy counselling center is operated by a coalition of persons opposed to abortion. The person who did the positive pregnancy test told Anne about adoption and programs in her community for unwed adolescent women who plan to continue the pregnancy and raise the child herself. At the pregnancy counselling center there was no mention of informing the parents — perhaps since in their mind there would be no abortion, the pregnancy would eventually become obvious.

Anne then made an appointment with a family planning clinic for an examination. The nurse who did the examination to confirm the pregnancy talked with Anne about all options: keeping, adoption and abortion. By that time Anne had already decided that it would not be feasible to continue the pregnancy and that she did not want to involve her mother and her stepfather. She had discussed the pregnancy with her nineteen year old partner and his parents. They supported her in her decision to have an abortion. So the nurse at the family planning clinic inquired about involving her parents but did not pursue the issue further when Anne explained that she would not. Anne also sought out her school counsellor, the same one who helped her before. The school counselor also discussed options..

Anne tolerated the abortion procedure very well and left the clinic feeling well about her decision and confident in her future.

her uterus removed and another, a 14 year old, died of complications of her pregnancy in spite of good obstetrical care.

For those women who do not wish to continue the pregnancy, abortion is a very safe procedure. The risk of death from a legal abortion preformed by a physician is less that one-tenth that of continuing the pregnancy.

The most desirable time to do the abortion is in the eighth to tenth week after the last normal menstrual period. From about the thirteenth week on the procedure is more complicated. The procedure of choice is called a dilation and evacuation or D&E. Procedures such as saline instillation are now rarely done because a D&E is safer.

Doing a suction curettage abortion at 8 to 10 weeks is three times safer that doing a D&E at 13 to 15 weeks. The risk from abortion does not begin to approach the risk of continuing a pregnancy until after the 20th week.

We would prefer to do the abortion as soon as feasible after the women is firm in her decision.

In Montana there are already problems that cause a minor to delay having the abortion. It might be difficult for her to see a physician so that the pregnancy can be verified and she can be provided the initial counseling. Abortions have to be scheduled during times that the clinics are in operation. She often must travel long distances to the abortion provider. In order to keep cost down and be fair to everyone, the women is required to pay at the time of the abortion. For a minor as well as other low-income women gathering the money sometime is a problem and a cause for delay.

It is obvious that this legislation will further delay the minor in obtaining the abortion. It will not stop women who are determined they can not support a child from having an abortion.

An early out of state abortion would not be an option for Montanans. Unlike the minors in Massachusets and Minnesota, Montanans can not go just across the state line to obtain abortions. This legislation will only delay the timing of the procedure.

Even in Minnesota, the proportion of abortions done beyond the 15th week for Minnesota residents increased by 13.0% after their minor consent law went into effect.

In addition to the documented complications from later procedures there are other undesirable consequences. Both the delay and contention in notifying both parents or going through the judicial process increases the woman's apprehension making the procedure more difficult for her. The later procedures are more expensive. She may have to travel to Denver, Seattle or Salt Lake for the procedure.

Though the risk of a delayed abortion is not greater than carrying a pregnancy to term, if this legislation is passed, the State would be placing a young woman at greater risk than what would otherwise be necessary.

C. H. McCracken, M.D.

SENATE JUDICIARY
EXHIBIT NO 22
DATE 1-23-89
BILL NO. SB 164

January 23, 1989

Mary Jane Fox
1204 N. Oakes
Helena, Mt. 59601

Testimony against S.B. 164

Member of Mt. State Chapter of National Association of Social Workers (NASW)

SB164 is in direct violation of the four cardinal values of social work

1. the rights of all to have access to resources - this includes pregnancy termination services
2. the respect for and recognition of the uniqueness of all individuals - this includes young adults whose family situation is not one of closeness and open communication
3. the right to confidentiality - provisions of the proposed legislation violate doctor/patient confidentiality and the provisions for court intervention cannot protect confidentiality
4. the right to self determination - this clearly supports all persons rights to decide for themselves the best course of action regarding unwanted pregnancies

1.1 million teenagers become pregnant each year

92% of teens who carry a pregnancy to term and keep the child, will raise that child in poverty

As a counselor for 15 years, who has administered a teen pregnancy program and worked with 100's of teenagers and parents, I can speak from experience. A crisis pregnancy is a difficult situation for anyone who is faced with the decisions to be made. Noone should face this situation alone. For some young adults a close relationship with their parents does not exist however, and a relationship of support cannot be legislated! The Montana Court System is not the appropriate agency to meet the needs of anyone in crisis!

SENATE JUDICIARY
EXHIBIT NO. 23
DATE 1-23-89
BILL NO. SB 164

SB 164
Testimony 1/23/89

Mr. Chairman and members of the committee; for the record, My name is Willa Craig.

I would like to share my personal story with you today. It is compelling not because I was a victim of incest or rape, but because it is common.

I am a native Montanan, raised in an economically depressed area. My family was typical of others in that area at that time; alcoholic and financially unstable. In 1973, at age 17, I became pregnant. My previous experiences regarding communication with my parents on sexuality issues were full of anger and denial. While I know that my parents loved and cared for me, our family circumstances colored every interaction, every situation. I chose to have an abortion and to not involve my parents. Ironically, the factors that influenced me to not involve my parents, were the very factors that enabled me to obtain an abortion. I was mature in many ways; independent, resourceful, a survivor. With financial help from my boyfriend, I received a safe, legal abortion procedure in a nearby state. I was treated with kindness and respect, both by the family planning agency that provided me with options counseling and the physician that did the procedure. That positive experience eventually led me into a career in reproductive health services.

Today, I train abortion counselors. I am intimately familiar with the many factors surrounding minors and pregnancy. I am aware that parental knowledge and support are optimal. The proposed parental notification bill, at face value, intends to support the parent-child relationship, while in effect it is only a punitive risk-increasing measure. We need only to examine Canada's abortion access system to know that privacy is a basic human requirement, and that the proposed judicial review system will only send young women elsewhere or deny them their legal options. Hundreds of Canadian women enter Montana each year to obtain abortions without governmental interference. Many of these women are older, with supportive partners. If these women are not willing to take part in a similar review process, why do we believe that minors, possibly rape or incest victims, will willingly undergo this humiliating and futile exercise?

It is imperative that we offer understanding and respect to these young women. They have more information regarding their personal circumstances than could ever be presented in a court of law. The actions they are taking are steps toward increased self knowledge and control over their own lives despite less than ideal terms. We should not let the frustration we may feel as a society or as parents lead us into the belief that if we just involve the government a little more everything will be OK and we will be relieved of our responsibility. I emplore you, vote NO on SB164.

Willa Craig

EXHIBIT NO. 23, p. 2
DATE 1-23-89
BILL NO. SB 164

NAME: Willa Craig DATE: 1-23-89

ADDRESS: 1021 Cherry Missoula. Mt 59802

PHONE: 721-5529

REPRESENTING WHOM? Self & Blue Mtn. Women's Clinic

APPEARING ON WHICH PROPOSAL: SB 164

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: testimony supplied.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY
EXHIBIT NO. 24
DATE 1-23-89
BILL NO. SB 164

January 23, 1989

Mr. Chairman and Members of the Committee:

My name is Joselyn Wilkinson and I am here to testify against Senate Bill 1-64. As a high school student, I know of many girls forced into the awful position of having to choose between being a mother and having an abortion. This is not an easy choice, but being an unwed, teenage mother cannot be anything but devastating to a girl. Most young women would willingly involve their parents in such a decision. It would be hard, no doubt, to tell them, but if they know their parents will ultimately support them, their first course of action would be to talk to their parents. However, in many cases, many more than perhaps you realize, this is not even an option.

Teenage girls are terrified at the thought of becoming pregnant. Many young women who discover they are pregnant are terrified at the thought of telling their parents. And not simply because they fear disappointing their parents or ending their parents dreams for their lives, but because they fear for their very health, happiness and their lives. Because of abuse or incestuous relationships within the home, their lives may actually be in danger.

Their parents' beliefs may simply not tolerate their teenage pregnancy, so they may be thrown out of their homes, or be forced into an unwanted marriage with the father of the child. Teenage marriages resulting from pregnancy are overwhelmingly unsuccessful.

The trauma of going through a judicial process where many members of the court will know of the young woman's pregnancy and her reasons for not being able to tell her parents or to fulfill that preganancy may be too much to bear. She would be forced to seek an illegal abortion or perform one on herself. I know of a girl who had to hitchhike to California -- with no money -- because she could not pay for an abortion here or tell her parents.

Because of all these situations, I beg you to fully consider the ramifications and vote against Senate Bill 164.

SENATE JUDICIARY

EXHIBIT NO 24, p. 3

DATE 1-23-09

NAME: [illegible] DATE:

BILL NO. SB 16

ADDRESS: 442 Alder Ave.

PHONE: [illegible]

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: I-64

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

JUDICIARY
EXHIBIT NO. 25
DATE 1-23-89
BILL NO. SB 164

My name is Carrie Garber. I am a junior at Montana University. I am representing myself and what I believe to be a majority of the silent voting group, the 18 to 24 year olds. This bill has important meaning to me because I am a woman and because it has only been three years since I was not legally considered an adult. I strongly oppose SB 164 because it makes several assumptions with which I do not agree. It assumes that a woman under 18 years of age of cannot independently make a decision as would an adult; it assumes that a minor can or should always be in a position to communicate with his or her parents; and it assumes that a minor woman who is pregnant is the only parent who must bear the responsibility of notification or the ordeal of court approval when she wishes to obtain an abortion. These assumptions are not correct. I believe that sixteen year olds are able to make adult decisions without the influence of their parents or the courts. I believe that it is increasingly difficult for teenagers to communicate with their parents, especially in households where there is only one parent, and parent is often unavailable or unreceptive due to the economic pressures of the divorce situation. And I believe it is grossly unfair to a pregnant young woman who wants an abortion to be forced to face her parents or the court alone when there exists another partner in what SB 164 considers a crime, the crime of pregnancy. Requiring notification is the not the answer to this problem. And the problem is not abortion: The problem is teenaged pregnancy. SB 164 in no way addresses the problem that exists; it merely attempts to eliminate a constitutionally legal solution to the problem. Having graduated from Helena High School only three years ago, I can tell you that the answer to the problem of teen pregnancy lies within

the school system. Sex education did not and does not exist. What does exist, and what is mistakenly labeled as sex education, is one week of instruction in a health class where we learn the names of sex organs, learn the names of contraceptives, learn the names of diseases, and are off-handedly advised to "Just say no." What we did not learn was where to go, who to talk to, how to act like adults when it came to our sexuality. And I guarantee you that over 50% fail to "Just say no." Fortunately for me, I had the money to afford a personal physician who accurately counselled me on birth control. Through that personal physician I was able to receive birth control pills at the outrageous price of $16 every four weeks. Since then I have turned to Family Planning Centers, both in Montana and in Oregon where I attended my first two years of college, because as a student, I cannot afford betweem $200 and $250 a year for contraception. The options that I pursued on my own should be the options that are available to all teenagers, both male and female. For those who cannot turn to a parent or cannot afford a private physician and the cost birth control, the school should be able to provide this kind of "Planned Parenthood" access. I cannot emphasize how immensely lacking the "sex education" programs are throughout the state, and this is where your legislation ought to be aimed. Thank you.

Carrie L. Farber

SENATE JUDICIARY
EXHIBIT NO. 25, p. 3
DATE 1-23-89
SB 164

NAME: CARRIE L. GARBER DATE: ~~BILL NO~~ 1/23/89

ADDRESS: 4360 CANYON FERRY RD. E. HELENA 59635

PHONE: 227-5191

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: SB 164

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: (prepared statement)

* PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Margaret Davis

SENATE JUDICIARY
EXHIBIT NO. 26
DATE 1-23-89
BILL NO. SB 164

LEAGUE OF WOMEN VOTERS OF MONTANA
Joy Bruck, president
1601 Illinois, Helena, Montana 59601

23 Jan 89

The League of Women Voters of Montana opposes SB 164, an act requiring parental notice by a physician be given before he performs an abortion on a minor;....

The League of Women Voters believes that there is no compelling reason for the government to regulate in this area. Legal tradition respects confidential relationships between individuals and physicians, ministers, counselors, attorneys, and a very limited number of other persons. The breaching of a confidential relationship has always been considered as a balance between protecting individial civil rights and the broader interests of society. When it cannot be demonstrated that others will be directly harmed or seriously threatened by failure to report a matter revealed in a confidential relationship, the law has sustained the individual's right to privacy.

SB 164 involves two individuals, each with an interest in the confidential relationship. SB 164 puts the burden of acting on either the physician or the patient. In either case, the failure to inform the parents of a minor does not constitute a immediate danger to society that outweighs the physician's duty to care for his or her patient and the patient's right to confidential medical advice and care. Abortion is a legal procedure. Both physician and patient must be able to consider it as an option without the prejudicial burden that would result from passage of SB 164.

The League of Women Voters of Montana asks that you give SB 164 a Do Not Pass recommendation.

Margaret S. Davis
816 Flowerree
Helena, Montana 59601
443-3467

SENATE J...
EXHIBIT NO. 27 10.1
DATE 1-23-89
BILL NO. SB 164

TESTIMONY OF DIANE SANDS ON SB 164 1/23/89

Mr. Chairman and Members of the Committee. My name is Diane Sands and I am here in opposition to SB 164. Several years ago in my capacity as state coordinator for Montanans for Choice a situation was brought to my attention which I feel I must share with you to help you understand the real life implications for young Montana women who will be effected should this grim bill become law.

Four years ago in a small rural Montana community a young 16 year old girl found herself pregnant by her steady boyfriend. She examined her situation and decided that for her an abortion was the right choice. Unfortuneately, someone informed her that she must have the consent of her parents to obtain an abortion in Montana. Her father was an outspokan opponent of abortion and she knew she could not tell him. She had no hope she could obtain his consent and greatly feared his reaction to her situation. The girl and her boyfriend attempted several ineffective, highly dangerous, methods to induce an abortion. Finally, very desparate and very scared, at the end of the second trimester, nearly 7 months pregnant, the young couple successfully induced an abortion using a knitting needle. As the girl began serious hemorrhaging, the young man contacted an adult friend who assisted them in getting to a hospital where a living infant was delivered. The infant was placed for adoption and the young woman luckily suffered minimal physical damage and was released after sometime spend in the hospital's psych ward, where she was confined at the insistance of her father.

This is a tragic story and it happened right here in Montana. It is a story about desparation that is a reality for many young women who truely can not involve their parents in this decision.

Minors who choose abortions, like their adult sisters, will risk risk their very lives if necessary to terminate an unwanted pregnancy.

This proposed law would not assist minors at this traumatic time in their lives. It would only contribute to their stress and delay their access to safe and legal abortion.

ABORTION IN MONTANA

MONTANA RESIDENT ABORTIONS TO MINORS:

Age of mother	1987	1986	1985
Under 15	15	14	21
15-17	241	335	304
Total	256	349	325

Total abortions in 1987 in Montana was 3,175, the lowest since 1978.

Source: Mt. Vital Statistics

POTENTIAL NUMBERS OF MINORS USING JUDICIAL BYPASS:

A recent study of the impact of the parental notification requirement in Minnesota found that approximately 43% of teens surveyed used the judicial bypass alternative rather than notify both parents of their desire to obtain an abortion; about a quarter of them reported having notified one parent (Blum, et al., 1985).

Based on the Minnesota percentage of 43% of minors using bypass procedures this could mean that in MT as many as 110 minors in '87, 150 minors in '86, and 139 minors in '85 might have used judicial bypass. In Montana experience in clinics indicates that about a quarter of minors can not tell both parents; however, like national data, the younger the teen the more likely her parents are to know about and even to have suggested the abortion.

SENATE JUDICIARY
EXHIBIT NO. 27, p. 3
DATE 1-23-89
BILL NO. SB 164

1987 REPORTS OF INDUCED ABORTIONS BY PLACE OF RESIDENCE AND MONTANA COUNTY OF OCCURRENCE

COUNTY	RESIDENCE	OCCURRENCE	COUNTY	RESIDENCE	OCCURRENCE
BEAVERHEAD	25	-	PHILLIPS	4	-
BIG HORN	26	-	PONDERA	13	-
BLAINE	10	-	POWDER RIVER	3	-
BROADWATER	5	-	POWELL	14	-
CARBON	29	-	PRAIRIE	1	-
CARTER	1	-	RAVALLI	49	-
CASCADE	234	362	RICHLAND	10	-
CHOUTEAU	17	-	ROOSEVELT	25	-
CUSTER	33	-	ROSEBUD	30	-
DANIELS	3	-	SANDERS	13	-
DAWSON	20	-	SHERIDAN	6	-
DEER LODGE	10	-	SILVER BOW	68	-
FALLON	4	-	STILLWATER	14	4
FERGUS	20	-	SWEET GRASS	5	-
FLATHEAD	221	471	TETON	4	-
GALLATIN	177	224	TOOLE	10	-
GARFIELD	3	-	TREASURE	2	-
GLACIER	28	-	VALLEY	15	-
GOLDEN VALLEY	0	-	WHEATLAND	3	-
GRANITE	4	-	WIBAUX	1	-
HILL	30	-	YELLOWSTONE	457	1020
JEFFERSON	10	-	MT COUNTY UNREPORTED	0	-
JUDITH BASIN	6	-			
LAKE	41	-	TOTAL MONTANA		
LEWIS & CLARK	120	-	RESIDENTS	2,293	-
LIBERTY	3	-	OUT OF STATE		
LINCOLN	25	-	RESIDENTS		
MCCONE	6	-	IDAHO	16	NA
MADISON	4	-	NORTH DAKOTA	20	NA
MEAGHER	2	-	WYOMING	217	NA
MINERAL	4	-	OTHER STATES	47	NA
MISSOULA	398	1,094	CANADA	580	NA
MUSSELSHELL	9	-	REST OF WORLD	2	NA
PARK	26	-			
PETROLEUM	0	-	TOTAL	3,175	3175

SENATE JUDICIARY
EXHIBIT NO. 27, p. 1 of 4
DATE 1-23-89
BILL NO SB 29

PARENTAL NOTIFICATION LAWS ENDANGER A MINOR'S HEALTH

For the minority of teens who seek abortions without parental involvement a law requiring notification could be detrimental to their health and well-being. In states that have parental notification laws, minors who choose abortion:

* Must undergo the difficult and often traumatic process of petitioning the court, with an average of 23 court personnel knowing the reason.
* Suffer delays in obtaining a judicial hearing, especially in rural areas, causing increased second trimester abortions which are significantly riskier and more expensive.
* Try to obtain illegal abortions or try self-induced abortions rather than tell their families or petition the court.

PARENTAL NOTIFICATION LAWS ARE UNSUCCESSFUL IN MASSACHUSETTS & MINNESOTA

Minnesota has enforced a stringent parental notification law for five years and Massachusetts has a similiar law. The experience of both states clearly shows that such laws are ineffective.

* The decline in minor's abortions in Mass. has been offset by an equivalent increase in abortions performed on Mass. minors in the six surrounding states.
* In Minn., where abortion services in neighboring states are not easily accessible, the number of teenage births and second trimester abortions rose sharply. Many minors went on AFDC or public assistance.
* Judges routinely rubber stamp the procedure, thus delaying but not altering the decision the minor has already made.
* The minor's right to privacy and confidential medical treatment is violated. As many as 23 court personnel know she is seeking judicial bypass, thus causing undue trauma in an already stressful situation.

PARENTAL NOTIFICATION LAWS FAIL TO DISCOURAGE SEXUAL ACTIVITY

In spite of more restrictions on reproductive health care, there is still a nationwide trend of increasing teenage sexual activity and childbearing.

* 118% more unplanned births occur each year than before abortion was legalized in 1973.
* 1 in 6 teenage girls becomes pregnant at least once before marriage.

We believe that the most effective approach to better health is prevention rather than reaction. We promote responsible sexual decision-making through community education and access to quality, confidential health care.

For More Information:

Montana Women's Lobby, P.O. 1099, Helena, MT 59624 449-7917
Planned Parenthood of Missoula, 219 E. Main, Missoula, MT 59802 728-5490
Intermountain Planned Parenthood, 721 North 29th, Billings, MT 59101 248-3636
Montanan's For Choice, P.O. Box 902, Helena, MT 59624

PARENTAL NOTIFICATION: A THREAT TO MINORS RIGHT TO ABORTION

Senator Tom Rasmussen (R-Helena) has requested a bill for consideration by the MT Legislature that will require minors to tell their parents before having an abortion. Pro-choice forces in MT oppose this legislation for three main reasons:

* The health and well-being of minors will be seriously jeopardized.
* Family communication can not be mandated.
* The bill will violate a minor's right to privacy guaranteed by the Montana Constitution.

The Legislature passed a law in 1974 requiring a minor to notify her parents but the U.S. District Court threw out the law in 1976, saying it was unconstitutional because it did not clarify how notification was to be given.

Rasmussen's bill probably will provide for "judicial bypass", by which a minor can demonstrate to a court that she is mature enough to make her own decision or that an abortion is in her best interest. A bypass provision has been a critical element in states with parental notification requirements for such laws to be found constitutional, e.g. Minnesota.

However, Montana's Constitution has an unusually strong right to privacy provision, as well as a stated fundamental provision that minor's rights "may be enhanced but not limited". For these reasons, any restrictions to minor's access to abortion are unconstitutional, in our opinion.

It is expected that Sen. Rasmussen's bill will be introduced early in the session, perhaps in January, giving the Legislature its first major abortion battle since 1981.

The MT Women's Lobby and Montana's many pro-choice organizations plan a noon rally at the Capitol in Helena on Jan. 20th in support of reproductive choice. This is 2 days before the Jan. 22 anniversary of the Roe v. Wade Supreme Court decision that legalized abortion in 1973.

What can you do? Familiarize yourself with the issue. Basic talking points are provided below. Write or call your Senator (444-4800 to leave a message). If you can be in Helena on Jan. 20th, please join the rally, or call your local pro-choice organization to find out what events are planned in your community. We can preserve reproductive choice for all women, with your help.

****

PARENTAL NOTIFICATION LAWS FAIL TO PROMOTE FAMILY COMMUNICATION

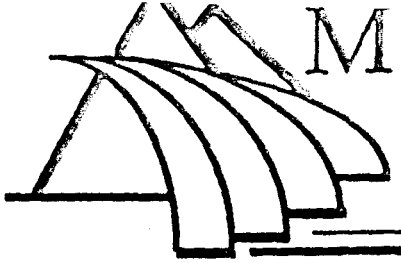
Laws can not mandate healthy parent-child communication when the issues are so complex and individual situations are so varied. All Montana abortion providers desire and strongly promote involvement of parents in pregnancy decisions. Most teens DO seek parental advice and involvement.

* 55% of teens ages 12-19 voluntarily choose to involve their parents in their abortion decision. 75% of teens under age 15 consult with parents.

However, there are a minority of teens who would not tell their parents about their decision, often for understandable reasons.

* Reasons include cases of rape, incest, violence in the home, drug or alcohol abuse in the family, parents are absent or minor is living independently.

Moore



Montana
Rainbow
Coalition

P.O. Box 9043, Missoula, MT 59807

SENATE JUDICIARY
EXHIBIT NO. 28
DATE 1-23-89
BILL NO. SB 164

January 23, 1989
Montana Rainbow Coalition
P.O. Bow 9043
Missoula, Mt. 59807

Testimony against S.B. 164

On January 14, 1989, members of the Rainbow Coalition in Montana at a statewide meeting held here in Helena, carfully considered Senate Bill 164.

We urge you to vote against this proposed legislation for the following reasons:
1. It clearly violates the minors right to privacy as guaranteed in the Montana Constitution.
2. We are strongly opposed to the concept of mandated parental consent by legislative fiat.
3. We strongly support the concept of reproductive freedom and the rights of women to control their own bodies. This legislation cleary violates these rights.

Joseph Moore
Legislative Coordinator
Montana Rainbow Coalition
58 S. Rodney
Helena, Mt. 59601

WITNESS STATEMENT

NAME [illegible] BILL NO. 164

ADDRESS 512 Benton DATE 1/23

WHOM DO YOU REPRESENT? Self

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME [illegible] BILL NO. 164

ADDRESS [illegible] DATE [illegible]

WHOM DO YOU REPRESENT? [illegible]

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Paul A. Olson, Ph.D. BILL NO. 164

ADDRESS 2210 Dodge, Helena DATE _____

WHOM DO YOU REPRESENT? Myself

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Rev. Cornelius Pool BILL NO. 164

ADDRESS 1010 Birch St Helena DATE 1-23-89

WHOM DO YOU REPRESENT? Green Meadow Church

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Bryan Asay BILL NO. SB164

ADDRESS 720 Laurel, Helena DATE _____

WHOM DO YOU REPRESENT? Mt. Family Coalition

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Robert G. Watson BILL NO. 164

ADDRESS 1113 Lincolnwood, Missoula DATE 1-23-03

WHOM DO YOU REPRESENT? Self

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Mark Moore BILL NO. S.B. 164

ADDRESS 585 S. Rodney, Helena MT 59601 DATE 1/23/89

WHOM DO YOU REPRESENT? Montana Rainbow Coalition

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME: Smith, Jim DATE: 1-23-88

ADDRESS: 510 State

PHONE: 3-0606

REPRESENTING WHOM? HRDC Assoc.

APPEARING ON WHICH PROPOSAL: SB 134

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Good bill - Removes disincentive to getting off of Welfare - Provides incentives to getting off of Welfare.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Migron Waterman DATE: 1/23/89

ADDRESS: Box 745

PHONE: 442-5761

REPRESENTING WHOM? Mt. Assoc. of Churches

APPEARING ON WHICH PROPOSAL: SB 134

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 1-23-9[illegible]

ADDRESS: 1014 Iroquois Tr; Victor, MT 59875

PHONE: 406 642-3915

REPRESENTING WHOM? Human Kind - the family unit

APPEARING ON WHICH PROPOSAL: SB-164

DO YOU: SUPPORT? ✓ AMEND? ____ OPPOSE? ____

COMMENTS: I support SB-164 on the following grounds:

1. Parents are given the responsibility of raising a minor child and should have the freedom to know the happenings of their child especially where medical procedure is involved.
2. The parents are left with the financial [illegible] (i.e. counseling) of such an abortion when in [illegible] were not aware of the abortion.
3. If a child (under 18) murders someone the parents are notified.
4. A child needs support in a [illegible] emotional time (such [illegible]) who better than the parents to give that support. A child going to the parents with such an issue could contribute to the further communication of a child and the parents.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

The family unit is the basis on which our country is built on. Children being advised to seek council with the family is a [illegible] to the family [illegible]

5. Abortion is Killing! [illegible]

[illegible] two

NAME: Ruth Batty DATE: 1-23-87

ADDRESS: 840 Bear Creek Trail Victor MT 59875

PHONE: 642-3118

REPRESENTING WHOM? our posterity

APPEARING ON WHICH PROPOSAL: SB-164

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: My 6-year old child was absolutely apalled at the possibility that someone would want to have an abortion and not have Grandma or Grandpa know.

As a parent I would like to know and hold my future grandchildren. It is the parents right and responsibility, whether they like it or not!

Ruth E Batty

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME LYNN A. CONNER BILL NO. 164

ADDRESS 3835 Chokecherry St. DATE 1/23/89

WHOM DO YOU REPRESENT? SELF

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support Bill number 164 for the following reasons:

1.) This bill maintains family unity. While many family systems are not healthy this measure does face the issue of pregnancy in minors openly and honestly rather than hiding it. With help a family can cope with this crisis & learn to be supportive.

2.) This bill maintains the role of a parent. There is a place for appropriate authority for parents in the family. Parents are to guide minors in responsible choices.

3.) This bill maintains accountability for the minors involved. In light of the increasing problem of teenage pregnancy requiring minors to be accountable for their behavior is essential to promoting responsible actions.

Lynn A. Conner

CS-34

WITNESS STATEMENT

NAME Allen Shelton BILL NO. 164

ADDRESS 2275 Old Derby Rd. DATE 1-23-89

WHOM DO YOU REPRESENT? Hamilton, MT, 59840 Ravalli Right To Life

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Most honorable Representatives - ~~Senators~~ judiciary committee and Concerned Activists, Today I appeal to Your God Conscience in regards to Up-Rightness and justice Concerning SB 164. I appeal to You, Our law-makers to let, and continue to enable parents and legal guardians, to their (our) God given Rights To intercede on our children's behalf. If SB 164 is defeated We Americans lose another freedom, which is our parental Rights Concerning our precious daughters of Montana, for they need our parental counsel concerning life and serious surgery and human life. Let us rise up in Victory of this Historical and Crucial legislation concerning Rights and Health & Welfare of Our Daughters. Our children are a heritage of God and of inestimable Value and we care-ably heartedly for them. Say Yes To SB 164 to "Our opponents," your cause doesn't pan Out"

CS-34

NAME: Rev. Cornelius Pool DATE: 1-23-89

ADDRESS: 1010 Birch St. Helena

PHONE: 442-3434

REPRESENTING WHOM? self - Right-to-Life - unborn children

APPEARING ON WHICH PROPOSAL: SB 164

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: The family is not a human invention. It is not the result of primarily evolutionary social processes. The family is part of God's creation ordinances. It has existed from the very beginning of human society. Within that family structure by God's creation ordinance He has given parents the responsibility of rearing & training their children. This parental right to rear their children is also acknowledged by the U.S. Supreme Court. The state must protect these rights. Neither the state nor the schools, nor the church can take over what are essentially parental responsibilities.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Allowing minors to get an abortion w/o notifying their parents is usurping the responsibilities of fathers & mothers in our state & in our country.

Notifying parents of their childs intent to have an abortion, however, is placing the responsibility for that decision back in the home where they belong in the first place.

Destroy the family unit + you destroy the most sacred + prized institution God has given our society.

A vote against SB 164 will destroy the family unit.

A vote for SB 164 will strengthen the family unit, + build a better future for the families of Montana.

With decision would you, as our elected Senators, like to be held responsible for?

I urge you, Mr Chairman + members of the committee to support SB 164

NAME: Maura Goulet DATE: Jan 23, 1987

ADDRESS: 1804 1st Street So Gt Falls, Mt.

PHONE: 406-453-8587

REPRESENTING WHOM? I'm a parent of a teenage

APPEARING ON WHICH PROPOSAL: Tom Rasmussens Bill 164

DO YOU: SUPPORT? Yes AMEND? _____ OPPOSE? _____

COMMENTS: I as a parent of two teenagers went thru extensive red tape to verify that we approved of our daughter getting a drivers license, plus we both had to have our signatures notarized. Yet the irony in the abortion issue is that parents don't even get a chance to know, or help or intervad until after the fact. Major complications, emotional and phychological damages can and does follow the abortion trama. My child at 16 and 17 even 18 cannot legally handle alcohol because of the immaturity of ~~them~~ her makeup yet she can go down and have a emotional tramatic surgical procedure such as an abortion with no help from as parents or guardian.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Maura Goulet

NAME: BECKY LANCETT DATE: 1/23/89

ADDRESS: 1510 LEGRANDE HELENA, MT

PHONE: 442-4018

REPRESENTING WHOM? MYSELF

APPEARING ON WHICH PROPOSAL: #164

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I am an 18 year old home school student. I believe no child my age or younger should have the right to have an abortion without their parents knowledge, because a child that age does not have the wisdom or information to understand the lifelong effects of this action. Abortion is murder & I believe parents should have total responsibility in this serious area of their child's life. I am adopted & thank God abortions weren't legal when I was conceived!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rosalie Marsh DATE: 1-23-87

ADDRESS: 524 Edith

PHONE: 549-9442

REPRESENTING WHOM? Myself-Right to Life-Suicidal Teenagers Who had an Abortion

APPEARING ON WHICH PROPOSAL: Parental Notification

DO YOU: SUPPORT? X AMEND? X OPPOSE? _____

COMMENTS: Would like to ammend the bill to parental permission.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 1-23-89

ADDRESS: 5530 Slapjay Dr., Missoula MT 59801

PHONE: 251-3454

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB164 - Parental Consent

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I was a victim of incest. My own father abused me and my older sister starting before we were even teens. One could clearly say our family was dysfunctional. Had I become pregnant, I would not have relished facing my parents or a judge about being pregnant. However, looking back now as an adult, I can see that had I (or an attending physician) been required to tell my parents or a judge about the situation, probably, I would have received help in the situation far sooner than I did, and I would have been spared the year of hell I encountered as an incest victim. It is only as we face a situation and are forced (by whatever means necessary) to receive counsel and help that we, who are victims, receive the help we really need.

#

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

On another note, if by "jeopardizing health", those against this bill imply that more second-trimester abortions would be performed upon passage than is now the case, I challenge you to consider Minnesota's results after passage of a similar law. Not only did teen abortions decrease in ALL THREE TRIMESTERS of pregnancy, but TEEN PREGNANCIES also decreased by 32%. Obviously, it follows that non-pregnant teens would have no need to cross state borders to obtain later trimester abortions.

#

NAME: [illegible] DATE: [illegible]

ADDRESS: 12 S. Benton Helena MT 59601

PHONE: 443-5666

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 164

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? X

COMMENTS: I oppose this bill. Minors who feel trust & communication with their parents will consult with them. The minors affected by this bill are those who do not. The inevitable result will be an increase in runaways, suicide & back-room butchers. Please, do not pass this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Christine Deveny DATE: 1-23-89

ADDRESS: 540 Breckenridge, Helena, MT 59601

PHONE: 442-2617

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB. 164

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: It would be ideal if all parents and children could effectively communicate their problems. Unfortunately that ideal is not realistic. Imagine a 16 year old in a small rural town in Eastern MT. She finds she is pregnant, and knows that her parents would disown her if they learned of it. She has made a decision that she wishes to have an abortion. Under SB164, she would have to go in front of a judge in her community. You can be sure that in doing so the whole community would find out, and her reputation within the community would be destroyed and obviously her parents would find out. Please protect the privacy and the right of Montana women to make choices about their own reproduction.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Hertz

SENATE JUDICIARY

DATE 1/23/89

BILL NO. SB 164

935 Longstaff
Missoula, MT 59801
January 22, 1989

Dear Members of the Senate Judiciary Committee:

My name is Jennifer Hertz. I am an 18 year old senior at Hellgate High School and I am opposed to Senate Bill 164. Parental notification of a minor's plan to have an abortion is a poor attempt at opening communication lines between parents and their children, not to mention taking away the young girl's right to her own privacy.

If the communication lines between minors and their parents are not working, chances are a call from a physician telling parents that their daughter wants to have an abortion is not going to help.

Furthermore, statistics show that parental notification laws have been for the most part unsuccessful if not detrimental to the minor's life. In Minnesota where the parental notification law has been enforced for five years the number of teenage births and second trimester abortions increased. Though the number of abortions performed on minors in Massachusetts declined the number of abortions performed on Massachusetts minors in the six surrounding states increased dramatically. If a minor has her mind set on having an abortion, she will go to great lengths to get it and forcing her to publicly reveal her situation to a judge is not going to help.

Senate Bill 164 is taking away minors' rights that they are lawfull entitled to by the Montana Constitution. I hope that you will kill SB 164.

Sincerely,

Jennifer Hertz

Jennifer Hertz

Bauer

January 24, 1989

IN OPPOSITION TO SB 164

(Tom Rasmussen, R-Helena, Sponsor)

As a retiree who was once a certified guidance counselor in Montana high schools and a licensed family and marriage counselor in California, I believe I can speak with authority as to the impracticality of SB 164.

The sponsor and other proponents of the bill would have the legislative committee believe that SB 164 would "enhance the fabric of the family," a high-sounding but non-germane phrase. Few adolescent girls from closely knit families become pregnant while in grade or high school. The adolescents who do become pregnant are most often from single-parent families or families which are abusive (characterized by impoverishment, alcoholism, drugs, and physical and emotional assault). For the proponents of the bill to maintain that the fabric of the family will be tightened if parental notification is mandated is to contradict the practical experience of every professional school and family counselor. The pregnant child who lives in an abusive home can be expected to hide her pregnancy from her parents because she fears beatings or being kicked out of the house and becoming homeless. (The Independent Record, Helena, recently reported the substantial number of homeless children in Montana's principal cities.)

My step-daughter, who was a guidance counselor in Houston, Texas, schools for several years, often gave refuge to these homeless children until they could be placed with custodial parents or ran away and joined the growing wave of street children. I grieved when she told me recently that she had quit her job with the school system because she had been forbidden by the school's administrator to discuss birth control or abortion with the children she was hired to guide. "Unfortunately," my daughter explained, "growing numbers of girls in grade school are sexually active. Alarmingly, some of them become pregnant."

Can you as legislators, in good conscience, expect a pregnant 12 year old to petition the court for an abortion or require that she carry a fetus to term?

As committee legislators who will pass or reject Bill 164, you are obligated to discuss the hazards of early child bearing with physicians, nurses, and technicians who staff preme (premature baby) hospital wards in Montana and elsewhere. These professionals will attest that the adolescent's body is insufficiently developed for child bearing. These professionals will also affirm that an inordinate percentage of premature babies are carried by adolescent girls who give birth to physically and mentally disabled offspring. These unwilling child mothers are most often products of underpriviledged homes and receive little or no prenatal care. Not uncommonly, they smoke, drink, and use drugs during their pregnancies, and the county and state bear the cost of caring for the disabled babies thereafter.

Senators, I appeal with you to accept counsel from professionals who deal daily with these disadvantaged adolescents and not with the vocal tribe of religious zealots who packed the gallery of your hearing room on January 23 and who are hell bent on imposing their "God-directed" dogma on everyone else by advocating imprisonment of those who maintain that abortion is sometimes the wise alternative.

Senators, SB 164 is patently dishonest because it is a subterfuge. The real objective of the bill is to discourage the pregnant adolescent from having an abortion by publicizing her misfortune and to disuade the physician from performing the procedure by threatening him with an inordinate penalty: a felony.

Albert L. Baun
1055 Sun Valley Road
Helena, MT 59601

Albert L Baun

SB 164
1/23/89

3 pgs

1-23-89

Parental Notification # 164

Chairman
Rosalie Marsh - Secy Right to Life
LPN - Mother

I Am for parental Notification
And for protecting the unborn.
I'd like to go one step farther
And encourage our representatives
And senators to Change the bill
to parental permission. Certainly
our Minors And their unborn
babies need some kind of protection
from us as their parents and
elders. It seems a Crime for
a Child age 13-18 yrs. to have
to take responsibility for her
life and future without her
parents knowledge, when that

Rosalie Marsh

2) — Parental Notification (Cont.)

Grandchild., the grandparents need to have a say. Teenagers Can't even legally hold a job until they are sixteen years old and Can't run a meatcutter until they are eighteen years old, in order to protect them as Children. Why have we waited sixteen years, allowing teenagers to not only get pregnant, but to go one step farther and allow them to have their babies suctioned out - leg, arm, abdomen, then #1 head, ~~taking~~ a 90% Chance of having suicidal tendencies and hemoraging. There are no safe abortions

Rosalie March of N. Mothers)
Secy Right to Life

Jan 23 1989.
Senate Hearing
Judiciary Comm.

#164

Dr. Brooke

I am a proponent in favor of House Bill 164.

I am an M.D. and have delivered about 2500 babies ~~and~~ as mont.

The family, admittedly the important unit of a democratic society, is a precious asset in this era. The intent of this bill which I favor will protect and strengthen the family authority and integrity. Children have the right to expect parental guidance in a pregnancy - which is one of the most important occurrences in her young life.

C. T. Brooke M.D. F.A.C.O.G.

SENATE JUDICIARY
EXHIBIT NO. SB 164
DATE January 23, 1989
BILL NO.

Christy Halmes Testimony Monday,

I had an abortion when I was 16 and another when I was 18. I have learned that abortion is a surgical procedure in which a woman's pregnancy is forcibly "terminated"; abortion, like any surgical procedure, is never without risks. Within the medical profession, the debate is not over whether there are risks or not, but over how often complications will occur. Answering the question, "How safe is abortion?" is crucial to any public policy on abortion. It is an undisputed medical observation that the younger the patient, the greater the long-term risks to her reproductive system.[1] When the woman is only a teenager, the frequency and severity of the damage is even worse.[2] The younger the patient - the higher the complication rate...some of the most catastrophic complications occur in teenagers.[3] I quote from the Journal of American Medical Association, "It is already clear that because of its many immediate and long-term complications, legal abortion is perhaps the leading cause of gynecological and obstetric emergencies in the United States."[4] Aside from physical complications, "whenever a woman makes the decision to abort, any compromise, whether in complying with the wishes of others or in setting aside her own values, opens the door to later psychiatric problems."[5] Post-Abortion Syndrome (PAS) is recognized by the American Psychiatric Association, who states, "the intentional destruction of one's unborn child is sufficiently traumatic and beyond the range of usual human experience so as to cause significant symptoms of guilt, distress, anxiety, denial, depression, and intense grieving."[6] The issue is not exactly how many women suffer - but that they do suffer.

I was promised that they would take care of my "problem" quickly and quietly. I would walk out all cleaned up like nothing had ever happened. The truth is - something did happen. I will always have to live with the fact that I allowed them to take the lives of my two unborn children in order to "solve my problem".

Have you ever wanted to take your own life because you just couldn't live with something you had done? Have any of you laid awake hour after hour - night after night - year after year trying to understand what was so important that two children's lives could so easily be sacrificed for your convenience? If you hadn't fought in WWII, or Korea or Vietnam, you can't really identify with what those people experienced. If you've never had an abortion you can't possibly begin to understand the trauma or the remorse. It took me 10 years of trying to deal with the confusion, guilt and intense inner conflict that caused extreme personal anguish and insecurity and marital difficulties. And then, when I was only 29 years old, I was told I'd have to have a complete hysterectomy; the complications were mostly due to the two abortions I'd had as a teenager.

Finally, "Because of their limited experience, their greater dependence on others and their youthful idealism, teenage women are extremely vulnerable to coercion, deceit and compromised decision-making."[7]

I wish somebody would have cared enough to have passed a law that would have helped me seek the counsel of someone other than those who made their living performing abortions.

Christy H. Halmes.

[1]David C. Reardon, "Aborted Women: Silent No More", Loyola University Press (1987)

[2]Dr. J.K. Russell, "Sexual Activity and Its Consequences in the Teenager", OB/GYN Clinic, University of Newcastle-on-Tyne publication, vol 1, no. 3, Dec. 1974, pp. 683-698.

[3]M. Bulfin, M.D., "OB/GYN Observer", Oct-Nov 1975

[4]"Journal of American Medical Association," vol. 249, no. 5, Feb. 4, 1983, pg. 588.

[5]Drs. M. Sim and R. Neisser, "The Psychological Aspects of Abortion", published in the American Journal of Psychiatry.

[6]"American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders", (DSM III-R), Washington, D.C., American Psychiatric Press (1987).

[7]David C. Reardon, "Aborted Women: Silent No More", Loyola University Press (1987)

SB164
1/23/85

We miss our grandchild----He/she was not allowed the gift of life. He/she was aborted.

My husband and I knew nothing of the abortion until last year.

Our daughter came to me crying and I asked her what was wrong.

She replied with "I can't tell you because you will hate me."

Her tears broke into sobs as she stood looking down at the floor.

Speaking very quietly I asked her if she was pregnant and she sobbed no to me. As I sat there bewildered for a moment, a cold chill ran through my body with apprehension. To this day, I do not know why I asked her if she had an abortion, and yet I knew that her answer would be yes.

She then started talking in between sobs telling me that she had one two years ago.

As I listened to her rapid words tumbling out, she told me she just couldn't keep it inside anymore.

She said,"I Knew I couldn't come to you and Dad because I knew how much you were against abortion. I didn't know what to do."

She stopped crying for a few minuted and said, "momma, I've been having nightmares for two years, and they're getting worse. I thought I could forget it, but I just can't. I wake up and I Just lay in bed and cry into my pillow so that you and Dad won't hear me. I'm so sorry, momma, I'm so sorry/"

As I took her in my arms, she was shaking as was I. She then told me a "friend" made her an appointment at the clinic. The "friend"thought that is would be the <u>best</u> thing to do as our daughter had confided in her.

The day she went to have the abortion, two other women were there. One was to have her second abortion, the other was there for her fourth abortion. She told our daughter that there was nothing to it, and not to worry.

As our daughter waited, she wanted to get up and leave. She was so mixed up and scared, but the "doctor" came in, told her to "relax" for "it" would be over quickly.

Her next words were "momma, I screamed, it hurt so bad, and then I just cried and cried."

As I held and watched our daughter in such torment, the anguish she had been through is our anguish and always will be. Time will eventually fade this nightmare as we placed it in God's hands. Yes, it is forgiven, but it will never be forgotten.

Our daughter has talked of suicide, lost her self esteem, and will never be able to forget the day that her child was to be born.

As I said, we miss our grandchild. We will never see him/her, hold him/her or share his/her joy or comfort his/her sorrow. This sorrow ended our love before it began.

SB 164
1/23/89

January 20, 1989

Senate Judiciary Committee:

I wish to add my support of Senate Bill 164. I believe that parents must at least have notice of such an important matter.

Parental guidance of young people is needed and this bill will help provide some of that. The family structure requires all the assistance it can get in view of the many outside pressures our children contend with.

I urge your support.

Jerry McCabe
3639-7th Ave. So
Great Falls, Mt. 59405

SB 164
1/23/89

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

WORKING TOGETHER:

erican Baptist Churches of the Northwest

Christian Churches of Montana (Disciples of Christ)

Episcopal Church Diocese of Montana

Evangelical Lutheran Church in America Montana Synod

yterian Church (U. S. A.) Glacier Presbytery

yterian Church (U. S. A.) ellowstone Presbytery

man Catholic Diocese f Great Falls - Billings

man Catholic Diocese of Helena

United Church of Christ Mt.-N. Wyo. Conf.

United Methodist Church owstone Conference

January 23, 1989

CHAIRMAN CRIPPEN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

I am Mignon Waterman of Helena and I represent the Montana Association of Churches.

The Montana Association of Churches urges you to continue to remove disincentives to employment that low income Montanans encounter. We believe most individuals truly want to work but at the same time they must consider the financial well-being of their families. Senate Bill 134, with the 30 and 1/3 income disregard, will encourage receipients to work additional hours and to move off of general assistance.

Also, because county officials and low income individuals are already familiar with the 30 and 1/3 formula because it is used in the AFDC program, it should be easily understood and applied.

We applaud the study and research that the interim legislative committee did in this areas and we urge your support of SB134.

SB 164
1/23/89

TO: Legislative Council

FROM: Rosemary Jacoby, Senate Judiciary Committee Secretary, 1989

MEMO: The attached sheets were cover sheets for a petition from the Deer Lodge area. The petition had been signed by 268 persons.

Information about: PARENTAL NOTIFICATION BILL

On Monday, January 23, 1989, a PARENTAL NOTIFICATION BILL will be introduced in Helena. The State of Montana now requires notification for minors for : school field trips, driver's licenses, credit purchases, school athletic participation, and all surgeries including ear piercing! ONLY ABORTION DOES NOT CURRENTLY REQUIRE PARENTAL NOTIFICATION, even though this surgical procedure carries with it complications of infection, perforation of the uterus, hemorrhaging, Post Abortion Syndrome (guilt, sorrow, and remorse over the decision to abort one's own child,) and the possible death of the mother.

To be expected, Planned Parenthood and other abortionists deny that there is guilt and sorrow following an abortion, but the American Psychiatric Association disagrees. They have classified Post Abortion Syndrome as a disorder resulting in suicide, drug addiction, and depression. In fact, a recent study spanning ten years and including 10,000 aborted women conclusively showed that even though 70% of the women aborting had no religious preference, 96% of them, in retrospect during the ten year time period, "deeply regretted" their abortion decision!

Isn't it ironic that in Montana and 47 other states, an abortion "counsellor" and the state can intervene in this extremely important abortion decision in the life of girls under 18 and assume the role only a parent should have in counselling with the girl about that decision! Parental Notification is not the same as Parental Consent. It merely REQUIRES THE ABORTIONIST TO NOTIFY THE PARENTS OF THE MINOR GIRL BEFORE PERFORMING THE SURGERY OF ABORTION ON HER. The United State Supreme Court has (on at least 5 occasions refering to abortions on minors) said that "PARENTS HAVE THE RIGHT TO REAR THEIR CHILDREN, AND THAT PARENTAL CONSULTATION IS NECESSARY TO PROTECT MINORS AGAINST THEIR 'PECULIAR VULNERABILITY' AND THAT THE STATE HAS AN OBLIGATION TO PROTECT THESE RIGHTS." So, according to the highest court in America, parental notification is constitutional. Judicial by-pass is available to those minors who do no want to benefit from their parent's counseling.

Other than allowing the proper and very appropriate counsel and communication between parents and their teens, are there other advantages to this bill? Minnesota's Notification Law

was enacted in 1981 - and by 1983, teen abortions decreased by 40 %, teen births decreased by 23%, and TEEN PREGNANCIES DECREASED BY 32%! After a consent law was passed in Massachutts in 1981, there was a 50% REDUCTION IN TEEN ABORTIONS. Even though Planned Parenthood claims they are deeply concerned about teen pregnancies, they and other abortionists are against this bill. Obviously, they want to

(1) continue to receive the millions of dollars annually for performing abortions, and
(2) step in and push parents aside when it comes to the rightful role of parents and their teens.

THOSE WHO MAKE A LIVING IN THE ABORTION INDUSTRY SHOULD NOT BE THE PRIMARY INFLUENCE FOR IMPRESSIONABLE YOUNG GIRLS AT THIS MOST VULNERABLE MOMENT IN THEIR LIVES.

To be against this bill is to presume that abortionists and abortion counsellors are more concerned for and have our children's best interests at heart more so than the parents.

Planned Parenthood and other abortionists claim that parental consultation results in riskier second trimester abortions. Yet according to Minnesota's Vital Statistics - there were 1072 2nd and 3rd trimester abortions among teens in 1980 before the Parental Notification was enacted. THREE YEARS AFTER PARENTAL NOTIFICATION WAS ENACTED, THERE WERE 849 2nd and 3rd TRIMESTER ABORTIONS - A DECREASE OF OVER 20%!

PARENTAL NOTIFICATION WORKS! Fewer girls get pregnant, fewer girls get abortions. Who among us would like to sit down face to face with the parents of a girl who just had an abortion without their knowledge and tell them it is none of their business?

PLEASE, PLEASE WRITE OR CALL YOUR STATE SENATOR AND STATE REPRESENTATIVE TODAY AND EXPRESS YOUR SUPPORT FOR THIS BILL AND ASK THEM TO VOTE "YES" FOR PARENTAL NOTIFICATION.

Sincerely,

ALANA MYERS
5530 Skyway Drive
Missoula, Montana 59801
(406) 251-3454

-- URGENT MESSAGE TO SUPPORTERS OF MORALITY!!! --

Across this nation hundreds of adult bookstores are being shut down. Soft-core pornography is being placed out of the reach of minors on store shelves with laws designed to protect minors. Commercial nude dancing is being prohibited. All of these are the result of concerned citizens who are letting their state and local elected officials know what kind of obscenity laws they want.

Last October, in conjunction with National Pornography Awareness Week, Governor Ted Schwinden signed a proclamation which recognized Montana citizens' concerns for pornography and obscenity. In addition, the proclamation acknowledged the findings of The U.S. Attorney General's Report on Pornography linking pornography and obscenity with child abuse, as well as assaults against men and women. The proclamation encouraged citizens to take appropriate action to let law enforcement officers, city councils, county commissioners, and state legislators know they want better laws and the enforcement of those laws.

As Montanans, we are in a position as never before to pass strong state laws in the 1989 legislative session in January. At this time, we have state senators and representatives who will introduce bills similar to the laws in force in North Carolina, where within the first few months after passage, over 200 adult bookstores were closed.

For the laws to pass in Montana, we will need strong support throughout the entire state. LETTER WRITING IS THE MOST EFFECTIVE WAY TO INFLUENCE OUR LEGISLATORS. Every senator and representative should receive letters of encouragement and support for these bills. Every citizen needs to make a personal commitment to write each of his senators and representatives. Every citizen should encourage friends, neighbors, and relatives to write. Women's groups, fellowship groups, and study groups are urged to support letter writing. All churches are encouraged to conduct letter writing campaigns among their members.

Write your state senators and representatives and tell them you want strong legislation in the following areas:

1. HARD-CORE PORNOGRAPHY LAW (obscenity)

2. HARMFUL TO MINORS LAW (restricting access of soft-core pornography to minors in commercial establishments)

3. COMMERCIAL NUDITY LAW (prohibiting commercial nude dancing)

Many states have failed in efforts like this because of apathy. One person puts off writing, or one church doesn't want to get involved, and in the end no one did anything. Don't let this happen in Montana.

PLEASE DON'T LET THIS OPPORTUNITY PASS.

phone 444-4800

WRITE NOW!!!--LET YOUR CONCERNS BE KNOWN!!!

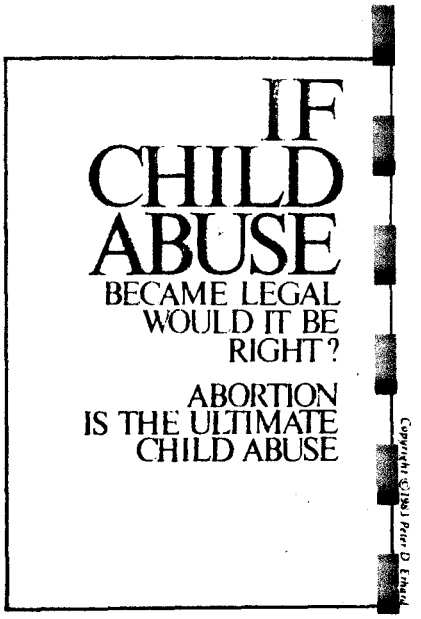
NOTE: Mail letters to Capitol Station, Helena, MT 59620, rather than the legislator's home.

Representative Bud Campbell

Senator Tom Beck.

I Am Personally Opposed to Abortion, . . . But

by Theodore F. Zimmer



We all know people who say that they would never have an abortion themselves but who still feel that abortion should be legal. Politicians who refuse to support a Human Life Amendment often say, "I am personally opposed to abortion, but . . ." Each of these individuals is really saying, "I hold two beliefs about abortion: 1) it is morally wrong, but 2) it should be legal." Can these two beliefs reasonably co-exist?

Why does someone believe that abortion is morally wrong? Because of the basic beliefs that 1) an unborn child is a human being, and 2) it is wrong for one human being to kill another.

For a person to believe that abortion is wrong but that it should be legal, he or she must believe that abortion qualifies for a special exception to the criminal laws against one person killing another. What could be the grounds for such an exception?

The pro-abortionists say abortion should be legal because of the burden of pregnancy or child care on the mother, or because the child may be unwanted or handicapped. But reasons such as these would not allow us to kill human beings already born. These arguments are logical only to a person who believes that an unborn child is not a human being. They must be rejected by the people who accept the testimony of science that human life begins at conception.

There are, however, two arguments addressed specifically to those who believe abortion is wrong. One of these is "You should not impose your morality on others." This is an attractive expression of a tolerant attitude. But tolerance must have reasonable limits. For one who believes that abortion is wrong, it is a fact that in the United States, legalized abortion results in the intentional killing of over a million innocent human beings each year by their parents and doctors. Surely one can remain a tolerant person without acceding to such a horror. Every law imposes some morality on somebody. The legality of abortion imposes the abortionist's morality on the unborn victims as well as on the many people who are distressed to live in a society which tolerates the intentional killing of innocent human beings by their mothers and doctors.

"It is clear that there is no logical way in which a person can believe both that abortion is wrong and that it should be legal."

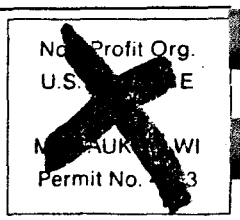
The other argument is the analogy to prohibition. It is said that, like prohibition, criminal abortion laws are unenforceable and would be generally ignored. The facts do not show this to be true. The laws against abortion were enforced. Prohibition cannot be compared to laws against abortion. In the hope of preventing abuses of drinking, prohibition (often called the "noble experiment") had the effect of banning even moderate drinking which is almost universally considered a perfectly moral pleasure, and which has been legal from the beginning of time. The legalization of abortion, however, is a barbaric experiment. Civilization long ago rejected abortion as inherently abusive of human dignity.

It is clear that there is no logical way in which a person can believe both that abortion is wrong and that it should be legal. A politician who continues to insist that abortion should be legal cannot be believed if he or she says that "I am personally opposed to abortion, but . . ." Any one of us who believes that abortion is wrong must discard the position that abortion should be legal.

A person who believes that abortion is wrong but should be legal must be prepared to say: "I think that it is civilized and appropriate for a society to permit the killing of innocent and defenseless human beings, so long as the killing is done by a doctor with the consent of the victim's mother."

No reasonable person of good will can honestly make that statement.

Reprinted from Lifeline, *Vol. 6, No. 4.*



DATE Jan [illegible]

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible] Lund		164	X	
[illegible] Lund		164	X	
[illegible] A Roberts	Knights of Columbus	164	X	
[K]athleen A. Roberts		164	X	
[D]avid C. Pearsall		164	X	
BEVERLY BARNHART	Citizen Bozeman	164		X
[illegible] J. Fedder		164	X	
[W]illiam L. CARVER	Knights of Columbus	164	X	
[illegible] Brewer		164	X	
[illegible] Carroll		164	X	
[illegible] Carroll		164	X	
[illegible] Carroll		164	X	
[illegible] Guthrie	Helena Montana	164	X	
[illegible]	self	164	X	
[illegible] Bartlett	Self	164		X
[illegible]	self	164	X	
[illegible]	Self	164	X	
[S]uzanne [illegible]	* note: requested to be present by Comm. member Dept. of Health + Env. Scie.	164		
JAY ANDERSON		164	X	
[L]ucille Keller	self	164	X	
[illegible] Jenkins	self	164		
[illegible] J. Arrinaga	self	164	X	
[P]atricia Finch	self	164	X	
[R]obert M. Wanotts	self	164	X	
Cheryl Forke	Lutherans For Life	164	X	
[illegible] Rorkus	" " "	164	X	

[illegible] prepared statement with Secretary)

DATE Jan 23 1989

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Opp
Mark Crawley	SELF	164	X	
Peter Schell	"	164	X	
Jean Marie Schell	"	164	X	
Angela Schell	"	164	X	
Joanne Shearer	Self	164	X	
Julia Noyes	self	164	X	
Paul Goodman	self	164	X	
Judi Edwards	self	164	X	
Stan White	self	164	X	
Tim Ringling	Montana Alliance	164		X
Tom Truscott	MAPP	164		X
Wendy Hutton	self	164		X
Frank Brisendine	self	164	X	
Rose M. Brisendine	MCAC	164	X	
Peyton Weintraub	self	164		X
Janell Fillinger	self	164	X	
Art Fillinger	self	164	X	
Ray Russell	self	164	X	
Rose Fillinger	self	164	X	
Jerome	MCAC - Alt Christian Action Coalition	164	X	
Teller	Myself	164	X	
Tubbs	self	164	X	
Kaufman	self	164		X
Mrs Hanson	self	164		X
Mr Curtiss	Self	164		X
Nelson	MAPP	134 / 164	X	X

(Please leave prepared statement with

DATE 1123 / [illegible] 23, 1983

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Ellie Hardy	Self			X
Edward C. Taylor	myself	164	✓	
William R. [illegible]	[illegible]	164	✓	
[illegible] Bell	Myself	164	✓	
Michael [illegible]	myself	164	✓	
Catherine [illegible]	Self	164	✓	
Chris Horton	self	164	✓	
Martin [illegible]	self	164	✓	
[illegible] Gleason	self	164	✓	
Donna Maynard	self	164	✓	
Mark [illegible]	Self & Central Assembly	164	✓	
[illegible]	SELF	164	✓	
Carol A. [illegible]	Self	164	✓	
David W. Staley	Self	164		X
Ann Larsen	self	164	X	
Jane C. Murphy	Self	164	X	
Wade Nason	self	164	X	
[illegible]	Self	164	X	
[illegible]	SELF	164	✓	
[illegible] Warner	self	[illegible]	✓	
[illegible] Shelly	self	164	✓	
[illegible] Gardner	self	164	✓	
[illegible]	self	164	✓	
[illegible]	self	164	✓	
[illegible]	self	[illegible]	✓	
[illegible]	self	164	✓	

(Please leave prepared statement with Secretary)

DATE Jan. 23, 19[illegible]

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppc
Shelly Wise	Self	164	X	
Michelle McGovern	Self	164	X	
Kathy Carroll	Self	164	X	
Sarah Brewer	Self	164	X	
Bryan Asay	Mt. Family Coalition	164	X	
Angela E. Hedges	self	164	X	
FR Jerry Lowney	Diocese of Helena	164	X	
Phyllis M Ouellette	Self	164	X	
Ken Waldron	Self	164	X	
Patsy Wirkkunen	Self	164	X	
Ralph L Nadeau	Self	164	X	
Lorna Corson	NASW	134	X	
Rev. Fred Reidy SJ	Missoula-Catholic Church	164	X	
C.P. Brooke MD JD	" Int.	164	X	
Edwin Hjelm	Helena "	164	X	
Mardie Hjelm	" "	164	X	
Pete Lee	Helena "	164	X	
Albert L. Baum	Self	164		X
Gaylyn Kuser	self	164	X	
Jim Reynolds	ACLU of MT	164		X
Carolyn Clemens	self	164		X
Judi Hood	self	164		X
Patricia Reis	myself	164	X	
Becky Lancette	Montana	164	X	
Tamara R. Black	self	164		X
Barbara Bonifas	self	164		X

(Please leave prepared statement with

DATE 1-23-89

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Toni Nikos	Self	164		XX
IKE FABER	SELF	"	✓	
Barry Pitts	"	"	✓	
Bob Marcus	"	164	✓	
Scott James	"	164	✓	
Vic Shiraks	"	164	✓	
Ida & Rose Waldenberg	"	164	✓✓	
Penny Thurman	"	164	✓	
Polly Olson	"	164	✓	
Jonie Taylor	"	164	✓	
Rita Sheehy	"	164	✓	
Mary Jane Fox	Nat. Assoc. of Soc. Wrkrs	164		X
Bertha Brod	self	164	✓	
Cheryl Sudrum	self	164	✓	
David Sudrum	"	164	✓	
Maureen Rice	" "	164	✓	
Claire E. Kinion	"	164	✓	
Alex Kinion	[illegible]		✓	
John Ostrom	Nat Catholic Corp	134 164	✓ ✓	
Linda Sargent	self	164	✓	
[illegible]	Mt. Rainier Coalition	164		X
Amy Norton	Self	164	XX	
Pat McCarty	HELLA RIGHT LIFE	164	✓	
Linda Kauffman	self	164	✓	
Traci Dodson	self	164	✓	
Joelk Betty	self	164	✓	

(Please leave prepared statement with Secretary)

DATE 1-23-89 6 of 18

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Alana Myers	self	164	✓	
Tiffany Donaldson	self	164	✓	
Terri Donaldson	self	164	✓	
Tracy Donaldson	self	164	✓	
Jimmy Donaldson	self	164	✓	
Michael McGOVERN	FOURSQUARE GOSPEL Ch	164	✓	
Chris Devery League of Women Voters	LWVM	134	✓	
Willa Craig	Blue Mtn Q's Clinic	164		✓
Mike Sherwood	MTLA	164		✓
Kathi Campbell	MWL	164		✓
Nancy Ann Griffin	MWL	164		✓
Sandra Baker	self	164	✓	
Dawn Gaulet	self	164	✓	
David P Maltby	self	164	✓	
Valerie Williams	self	164	✓	
Mrs. Ricki Ritter	self	164	✓	
Clayton McCracken	Yellowstone Valley Women's Clinic	164		✓
Ann Brodsky	self	164		X
Brenda Nordlund	MT Women's Coalition	164		X
DAVID D PHILLIPS	SELF	164	✓	
Claudia Lancette	SELF	164	✓	
Mary P May	self	164	✓	
Lauren Hawkins	Self	164	✓	
Laurie Koutnik	self	164	✓	
Carol Wilkes	self	164	✓	
Lynn Dahood	self	164	✓	

(Please leave prepared statement with Secretary)

DATE 1-23-89 (16, 18)

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Mandy Goff	self	164	✓	
[illegible]	self	164	✓	
Mrs. Mary E Doubek	Eagle Forum/Mothers/self (Family)	164	✓	
Dan Erwin	Self	164	✓	
Donna Vandenacre	Pro-family Women Lobby/Self	164	✓	
William Palmer	WSS Pro-Life	164	✓	
Rev. Alan Maki	Ravalli Co. Right to Life	164	✓	
Allen Shelton	" " " "	164	✓	
Ruth Maltby	self	164	✓	
Rene Phillips	self	164	✓	
Evelyn Johnston	self	164	✓	
John Johnston	self	164	✓	
LYNN A. CONNER	SELF	164	✓	
Kevin T. Horton, DVM	Self	164	✓	
ROBERT G. NATELSON	Self	164	✓	
Bryan Hutcheson	self	164	✓	
[illegible]	Tracy Dodson	164	✓	
Heather Wolcott	TRACY DODSON	164	✓	
[illegible]	Traci Dodson	164	✓	
[illegible]	Traci Dodson	164	—	
Jamie Clawson	Traci Dodson	164	✓	
[illegible] Martin	Traci Dodson	164	✓	
Stacy Nyquest	"	"	"	
Cassidy Johnson	Self		—	
Alexis Molineux	self	164	✓	
Richard Dubo	self	164	✓	

(Please leave prepared statement with Secretary)

DATE 1/23/89

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible]	[illegible] Life	164	✓	
[illegible]	Pro Life	164	✓	
[illegible]	Pro Life	164	✓	
[illegible]	Pro Life	164	✓	
Ann Shaub	Prolife	164	✓	
[illegible]	Prolife	164	✓	
[illegible]	Prolife	164	✓	
[illegible]	Prolife	164	✓	
Randy Turner	PROLIFE	164	✓	
Eric Stimson	myself	164		✓
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
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[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	

(Please leave prepared statement with Secretary)

DATE 1-23-89

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
Elizabeth Webb	Self	164	✓	
Stephen Webb	Self	164	✓	
Karen Webb	self	164	✓	
Daniel Webb	self	164	✓	
Ann L. Keating	self	164	✓	
Bernie Nelson	self	164	✓	
Shannon O'Keefe	self	164	✓	
Sean O'Keefe	Self	164	✓	
Marlene Gage	Self	164	✓	
Judy Bolton	Self	164	✓	
Timothy Denty	Knights of Columbus	164	✓	
Marjorie Sanders	self	164	✓	
Liz Smith	Liz	164	✓	
Angela Skjerven	self	164	✓	
Lorene Rice	self	164	✓	
[illegible]	self	164	✓	
[illegible] Shindoom	self	164	✓	
[illegible]	self	164	✓	
[illegible]	Self	164	✓	
Paula Lindsey	Self	164	✓	

(Please leave prepared statement with Secretary)

DATE 1-23-89 16/18

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Mary E. Christensen	Right To Life	164	✓	
Mary Kay Baker	Right to Life	164	✓	
Gail Scarth	Right to Life	164	✓	
Shirley Kemp	Right to Life	164	✓	
[illegible]	" "	164	✓	
Nancy Rose	Right to Life	164	✓	
Barb Pepprock	" "	164	✓	
Julie Pepprock	" "	164	✓	
Carrie Cornelson	" "	164	✓	
Alice Worrall	" "	164	✓	
Miriam Wellman	" "	164	✓	
Carl Wellman	" "	164	✓	
Judy Hebner	Right To Life	164	✓	
Jane Finlay	" "	164	✓	
Dawn A O'Keefe	Right to Life	164	✓	
John Healey	Right to Life	164	✓	
Shan Rooney	Make Their own Choice	164	✓	
Betty Millsap	Rt to Life	164	✓	
Orville Millsap	" "	164	✓	
Darlene Tilton	Right To Life	164	✓	
Martha Biegh	Pro Life	164	✓	
Marlene Hiatt	self	164	✓	
Judy Bolton	self	164	✓	
Timothy Doty	Knights of Columbus	164	✓	
Sue [illegible]	MLIC	134	✓	
Jim Smith	HRDC	134	✓	

(Please leave prepared statement with Secretary)

DATE 1-23 89

COMMITTEE ON Parental Notification

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Karma Tutcher	Right To Life	164	X	
Rosalie Marsh	Teenagers-Christ	164	X	
Debbie Nagelbaker	My Generation	164	X	
Kay Landon	Right to life	164	X	
Everett Curdy	Right to Life	164	X	
Frances Curdy	Right to Life	164	X	
Hiram Sellers	Human Rights	164	X	
Barbara Nelsen	Right to Life	164	X	
Ruth & Betty	Right to Life	164	X	
George Hanger	self	164		X
Karen Rasmussen	self/Right to life	164	X	
Dorisht Ricker	self R.T.Life	164	X	
Erin Kissane	R.T.L.	164	X	
Gail Kissane	R.T.L.	164	X	

(Please leave prepared statement with Secretary)

DATE Jan. 23, 1989

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Joy Lade	Right to life	164	X	
Suzanne Jarrett	Pro-Choice	164		X
Audrie Parker	Pro-Choice	164		X
Stephen L. Pies	Right-to-Life -	164	X	
Francis Schmitt (Rep)	Self	164	X	
Inga & Bill Burbert	Right-to-Life	164	X	
Chris Baker	self	164	X	
Dawn Goulet	self	164	X	
Helen Barbagallo	self	164	X	
Barb Conner	self	164	X	

(Please leave prepared statement with Secretary)

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DATE 1-23-89

COMMITTEE ON D-D-I

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Nancy WORNATH	Pro Life	S-164	✓	

(Please leave prepared statement with Secretary)

DATE [illegible]

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	
[illegible]	Pro-Life	164	✓	

(Please leave prepared statement with Secretary)

DATE Jan 28 1989

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
FAYE DERGAN	Self	164		X
Christie Davey	Self	164		X
Margaret S Davis	LWV MT	164		X
Carol L Hansen	Self	164		X
Jim Jensen	Self	164		✓
Diane Sands	Mt. Women's Lobby	164		✓
Christy H Holmes	self	164	X	
Judith Rose	self	164		✓
Marlene Veatt	self and husband Darrell Veatt	164	✓	✓
Brenda Nordlund	Mt Women's Lobby	134	✓	
Andrea Haire	Pro-choice, self	164		✓

(Please leave prepared statement with Secretary)

DATE JAN 23 1989

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Wes Omsberg	Montana Life League	164	X	

(Please leave prepared statement with Secretary)

DATE JAN 23 1989

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Mr. David K. Weber	1st Lutheran Church	164	X	
[illegible] Hamb	1st Assembly of God	164	✓	
Greg Guthrie	1st Assembly of God	164	X	
Lyn NORTON	Mothers	164	X	
James L. Reilly	Bozeman Christian Center	164	X	
Cindy Kelly	Teens for Life Bozeman	164	X	
[illegible] Kelly	Concerned Parents	164	X	
[illegible] Kelly	Teens for Life Bozeman	164	X	
Mary Haugrude	Bozeman Christian Center	164	X	
Dave Haugrude	Staff Bozeman Christian Center	164	✓	
Margaret Asay	Self	164	✓	
Nancy Wyne	self	164	✓	
Doris M. Habel	Self	164	✓	
Arthur M. Habel	Self	164	✓	

(Please leave prepared statement with Secretary)

DATE Jan. 23 1989

COMMITTEE ON Senate Judiciary BILL NO. SB 164

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppos
Thomas N. Lee	House District 49	✓	
Mike Simpkins	House District 39	✓	
Jim Rice	House District 43	✓	

(Please leave prepared statement with Secretary)

DATE Jan 23, 1985 1 of 18

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Oppose
Stanley Fund[illegible]		164	X	
[illegible]		164	X	
[illegible] A Roberts	Knights of Columbus	164	X	
Kathleen A. Roberts		164	X	
David C. Pearsall		164	X	
BEVERLY BARNHART	Citizen Bozeman	164		X
[illegible] J. Fedder		164	X	
William L. CARVER	Knights of Columbus	164	X	
Sarah Brewer		164	X	
[illegible] Carroll		164	X	
Tony Carroll		164	X	
Dick Carroll		164	X	
[illegible] Guthrie	Helena Montana	164	X	
Jay Lode	self	164	X	
[illegible] Bartlett	Self	164		X
[illegible]	self	164	X	
[illegible] Cordier	self	164	X	
Suzanne Nybo	x note: requested to be present by Comm. member Dept. of Health + Env Scie	164		
JAY ANDERSON		164	X	
[illegible] Keller	self	164	X	
Donna Jenkins	self	164		
[illegible] J. Iturraga	self	164	X	
Patricia Finch	self	164	X	
[illegible] M. Wanoski	self	164	X	
Cheryl Fake	Lutherans For Life	164	X	
Nancy Rockne	" " "	164	X	

(Please leave prepared statement with Secretary)

DATE Jan 23 1999

COMMITTEE ON JUDICIARY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Marc Cramer	SELF	164	X	
Peter Schell	"	164	X	
Jean Marie Schell	"	164	X	
Angela Schell	"	164	X	
Joanne Shearer	Self	164	X	
Julia Mayer	self	164	X	
Paul Goodman	self	164	X	
Judi Echols	self	164	X	
Steve White	self	164	X	
Ted Ringling	Montana Alliance	164		X
Jan Pruniski	MAPP	164		X
Cindy Hilton	self	164		X
Frank Brisendine	self	164	X	
Laura M. Brisendine	MCAC	164	X	
Justin Dexheimer	self	164		X
Janell Fillingers	self	164	X	
Matt Fillingers	self	164	X	
Tracy Russell	self	164	X	
Brooke Fillinger	self	164	X	
Joey Jerome	MCAC - MT Christian Action Coalition	164	X	
Jo Ellen	Myself	164	X	
Diane Sibbes	self	164	X	
Lisa Kaufman	self	164		X
Suzanne Hanson	self	164		X
Suzanne Kuntz	Self	164		X
Jim Wilson	MAPP	134 164	X	X

(Please leave prepared statement with Secretary)