

Case Nos. 112673 and 112704 cons.

IN THE SUPREME COURT OF ILLINOIS

THE HOPE CLINIC FOR WOMEN LTD.; and
ALLISON COWETT, M.D., M.P.H.,

Plaintiffs-Appellees,

v.

BRENT ADAMS, Acting Secretary of the Illinois Department of Financial and Professional Regulation, in his official capacity; **DANIEL BLUTHARDT**, Director of Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation, in his official capacity; and the **ILLINOIS STATE MEDICAL DISCIPLINARY BOARD**,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois, First Judicial District (1-10-1463), and the Circuit Court of Cook County (05 CH 495), The Hon. Daniel Riley, Judge Presiding

***AMICUS CURIAE* BRIEF OF THE CHRISTIAN MEDICAL AND DENTAL ASSOCIATIONS, THE AMERICAN ASSOCIATION OF PRO LIFE OBSTETRICIANS AND GYNECOLOGISTS, AND THE CATHOLIC MEDICAL ASSOCIATION**

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INTEREST OF *AMICI*

Amici Curiae are national medical organizations with member-physicians who believe that notification of a family member, as that term is defined in the Illinois Parental Notice of Abortion Act of 1995 (the “Parental Notice Act”), 750 Ill. Comp. Stat. Ann. 70/5 (West 2008), is medically in the best interests of an un-emancipated minor seeking an abortion.

Specifically, *Amicus* Christian Medical & Dental Associations (“CMDA”), founded in 1931, is a non-profit national membership organization primarily for physicians and dentists. With more than 16,000 members, CMDA provides a public voice on bioethics and healthcare policy. Included in its many activities, CMDA conducts overseas missions, provides missionary doctors and medical education to the developing world, provides continuing medical and dental education, and sponsors student chapters at most U.S. medical and dental schools. CMDA and its members have an interest in the healthcare issue of minors choosing and undergoing abortion, recognizing the important role parents play in making appropriate healthcare choices, and facilitating healthy outcomes.

Amicus American Association of Pro Life Obstetricians and Gynecologists (AAPLOG) is a non-profit professional and medical organization consisting of over 2,000 obstetrician-gynecologist members and associates. The American College of Obstetricians and Gynecologists (ACOG) recognizes AAPLOG as one of its largest special interest groups. AAPLOG maintains that minor girls who abort face grave physical and psychological risks and have the right to be informed of all of those risks and are better able to assess those risks in consultation with a parent or guardian.

Amicus Catholic Medical Association (CMA) consists of over 1,000 physician members and hundreds of allied health members nationwide. CMA members seek to uphold the principles of the Catholic faith in the science and practice of medicine—including not only the belief that human life begins at conception, but also that minor girls are harmed by abortion and face an even greater risk of harm when their parents or guardians are not notified of their decisions to seek abortions.

SUMMARY OF THE ARGUMENT

As a general principle, law and medicine agree that minors are best served when their parents or guardians are involved in the making and execution of any type of weighty decision. The decision to abort the “infant life they once created and [are sustaining]” is a particularly “difficult and painful moral decision ... fraught with emotional consequences” for mature women. *Gonzales v. Carhart*, 550 U.S. 124, 157-159 (2007). The decision is all the more difficult for minor girls who lack the maturity, experience, and knowledge necessary to make an informed decision about whether to have an abortion to “terminate the life of a whole, separate, unique, living human being” within them. *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724 (8th Cir. 2008).

For this reason and others, there is a growing national consensus that parental involvement and notification laws are important and that parents should be involved in their minor daughter’s decisions regarding an unplanned pregnancy.¹ Among the most

¹ Lydia Saad, *Common State Abortion Restrictions Spark Mixed Reviews*, Gallup, July 25, 2011, <http://www.gallup.com/poll/148631/Common-State-Abortion-Restrictions-Spark-Mixed-Reviews.aspx> (stating that parental consent laws boast a 71% approval rating).

important reasons are the medical and psychological benefits to the minor girl herself which the *Amici* now raise in support of the enforcement of the Parental Notice Act:

I. A notified parent can assist the minor in making an informed decision whether to have an abortion and thereby ensure that the minor apprehends the full consequences of her decision.

II. A notified parent can assist the minor in selecting a safe and competent abortion provider.

III. A notified parent can assist the minor in providing the physician with a full medical and family history.

IV. A notified parent can ensure that someone other than the minor is on alert for possible physical and emotional post-abortion complications.²

Given the medical benefits of parental involvement, the Parental Notice Act accords with what is medically in the best interest of minors seeking an abortion.

ARGUMENT

The law has long and generally held that children under the age of majority are legally incapable of either consenting or refusing consent to medical treatment.³ This principle is based upon the premise that children “are incapable of intelligent decision, as the result of which public policy demands legal protection of their personal as well as their property rights.” *Bonner v. Moran*, 126 F.2d 121, 122 (D.C. Cir. 1941); *see, e.g.*,

² Teresa S. Collett, *Issue in Vermont Law: Protecting Our Daughters: The Need for the Vermont Parental Notification Law*, 26 VT. L. REV. 101 (Fall 2001).

³ See John C. Duncan, Jr., *The Ultimate Best Interest of the Child Enures from Parental Reinforcement: The Journey to Family Integrity*, 83 Neb. L. Rev. 1240, 1271 (2005); Jessica A. Penkower, *The Potential Right of Chronically Ill Adolescents To Refuse Life-Saving Medical Treatment - Fatal Misuse of the Mature Minor Doctrine*, 45 DePaul L. Rev. 1165, 1166 (1996).

Curran v. Bosze, 141 Ill. 2d 473, 490 (1990) (holding that a parent or guardian may give consent on behalf of a minor daughter or son for the child to donate bone marrow to a sibling). Parental consent is generally required before any medical treatment is administered to a child. In making most medical decisions on behalf of the child, the parents need not consult with the child and may even choose a course of treatment to which the child otherwise objects.⁴

Adolescents in particular are caught in a limbo-like state between the dependency of childhood and the autonomy of adulthood. The average age of the onset of menstruation for girls in the United States is 12.4 years. However, about ten percent of girls are physically capable of bearing children by 11.1 years of age.⁵ U.S. Department of Health and Human Services Secretary Kathleen Sebelius recently stated that, “It is common knowledge that there are significant cognitive and behavioral differences between older adolescent girls and the youngest girls of reproductive age.”⁶ Some older adolescents have the cognitive ability and capacity to reason similarly to an adult.⁷ However, neuroimaging studies have shown the brain undergoes major reorganization during adolescence, particularly in the regions of the brain relating to executive

⁴ See Cecilia Zalkind, *Having the Final Say: Children & Med. Treatment*, 175 N.J.L. 14 (Mar. 1996).

⁵ See U.S. Department of Health and Human Services, *A Statement by U.S. Department of Health and Human Services Secretary Kathleen Sebelius* (December 7, 2011), at <http://www.hhs.gov/news/press/2011pres/12/20111207a.html> (last visited February 6, 2012).

⁶ *Id.*

⁷ Kathryn Hickey BA, RN, *Minors' Rights in Medical Decision Making*, JONA'S HEALTHCARE LAW, ETHICS, AND REGULATION, July/September 2007, Volume 9 Number 3, Pages 100 – 104.

functions.⁸ Therefore, adolescents may lack the decision making abilities, judgments, and experience, to fully integrate and understand the outcome of their actions and decisions. They may have more volatile emotions and may look only at short-term consequences.⁹

Thus, adolescents remain in an ambiguous state regarding self-determination.

The United States Supreme Court has recognized as much, stating that:

[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment' expected of adults.

Thompson v. Oklahoma, 487 U.S. 815, 834 (1988)(quoting *Bellotti v. Baird*, 443

U.S. 622, 635 (1979)). This Court has also recognized that:

The law's concept of the family rests on the presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.

Wickham v. Byrne, 199 Ill. 2d 309, 318-19 (2002) (quoting *Parham v. J.R.*, 442 U.S. 584, 602 (1979)).

As stated below, parental involvement laws protect young women and their physicians, ensuring that full informed consent is given and a proper medical standard of

⁸ E.R.Sowell et al, NATURE NEUROSCIENCE 2, No.10, 859-861 (1999); L.P. Spear, NEUROSCIENCE AND BIOBEHAVIORAL REVIEWS 24, 424-425 (2000).

⁹ J.Dayan et al., JOURNAL OF PHYSIOLOGY-PARIS, 279-286 (2010).

care is met. To assist this Court in addressing the utility and reasonableness of the Parental Notice Act, *Amici* respectfully submit this brief.

I. PARENTAL NOTIFICATION LAWS SUCH AS THE PARENTAL NOTICE ACT SERVE THE LEGITIMATE PURPOSE OF HELPING MINORS MAKE MATURE AND INFORMED DECISIONS ABOUT WHETHER TO ABORT.

The Parental Notice Act must be evaluated in the context of the regulation of informed consent to a medical procedure. The first consideration is whether to have the abortion or not. An adolescent may not fully appreciate the inherent moral, spiritual, physical, and emotional dangers of abortion or its associated long-term risks. This calls into question her ability to give truly informed consent.¹⁰ With parental involvement, abortion providers are given the opportunity to disclose medical risks of the procedure to an adult who can advise the girl so as to increase the likelihood of the adolescent giving her informed consent to the procedure. Parental notification ensures that the abortion providers will inform a mature adult of the risks and benefits of the proposed treatment, after having received a more complete and accurate medical history of the patient.¹¹

Aside from the physical dangers, an adolescent may also need guidance with regard to the spiritual, moral and emotional dangers inherent in the decision to abort. *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 831, 882 (1992). In *Casey*, the United States Supreme Court recognized that the government has a legitimate interest to “ensure that a woman apprehend the full consequences of her decision [to abort or not].”

¹⁰ See Christian Medical and Dental Association, *Parental Consent For Minors Seeking Abortion* (June 12, 2002) at http://www.cmda.org/wcm/CMDA/Issues2/Beginning_of_Life1/Abortion1/Ethics_Statements2/Parental_Consent.aspx (last visited January 26, 2012).

¹¹ See *Fla. Dep't of Health v. N. Fla. Women's Health & Counseling Servs.*, 852 So. 2d 254, 262-263 (Fla. App. 1st Dist. 2001).

Id. It further held that states may seek to “further the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.” *Id.* *Casey* went on to say that states may even further the “legitimate goal of protecting the life of the unborn” through “legislation aimed at ensuring a decision that is mature and informed, even when in doing so the State expresses a preference for childbirth over abortion.” *Id.* at 883 (emphasis added).

These principles enunciated in *Casey* were affirmed in *Gonzales*. Recognizing the gravity of this decision the Court stated, “...some women come to regret their choice to abort the infant life they once created and sustained. Severe depression and loss of esteem can follow.” *Gonzales*, 550 U.S. at 159. Given the risks inherent in this decision, the Court reaffirmed the state’s role in regulating the medical profession and went on to affirm that the state “may use its voice and regulatory authority to show its profound respect for the life within the woman.” *Id.* at 157. Thus, at the heart of the *Casey* and *Gonzalez* decisions is the well established medical principal of ensuring mature and informed consent.

As with the regulations in the *Casey* and *Gonzales* cases, The Parental Notice Act also involves the constitutionality of regulations aimed at ensuring mature and informed consent. However, here the mature and informed consent involves a medical procedure to be applied to women who are minors. In calling for parental involvement from the very start of this medical decision, the Parental Notice Act recognizes the immaturity and resulting legal inability of a minor to give informed consent and seeks to reduce the risk of a coerced or ill-informed abortion. In doing so, the Parental Notice Act furthers the

legitimate State aim of ensuring that minor girls make mature and informed decisions between giving birth to or aborting their child.

II. PARENTAL INVOLVEMENT LAWS ALLOW PARENTS TO ASSIST THEIR DAUGHTER IN SELECTING A SAFE AND COMPETENT ABORTION PROVIDER.

If a minor, with guidance, makes a mature and fully informed decision to have an abortion, then parental assistance is needed undeniably more. As with all medical procedures, one of the most important guarantees of patient safety is the professional competence of those who perform the medical procedure. In *Belotti v. Baird*, the United States Supreme Court acknowledged the parents' superior ability to evaluate and select appropriate healthcare providers:

In this case, however, we are concerned only with minors who, according to the record, may range in age from children of twelve years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.

Belotti v. Baird, 443 U.S. 622, 641, n.21 (1979). The Court's concern for the ability of minors to distinguish between competent and ethical abortion providers is well justified. In testimony before a federal district court, one abortion provider described some clinics as having a "cattle herd mentality." *Women's Medical Ctr. of NW Houston v. Archer*, 159 F.Supp. 2d 414, 428 (S.D. Tex. 1999). In fact, the competency of an abortion provider and the safety of the clinic are particularly grave concerns in Illinois where a number of abortion clinics have reportedly not been inspected in over a decade and where recent

inspections have lead to the permanent closure of abortion clinics in Rockford and suburban Chicago.¹²

Furthermore, a parent or guardian is more likely to evaluate the risks and become well-informed about the procedure than a minor seeking a speedy “way out” of her predicament. The National Abortion Federation (NAF) has recommended that patients seeking an abortion confirm that the abortion will be performed by a licensed physician. The NAF also recommends asking whether the facility has a working relationship with a local hospital.¹³ Care in the selection of the individual performing the abortion is especially important as evidenced by the convictions of abortionists for sexually abusing patients.¹⁴

¹² *Illinois Takes Closer Look at Health, Safety at Abortion Clinics*, ROCKFORD REGISTER STAR, January 20, 2012, available at <http://www.rrstar.com/news/x1069934753/Illinois-cracks-down-on-abortion-clinics> (last visited February 6, 2012)(Article further states that State officials admit that Illinois only has 24 inspectors for nearly 2,000 facilities).

¹³ See National Abortion Federation, *Choosing the Right Provider* (2010) at <http://www.prochoice.org/Pregnant/expect/clinic.html> (last visited January 23, 2012); American Pregnancy Hotline, *Questions to Ask an Abortion Clinic* (Feb. 2008) at <http://www.thehelpline.org/unplanned-pregnancy/abortion/questions-to-ask-an-abortion-clinic/> (last visited January 23, 2012).

¹⁴ Paul Reuben, *No Choice*, PHOENIX NEW TIMES (Jan. 8, 2004), available at <http://www.phoenixnewtimes.com/2004-01-08/news/no-choice/> (last visited January 26, 2012)(Dr. Brian Finkel sentenced to 35 years in prison on 22 counts of sexually abusing patients); *Woman Wins Claim Against Dr. Alberts for Unneeded Surgery*, PORTLAND OREGONIAN (Aug. 12, 1995) at 1995 WL 9181194 (Dr. Phillip Alberts, an Oregon abortionist, died before trial could be completed on 29 counts of sexually abusing his patients); Dr. Ronald Stevenson also provided abortions in Oregon prior to his conviction in 2004 for sexual harassment of patients. See e.g. Peter Sachs, *Bend Doctor Arrested*, THE BULLETIN (Bend, Ore. March 31, 2007) at <http://www.bendbulletin.com/article/20070331/news0107/703310324/>

III. PARENTAL INVOLVEMENT LAWS ENSURE THAT PARENTS HAVE THE OPPORTUNITY TO PROVIDE ADDITIONAL MEDICAL HISTORY AND INFORMATION TO ASSIST ABORTION PROVIDERS.

As previously stated, the medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data. *H.L. v. Matheson*, 450 U.S. 398, 411 (1981); *Accord Ohio v. Akron Ctr. For Reproductive Health*, 497 U.S. 502, 518, 519 (1990).

A minor may not be fully aware of a familial history that makes surgical or medical abortions dangerous. The minor may also have emotional difficulties about which the physician is unaware. Without these types of information the physician may treat a patient without the proper background necessary to perform to an appropriate medical standard of care. This dilemma underlines the tension between the minor's right of privacy and the physician's need for sufficient information. If a minor subsequently suffers an injury due to the abortion, the physician might be sued for negligent treatment. Such a lawsuit could be successful if the physician had failed to obtain sufficient information on which to base his or her judgments.¹⁵

¹⁵ Dean Haas, "Doctor, I'm Pregnant and Fifteen – I Can't Tell My Parents – Please Help Me": *Minor Consent, Reproductive Rights, and Ethical Principles for Physicians*, 86 N. DAK. L. REV. 63, 106 (1998).

IV. PARENTAL INVOLVEMENT LAWS ENSURE THAT PARENTS HAVE ADEQUATE KNOWLEDGE TO RECOGNIZE AND RESPOND TO POST-ABORTION COMPLICATIONS.

While it is often claimed that abortion is one of the safest medical procedures performed today, the actual occurrence rate of many complications is simply unknown. Nevertheless, abortion providers have identified infection as one of the most common post-abortion complications.¹⁶ The warning signs of infection typically begin within the first forty-eight to ninety-six hours after the abortion and can include fever, pain, pelvic tenderness, and elevated white blood count.¹⁷ Caught early, most infections can be treated successfully with oral antibiotics.¹⁸ Left untreated, they can result in death.

Similarly, post-operative bleeding after an abortion is common, and even when excessive, can be easily controlled if medical treatment is sought promptly. Hemorrhaging is a one of the most serious post-abortion complications and should be evaluated by a medical professional immediately.¹⁹ Untreated it too can result in the death of the minor. See *Evans v. Mutual Assur., Inc.*, 727 So. 2d 66 (Ala. 1999) (discussing a dispute between a physician and the malpractice carrier regarding coverage for the death of an 18-year-old girl from hemorrhaging induced by abortion).

¹⁶ David A. Grimes, *Sequelae of Abortion*, MODERN METHODS OF INDUCING ABORTION 95, 99-100 (David T. Baird et al. eds., 1995).

¹⁷ See E. Steve Lichtenberg et al., *Abortion Complications: Prevention and Management*, A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS 197, 206 (Maureen Paul et al. eds., 1999).

¹⁸ *Id.* at 206-07.

¹⁹ National Abortion Federation, *Clinical Policy Guidelines, Complications: Bleeding, Policy Statement* (2011) available at http://www.prochoice.org/pubs_research/publications/downloads/professional_education/2011%20CPGs.pdf (last visited January 26, 2012).

Additionally, experts often characterize a perforated uterus as a “normal risk” associated with abortion. *Reynier v Delta Women's Clinic*, 359 So.2d 733 (La. Ct. App. 1978). This complication can also be easily dealt with if detected early but may lead to serious consequences if medical help is not sought promptly.

Be it infection, hemorrhaging, or a perforated uterus, many minors may ignore or deny the seriousness of post-abortion symptoms or may lack the financial resources to respond to those symptoms.²⁰ In fact, some of the most serious complications are delayed and only detected during the follow-up visit; yet, only about one-third of all abortion patients actually keep their appointments for post-operative checkups.²¹ Absent parental notification, hemorrhaging may be mistaken for a heavy period, and severe depression as typical teenage angst.²²

Without knowledge of their daughters' abortions, parents cannot ensure that their children obtain necessary post-operative care or provide an adequate medical history to physicians called upon to treat any complications that arise.²³ When parents do not know

²⁰ *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Health and Welfare*, 2001-2002 Legis. Sess. 33 (Vt. 2001)(testimony of an anonymous Vermont mother, on March 20, 2001).

²¹ *See id.*

²² *Child Custody Protection Act: Hearing on H.R. 1755 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 109th Cong. (2004) (statement by Teresa S. Collett, Professor of Law at University of St. Thomas School of Law).

²³ Collett, *supra* note 2, at 113-117.

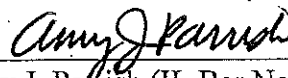
their daughter has had an abortion, ignorance prevents swift and appropriate intervention by emergency room professionals responding to a life-threatening condition.²⁴

CONCLUSION

The Parental Notice Act balances the minor's right to privacy and the importance of fully informed consent and an appropriate standard of care by physicians performing an abortion. Wherefore, the *Amici* respectfully request that the lower court's holding be upheld, and the Parental Notice Act be permitted to go into effect.



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²⁴ *Open Letter from the Parents of Holly Patterson – Death by RU-486*, available at <http://www.godandscience.org/abortion/patterson.htm>. (last visited January 26, 2012).

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.



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PROOF OF SERVICE

I hereby certify that on February 8, 2012, I caused to be served three (3) paper copies of the foregoing *Amici Curiae* Brief to counsel listed below by depositing said copies in DHL Overnight Courier Envelopes, postage paid.

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