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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

Case No. B355195

MAX DAVID BORENSTEIN,

Respondent,

v.

SOFIYA ALEXANDRA GOLDSHTEYN,

Appellant.

Appeal from the Superior Court of California,
County of Los Angeles - Case No. 22STFL08826

Hon. Scott J. Nord, Judge

APPELLANT'S APPENDIX
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CITY OF AKRON v. AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., ET AL.

No. 81-746

SUPREME COURT OF THE UNITED STATES

462 U.S. 416; 103 S. Ct. 2481; 76 L. Ed. 2d 687; 1983 U.S. LEXIS 63; 51 U.S.L.W. 4767

November 30, 1982, Argued

June 15, 1983, Decided *
* Together with No. 81-1172, Akron Center for Reproductive Health, Inc., et al. v. City of Akron et al., also on certiorari to the same court.

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

DISPOSITION:
651 F.2d 1198, affirmed in part and reversed in part.

SYLLABUS:

An Akron, Ohio, ordinance, inter alia, (1) requires all abortions performed after the first trimester of pregnancy to be performed in a hospital (@ 1870.03); (2) prohibits a physician from performing an abortion on an unmarried minor under the age of 15 unless he obtains the consent of one of her parents or unless the minor obtains an order from a court having jurisdiction over her that the abortion be performed (@ 1870.05(B)); (3) requires that the attending physician inform his patient of the status of her pregnancy, the development of her fetus, the date of possible viability, the physical and emotional complications that may result from an abortion, and the availability of agencies to provide her with assistance and information with respect to birth control, adoption, and childbirth (@ 1870.06(B)), and also inform her of the particular risks associated with her pregnancy and the abortion technique to be employed (@ 1870.06(C)); (4) prohibits a physician from performing an abortion until 24 hours after the pregnant woman signs a consent form (@ 1870.07); and (5) requires physicians performing abortions to ensure that fetal remains are disposed of in a "humane and sanitary manner" (@ 1870.16). A violation of the ordinance is punishable as a misdemeanor. Respondents and cross-petitioners filed an action in Federal District Court against petitioners and cross-respondents, challenging the ordinance. The District Court invalidated @@ 1870.05(B), 1870.06(B), and 1870.16, but upheld @@ 1870.03, 1870.06(C), and 1870.07. The Court of Appeals affirmed as to @@ 1870.03, 1870.05(B), 1870.06(B), and 1870.16, but reversed as to @@ 1870.06(C) and 1870.07.

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Held:

1. Section 1870.03 is unconstitutional. Pp. 431-439.

(a) While a State's interest in health regulation becomes compelling at approximately the end of the first trimester, the State's regulation may be upheld only if it is reasonably designed to further that interest. If during a substantial portion of the second trimester the State's regulation departs from accepted medical practice, it may not be upheld simply because it may be reasonable for the remaining portion of the trimester. Rather, the State is obligated to make a reasonable effort to limit the effect of its regulations to the period in the trimester during which its health interest may be furthered. Pp. 433-434.

(b) It cannot be said that the lines drawn in @ 1870.03 are reasonable. By preventing the performance of dilation-and-evacuation abortions in an appropriate nonhospital setting, Akron has imposed a heavy and unnecessary burden on women's access to a relatively inexpensive, otherwise accessible, and safe abortion procedure. Section 1870.03 has the effect of inhibiting the vast majority of abortions after the first trimester and therefore unreasonably infringes upon a woman's constitutional right to obtain an abortion. Pp. 434-439.

2. Section 1870.05(B) is unconstitutional as making a blanket determination that all minors under the age of 15 are too immature to make an abortion decision or that an abortion never may be in the minor's best interests without parental approval. Under circumstances where the Ohio statute governing juvenile proceedings does not mention minors' abortions nor suggest that the Ohio Juvenile Court has authority to inquire into a minor's maturity or emancipation, @ 1870.05(B), as applied in juvenile proceedings, is not reasonably susceptible of being construed to create an opportunity for case-by-case evaluations of the maturity of pregnant minors. Pp. 439-442.

3. Sections 1870.06(B) and 1870.06(C) are unconstitutional. Pp. 442-449.

(a) The validity of an informed consent requirement rests on the State's interest in protecting the pregnant woman's health. But this does not mean that a State has unreviewable authority to decide what information a woman must be given before she chooses to have an abortion. A State may not adopt regulations designed to influence the woman's informed choice between abortion or childbirth. Pp. 442-444.

(b) Section 1870.06(B) attempts to extend the State's interest in ensuring " informed consent" beyond permissible limits, and intrudes upon the discretion of the pregnant woman's physician. While a State may require a physician to make certain that his patient understands the physical and emotional implications of having an abortion, @ 1870.06(B) goes far beyond merely describing the general subject matter relevant to informed consent. By insisting upon recitation of a lengthy and inflexible list of information, the section unreasonably has placed obstacles in the path of the physician. Pp. 444-445.

(c) With respect to @ 1870.06(C)'s requirement that the "attending physician" must inform the woman of the specified information, it is unreasonable for a

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State to insist that only a physician is competent to provide the information and counseling relevant to informed consent. Pp. 446-449.

4. Section 1870.07 is unconstitutional. Akron has failed to demonstrate that any legitimate state interest is furthered by an arbitrary and inflexible waiting period. There is no evidence that the abortion procedure will be performed more safely. Nor does it appear that the State's legitimate concern that the woman's decision be informed is reasonably served by requiring a 24-hour delay as a matter of course. Pp. 449-451.

5. Section 1870.16 violates the Due Process Clause by failing to give a physician fair notice that his contemplated conduct is forbidden. Pp. 451-452.

COUNSEL:

Alan G. Segedy argued the cause for petitioner in No. 81-746 and respondent in No. 81-1172. With him on the briefs was Robert D. Pritt. Mr. Segedy and Robert A. Destro filed a brief for Seguin et al., respondents under this Court's Rule 19.6, in support of petitioner in No. 81-746 and respondent in No. 81-1172.

Solicitor General Lee argued the cause for the United States as amicus curiae. With him on the brief were Assistant Attorney General McGrath and Deputy Solicitor General Geller.

Stephan Landsman argued the cause for respondents in No. 81-746 and petitioners in No. 81-1172. With him on the briefs were Janet Benshoof, Suzanne M. Lynn, Nan D. Hunter, Lois J. Lipton, and Gordon Beggs. +

+ Briefs of amici curiae urging reversal were filed by Delores V. Horan for Feminists for Life; and by Lynn D. Wardle for the United Families Foundation et al.

Briefs of amici curiae urging affirmance were filed by Bruce J. Ennis, Jr., and Donald N. Bersoff for the American Psychological Association; and by Sylvia A. Law, Nadine Taub, and Ellen J. Winner for the Committee for Abortion Rights and Against Sterilization Abuse et al.

Briefs of amici curiae were filed by M. Carolyn Cox and Lynn Bregman for the American College of Obstetricians and Gynecologists et al.; by David B. Hopkins for the American Public Health Association; by Dennis J. Horan, Victor G. Rosenblum, Patrick A. Trueman, and Thomas J. Marzen for Americans United for Life; for California Women Lawyers et al.; by Charles E. Rice for the Catholic League for Religious and Civil Rights; by Rhonda Copelon for Certain Religious Organizations; by Jack R. Bierig for the College of American Pathologists; by Ronald J. Suster for Lawyers for Life; by Alan Ernest for the Legal Defense Fund for Unborn Children; by Judith Levin for the National Abortion Federation; by Jack Greenberg, James M. Nabrit III, and Judith Reed for the NAACP Legal Defense and Educational Fund, Inc.; by Phyllis N. Segal, Judith I. Avner, and Jemera Rone for the National Organization for Women et al.; by Eve W. Paul and Dara Klassel for the Planned Parenthood Federation of America, Inc., et al.; by James Arthur Gleason for Womankind, Inc.; by Nancy Reardan for Women Lawyers of Sacramento et al; and by Susan Frelich Appleton and Paul Brest for Certain Law Professors.

JUDGES:

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POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which WHITE and REHNQUIST, JJ., joined, post, p. 452.

OPINIONBY:
POWELL

OPINION:

[*419] [***696] [**2487] JUSTICE POWELL delivered the opinion of the Court.

In this litigation we must decide the constitutionality of several provisions of an ordinance enacted by the city of Akron, Ohio, to regulate the performance of abortions. Today we also review abortion regulations enacted by the State of Missouri, see Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, post, p. 476, and by the State of Virginia, see Simopoulos v. Virginia, post, p. 506.

[***HR1A] These cases come to us a decade after we held in Roe v. Wade, 410 U.S. 113 (1973), that the right of privacy, grounded in the concept of personal liberty guaranteed by the Constitution, encompasses a woman's right to decide whether to terminate her pregnancy. Legislative responses to the Court's decision have required us on several occasions, and again today, to define the limits of a State's authority to regulate the performance of abortions. And arguments continue to be made, in these cases as well, that we erred in interpreting the Constitution. Nonetheless, the doctrine of [*420] stare decisis, while perhaps never entirely persuasive on a constitutional question, is a doctrine that demands respect in a society governed by the rule of law. n1 We [***697] respect it today, and reaffirm Roe v. Wade.

----------Footnotes----------

n1

[***HR1B] There are especially compelling reasons for adhering to stare decisis in applying the principles of Roe v. Wade. That case was considered with special care. It was first argued during the 1971 Term, and reargued -- with extensive briefing -- the following Term. The decision was joined by THE CHIEF JUSTICE and six other Justices. Since Roe was decided in January 1973, the Court repeatedly and consistently has accepted and applied the basic principle that a woman has a fundamental right to make the highly personal choice whether or not to terminate her pregnancy. See Connecticut v. Menillo, 423 U.S. 9 (1975); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976); Bellotti v. Baird, 428 U.S. 132 (1976); Beal v. Doe, 432 U.S. 438 (1977); Maher v. Roe, 432 U.S. 464 (1977); Colautti v. Franklin, 439 U.S. 379 (1979); Bellotti v. Baird, 443 U.S. 622 (1979); Harris v. McRae, 448 U.S. 297 (1980); H. L. v. Matheson, 450 U.S. 398 (1981).

Today, however, the dissenting opinion rejects the basic premise of Roe and its progeny. The dissent stops short of arguing flatly that Roe should be overruled. Rather, it adopts reasoning that, for all practical purposes, would accomplish precisely that result. The dissent states that "[even] assuming that there is a fundamental right to terminate pregnancy in some situations," the

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State's compelling interests in maternal health and potential human life "are present throughout pregnancy." Post, at 459 (emphasis in original). The existence of these compelling interests turns out to be largely unnecessary, however, for the dissent does not think that even one of the numerous abortion regulations at issue imposes a sufficient burden on the "limited" fundamental right, post, at 465, n. 10, to require heightened scrutiny. Indeed, the dissent asserts that, regardless of cost, "[a] health regulation, such as the hospitalization requirement, simply does not rise to the level of 'official interference' with the abortion decision." Post, at 467 (quoting Harris v. McRae, supra, at 328 (WHITE, J., concurring)). The dissent therefore would hold that a requirement that all abortions be performed in an acute-care, general hospital does not impose an unacceptable burden on the abortion decision. It requires no great familiarity with the cost and limited availability of such hospitals to appreciate that the effect of the dissent's views would be to drive the performance of many abortions back underground free of effective regulation and often without the attendance of a physician.

In sum, it appears that the dissent would uphold virtually any abortion regulation under a rational-basis test. It also appears that even where heightened scrutiny is deemed appropriate, the dissent would uphold virtually any abortion-inhibiting regulation because of the State's interest in preserving potential human life. See post, at 474 (arguing that a 24-hour waiting period is justified in part because the abortion decision "has grave consequences for the fetus"). This analysis is wholly incompatible with the existence of the fundamental right recognized in Roe v. Wade.

----------End Footnotes----------

[*421] [**2488] I

In February 1978 the City Council of Akron enacted Ordinance No. 160-1978, entitled "Regulation of Abortions." n2 [*422] The ordinance sets forth 17 provisions that regulate the performance of abortions, see Akron Codified Ordinances, ch. 1870, 5 of which are at issue in this case:

----------Footnotes----------

n2 The ordinace was prefaced by several findings:

"WHEREAS, the citizens of Akron are entitled to the highest standard of health care; and

"WHEREAS, abortion is a major surgical procedure which can result in complications, and adequate equipment and personnel should be required for its safe performance in order to insure the highest standards of care for the protection of the life and health of the pregnant woman; and

"WHEREAS, abortion should be performed only in a hospital or in such other special outpatient facility offering the maximum safeguards to the life and health of the pregnant woman; and

"WHEREAS, it is the finding of Council that there is no point in time between the union of sperm and egg, or at least the blastocyst stage and the birth of the infant at which point we can say the unborn child is not a human life, and

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that the changes occuring between implantation, a six-weeks embryo, a six-month fetus, and a one-week-old child, or a mature adult are merely stages of development and maturation; and

"WHEREAS, traditionally the physician has been responsible for the welfare of both the pregnant woman and her unborn child, and that while situations of conflict may arise between a pregnant woman's health interests and the welfare of her unborn child, the resolution of such conflicts by inducing abortion in no way implies that the physician has an adversary relationship towards the unborn child; and

"WHEREAS, Council therefore wishes to affirm that the destruction of the unborn child is not the primary purpose of abortion and that consequently Council recognizes a continuing obligation on the part of the physician towards the survival of a viable unborn child where this obligation can be discharged without additional hazard to the health of the pregnant woman; and

"WHEREAS, Council, after eztensive public hearings and investigations concludes that enactment of this ordinance is a reasonable and prudent action which will significantly contribute to the preservation of the public life, health, safety, morals, and welfare." Akron Ordinance No. 160-1978.

----------End Footnotes----------

(i) Section 1870.03 requires that all abortions performed after the first trimester of pregnancy be performed in a hospital. n3

----------Footnotes----------

n3 "1870.03 ABORTION IN HOSPITAL

"No person shall perform or induce an abortion upon a pregnant woman subsequent to the end of the first trimester of her pregnancy, unless such abortion is performed in a hospital."

Section 1870.01(B) defines "hospital" as "a general hospital or special hospital devoted to gynecology or obstetrics which is accredited by the Joint Commission on Accreditation of Hospitals or by the American Osteopathic Association."

----------End Footnotes----------

[***698] (ii) Section 1870.05 sets forth requirements for notification of and consent by parents before abortions may be performed on unmarried minors. n4

----------Footnotes----------

n4 "1870.05 NOTICE AND CONSENT

"(A) No physician shall perform or indice an abortion upon an unmarrried pregnant woman under the age of 18 years without first having given at lest twenty-four (24) hours actual notice to one of the parents or the legal guardian of the minor pregnant woman as to the intention to perform such abortion, or if such parent or guardian cannot be reached after a reasonable effort to find him

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or her, without first having given at least seventy-two (72) hours constructive notice to one of the parents or the legal guardian of the minor pregnant woman by certified mail to the last known address of one of the parents or guardian, computed from the time of mailing, unless the abortion is ordered by a court having jurisdiction over such minor pregnant woman.

"(B) No physician shall perform or induce an abortion upon a minor pregnant woman under the age of fifteen (15) years without first having obtained the informed written consent of the minor pregnant woman in accordance with Section 1870.06 of this Chapter, and

"(1) First having obtained the informed written consent of one of her parents or her legal guardian in accordance with Section 1870.06 of this Chapter, or

"(2) The minor pregnant woman first having obtained an order from a court having jurisdiction over her that the abortion be performed or induced."

----------End Footnotes----------

[*423] (iii) Section 1870.06 requires that the attending physician make certain specified statements to the patient "to insure that the consent for an abortion is truly informed consent." n5

----------Footnotes----------

n5 "1870.06 INFORMED CONSENT

"(A) An abortion otherwise permitted by law shall be performed or induced only with the informed written consent of the pregnant woman, and one of her parents or her legal guardian whose consent is required in accordance with Section 1870.05(B) of this Chapter, given freely and without coercion.

"(B) In order to insure that the consent for an abortion is truly informed consent, an abortion shall be performed or induced upon a pregnant woman only after she, and one of her parents or her legal guardian whose consent is required in accordance with Section 1870.05(B) of this Chapter, have been orally informed by her attending physician of the following facts, and have signed a consent form acknowledging that she, and the parent or legal guardian where applicable, have been informed as follows:

"(1) That according to the best judgment of her attending physician she is pregnant.

"(2) The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or after a history and physical exmaination and appropriate laboratory tests.

"(3) That the unborn child is a human life from the moment of conception and that there has been described in detail the anatomical and physiological characteristics of the particular unborn child at the gestational point of development at which time the abortion is to be performed, including, but not limited to, appearance, mobility, tactile sensitivity, including pain, perception or response, brain and heart function, the presence of internal

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organs and the presence of external members.

"(4) That her unborn child may be viable, and thus capable of surviving outside of her womb, if more than twenty-two (22) weeks have elapsed from the time of conception, and that her atttending physician has a legal obligation to take all reasonable steps to preserve the life and health of her viable unborn child during the abortion.

"(5) That abortion is a major surgical procedure which can result in serious complications, including hemorrhage, perforated uterus, infection, menstrual disturbances, sterility and miscarriage and prematurity in subsequent pregnancies; and that abortion may leave essentially unaffected or may worsen any existing psychological problems she may have, and can result in severe emotional disturbances.

"(6) That numerous public and private agencies and services are available to provide her with birth control information, and that her physician will provide her with a list of such agencies and the services available if she so requests.

"(7) That numerous public and private agencies and services are available to assist her during pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place him or her for adoption, and that her physician will provide her with a list of such agencies and the services available if she so requests.

"(C) At the same time the attending physician provides the information required by paragraph (B) of this Section, he shall, at least orally, inform the pregnant woman, and one of her parents or her legal guardian whose consent is required in accordance with Section 1870.05(B) of this Chapter, of the particular risks associated with her own pregnancy and the abortion technique to be employed including providing her with at least a general description of the medical instructions to be followed subsequent to the abortion in order to insure her safe recovery, and shall in addition provide her with such other information which in his own medical judgment is relevant to her decision as to whether to have an abortion or carry her pregnancy to term.

"(D) The attending physician performing or inducing the abortion shall provide the pregnant woman, or one of her parents or legal guardian signing the consent form where applicable, with a duplicate copy of the consent form signed by her, and one of her parents or her legal guardian where applicable, in accordance with paragraph (B) of this Section."

----------End Footnotes----------

[*424] [***699] (iv) Section 1870.07 requires a 24-hour waiting period between the time the woman [**2489] signs a consent form and the time the abortion is performed. n6

----------Footnotes----------

n6 "1870.07 WAITING PERIOD

"No physician shall perform or induce an abortion upon a pregnant woman until twenty-four (24) hours have elapsed from the time the pregnant woman, and one of

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her parents or her legal guardian whose consent is required in accordance with Section 1870.05(B) of this Chapter, have signed the consent form required by Section 1870.06 of this Chapter, and the physician so certifies in writing that such time has elapsed."

----------End Footnotes----------

(v) Section 1870.16 requires that fetal remains be "disposed of in a humane and sanitary manner." n7

----------Footnotes----------

n7 "1870.16 DISPOSAL OF REMAINS

"Any physician who shall perform or induce an abortion upon a pregnant woman shall insure that the remains of the unborn child are disposed of in a humane and sanitary manner."

----------End Footnotes----------

[*425] A violation of any section of the ordinance is punishable as a criminal misdemeanor. @ 1870.18. If any provision is invalidated, it is to be severed from the remainder of the ordinance. n8 The ordinance became effective on May 1, 1978.

----------Footnotes----------

n8 "1870.19 SEVERABILITY

"Should any provision of this Chapter be construed by any court of law to be invalid, illegal, unconstitutional, or otherwise unenforcible, such invalidity, illegality, unconstitutionality, or unenforcibility shall not extend to any other provision or provisions of this Chapter."

----------End Footnotes----------

[**2490] On April 19, 1978, a lawsuit challenging virtually all of the ordinance's provisions was filed in the District Court for the Northern District of Ohio. The plaintiffs, respondents and cross-petitioners in this Court, were three corporations that operate abortion clinics in Akron and a physician who has performed abortions at one of the clinics. The defendants, petitioners and cross-respondents here, were the city of Akron and three city officials (Akron). Two individuals (intervenors) were permitted to intervene as codefendants "in their individual capacity as parents of unmarried minor daughters of childbearing age." 479 F.Supp. 1172, 1181 (1979). On April 27, 1978, the District Court preliminarily enjoined enforcement of the ordinance.

In August 1979, after hearing evidence, the District Court ruled on the merits. It found that plaintiffs lacked standing to challenge seven [***700] provisions of the ordinance, none of which is before this Court. The District Court invalidated four provisions, including @ 1870.05 (parental notice and consent), @ 1870.06(B) (requiring disclosure of facts concerning the woman's pregnancy, fetal development, the complications of abortion, and agencies available to assist the woman), and @ 1870.16 (disposal of fetal remains). The

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court upheld the constitutionality of the remainder of the ordinance, including @ 1870.03 (hospitalization for abortions after the first trimester), @ 1870.06(C) (requiring disclosure of the particular risks of the woman's pregnancy and the abortion technique to be employed), and @ 1870.07 (24-hour waiting period).

[*426] All parties appealed some portion of the District Court's judgment. The Court of Appeals for the Sixth Circuit affirmed in part and reversed in part. 651 F.2d 1198 (1981). It affirmed the District Court's decision that @ 1870.03's hospitalization requirement is constitutional. It also affirmed the ruling that @@ 1870.05, 1870.06(B), and 1870.16 are unconstitutional. The Court of Appeals reversed the District Court's decision on @@ 1870.06(C) and 1870.07, finding these provisions to be unconstitutional.

Three separate petitions for certiorari were filed. In light of the importance of the issues presented, and in particular the conflicting decisions as to whether a State may require that all second-trimester abortions be performed in a hospital, n9 we granted both Akron's and the plaintiffs' petitions. 456 U.S. 988 (1982). We denied the intervenors' petition, Seguin v. Akron Center for Reproductive Health, Inc., 456 U.S. 989 (1982), but they have participated in this Court as respondents under our Rule 19.6. We now reverse the judgment of the Court of Appeals upholding Akron's hospitalization requirement, but affirm the remainder of the decision invalidating the provisions on parental consent, informed consent, waiting period, and disposal of fetal remains.

----------Footnotes----------

n9 Compare Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 655 F.2d 848 (CA8), supplemented, 664 F.2d 687 (CA8 1981) (invalidating hospital requirement), with Simopoulos v. Commonwealth, 221 Va. 1059, 277 S. E. 2d 194 (1981) (upholding hospital requirement). Numerous States require that second-trimester abortions be performed in hospitals. See Brief for Americans United for Life as Amicus Curiae in Simopoulos v. Virginia, O. T. 1982, No. 81-185, p. 4, n. 1 (listing 23 States).

----------End Footnotes----------

II

[***HR2] [***HR3] In Roe v. Wade, the Court held that the "right of privacy, . . . founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U.S., at 153. Although the Constitution does not specifically identify this right, the [*427] history of this Court's constitutional adjudication leaves no doubt that "the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution." Poe v. Ullman, 367 U.S. 497, 543 [**2491] (1961) (Harlan, J., dissenting from dismissal of appeal). Central [***701] among these protected liberties is an individual's "freedom of personal choice in matters of marriage and family life." Roe, 410 U.S., at 169 (Stewart, J., concurring). See, e. g., Eisenstadt v. Baird, 405 U.S. 438 (1972); Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965); Pierce v. Society

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of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923). The decision in Roe was based firmly on this long-recognized and essential element of personal liberty.

[***HR4] The Court also has recognized, because abortion is a medical procedure, that the full vindication of the woman's fundamental right necessarily requires that her physician be given "the room he needs to make his best medical judgment." Doe v. Bolton, 410 U.S. 179, 192 (1973). See Whalen v. Roe, 429 U.S. 589, 604-605, n. 33 (1977). The physician's exercise of this medical judgment encompasses both assisting the woman in the decisionmaking process and implementing her decision should she choose abortion. See Colautti v. Franklin, 439 U.S. 379, 387 (1979).

[***HR5] [***HR6A] [***HR7A] [***HR8A] At the same time, the Court in Roe acknowledged that the woman's fundamental right "is not unqualified and must be considered against important state interests in abortion." Roe, 410 U.S., at 154. But restrictive state regulation of the right to choose abortion, as with other fundamental rights subject to searching judicial examination, must be supported by a compelling state interest. Id., at 155. We have recognized two such interests that may justify state regulation of abortions. n10

----------Footnotes----------

n10

[***HR6B] [***HR7B] [***HR8B] In addition, the Court repeatedly has recognized that, in view of the unique status of children under the law, the States have a "significant" interest in certain abortion regulations aimed at protecting children "that is not present in the case of an adult." Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 75. See Carey v. Population Services International, 431 U.S. 678, 693, n. 15 (1977) (plurality opinion). The right of privacy includes "independence in making certain kinds of important decisions," Whalen v. Roe, 429 U.S. 589, 599-600 (1977), but this Court has recognized that many minors are less capable than adults of making such important decisions. See Bellotti v. Baird, 443 U.S., at 633-635 (Bellotti II) (plurality opinion); Danforth, supra, at 102 (STEVENS, J., concurring in part and dissenting in part). Accordingly, we have held that the States have a legitimate interest in encouraging parental involvement in their minor children's decision to have an abortion. See H. L. v. Matheson, 450 U.S. 398 (1981) (parental notice); Bellotti II, supra, at 639, 648 (plurality opinion) (parental consent). A majority of the Court, however, has indicated that these state and parental interests 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., Matheson, 450 U.S., at 420 (POWELL, J., concurring); id., at 450-451 (MARSHALL, J., dissenting). The plurality in Bellotti II concluded that a State choosing to encourage parental involvement 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 interest. See Bellotti II, supra, at 643-644.

----------End Footnotes----------

[*428]

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[***HR9] [***HR10] [***HR11] First, [***702] a State has an "important and legitimate interest in protecting the potentiality of human life." Id., at 162. Although this interest exists "throughout the course of the woman's pregnancy," Beal v. Doe, 432 U.S. 438, 446 (1977), it becomes compelling only at viability, the point at which the fetus "has the capability of meaningful life outside the mother's womb," Roe, supra, at 163. See Planned Parenthood of [**2492] Central Missouri v. Danforth, 428 U.S. 52, 63-65 (1976). At viability this interest in protecting the potential life of the unborn child is so important that the State may proscribe abortions altogether, "except when it is necessary to preserve the life or health of the mother." Roe, 410 U.S., at 164.

[***HR12] [***HR13A] [***HR14A] [***HR15A] [***HR16] [***HR17A] [***HR18A] Second, because a State has a legitimate concern with the health of women who undergo abortions, "a State may properly assert important interests in safeguarding health [and] [*429] in maintaining medical standards." Id., at 154. We held in Roe, however, that this health interest does not become compelling until "approximately the end of the first trimester" of pregnancy. n11 Id., at 163. Until that time, a pregnant woman must be permitted, in consultation with her physician, [*430] to decide to have an abortion and to effectuate [***703] that decision "free of interference by the State." n12 Ibid.

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n11 Roe identified the end of the first trimester as the compelling point because until that time -- according to the medical literature available in 1973 -- "mortality in abortion may be less than mortality in normal childbirth." 410 U.S., at 163. There is substantial evidence that developments in the past decade, particularly the development of a much safer method for performing second-trimester abortions, see infra, at 435-437, have extended the period in which abortions are safer than childbirth. See, e. g., LeBolt, Grimes, & Cates, Mortality From Abortion and Childbirth: Are the Populations Comparable?, 248 J. A. M. A. 188, 191 (1982) (abortion may be safer than childbirth up to gestational ages of 16 weeks).

[***HR13B] We think it prudent, however, to retain Roe's identification of the beginning of the second trimester as the approximate time at which the State's interest in maternal health becomes sufficiently compelling to justify significant regulation of abortion. We note that the medical evidence suggests that until approximately the end of the first trimester, the State's interest in maternal health would not be served by regulations that restrict the manner in which abortions are performed by a licensed physician. See, e. g., American College of Obstetricians and Gynecologists (ACOG), Standards for Obstetric-Gynecologic Services 54 (5th ed. 1982) (hereinafter ACOG Standards) (uncomplicated abortions generally may be performed in a physician's office or an outpatient clinic up to 14 weeks from the first day of the last menstrual period); ACOG Technical Bulletin No. 56, Methods of Mid-Trimester Abortion 4 (Dec. 1979) ("Regardless of advances in abortion technology, midtrimester terminations will likely remain more hazardous, expensive, and emotionally disturbing for women than earlier abortions").

[***HR14B] [***HR15B] The Roe trimester standard thus continues to provide a reasonable legal framework for limiting a State's authority to regulate abortions. Where the State adopts a health regulation governing the performance

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of abortions during the second trimester, the determinative question should be whether there is a reasonable medical basis for the regulation. See Roe, 410 U.S., at 163. The comparison between abortion and childbirth mortality rates may be relevant only where the State employs a health rationale as a justification for a complete prohibition on abortions in certain circumstances. See Danforth, supra, at 78-79 (invalidating state ban on saline abortions, a method that was "safer, with respect to maternal mortality, than even continuation of the pregnancy until normal childbirth").

n12

[***HR17B] [***HR18B] Of course, the State retains an interest in ensuring the validity of Roe's factual assumption that "the first trimester abortion [is] as safe for the woman as normal childbirth at term," an assumption that "holds true only if the abortion is performed by medically competent personnel under conditions insuring maximum safety for the woman." Connecticut v. Menillo, 423 U.S. 9, 11 (1975) (per curiam). On this basis, for example, it is permissible for the States to impose criminal sanctions on the performance of an abortion by a nonphysician. Ibid.

----------End Footnotes----------

[***HR19] [***HR20] This does not mean that a State never may enact a regulation touching on the woman's abortion right during the first weeks of pregnancy. Certain regulations that have no significant impact on the woman's exercise of her right may be permissible where justified by important state health objectives. In Danforth, supra, we unanimously upheld two Missouri statutory provisions, applicable to the first trimester, requiring the woman to provide her informed written consent to the abortion and the physician to keep certain records, even though comparable requirements were not imposed on most other medical procedures. See 428 U.S., at 65-67, 79-81. The decisive factor was that the State met its burden of demonstrating [**2493] that these regulations furthered important health-related state concerns. n13 But even these minor regulations on the abortion procedure during the first trimester may not interfere with physician-patient consultation or with the woman's choice between abortion and childbirth. See id., at 81.

----------Footnotes----------

n13 For example, we concluded that recordkeeping, "if not abused or overdone, can be useful to the State's interest in protecting the health of its female citizens, and may be a resource that is relevant to decisions involving medical experience and judgment." 428 U.S., at 81. See infra, at 443-445 (discussing the State's interest in requiring informed consent).

----------End Footnotes----------

[***HR21] [***HR22] From approximately the end of the first trimester of pregnancy, the State "may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation [*431] and protection of maternal health." n14 Roe, 410 U.S., at 163. The State's discretion to regulate on this basis does not, however, permit it to adopt abortion regulations that depart from accepted medical practice. We have rejected a State's attempt to ban a particular second-trimester abortion procedure, where

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the ban would have increased the costs and limited the availability of abortions without promoting important health benefits. See Danforth, 428 U.S., at 77-78. If a State requires licensing or undertakes to regulate the performance of abortions during this period, the health standards adopted must be "legitimately related to the objective the State seeks to accomplish." Doe, 410 U.S., at 195.

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n14 "Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like." Roe, supra, at 163-164.

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[***704] III

Section 1870.03 of the Akron ordinance requires that any abortion performed "upon a pregnant woman subsequent to the end of the first trimester of her pregnancy" n15 must be [*432] "performed in a hospital." A "hospital" is "a general hospital or special hospital devoted to gynecology or obstetrics which is accredited by the Joint Commission on Accreditation of Hospitals or by the American Osteopathic Association." @ 1870.01(B). Accreditation by these organizations requires compliance with comprehensive standards governing a wide variety of health and surgical services. n16 The ordinance thus prevents the performance of abortions in outpatient facilities that are not part of an acute-care, full-service hospital. n17

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n15 The Akron ordinance does not define "first trimester," but elsewhere suggests that the age of the fetus should be measured from the date of conception. See @ 1870.06(B)(2) (physician must inform woman of the number of weeks elapsed since conception); @ 1870.06(B)(4) (physician must inform woman that a fetus may be viable after 22 weeks from conception). An average pregnancy lasts approximately 38 weeks from the time of conception or, as more commonly measured, 40 weeks from the beginning of the woman's last menstrual period. Under both methods there may be more than a 2-week deviation either way.

Because of the approximate nature of these measurements, there is no certain method of delineating "trimesters." Frequently, the first trimester is estimated as 12 weeks following conception, or 14 weeks following the last menstrual period. We need not attempt to draw a precise line, as this Court – for purposes of analysis – has identified the "compelling point" for the State's interest in health as "approximately the end of the first trimester." Roe, 410 U.S., at 163. Unless otherwise indicated, all references in this opinion to gestational age are based on the time from the beginning of the last menstrual period.

n16 The Joint Commission on Accreditation of Hospitals (JCAH), for example, has established guidelines for the following services: dietetic, emergency, home

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care, nuclear medicine, pharmaceutical, professional library, rehabilitation, social work, and special care. See generally JCAH, Accreditation Manual for Hospitals, 1983 Edition (1982).

n17 Akron's ordinance distinguishes between "hospitals" and outpatient clinics. Section 1870.02 provides that even first-trimester abortions must be performed in "a hospital or an abortion facility." "Abortion facility" is defined as "a clinic, physician's office, or any other place or facility in which abortions are performed, other than a hospital." @ 1870.01(G).

----------End Footnotes----------

[**2494]

[***HR23A] [***HR24A] In the District Court plaintiffs sought to demonstrate that this hospitalization requirement has a serious detrimental impact on a woman's ability to obtain a second-trimester abortion in Akron and that it is not reasonably related to the State's interest in the health of the pregnant woman. The District Court did not reject this argument, but rather found the evidence "not . . . so convincing that it is willing to discard the Supreme Court's formulation in Roe" of a line between impermissible first-trimester regulation and permissible second-trimester regulation. 479 F.Supp., at 1215. The Court of Appeals affirmed on a similar basis. It accepted plaintiffs' argument that Akron's hospitalization requirement did not have a reasonable health justification during at least part of the second trimester, but declined to "retreat from the 'bright line' in Roe v. Wade." 651 F.2d, at [*433] 1210. n18 We believe that the [***705] courts below misinterpreted this Court's prior decisions, and we now hold that @ 1870.03 is unconstitutional.

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n18

[***HR24B] The Court of Appeals believed that it was bound by Gary-Northwest Indiana Women's Services, Inc. v. Bowen, 496 F.Supp. 894 (ND Ind. 1980) (three-judge court), summarily aff'd sub nom. Gary-Northwest Indiana Women's Services, Inc. v. Orr, 451 U.S. 934 (1981), in which an Indiana second-trimester hospitalization requirement was upheld. Although the District Court in that case found that "Roe does not render the constitutionality of second trimester regulations subject to either the availability of abortions or the improvements in medical techniques and skills," 496 F.Supp., at 901-902, it also rested the decision on the alternative ground that the plaintiffs had failed to provide evidence to support their theory that it was unreasonable to require hospitalization for dilation and evacuation abortions performed early in the second trimester. See id., at 902-903. Our summary affirmance therefore is not binding precedent on the hospitalization issue. See Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 180-181, 182-183 (1979).

----------End Footnotes----------

A

In Roe v. Wade the Court held that after the end of the first trimester of pregnancy the State's interest becomes compelling, and it may "regulate the

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abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health." 410 U.S., at 163. We noted, for example, that States could establish requirements relating "to the facility in which the procedure is to be performed, that is, whether it must be in a hospital or may be a clinic or some other place of less-than-hospital status." Ibid. In the companion case of Doe v. Bolton the Court invalidated a Georgia requirement that all abortions be performed in a hospital licensed by the State Board of Health and accredited by the Joint Commission on Accreditation of Hospitals. See 410 U.S., at 201. We recognized the State's legitimate health interests in establishing, for second-trimester abortions, "standards for licensing all facilities where abortions may be performed." Id., at 195. We found, however, that "the State must show more than [was shown in Doe] in order to prove that only the full resources of [*434] a licensed hospital, rather than those of some other appropriately licensed institution, satisfy these health interests." Ibid. n19

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n19 We also found that the additional requirement that the licensed hospital be accredited by the JCAH was "not 'based on differences that are reasonably related to the purposes of the Act in which it is found.'" Doe, 410 U.S., at 194 (quoting Morey v. Doud, 354 U.S. 457, 465 (1957)). We concluded that, in any event, Georgia's hospital requirement was invalid because it applied to first-trimester abortions.

----------End Footnotes----------

[***HR25] [***HR26] [***HR27] We reaffirm today, see supra, at 429, n. 11, that a State's interest in health regulation becomes compelling at approximately the end of the first trimester. The existence of a compelling state interest in health, however, is only the beginning of the inquiry. The State's regulation may be upheld only if it is reasonably designed to further that state interest. See Doe, 410 U.S., at 195. [**2495] And the Court in Roe did not hold that it always is reasonable for a State to adopt an abortion regulation that applies to the entire second trimester. A State necessarily must have latitude in adopting regulations of general applicability in this sensitive area. But if it appears that during a substantial portion of the second trimester the State's regulation "[departs] from accepted medical practice," supra, at 431, the [***706] regulation may not be upheld simply because it may be reasonable for the remaining portion of the trimester. Rather, the State is obligated to make a reasonable effort to limit the effect of its regulations to the period in the trimester during which its health interest will be furthered.

B

There can be no doubt that @ 1870.03's second-trimester hospitalization requirement places a significant obstacle in the path of women seeking an abortion. A primary burden created by the requirement is additional cost to the woman. The Court of Appeals noted that there was testimony that a second-trimester abortion costs more than twice as much in a [*435] hospital as in a clinic. See 651 F.2d, at 1209 (in-hospital abortion costs $ 850-$ 900, whereas a dilatation-and-evacuation (D&E) abortion performed in a clinic costs $ 350-$ 400). n20 Moreover, the court indicated that second-trimester abortions were rarely performed in Akron hospitals. Ibid. (only nine second-trimester

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abortions performed in Akron hospitals in the year before trial). n21 Thus, a second-trimester hospitalization requirement may force women to travel to find available facilities, resulting in both financial expense and additional health risk. It therefore is apparent that a second-trimester hospitalization requirement may significantly limit a woman's ability to obtain an abortion.

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n20 National statistics indicate a similar cost difference. In 1978 the average clinic charged $ 284 for a D&E abortion, whereas the average hospital charge was $ 435. The hospital charge did not include the physician's fee, which ran as high as $ 300. See Rosoff, The Availability of Second-Trimester Abortion Services in the United States, published in Second-Trimester Abortion: Perspectives After a Decade of Experience 35 (G. Berger, W. Brenner, & L. Keith eds. 1981) (hereinafter Second-Trimester Abortion).

n21 The Akron situation is not unique. In many areas of this country, few, if any, hospitals perform second-trimester abortions. See, e. g., Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 664 F.2d, at 689 (second-trimester D&E abortions available at only one hospital in Missouri); Wolfe v. Stumbo, 519 F.Supp. 22, 23 (WD Ky. 1980) (no elective post-first-trimester abortion performed in Kentucky hospitals); Margaret S. v. Edwards, 488 F.Supp. 181, 192 (ED La. 1980) (no hospitals in Louisiana perform abortions after first trimester).

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Akron does not contend that @ 1870.03 imposes only an insignificant burden on women's access to abortion, but rather defends it as a reasonable health regulation. This position had strong support at the time of Roe v. Wade, as hospitalization for second-trimester abortions was recommended by the American Public Health Association (APHA), see Roe, 410 U.S., at 143-146, and the American College of Obstetricians and Gynecologists (ACOG), see Standards for Obstetric-Gynecologic Services 65 (4th ed. 1974). Since then, however, the safety of second-trimester abortions has increased [*436] dramatically. n22 The principal reason is that the D&E procedure is now widely and successfully used for second-trimester abortions. n23 The Court of Appeals [***707] found that there was "an abundance of evidence that D&E is the safest method of performing post-first trimester abortions today." 651 F.2d, at 1209. The availability of the D&E procedure during the interval between approximately 12 and 16 weeks of pregnancy, a period during which other [**2496] second-trimester abortion techniques generally cannot be used, n24 has meant that women desiring an early second-trimester abortion no longer are forced to incur the health risks of waiting until at least the 16th week of pregnancy.

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n22 The death-to-case ratio for all second-trimester abortions in this country fell from 14.4 deaths per 100,000 abortions in 1972 to 7.6 per 100,000 in 1977. See Tyler, Cates, Schulz, Selik, & Smith, Second-Trimester Induced Abortion in the United States, published in Second-Trimester Abortion 17-20.

n23 At the time Roe was decided, the D&E procedure was used only to perform first-trimester abortions.

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n24 Instillation procedures, the primary means of performing a second-trimester abortion before the development of D&E, generally cannot be performed until approximately the 16th week of pregnancy because until that time the amniotic sac is too small. See Grimes & Cates, Dilatation and Evacuation, published in Second-Trimester Abortion 121.

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For our purposes, an even more significant factor is that experience indicates that D&E may be performed safely on an outpatient basis in appropriate nonhospital facilities. The evidence is strong enough to have convinced the APHA to abandon its prior recommendation of hospitalization for all second-trimester abortions:

"Current data show that abortions occurring in the second trimester can be safely performed by the Dilatation and Evacuation (D and E) procedure. . . . Requirements that all abortions after 12 weeks of gestation be performed in hospitals increase the expense and inconvenience to the woman without contributing to the safety of the procedure." APHA Recommended Program [*437] Guide for Abortion Services (Revised 1979), 70 Am. J. Public Health 652, 654 (1980) (hereinafter APHA Recommended Guide).

Similarly, the ACOG no longer suggests that all second-trimester abortions be performed in a hospital. It recommends that abortions performed in a physician's office or outpatient clinic be limited to 14 weeks of pregnancy, but it indicates that abortions may be performed safely in "a hospital-based or in a free-standing ambulatory surgical facility, or in an outpatient clinic meeting the criteria required for a free-standing surgical facility," until 18 weeks of pregnancy. ACOG, Standards for Obstetric-Gynecologic Services 54 (5th ed. 1982).

[***HR28A] These developments, and the professional commentary supporting them, constitute impressive evidence that -- at least during the early weeks of the second trimester -- D&E abortions may be performed as safely in an outpatient clinic as in a full-service hospital. n25 We conclude, therefore, that "present medical knowledge," Roe, supra, at 163, convincingly undercuts Akron's justification for requiring that all second-trimester [***708] abortions be performed in a hospital. n26

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n25 See also Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, supra, at 690, n. 6 (discussing testimony by Dr. Willard Cates, Chief of Federal Abortion Surveillance for the National Centers for Disease Control, that D&E second-trimester abortions are as safely performed outside of hospitals up to the 16th week); APHA Recommended Guide 654 (outpatient D&E is safer than all in-hospital non-D&E abortion procedures during the second trimester).

n26 At trial Akron relied largely on the former position of the various medical organizations concerning hospitalization during the second trimester. See 651 F.2d, at 1209. The revised position of the ACOG did not occur until after trial.

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[***HR28B] Akron also argues that the safety of nonhospital D&E abortions depends on adherence to minimum standards such as those adopted by ACOG for free-standing surgical facilities, see ACOG Standards 51-62, and that there is no evidence that plaintiffs' clinics operate in this manner. But the issue in this litigation is not whether these clinics would meet such standards if they were prescribed by the city. Rather, Akron has gone much further by banning all second-trimester abortions in all clinics, a regulation that does not reasonably further the city's interest in promoting health. We continue to hold, as we did in Doe v. Bolton, that a State may, "from and after the end of the first trimester, adopt standards for licensing all facilities where abortions may be performed so long as those standards are legitimately related to the objective the State seeks to accomplish." 410 U.S., at 194-195. This includes standards designed to correct any deficiencies that Akron reasonably believes exist in the clinics' present operation.

----------End Footnotes----------

[*438]

[***HR23B] [***HR29] [***HR30] Akron nonetheless urges that "[the] fact that some mid-trimester abortions may be done in a minimally equipped clinic does not invalidate the regulation." n27 [**2497] Brief for Respondents in No. 81-1172, p. 19. It is true that a state abortion regulation is not unconstitutional simply because it does not correspond perfectly in all cases to the asserted state interest. But the lines drawn in a state regulation must be reasonable, and this cannot be said of @ 1870.03. By preventing the performance of D&E abortions in an appropriate nonhospital setting, Akron has imposed a heavy, and unnecessary, burden on women's access to a relatively inexpensive, otherwise accessible, and safe abortion procedure. n28 Section 1870.03 has "the effect of inhibiting . . . the vast majority of abortions after the first 12 weeks," Danforth, 428 U.S., at 79, and [*439] therefore unreasonably infringes upon a woman's constitutional right to obtain an abortion.

----------Footnotes----------

n27 The city thus implies that its hospital requirement may be sustained because it is reasonable as applied to later D&E abortions or to all second-trimester instillation abortions. We do not hold today that a State in no circumstances may require that some abortions be performed in a full-service hospital. Abortions performed by D&E are much safer, up to a point in the development of the fetus, than those performed by instillation methods. See Cates & Grimes, Morbidity and Mortality, published in Second-Trimester Abortion 166-169. The evidence before us as to the need for hospitalization concerns only the D&E method performed in the early weeks of the second trimester. See 651 F.2d, at 1208-1210.

n28 In the United States during 1978, 82.1% of all abortions from 13-15 weeks and 24.6% of all abortions from 16-20 weeks were performed by the D&E method. See Department of Health and Human Services, Centers for Disease Control, Abortion Surveillance: Annual Summary 1978, Table 14, p. 43 (1980).

----------End Footnotes----------

IV

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We turn next to @ 1870.05(B), the provision prohibiting a physician from performing an abortion on a minor pregnant woman under the age of 15 unless he obtains "the informed written consent of one of her parents or her legal guardian" or unless the minor obtains "an order from a court having jurisdiction over her that the abortion be performed or induced." The District Court invalidated this provision because "[it] does not establish a procedure by which a minor can avoid a parental veto of her abortion decision by demonstrating that her decision is, in fact, informed. Rather, it [***709] requires, in all cases, both the minor's informed consent and either parental consent or a court order." 479 F.Supp., at 1201. The Court of Appeals affirmed on the same basis. n29

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n29 The Court of Appeals upheld @ 1870.05(A)'s notification requirement. See 651 F.2d, at 1206. The validity of this ruling has not been challenged in this Court.

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[***HR31] The relevant legal standards are not in dispute. The Court has held that "the State may not impose a blanket provision . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor." Danforth, supra, at 74. In Bellotti v. Baird, 443 U.S. 622 (1979) (Bellotti II), a majority of the Court indicated that a State's interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial. See id., at 640-642 (plurality opinion for four Justices); id., at 656-657 (WHITE, J., dissenting) (expressing approval of absolute parental or judicial consent requirement). See also Danforth, supra , at 102-105 (STEVENS, J., concurring in part and dissenting in part). The Bellotti II plurality cautioned, however, that the State must provide an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself [*440] or that, despite her immaturity, an abortion would be in her best interests. 443 U.S., at 643-644. Under these decisions, it is clear that Akron may not make a blanket determination that all minors under the age of 15 are too immature to make this decision or that an abortion never may be in the minor's best interests without parental approval.

[**2498]

[***HR32A] Akron's ordinance does not create expressly the alternative procedure required by Bellotti II. But Akron contends that the Ohio Juvenile Court will qualify as a "court having jurisdiction" within the meaning of @ 1870.05(B), and that "it is not to be assumed that during the course of the juvenile proceedings the Court will not construe the ordinance in a manner consistent with the constitutional requirement of a determination of the minor's ability to make an informed consent." Brief for Petitioner in No. 81-746, p. 28. Akron concludes that the courts below should not have invalidated @ 1870.05(B) on its face. The city relies on Bellotti v. Baird, 428 U.S. 132 (1976) (Bellotti I), in which the Court did not decide whether a State's parental consent provisions were unconstitutional as applied to mature minors, holding instead that "abstention is appropriate where an unconstrued state statute is

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susceptible of a construction by the state judiciary 'which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem.'" Id., at 146-147 (quoting Harrison v. NAACP, 360 U.S. 167, 177 (1959)). See also H. L. v. Matheson, 450 U.S. 398 (1981) (refusing to decide whether parental notice statute would be constitutional [***710] as applied to mature minors). n30

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n30

[***HR32B] The Court's primary holding in Matheson was that the pregnant minor who questioned Utah's abortion consent requirement on the ground that it impermissibly applied to mature or emancipated minors lacked standing to raise that argument since she had not alleged that she or any member of her class was mature or emancipated. 450 U.S., at 406. No such standing problem exists here, however, as the physician plaintiff, who is subject to potential criminal liability for failure to comply with the requirements of @ 1870.05(B), has standing to raise the claims of his minor patients. See Danforth, 428 U.S., at 62; Doe v. Bolton, 410 U.S., at 188-189; Bellotti II, 443 U.S., at 627, n. 5 (plurality opinion).

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[*441]

[***HR33] [***HR34A] [***HR35A] We do not think that the abstention principle should have been applied here. It is reasonable to assume, as we did in Bellotti I, supra, and Matheson, supra, that a state court presented with a state statute specifically governing abortion consent procedures for pregnant minors will attempt to construe the statute consistently with constitutional requirements. This suit, however, concerns a municipal ordinance that creates no procedures for making the necessary determinations. Akron seeks to invoke the Ohio statute governing juvenile proceedings, but that statute neither mentions minors' abortions nor suggests that the Ohio Juvenile Court has authority to inquire into a minor's maturity or emancipation. n31 In these circumstances, we do not think that the Akron ordinance, as applied in Ohio juvenile proceedings, is reasonably susceptible of being construed to create an "opportunity for case-by-case evaluations of the maturity of pregnant minors." Bellotti II, supra, at 643, n. 23 (plurality [*442] [**2499] opinion). We therefore affirm the Court of Appeals' judgment that @ 1870.05(B) is unconstitutional.

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n31

[***HR34B] The Ohio Juvenile Court has jurisdiction over any child "alleged to be a juvenile traffic offender, delinquent, unruly, abused, neglected, or dependent." Ohio Rev. Code Ann. @ 2151.23 (Supp. 1982). The only category that arguably could encompass a pregnant minor desiring an abortion would be the "neglected" child category. A neglected child is defined as one "[whose] parents, guardian or custodian neglects or refuses to provide him with proper or necessary subsistence, education, medical or surgical care, or other care

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necessary for his health, morals, or well being." @ 2151.03. Even assuming that the Ohio courts would construe these provisions as permitting a minor to obtain judicial approval for the "proper or necessary . . . medical or surgical care" of an abortion, where her parents had refused to provide that care, the statute makes no provision for a mature or emancipated minor completely to avoid hostile parental involvement by demonstrating to the satisfaction of the court that she is capable of exercising her constitutional right to choose an abortion. On the contrary, the statute requires that the minor's parents be notified once a petition has been filed, @ 2151.28, a requirement that in the case of a mature minor seeking an abortion would be unconstitutional. See H. L. v. Matheson, 450 U.S., at 420 (POWELL, J., concurring); id., at 428, n. 3 (MARSHALL, J., dissenting).

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V

The Akron ordinance provides that no abortion shall be performed except "with the informed written consent of the pregnant woman, . . . given freely and without coercion." @ 1870.06(A). Furthermore, "in order to insure that the consent for an abortion is truly informed consent," the woman must be "orally informed by her attending physician" of the status of her pregnancy, the development of her fetus, the date of possible viability, the physical and emotional [***711] complications that may result from an abortion, and the availability of agencies to provide her with assistance and information with respect to birth control, adoption, and childbirth. @ 1870.06(B). In addition, the attending physician must inform her "of the particular risks associated with her own pregnancy and the abortion technique to be employed . . . [and] other information which in his own medical judgment is relevant to her decision as to whether to have an abortion or carry her pregnancy to term." @ 1870.06(C).

The District Court found that @ 1870.06(B) was unconstitutional, but that @ 1870.06(C) was related to a valid state interest in maternal health. See 479 F.Supp., at 1203-1204. The Court of Appeals concluded that both provisions were unconstitutional. See 651 F.2d, at 1207. We affirm.

A

In Danforth, we upheld a Missouri law requiring a pregnant woman to "[certify] in writing her consent to the abortion and that her consent is informed and freely given and is not the result of coercion." 428 U.S., at 85. We explained:

"The decision to abort . . . 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. [*443] The woman is the one primarily concerned, and her awareness of the decision and its significance may be assured, constitutionally, by the State to the extent of requiring her prior written consent." Id., at 67.

We rejected the view that "informed consent" was too vague a term, construing it to mean "the giving of information to the patient as to just what would be done and as to its consequences. To ascribe more meaning than this might well

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confine the attending physician in an undesired and uncomfortable straitjacket in the practice of his profession." Id., at 67, n. 8.

[***HR36] [***HR37] [***HR38] [***HR39A] The validity of an informed consent requirement thus rests on the State's interest in protecting the health of the pregnant woman. The decision to have an abortion has "implications far broader than those associated with most other kinds of medical treatment," Bellotti II, 443 U.S., at 649 (plurality opinion), and thus the State legitimately may seek to ensure that it has been made "in the light of all attendant circumstances -- psychological and emotional as well as physical -- that might be relevant to the well-being of the patient." Colautti v. Franklin, 439 U.S., at 394. n32 This does not mean, however, that a State has unreviewable authority to decide what information a woman must be given before she chooses to [***712] have an abortion. It remains primarily the responsibility of the physician to ensure that appropriate information is conveyed to his patient, depending on her particular circumstances. Danforth's recognition of [**2500] the State's interest in ensuring that this information be given [*444] will not justify abortion regulations designed to influence the woman's informed choice between abortion or childbirth. n33

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n32 In particular, we have emphasized that a State's interest in protecting immature minors and in promoting family integrity gives it a special interest in ensuring that the abortion decision is made with understanding and after careful deliberation. See, e. g., H. L. v. Matheson, 450 U.S., at 411; id., at 419-420 (POWELL, J., concurring); id., at 421-424 (STEVENS, J., concurring in judgment).

n33

[***HR39B] A State is not always foreclosed from asserting an interest in whether pregnancies end in abortion or childbirth. In Maher v. Roe, 432 U.S. 464 (1977), and Harris v. McRae, 448 U.S. 297 (1980), we upheld governmental spending statutes that reimbursed indigent women for childbirth but not abortion. This legislation to further an interest in preferring childbirth over abortion was permissible, however, only because it did not add any "restriction on access to abortions that was not already there." Maher, supra, at 474.

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B

[***HR40A] [***HR41] Viewing the city's regulations in this light, we believe that @ 1870.06(B) attempts to extend the State's interest in ensuring " informed consent" beyond permissible limits. First, it is fair to say that much of the information required is designed not to inform the woman's consent but rather to persuade her to withhold it altogether. Subsection (3) requires the physician to inform his patient that "the unborn child is a human life from the moment of conception," a requirement inconsistent with the Court's holding in Roe v. Wade that a State may not adopt one theory of when life begins to justify its regulation of abortions. See 410 U.S., at 159-162. Moreover, much of the detailed description of "the anatomical and physiological characteristics of the particular unborn child" required by subsection (3) would involve at best speculation by the physician. n34 And subsection (5), that begins with the

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dubious statement that "abortion is a major surgical procedure" n35 and proceeds to describe numerous possible [*445] physical and psychological complications of abortion, n36 is a "parade of horribles" intended to suggest that abortion is a particularly dangerous procedure.

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n34 This description must include, but not be limited to, "appearance, mobility, tactile sensitivity, including pain, perception or response, brain and heart function, the presence of internal organs and the presence of external members." The District Court found that "there was much evidence that it is impossible to determine many of [these] items, . . . such as the 'unborn child's' sensitivity to pain." 479 F.Supp., at 1203.

n35 The District Court found that "there was much evidence that rather than being 'a major surgical procedure' as the physician is required to state . . . , an abortion generally is considered a 'minor surgical procedure.'" Ibid.

n36 Section 1870.06(B)(5) requires the physician to state

"[that] abortion is a major surgical procedure which can result in serious complications, including hemorrhage, perforated uterus, infection, menstrual disturbances, sterility and miscarriage and prematurity in subsequent pregnancies; and that abortion may leave essentially unaffected or may worsen any existing psychological problems she may have, and can result in severe emotional disturbances."

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[***HR40B] [***HR42] [***HR43A] An additional, and equally decisive, objection to @ 1870.06(B) is its intrusion upon the discretion of the pregnant woman's physician. This provision specifies a litany of information that the physician must recite to each woman regardless of whether in his judgment the information is relevant to her personal decision. For example, even [***713] if the physician believes that some of the risks outlined in subsection (5) are nonexistent for a particular patient, he remains obligated to describe them to her. In Danforth the Court warned against placing the physician in just such an "undesired and uncomfortable straitjacket." 428 U.S., at 67, n. 8. Consistent with its interest in ensuring informed consent, a State may require that a physician make certain that his patient understands the physical and emotional implications of having an abortion. But Akron has gone far beyond merely describing the general subject matter relevant to informed consent. By insisting upon recitation of a lengthy and inflexible list of information, Akron unreasonably has placed "obstacles in the path of the doctor upon whom [the woman is] entitled to rely for advice in connection with her decision." [**2501] Whalen v. Roe, 429 U.S., at 604, n. 33. n37

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n37

[***HR43B] Akron has made little effort to defend the constitutionality of @@ 1870.06(B)(3), (4), and (5), but argues that the remaining four subsections of the provision are valid and severable. These four subsections require that the

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patient be informed by the attending physician of the fact that she is pregnant, @ 1870.06(B)(1), the gestational age of the fetus, @ 1870.06(B)(2), the availability of information on birth control and adoption, @ 1870.06(B)(6), and the availability of assistance during pregnancy and after childbirth, @ 1870.06(B)(7). This information, to the extent it is accurate, certainly is not objectionable, and probably is routinely made available to the patient. We are not persuaded, however, to sever these provisions from the remainder of @ 1870.06(B). They require that all of the information be given orally by the attending physician when much, if not all of it, could be given by a qualified person assisting the physician. See infra, at 448-449.

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[*446] C

Section 1870.06(C) presents a different question. Under this provision, the "attending physician" must inform the woman

"of the particular risks associated with her own pregnancy and the abortion technique to be employed including providing her with at least a general description of the medical instructions to be followed subsequent to the abortion in order to insure her safe recovery, and shall in addition provide her with such other information which in his own medical judgment is relevant to her decision as to whether to have an abortion or carry her pregnancy to term."

The information required clearly is related to maternal health and to the State's legitimate purpose in requiring informed consent. Nonetheless, the Court of Appeals determined that it interfered with the physician's medical judgment "in exactly the same way as section 1870.06(B). It requires the doctor to make certain disclosures in all cases, regardless of his own professional judgment as to the desirability of doing so." 651 F.2d, at 1207. This was a misapplication of Danforth. There we construed "informed consent" to mean "the giving of information to the patient as to just what would be done and as to its consequences." 428 U.S., at 67, n. 8. We see no significant difference in Akron's requirement that the woman be told of the particular risks of her pregnancy and the abortion technique to be [*447] used, and be given general instructions on proper postabortion care. Moreover, in contrast to subsection (B), [***714] @ 1870.06(C) merely describes in general terms the information to be disclosed. It properly leaves the precise nature and amount of this disclosure to the physician's discretion and "medical judgment."

The Court of Appeals also held, however, that @ 1870.06(C) was invalid because it required that the disclosure be made by the "attending physician." The court found that "the practice of all three plaintiff clinics has been for the counseling to be conducted by persons other than the doctor who performs the abortion," 651 F.2d, at 1207, and determined that Akron had not justified requiring the physician personally to describe the health risks. Akron challenges this holding as contrary to our cases that emphasize the importance of the physician-patient relationship. In Akron's view, as in the view of the dissenting judge below, the "attending physician" requirement "does no more than seek to ensure that there is in fact a true physician-patient relationship even for the woman who goes to an abortion clinic." Id., at 1217 (Kennedy, J., concurring in part and dissenting in part).

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[***HR44] Requiring physicians personally to discuss the abortion decision, its health risks, and consequences with each patient may in some cases add to the cost of providing abortions, though the record here does not suggest that ethical physicians will charge more for adhering to this typical element of the physician-patient relationship. Yet in Roe and subsequent cases we have "stressed repeatedly the central role of the physician, both in consulting with the woman about whether or not to have an abortion, and in determining how any abortion was to be carried out." Colautti v. Franklin, 439 U.S., at 387. [**2502] Moreover, we have left no doubt that, to ensure the safety of the abortion procedure, the States may mandate that only physicians perform abortions. See Connecticut v. Menillo, 423 U.S. 9, 11 (1975); Roe, 410 U.S., at 165.

[*448]

[***HR45] We are not convinced, however, that there is as vital a state need for insisting that the physician performing the abortion, or for that matter any physician, personally counsel the patient in the absence of a request. The State's interest is in ensuring that the woman's consent is informed and unpressured; the critical factor is whether she obtains the necessary information and counseling from a qualified person, not the identity of the person from whom she obtains it. n38 Akron and intervenors strongly urge that the nonphysician counselors at the plaintiff abortion clinics are not trained or qualified to perform this important function. The courts below [***715] made no such findings, however, and on the record before us we cannot say that the woman's consent to the abortion will not be informed if a physician delegates the counseling task to another qualified individual.

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n38 We do not suggest that appropriate counseling consists simply of a recital of pertinent medical facts. On the contrary, it is clear that the needs of patients for information and an opportunity to discuss the abortion decision will vary considerably. It is not disputed that individual counseling should be available for those persons who desire or need it. See, e. g., National Abortion Federation Standards 1 (1981) (hereinafter NAF Standards); Planned Parenthood of Metropolitan Washington, D. C., Inc., Guidelines for Operation, Maintenance, and Evaluation of First Trimester Outpatient Abortion Facilities 5 (1980). Such an opportunity may be especially important for minors alienated or separated from their parents. See APHA Recommended Guide 654. Thus, for most patients, mere provision of a printed statement of relevant information is not counseling.

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[***HR46] [***HR47] [***HR48] [***HR49] [***HR50A] In so holding, we do not suggest that the State is powerless to vindicate its interest in making certain the "important" and "stressful" decision to abort "[is] made with full knowledge of its nature and consequences." Danforth, 428 U.S., at 67. Nor do we imply that a physician may abdicate his essential role as the person ultimately responsible for the medical aspects of the decision to perform the abortion. n39 A [*449] State may define the physician's responsibility to include verification that adequate counseling has been provided and that the woman's

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consent is informed. n40 In addition, the State may establish reasonable minimum qualifications for those people who perform the primary counseling function. n41 See, e. g., Doe, 410 U.S., at 195 (State may require a medical facility "to possess all the staffing and services necessary to perform an abortion safely"). In light of these alternatives, we believe that it is unreasonable for a State to insist that only a physician is competent to provide the information and counseling relevant to informed consent. We affirm the judgment of the Court of Appeals that @ 1870.06(C) is invalid.

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n39 This Court's consistent recognition of the critical role of the physician in the abortion procedure has been based on the model of the competent, conscientious, and ethical physician. See Doe, 410 U.S., at 196-197. We have no occasion in this case to consider conduct by physicians that may depart from this model. Cf. Danforth, 428 U.S., at 91-92, n. 2 (Stewart, J., concurring).

n40 Cf. ACOG Standards 54 ("If counseling has been provided elsewhere, the physician performing the abortion should verify that the counseling has taken place").

n41 The importance of well-trained and competent counselors is not in dispute. See, e. g., APHA Recommended Guide 654 ("Abortion counselors may be highly skilled physicians as well as trained, sympathetic individuals working under appropriate supervision"); NAF Standards 2 (counselors must be trained initially at least in the following subjects: "sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referrals; informed consent; agency policies and practices").

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VI

The Akron ordinance prohibits a physician from performing an abortion until [**2503] 24 hours after the pregnant woman signs a consent form. @ 1870.07. n42 The District Court upheld this provision on the ground that it furthered Akron's interest in ensuring "that a woman's abortion decision is made after careful consideration of all the facts applicable to her particular [*450] situation." 479 F.Supp., at 1204. The Court of Appeals reversed, finding that the inflexible waiting period had "no medical basis," and that careful consideration of the abortion decision by the woman "is beyond the state's power to require." 651 F.2d, at 1208. We affirm the Court of Appeals' judgment.

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n42 This provision does not apply if the physician certifies in writing that "there is an emergency need for an abortion to be performed or induced such that continuation of the pregnancy poses an immediate threat and grave risk to the life or physical health of the pregnant woman." @ 1870.12.

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The District Court found that the mandatory 24-hour waiting period [***716]

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increases the cost of obtaining an abortion by requiring the woman to make two separate trips to the abortion facility. See 479 F.Supp., at 1204. Plaintiffs also contend that because of scheduling difficulties the effective delay may be longer than 24 hours, and that such a delay in some cases could increase the risk of an abortion. Akron denies that any significant health risk is created by a 24-hour waiting period, and argues that a brief period of delay -- with the opportunity for reflection on the counseling received -- often will be beneficial to the pregnant woman.

[***HR51A] [***HR52] [***HR53] We find that Akron has failed to demonstrate that any legitimate state interest is furthered by an arbitrary and inflexible waiting period. There is no evidence suggesting that the abortion procedure will be performed more safely. Nor are we convinced that the State's legitimate concern that the woman's decision be informed is reasonably served by requiring a 24-hour delay as a matter of course. The decision whether to proceed with an abortion is one as to which it is important to "[afford] the physician adequate discretion in the exercise of his medical judgment." Colautti v. Franklin, 439 U.S., at 387. In accordance with the ethical standards of the profession, a physician will advise the patient to defer the abortion when he thinks this will be beneficial to her. n43 But if a woman, after appropriate counseling, is prepared [*451] to give her written informed consent and proceed with the abortion, a State may not demand that she delay the effectuation of that decision.

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n43 The ACOG recommends that a clinic allow "sufficient time for reflection prior to making an informed decision." ACOG Standards 54. In contrast to @ 1870.07's mandatory waiting period, this standard recognizes that the time needed for consideration of the decision varies depending on the particular situation of the patient and how much prior counseling she has received.

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VII

Section @ 1870.16 of the Akron ordinance requires physicians performing abortions to "insure that the remains of the unborn child are disposed of in a humane and sanitary manner." The Court of Appeals found that the word "humane" was impermissibly vague as a definition of conduct subject to criminal prosecution. The court invalidated the entire provision, declining to sever the word "humane" in order to uphold the requirement that disposal be "sanitary." See 651 F.2d, at 1211. We affirm this judgment.

[***HR54A] Akron contends that the purpose of @ 1870.16 is simply "'to preclude the mindless dumping of aborted fetuses onto garbage piles.'" Planned Parenthood Assn. v. Fitzpatrick, 401 F.Supp. 554, 573 (ED Pa. 1975) (three-judge court) (quoting State's characterization of legislative purpose), summarily aff'd sub nom. Franklin v. Fitzpatrick, 428 U.S. 901 (1976). n44 It is far from [**2504] clear, however, that this provision has such a limited intent. The phrase "humane [***717] and sanitary" does, as the Court of Appeals noted, suggest a possible intent to "mandate some sort of 'decent burial' of an embryo at the earliest stages of formation." 651 F.2d, at 1211. This level of uncertainty is fatal where criminal liability is imposed. See Colautti v.

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Franklin, supra, at 396. Because @ 1870.16 fails to give a physician "fair notice that his contemplated conduct is forbidden," United States v. Harriss, 347 [*452] U.S. 612, 617 (1954), we agree that it violates the Due Process Clause. n45

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n44 In Fitzpatrick the District Court accepted Pennsylvania's contention that its statute governing the "humane" disposal of fetal remains was designed only to prevent such "mindless dumping." That decision is distinguishable because the statute did not impose criminal liability, but merely provided for the promulgation of regulations to implement the disposal requirement. See 401 F.Supp., at 572-573.

n45 We are not persuaded by Akron's argument that the word "humane" should be severed from the statute. The uncertain meaning of the phrase "humane and sanitary" leaves doubt as to whether the city would have enacted @ 1870.16 with the word "sanitary" alone. Akron remains free, of course, to enact more carefully drawn regulations that further its legitimate interest in proper disposal of fetal remains.

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VIII

[***HR23C] [***HR35B] [***HR40C] [***HR50B] [***HR51B] [***HR54B] We affirm the judgment of the Court of Appeals invalidating those sections of Akron's "Regulations of Abortions" ordinance that deal with parental consent, informed consent, a 24-hour waiting period, and the disposal of fetal remains. The remaining portion of the judgment, sustaining Akron's requirement that all second-trimester abortions be performed in a hospital, is reversed.

It is so ordered.

DISSENTBY:
O'CONNOR

DISSENT:

JUSTICE O'CONNOR, with whom JUSTICE WHITE and JUSTICE REHNQUIST join, dissenting.

In Roe v. Wade, 410 U.S. 113 (1973), the Court held that the "right of privacy . . . founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Id., at 153. The parties in these cases have not asked the Court to re-examine the validity of that holding and the court below did not address it. Accordingly, the Court does not re-examine its previous holding. Nonetheless, it is apparent from the Court's opinion that neither sound constitutional theory nor our need to decide cases based on the application of neutral principles can accommodate an analytical framework that varies according to the "stages" of pregnancy, where those stages, and their concomitant standards of review, differ according to the level of medical technology available when a particular challenge to state regulation

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occurs. The Court's analysis of the Akron regulations is inconsistent both with [*453] the methods of analysis employed in previous cases dealing with abortion, and with the Court's approach to fundamental rights in other areas.

Our recent cases indicate that a regulation imposed on "a lawful abortion 'is not unconstitutional unless it unduly burdens the right to seek an abortion.'" Maher v. Roe, 432 U.S. 464, 473 (1977) (quoting Bellotti v. Baird, 428 U.S. 132, 147 (1977) (Bellotti I)). See also Harris v. McRae, 448 U.S. 297, 314 [***718] (1980). In my view, this "unduly burdensome" standard should be applied to the challenged regulations throughout the entire pregnancy without reference to the particular "stage" of pregnancy involved. If the particular regulation does not "unduly [burden]" the fundamental right, Maher, supra, at 473, then our evaluation of that regulation is limited to our determination that the regulation rationally relates to a legitimate state purpose. Irrespective of what we may believe is wise or prudent policy in this difficult area, "the Constitution does not constitute us as 'Platonic Guardians' nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, 'wisdom,' [**2505] or 'common sense.'" Plyler v. Doe, 457 U.S. 202, 242 (1982) (BURGER, C. J., dissenting).

I

The trimester or "three-stage" approach adopted by the Court in Roe, n1 and, in a modified form, employed by the [*454] Court to analyze the regulations in these cases, cannot be supported as a legitimate or useful framework for accommodating the woman's right and the State's interests. The decision of the Court today graphically illustrates why the trimester approach is a completely unworkable method of accommodating the conflicting personal rights and compelling state interests that are involved in the abortion context.

----------Footnotes----------

n1 Roe recognized that the State possesses important and legitimate interests in protecting maternal health and the potentiality of human life. These "separate and distinct" interests were held to grow "in substantiality as the woman approaches term and, at a point during pregnancy, each becomes 'compelling.'" 410 U.S., at 162-163. The state interest in maternal health was said to become compelling "at approximately the end of the first trimester." Id ., at 163. Before that time, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." Id., at 164. After the end of the first trimester, "a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health." Id., at 163. The Court noted that "in the light of present medical knowledge . . . mortality in abortion may be less than mortality in normal childbirth" during the first trimester of pregnancy. Ibid.

The state interest in potential human life was held to become compelling at " viability," defined by the Court as that point "at which the fetus . . . [is] potentially able to live outside the mother's womb, albeit with artificial aid." Roe, 410 U.S., at 160 (footnote omitted). Based on the Court's review of the contemporary medical literature, it placed viability at about 28 weeks, but acknowledged that this point may occur as early as 24 weeks. After viability is reached, the State may, according to Roe, proscribe abortion altogether, except

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when it is necessary to preserve the life and health of the mother. See id., at 163-164. Since Roe, the Court has held that Roe "left the point [of viability] flexible for anticipated advancements in medical skill." Colautti v. Franklin, 439 U.S. 379, 387 (1979).

The Court has also identified a state interest in protection of the young and "familial integrity" in the abortion context. See, e. g., H. L. v. Matheson, 450 U.S. 398, 411 (1981).

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As the Court indicates today, the State's compelling interest in maternal health changes as medical technology changes, and any health regulation must not "depart from [***719] accepted medical practice." Ante, at 431. n2 In applying this standard, the Court holds that "the safety of second-trimester abortions has increased dramatically" since 1973, when [*455] Roe was decided. Ante, at 435-436 (footnote omitted). Although a regulation such as one requiring that all second-trimester abortions be performed in hospitals "had strong support" in 1973 "as a reasonable health regulation," ante, at 435, this regulation can no longer stand because, according to the Court's diligent research into medical and scientific literature, the dilation and evacuation (D&E) procedure used in 1973 only for first-trimester abortions, "is now widely and successfully used for second-trimester abortions." Ante, at 436 (footnote omitted). Further, the medical literature relied on by the Court indicates that the D&E procedure may be performed in an appropriate nonhospital setting for "at least . . . the early weeks of the second trimester . . . ." Ante, at 437. The Court then chooses the period of 16 weeks of gestation as that point at which D&E procedures may be [**2506] performed safely in a nonhospital setting, and thereby invalidates the Akron hospitalization regulation.

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n2 Although the Court purports to retain the trimester approach as "a reasonable legal framework for limiting" state regulatory authority over abortions, ante at 429, n. 11, the Court expressly abandons the Roe view that the relative rates of childbirth and abortion mortality are relevant for determining whether second-trimester regulations are reasonably related to maternal health. Instead, the Court decides that a health regulation must not "depart from accepted medical practice" if it is to be upheld. Ante, at 431. The State must now "make a reasonable effort to limit the effect of its regulations to the period in the trimester during which its health interest will be furthered." Ante, at 434 (emphasis added).

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It is not difficult to see that despite the Court's purported adherence to the trimester approach adopted in Roe, the lines drawn in that decision have now been "blurred" because of what the Court accepts as technological advancement in the safety of abortion procedure. The State may no longer rely on a "bright line" that separates permissible from impermissible regulation, and it is no longer free to consider the second trimester as a unit and weigh the risks posed by all abortion procedures throughout that trimester. n3 Rather, [*456] the State must continuously and conscientiously study contemporary medical and scientific literature in order to determine whether the effect of a particular

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regulation is to "depart from accepted medical practice" insofar as particular procedures and particular periods within the trimester are concerned. Assuming that legislative [***720] bodies are able to engage in this exacting task, n4 it is difficult to believe that our Constitution requires that they do it as a prelude to protecting the health of their citizens. It is even more difficult to believe that this Court, without the resources available to those bodies entrusted with making legislative choices, believes itself competent to make these inquiries and to revise these standards every time the American College of Obstetricians and Gynecologists (ACOG) or similar group revises its views about what is and what is not appropriate medical procedure in this area. Indeed, the ACOG Standards on which the Court relies were changed in 1982 after trial in the present cases. Before ACOG changed its Standards in 1982, it recommended that all mid-trimester abortions be performed in a hospital. See 651 F.2d 1198, 1209 (CA6 1981). As today's decision indicates, medical technology is changing, and this change will necessitate our continued functioning as the Nation's "ex officio medical board with powers to approve or disapprove medical and operative practices and standards throughout the United States." Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 99 (1976) (WHITE, J., concurring in part and dissenting in part).

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n3 The Court holds that the summary affirmance in Gary-Northwest Indiana Women's Services, Inc. v. Bowen, 496 F.Supp. 894 (ND Ind. 1980) (three-judge court), aff'd sub nom. Gary-Northwest Indiana Women's Services, Inc. v. Orr, 451 U.S. 934 (1981), is not, as the court below thought, binding precedent on the hospitalization issue. See ante, at 433, n. 18. Although the Court reads Gary-Northwest to be decided on the alternative ground that the plaintiffs failed to prove the safety of second-trimester abortions, ante, at 433, n. 18, the Court simply ignores the fact that the District Court in Gary-Northwest held that "even if the plaintiffs could prove birth more dangerous than early second trimester D&E abortions," that would not matter insofar as the constitutionality of the regulations were concerned. See 496 F.Supp., at 903 (emphasis added).

n4 Irrespective of the difficulty of the task, legislatures, with their superior factfinding capabilities, are certainly better able to make the necessary judgments than are courts.

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Just as improvements in medical technology inevitably will move forward the point at which the State may regulate for reasons of maternal health, different technological improvements will move backward the point of viability at which the [*457] State may proscribe abortions except when necessary to preserve the life and health of the mother.

In 1973, viability before 28 weeks was considered unusual. The 14th edition of L. Hellman & J. Pritchard, Williams Obstetrics (1971), on which the Court relied in Roe for its understanding of viability, stated, at 493, that "[attainment] of a [fetal] weight of 1,000 g [or a fetal age of approximately 28 weeks' gestation] is . . . widely used as the criterion of viability." However, recent studies have demonstrated increasingly earlier fetal viability. n5 It is certainly [**2507] reasonable to believe that fetal viability in the first

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trimester of pregnancy may be possible in the [***721] not too distant future. Indeed, the Court has explicitly acknowledged that Roe left the point of viability "flexible for anticipated advancements in medical skill." Colautti v. Franklin, 439 U.S. 379, 387 (1979). "[We] recognized in Roe that viability was a matter of medical [*458] judgment, skill, and technical ability, and we preserved the flexibility of the term." Danforth, supra, at 64.

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n5 One study shows that infants born alive with a gestational age of less than 25 weeks and weight between 500 and 1,249 grams have a 20% chance of survival. See Phillip, Little, Polivy, & Lucey, Neonatal Mortality Risk for the Eighties: The Importance of Birth Weight/Gestational Age Groups, 68 Pediatrics 122 (1981). Another recent comparative study shows that preterm infants with a weight of 1,000 grams or less born in one hospital had a 42% rate of survival. Kopelman, The Smallest Preterm Infants: Reasons for Optimism and New Dilemmas, 132 Am. J. Diseases of Children 461 (1978). An infant weighing 484 grams and having a gestational age of 22 weeks at birth is now thriving in a Los Angeles hospital, and the attending physician has stated that the infant has a "95% chance of survival." Washington Post, Mar. 31, 1983, p. A2, col. 2. The aborted fetus in Simopoulos v. Virginia, post, p. 506, weighed 495 grams and had a gestational age of approximately 22 weeks.

Recent developments promise even greater success in overcoming the various respiratory and immunological neonatal complications that stand in the way of increased fetal viability. See, e. g., Beddis, Collins, Levy, Godfrey, & Silverman, New Technique for Servo-Control of Arterial Oxygen Tension in Preterm Infants, 54 Archives of Disease in Childhood 278 (1979). "There is absolutely no question that in the current era there has been a sustained and progressive improvement in the outlook for survival of small premature infants." Stern, Intensive Care of the Pre-Term Infant, 26 Danish Med. Bull. 144 (1979).

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The Roe framework, then, is clearly on a collision course with itself. As the medical risks of various abortion procedures decrease, the point at which the State may regulate for reasons of maternal health is moved further forward to actual childbirth. As medical science becomes better able to provide for the separate existence of the fetus, the point of viability is moved further back toward conception. Moreover, it is clear that the trimester approach violates the fundamental aspiration of judicial decisionmaking through the application of neutral principles "sufficiently absolute to give them roots throughout the community and continuity over significant periods of time . . . ." A. Cox, The Role of the Supreme Court in American Government 114 (1976). The Roe framework is inherently tied to the state of medical technology that exists whenever particular litigation ensues. Although legislatures are better suited to make the necessary factual judgments in this area, the Court's framework forces legislatures, as a matter of constitutional law, to speculate about what constitutes "accepted medical practice" at any given time. Without the necessary expertise or ability, courts must then pretend to act as science review boards and examine those legislative judgments.

The Court adheres to the Roe framework because the doctrine of stare decisis "demands respect in a society governed by the rule of law." Ante, at 420.

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Although respect for stare decisis cannot be challenged, "this Court's considered practice [is] not to apply stare decisis as rigidly in constitutional as in nonconstitutional cases." Glidden Co. v. Zdanok, 370 U.S. 530, 543 (1962). Although we must be mindful of the "desirability of continuity of decision in constitutional questions . . . when convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history [*459] has freely exercised its power to reexamine the basis of its constitutional decisions." Smith v. Allwright, 321 U.S. 649, 665 (1944) (footnote omitted).

Even assuming that there is a fundamental right to terminate pregnancy in some situations, there is no justification in law or logic for the trimester framework adopted in Roe and employed by the Court today on the basis of stare decisis. For the reasons [**2508] stated above, that framework is clearly an unworkable means of balancing the fundamental right and the compelling state interests that are indisputably implicated.

II

The Court in Roe correctly realized [***722] that the State has important interests "in the areas of health and medical standards" and that "[the] State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient." 410 U.S., at 149-150. The Court also recognized that the State has "another important and legitimate interest in protecting the potentiality of human life." Id., at 162 (emphasis in original). I agree completely that the State has these interests, but in my view, the point at which these interests become compelling does not depend on the trimester of pregnancy. Rather, these interests are present throughout pregnancy.

This Court has never failed to recognize that "a State may properly assert important interests in safeguarding health [and] in maintaining medical standards." Id., at 154. It cannot be doubted that as long as a state statute is within "the bounds of reason and [does not] [assume] the character of a merely arbitrary fiat . . . [then] [the] State . . . must decide upon measures that are needful for the protection of its people . . . ." Purity Extract and Tonic Co. v. Lynch, 226 U.S. 192, 204-205 (1912). "There is nothing in the United States Constitution which limits the State's power to require that medical procedures be done safely . . . ." Sendak v. [*460] Arnold, 429 U.S. 968, 969 (1976) (WHITE, J., dissenting). "The mode and procedure of medical diagnostic procedures is not the business of judges." Parham v. J. R., 442 U.S. 584, 607-608 (1979). Under the Roe framework, however, the state interest in maternal health cannot become compelling until the onset of the second trimester of pregnancy because "until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth." 410 U.S., at 163. Before the second trimester, the decision to perform an abortion "must be left to the medical judgment of the pregnant woman's attending physician." Id., at 164. n6

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n6 Interestingly, the Court in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), upheld a recordkeeping requirement as well as the consent provision even though these requirements were imposed on first-trimester

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abortions and although the State did not impose comparable requirements on most other medical procedures. See id., at 65-67, 79-81. Danforth, then, must be understood as a retreat from the position ostensibly adopted in Roe that the State had no compelling interest in regulation during the first trimester of pregnancy that would justify restrictions imposed on the abortion decision.

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The fallacy inherent in the Roe framework is apparent: just because the State has a compelling interest in ensuring maternal safety once an abortion may be more dangerous than childbirth, it simply does not follow that the State has no interest before that point that justifies state regulation to ensure that first-trimester abortions are performed as safely as possible. n7

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n7 For example, the 1982 ACOG Standards, on which the Court relies so heavily in its analysis, provide that physicians performing first-trimester abortions in their offices should provide for prompt emergency treatment or hospitalization in the event of any complications. See ACOG Standards, at 54. ACOG also prescribes that certain equipment be available for office abortions. See id., at 57. I have no doubt that the State has a compelling interest to ensure that these or other requirements are met, and that this legitimate concern would justify state regulation for health reasons even in the first trimester of pregnancy.

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[***723] The state interest in potential human life is likewise extant throughout pregnancy. In Roe, the Court held that [*461] although the State had an important and legitimate interest in protecting potential life, that interest could not become compelling until [**2509] the point at which the fetus was viable. The difficulty with this analysis is clear: potential life is no less potential in the first weeks of pregnancy than it is at viability or afterward. At any stage in pregnancy, there is the potential for human life. Although the Court refused to "resolve the difficult question of when life begins," id., at 159, the Court chose the point of viability -- when the fetus is capable of life independent of its mother -- to permit the complete proscription of abortion. The choice of viability as the point at which the state interest in potential life becomes compelling is no less arbitrary than choosing any point before viability or any point afterward. Accordingly, I believe that the State's interest in protecting potential human life exists throughout the pregnancy.

III

Although the State possesses compelling interests in the protection of potential human life and in maternal health throughout pregnancy, not every regulation that the State imposes must be measured against the State's compelling interests and examined with strict scrutiny. This Court has acknowledged that "the right in Roe v. Wade can be understood only by considering both the woman's interest and the nature of the State's interference with it. Roe did not declare an unqualified 'constitutional right to an abortion' . . . . Rather, the right protects the woman from unduly burdensome

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interference with her freedom to decide whether to terminate her pregnancy." Maher, 432 U.S., at 473-474. The Court and its individual Justices have repeatedly utilized the "unduly burdensome" standard in abortion cases. n8

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n8 See Bellotti v. Baird, 428 U.S. 132, 147 (1976) (Bellotti I) (State may not "impose undue burdens upon a minor capable of giving an informed consent." In Bellotti I, the Court left open the question whether a judicial hearing would unduly burden the Roe right of an adult woman. See 428 U.S., at 147); Bellotti v. Baird, 443 U.S. 622, 640 (1979) (Bellotti II) (opinion of POWELL, J.) (State may not "unduly burden the right to seek an abortion"); Harris v. McRae, 448 U.S. 297, 314 (1980) ("The doctrine of Roe v. Wade, the Court held in Maher, 'protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy,' [432 U.S.], at 473-474, such as the severe criminal sanctions at issue in Roe v. Wade, supra, or the absolute requirement of spousal consent for an abortion challenged in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52"); Beal v. Doe, 432 U.S. 438, 446 (1977) (The state interest in protecting potential human life "does not, at least until approximately the third trimester, become sufficiently compelling to justify unduly burdensome state interference . . ."); Carey v. Population Services International, 431 U.S. 678, 705 (1977) (POWELL, J., concurring in part and concurring in judgment) ("In my view, [Roe and Griswold v. Connecticut, 381 U.S. 479 (1965),] make clear that the [compelling state interest] standard has been invoked only when the state regulation entirely frustrates or heavily burdens the exercise of constitutional rights in this area. See Bellotti v. Baird, 428 U.S. 132, 147 (1976)"). Even though the Court did not explicitly use the "unduly burdensome" standard in evaluating the informed-consent requirement in Planned Parenthood of Central Missouri v. Danforth, supra, the informed-consent requirement for first-trimester abortions in Danforth was upheld because it did not "unduly [burden] the right to seek an abortion." Bellotti I, supra, at 147.

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[*462] [***724] The requirement that state interference "infringe substantially" or "heavily burden" a right before heightened scrutiny is applied is not novel in our fundamental-rights jurisprudence, or restricted to the abortion context. In San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 37-38 (1973), we observed that we apply "strict judicial scrutiny" only when legislation may be said to have "'deprived,' 'infringed,' or 'interfered' with the free exercise of some such fundamental personal right or liberty." If the impact of the regulation does not rise to the level appropriate for our strict scrutiny, then our inquiry is limited to whether the state law bears "some rational relationship to legitimate [**2510] state purposes." Id., at 40. Even in the First Amendment context, we have required in some circumstances that state laws "infringe substantially" on protected conduct, Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 545 [*463] (1963), or that there be "a significant encroachment upon personal liberty," Bates v. City of Little Rock, 361 U.S. 516, 524 (1960).

In Carey v. Population Services International, 431 U.S. 678 (1977), we eschewed the notion that state law had to meet the exacting "compelling state interest" test "'whenever it implicates sexual freedom.'" Id., at 688, n. 5.

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Rather, we required that before the "strict scrutiny" standard was employed, it was necessary that the state law "[impose] a significant burden" on a protected right, id., at 689, or that it "burden an individual's right to decide to prevent conception or terminate pregnancy by substantially limiting access to the means of effectuating that decision . . . ." Id., at 688 (emphasis added). The Court stressed that "even a burdensome regulation may be validated by a sufficiently compelling state interest." Id., at 686. Finally, Griswold v. Connecticut, 381 U.S. 479, 485 (1965), recognized that a law banning the use of contraceptives by married persons had "a maximum destructive impact" on the marital relationship.

Indeed, the Court today follows this approach. Although the Court does not use the expression "undue burden," the Court recognizes that even a "significant obstacle" can be justified by a "reasonable" regulation. See ante, at 434, 435, 438.

The "undue burden" required in the abortion cases represents the required threshold inquiry that must be conducted before this Court can require a State to justify its legislative actions under the exacting " [***725] compelling state interest" standard. "[A] test so severe that legislation rarely can meet it should be imposed by courts with deliberate restraint in view of the respect that properly should be accorded legislative judgments." Carey, supra, at 705 (POWELL, J., concurring in part and concurring in judgment).

The "unduly burdensome" standard is particularly appropriate in the abortion context because of the nature and scope of the right that is involved. The privacy right involved in the abortion context "cannot be said to be absolute." Roe, [*464] 410 U.S., at 154. "Roe did not declare an unqualified 'constitutional right to an abortion.'" Maher, 432 U.S., at 473. Rather, the Roe right is intended to protect against state action "drastically limiting the availability and safety of the desired service," id., at 472, against the imposition of an "absolute obstacle" on the abortion decision, Danforth, 428 U.S., at 70-71, n. 11, or against "official interference" and "coercive restraint" imposed on the abortion decision, Harris, 448 U.S., at 328 (WHITE, J., concurring). That a state regulation may "inhibit" abortions to some degree does not require that we find that the regulation is invalid. See H. L. v. Matheson, 450 U.S. 398, 413 (1981).

The abortion cases demonstrate that an "undue burden" has been found for the most part in situations involving absolute obstacles or severe limitations on the abortion decision. In Roe, the Court invalidated a Texas statute that criminalized all abortions except those necessary to save the life of the mother. In Danforth, the Court invalidated a state prohibition of abortion by saline amniocentesis because the ban had "the effect of inhibiting . . . the vast majority of abortions after the first 12 weeks." 428 U.S., at 79. The Court today acknowledges that the regulation in Danforth effectively represented " [**2511] a complete prohibition on abortions in certain circumstances." Ante, at 429, n. 11 (emphasis added). In Danforth, the Court also invalidated state regulations requiring parental or spousal consent as a prerequisite to a first-trimester abortion because the consent requirements effectively and impermissibly delegated a "veto power" to parents and spouses during the first trimester of pregnancy. In both Bellotti I, 428 U.S. 132 (1977), and Bellotti v. Baird, 443 U.S. 622 (1979) (Bellotti II), the Court was concerned with effective parental veto over the abortion decision. n9

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n9 The only case in which the Court invalidated regulations that were not "undue burdens" was Doe v. Bolton, 410 U.S. 179 (1973), which was decided on the same day as Roe. In Doe, the Court invalidated a hospitalization requirement because it covered first-trimester abortion. The Court also invalidated a hospital accreditation requirement, a hospital-committee approval requirement, and a two-doctor concurrence requirement. The Court clearly based its disapproval of these requirements on the fact that the State did not impose them on any other medical procedure apart from abortion. But the Court subsequent to Doe has expressly rejected the view that differential treatment of abortion requires invalidation of regulations. See Danforth, 428 U.S., at 67, 80-81; Maher v. Roe, 432 U.S. 464, 480 (1977); Harris, 448 U.S., at 325. See also Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, post, p. 476.

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[*465] [***726] In determining whether the State imposes an "undue burden," we must keep in mind that when we are concerned with extremely sensitive issues, such as the one involved here, "the appropriate forum for their resolution in a democracy is the legislature. We should not forget that 'legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.' Missouri, K.&T.R. Co. v. May, 194 U.S. 267, 270 (1904) (Holmes, J.)." Maher, 432 U.S., at 479-480 (footnote omitted). This does not mean that in determining whether a regulation imposes an "undue burden" on the Roe right we defer to the judgments made by state legislatures. "The point is, rather, that when we face a complex problem with many hard questions and few easy answers we do well to pay careful attention to how the other branches of Government have addressed the same problem." Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 103 (1973). n10

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n10 In his amicus curiae brief in support of the city of Akron, the Solicitor General of the United States argues that we should adopt the "unduly burdensome" standard and in doing so, we should "accord heavy deference to the legislative judgment" in determining what constitutes an "undue burden." See Brief for the United States as Amicus Curiae 10. The "unduly burdensome" standard is appropriate not because it incorporates deference to legislative judgment at the threshold stage of analysis, but rather because of the limited nature of the fundamental right that has been recognized in the abortion cases. Although our cases do require that we "pay careful attention" to the legislative judgment before we invoke strict scrutiny, see e. g., Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S., at 103, it is not appropriate to weigh the state interests at the threshold stage.

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[*466] We must always be mindful that "[the] Constitution does not compel a state to fine-tune its statutes so as to encourage or facilitate abortions. To the contrary, state action 'encouraging childbirth except in the most urgent circumstances' is 'rationally related to the legitimate governmental objective

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of protecting potential life.' Harris v. McRae, 448 U.S., at 325. Accord, Maher v. Roe, supra, at 473-474." H. L. v. Matheson, supra, at 413 (footnote omitted).

IV

A

Section 1870.03 of the Akron ordinance requires that second-trimester abortions be [**2512] performed in hospitals. The Court holds that this requirement imposes a "significant obstacle" in the form of increased costs and decreased availability of abortions, ante, at 434-435, 435, and the Court rejects the argument offered by the State that the requirement is a reasonable health regulation under Roe, 410 U.S., at 163. See ante, at 435-436.

For the reasons stated above, I find no justification for the trimester approach used by the Court to analyze this restriction. I would apply [***727] the "unduly burdensome" test and find that the hospitalization requirement does not impose an undue burden on that decision.

The Court's reliance on increased abortion costs and decreased availability is misplaced. As the city of Akron points out, there is no evidence in this case to show that the two Akron hospitals that performed second-trimester abortions denied an abortion to any woman, or that they would not permit abortion by the D&E procedure. See Reply Brief for Petitioner in No. 81-746, p. 3. In addition, there was no evidence presented that other hospitals in nearby areas did not provide second-trimester abortions. Further, almost any state regulation, including the licensing requirements [*467] that the Court would allow, see ante, at 437-438, n. 26, inevitably and necessarily entails increased costs for any abortion. In Simopoulos v. Virginia, post, p. 506, the Court upholds the State's stringent licensing requirements that will clearly involve greater cost because the State's licensing scheme "is not an unreasonable means of furthering the State's compelling interest in" preserving maternal health. Post, at 519. Although the Court acknowledges this indisputably correct notion in Simopoulos, it inexplicably refuses to apply it in this case. A health regulation, such as the hospitalization requirement, simply does not rise to the level of "official interference" with the abortion decision. See Harris, supra, at 328 (WHITE, J., concurring).

Health-related factors that may legitimately be considered by the State go well beyond what various medical organizations have to say about the physical safety of a particular procedure. Indeed, "all factors -- physical, emotional, psychological, familial, and the woman's age -- [are] relevant to the well-being of the patient." Doe v. Bolton, 410 U.S. 179, 192 (1973). The ACOG Standards, upon which the Court relies, state that "[regardless] of advances in abortion technology, midtrimester terminations will likely remain more hazardous, expensive, and emotionally disturbing for a woman than early abortions." American College of Obstetricians and Gynecologists, Technical Bulletin No. 56: Methods of Midtrimester Abortion 4 (Dec. 1979).

The hospitalization requirement does not impose an undue burden, and it is not necessary to apply an exacting standard of review. Further, the regulation has a "rational relation" to a valid state objective of ensuring the health and welfare of its citizens. See Williamson v. Lee Optical Co., 348 U.S. 483, 491 (1955). n11

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n11 The Court has never required that state regulation that burdens the abortion decision be "narrowly drawn" to express only the relevant state interest. In Roe, the Court mentioned "narrowly drawn" legislative enactments, 410 U.S., at 155, but the Court never actually adopted this standard in the Roe analysis. In its decision today, the Court fully endorses the Roe requirement that a burdensome health regulation, or as the Court appears to call it, a "significant obstacle," ante, at 434, be "reasonably related" to the state compelling interest. See ante, at 430-431, 435, 438. The Court recognizes that "[a] State necessarily must have latitude in adopting regulations of general applicability in this sensitive area." Ante, at 434. See also Simopoulos v. Virginia, post, at 516. Nevertheless, the Court fails to apply the "reasonably related" standard. The hospitalization requirement "reasonably relates" to its compelling interest in protection and preservation of maternal health under any normal understanding of what "reasonably relates" signifies.

The Court concludes that the regulation must fall because "it appears that during a substantial portion of the second trimester the State's regulation '[departs] from accepted medical practice.'" Ante, at 434. It is difficult to see how the Court concludes that the regulation "[departs] from accepted medical practice" during "a substantial portion of the second trimester," ibid., in light of the fact that the Court concludes that D&E abortions may be performed safely in an outpatient clinic through 16 weeks, or 4 weeks into the second trimester. Ante, at 436-437. Four weeks is hardly a "substantial portion" of the second trimester.

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[*468] [***728] [**2513] B

Section 1870.05(B)(2) of the Akron ordinance provides that no physician shall perform an abortion on a minor under 15 years of age unless the minor gives written consent, and the physician first obtains the informed written consent of a parent or guardian, or unless the minor first obtains "an order from a court having jurisdiction over her that the abortion be performed or induced." Despite the fact that this regulation has yet to be construed in the state courts, the Court holds that the regulation is unconstitutional because it is not "reasonably susceptible of being construed to create an 'opportunity for case-by-case evaluations of the maturity of pregnant minors.'" Ante, at 441 (quoting Bellotti II, 443 U.S., at 643-644, n. 23 (plurality opinion)). I believe that the Court should have abstained from declaring the ordinance unconstitutional.

In Bellotti I, the Court abstained from deciding whether a state parental consent provision was unconstitutional as [*469] applied to mature minors. The Court recognized and respected the well-settled rule that abstention is proper "where an unconstrued state statute is susceptible of a construction by the state judiciary 'which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem.'" 428 U.S., at 147 (quoting Harrison v. NAACP, 360 U.S. 167, 177 (1959)). While acknowledging the force of the abstention doctrine, see ante, at 440-441, the Court nevertheless declines to apply it. Instead, it speculates

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that a state juvenile court might inquire into a minor's maturity and ability to decide to have an abortion in deciding whether the minor is being provided "'surgical care . . . necessary for his health, morals, or well being,'" ante at 441, n. 31 (quoting Ohio Rev. Code Ann. @ 2151.03 (1976)). The Court ultimately rejects this possible interpretation of state law, however, because filing a petition in juvenile court requires parental notification, an unconstitutional condition insofar as mature minors are concerned.

Assuming, arguendo, that the Court is correct in holding that a parental notification requirement would be unconstitutional as applied to mature minors, n12 I see no reason to [***729] assume that the Akron ordinance and the State Juvenile Court statute compel state judges to notify the parents of a mature minor if such notification was contrary to the minor's best interests. Further, there is no reason to believe that the state [*470] courts would construe the consent requirement to impose any type of parental or judicial veto on the abortion decisions of mature minors. In light of the Court's complete lack of knowledge about how the [**2514] Akron ordinance will operate, and how the Akron ordinance and the State Juvenile Court statute interact, our "'scrupulous regard for the rightful independence of state governments'" counsels against "unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system." Harrison v. NAACP, supra, at 176 (quoting Matthews v. Rodgers, 284 U.S. 521, 525 (1932)).

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n12 In my view, no decision of this Court has yet held that parental notification in the case of mature minors is unconstitutional. Although the plurality opinion of JUSTICE POWELL in Bellotti II suggested that the state statute in that case was unconstitutional because, inter alia, it failed to provide all minors with an opportunity "to go directly to a court without first consulting or notifying her parents," 443 U.S., at 647, the Court in H. L. v. Matheson held that unemancipated and immature minors had "no constitutional right to notify a court in lieu of notifying their parents." 450 U.S., at 412, n. 22. Furthermore, the Court in H. L. v. Matheson expressly did not decide that a parental notification requirement would be unconstitutional if the State otherwise permitted mature minors to make abortion decisions free of parental or judicial "veto." See id., at 406-407.

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C

The Court invalidates the informed-consent provisions of @ 1870.06(B) and @ 1870.06(C) of the Akron ordinance. n13 Although it finds that subsections (1), (2), (6), and (7) of @ 1870.06(B) are "certainly . . . not objectionable," ante, at 445-446, n. 37, it refuses to sever those provisions from subsections (3), (4), and (5) because the city requires that the "acceptable" information be provided by the attending physician when "much, if not all of it, could be given by a qualified person assisting the physician," ibid. Despite the fact that the Court finds that @ 1870.06(C) "properly leaves the precise nature and amount of . . . disclosure to the physician's discretion [*471] and 'medical judgment,'" ante, at 447, the Court also finds @ 1870.06(C) unconstitutional because it requires that the disclosure be made by the attending physician, rather than by

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other "qualified persons" who work at abortion clinics.

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n13 Section 1870.06(B) requires that the attending physician orally inform the pregnant woman: (1) that she is pregnant; (2) of the probable number of weeks since conception; (3) that the unborn child is a human being from the moment of conception, and has certain anatomical and physiological characteristics; (4) that the unborn child may be viable and, if so, the physician has a legal responsibility to try to save the child; (5) that abortion is a major surgical procedure that can result in serious physical and psychological complications; (6) that various agencies exist that will provide the pregnant woman with information about birth control; and (7) that various agencies exist that will assist the woman through pregnancy should she decide not to undergo the abortion. Section 1870.06(C) requires the attending physician to inform the woman of risks associated with her particular pregnancy and proposed abortion technique, as well as to furnish information that the physician deems relevant "in his own medical judgment."

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We have approved informed-consent provisions in the past even though the physician was required [***730] to deliver certain information to the patient. In Danforth, the Court upheld a state informed-consent requirement because "[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." 428 U.S., at 67. n14 In H. L. v. Matheson, the Court noted that the state statute in the case required that the patient "be advised at a minimum about available adoption services, about fetal development, and about foreseeable complications and risks of an abortion. See Utah Code Ann. @ 76-7-305 (1978). In Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 65-67 (1976), we rejected a constitutional attack on written consent provisions." 450 U.S., at 400-401, n. 1. Indeed, we have held that an informed-consent provision does not "unduly [burden] the right to seek an abortion." Bellotti I, 428 U.S., at 147. n15

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n14 The Court in Danforth did not even view the informed-consent requirement as having a "legally significant impact" on first-trimester abortions that would trigger the Roe and Doe proscriptions against state interference in the decision to seek a first-trimester abortion. See 428 U.S., at 81 (recordkeeping requirements).

n15 Assuming, arguendo, that the Court now decides that Danforth, Bellotti II , and H. L. v. Matheson were incorrect, and that the informed-consent provisions do burden the right to seek an abortion, the Court inexplicably refuses to determine whether this "burden" "reasonably relates" to legitimate state interests. Ante, at 430 (quoting Roe, 410 U.S., at 163). Rather, the Court now decides that an informed-consent provision must be justified by a "vital state need" before it can be upheld. See ante, at 448.

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[**2515] The validity of subsections (3), (4), and (5) is not before the Court because it appears that the city of Akron conceded their unconstitutionality before the court below. See Brief [*472] for City of Akron in No. 79-3757 (CA6), p. 35; Reply Brief for City of Akron in No. 79-3757 (CA6), pp. 5-9. In my view, the remaining subsections of @ 1870.06(B) are separable from the subsections conceded to be unconstitutional. Section 1870.19 contains a separability clause which creates a "'presumption of divisibility'" and places "the burden . . . on the litigant who would escape its operation." Carter v. Carter Coal Co., 298 U.S. 238, 335 (1936) (opinion of Cardozo, J.). Akron Center has failed to show that severance of subsections (3), (4), and (5) would "create a program quite different from the one the legislature actually adopted." Sloan v. Lemon, 413 U.S. 825, 834 (1973).

The remainder of @ 1870.06(B), and @ 1870.06(C), impose no undue burden or drastic limitation on the abortion decision. The city of Akron is merely attempting to ensure that the decision to abort is made in light of that knowledge that the city deems relevant to informed choice. As such, these regulations do not impermissibly affect any privacy right under the Fourteenth Amendment. n16

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n16 This is not to say that the informed-consent provisions may not violate the First Amendment rights of the physician if the State requires him or her to communicate its ideology. See Wooley v. Maynard, 430 U.S. 705 (1977). However, it does not appear that Akron Center raised any First Amendment argument in the court below. See Brief for Akron Center for Reproductive Health, Inc., in No. 79-3701 (CA6), pp. 18-23; Reply Brief for Akron Center for Reproductive Health, Inc., in No. 79-3701 (CA6), pp. 26-33.

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D

[***731] Section 1870.07 of the Akron ordinance requires a 24-hour waiting period between the signing of a consent form and the actual performance of the abortion, except in cases of emergency. See @ 1870.12. The court below invalidated this requirement because it affected abortion decisions during the first trimester of pregnancy. The Court affirms the decision below, not on the ground that it affects early abortions, but because "Akron has failed to demonstrate that any legitimate state interest is furthered by an arbitrary and inflexible waiting [*473] period." Ante, at 450. The Court accepts the arguments made by Akron Center that the waiting period increases the costs of obtaining an abortion by requiring the pregnant woman to make two trips to the clinic, and increases the risks of abortion through delay and scheduling difficulties. The decision whether to proceed should be left to the physician's "'discretion in the exercise of his medical judgment.'" Ibid. (quoting Colautti, 439 U.S., at 387).

It is certainly difficult to understand how the Court believes that the physician-patient relationship is able to accommodate any interest that the State has in maternal physical and mental well-being in light of the fact that the record in this case shows that the relationship is nonexistent. See 651 F.2d, at 1217 (Kennedy, J., concurring in part and dissenting in part). It is

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also interesting to note that the American College of Obstetricians and Gynecologists recommends that "[prior] to abortion, the woman should have access to special counseling that explores options for the management of an unwanted pregnancy, examines the risks, and allows sufficient time for reflection prior to making an informed decision." 1982 ACOG Standards for Obstetric-Gynecologic Services, at 54.

The waiting period does not apply in cases of medical emergency. Therefore, should the physician determine that the waiting period would increase risks significantly, he or she need not require the woman to wait. The Court's concern in this respect is simply misplaced. Although the waiting period may impose an additional cost on the abortion decision, this increased cost does not unduly burden the availability [**2516] of abortions or impose an absolute obstacle to access to abortions. Further, the State is not required to "fine-tune" its abortion statutes so as to minimize the costs of abortions. H. L. v. Matheson, 450 U.S., at 413.

Assuming, arguendo, that any additional costs are such as to impose an undue burden on the abortion decision, the State's compelling interests in maternal physical and mental [*474] health and protection of fetal life clearly justify the waiting period. As we acknowledged in Danforth, 428 U.S., at 67, the decision to abort is "a stressful one," and the waiting period reasonably relates to the State's [***732] interest in ensuring that a woman does not make this serious decision in undue haste. The decision also has grave consequences for the fetus, whose life the State has a compelling interest to protect and preserve. "[No] other [medical] procedure involves the purposeful termination of a potential life." Harris, 448 U.S., at 325. The waiting period is surely a small cost to impose to ensure that the woman's decision is well considered in light of its certain and irreparable consequences on fetal life, and the possible effects on her own. n17

----------Footnotes----------

n17 On the basis of this analysis of the waiting-period requirement, the Court charges that "the dissent would uphold virtually any abortion-inhibiting regulation . . . ." Ante, at 421, n. 1. The waiting-period requirement is valid because it imposes a small cost when all relevant factors are taken into consideration. This is precisely the reasoning that JUSTICE POWELL employs in upholding the pathology-report requirement in Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, post, p. 476 (report requirement imposes a "comparatively small additional cost," post, at 489).

----------End Footnotes----------

E

Finally, @ 1870.16 of the Akron ordinance requires that "[any] physician who shall perform or induce an abortion upon a pregnant woman shall insure that the remains of the unborn child are disposed of in a humane and sanitary manner." The Court finds this provision void for vagueness. I disagree.

In Planned Parenthood Assn. v. Fitzpatrick, 401 F.Supp. 554 (ED Pa. 1975) (three-judge court), summarily aff'd sub nom. Franklin v. Fitzpatrick, 428 U.S. 901 (1976), the District Court upheld a "humane disposal" provision against a

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vagueness attack in light of the State's representation that the intent of the Act "'is to preclude the mindless dumping of [*475] aborted fetuses onto garbage piles.'" 401 F.Supp., at 573. The District Court held that different concerns would be implicated if the statute were, at some point, determined to require "expensive burial." Ibid. In the present cases, the city of Akron has informed this Court that the intent of the "humane" portion of its statute, as distinguished from the "sanitary" portion, is merely to ensure that fetuses will not be "'[dumped] . . . on garbage piles.'" Brief for Petitioner in No. 81-746, p. 48. In light of the fact that the city of Akron indicates no intent to require that physicians provide "decent burials" for fetuses, and that "humane" is no more vague than the term "sanitary," the vagueness of which Akron Center does not question, I cannot conclude that the statute is void for vagueness.

V

For the reasons set forth above, I dissent from the judgment of the Court in these cases.

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LEXSEE 462 US 476

PLANNED PARENTHOOD ASSOCIATION OF KANSAS CITY, MISSOURI, INC., ET AL. v. ASHCROFT, ATTORNEY GENERAL OF MISSOURI, ET AL.

No. 81-1255

SUPREME COURT OF THE UNITED STATES

462 U.S. 476; 103 S. Ct. 2517; 76 L. Ed. 2d 733; 1983 U.S. LEXIS 64; 51 U.S.L.W. 4783

November 30, 1982, Argued

June 15, 1983, Decided *
* Together with No. 81-1623, Ashcroft, Attorney General of Missouri, et al. v. Planned Parenthood Association of Kansas City, Missouri, Inc., et al., also on certiorari to the same court.

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

DISPOSITION:
664 F.2d 687, affirmed in part, reversed in part, vacated in part, and remanded.

SYLLABUS:

Missouri statutes require abortions after 12 weeks of pregnancy to be performed in a hospital (@ 188.025); require a pathology report for each abortion performed (@ 188.047); require the presence of a second physician during abortions performed after viability (@ 188.030.3); and require minors to secure parental consent or consent from the Juvenile Court for an abortion (@ 188.028). In an action challenging the constitutionality of these provisions, the District Court invalidated all provisions except @ 188.047. The Court of Appeals reversed as to @@ 188.028 and 188.047 but affirmed as to @@ 188.030.3 and 188.025.

Held: Section 188.025 is unconstitutional, but @@ 188.047, 188.030.3, and 188.028 are constitutional.

JUSTICE POWELL delivered the opinion of the Court with respect to Parts I and II, concluding that the second-trimester hospitalization requirement of @ 188.025 "unreasonably infringes upon a woman's constitutional right to obtain an abortion." Akron v. Akron Center of Reproductive Health, Inc., ante, at 439. Pp. 481-482.

JUSTICE POWELL, joined by THE CHIEF JUSTICE, concluded in Parts III, IV, and V that:

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1. The second-physician requirement of @ 188.030.3 is constitutional as reasonably furthering the State's compelling interest in protecting the lives of viable fetuses. Pp. 482-486.

2. The pathology-report requirement of @ 188.047 is constitutional. On its face and in effect, such requirement is reasonably related to generally accepted medical standards and furthers important health-related state concerns. In light of the substantial benefits that a pathologist's examination can have, the small additional cost of such an examination does not significantly burden a pregnant woman's abortion decision. Pp. 486-490.

3. Section 188.028 is constitutional. A State's interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial. And as interpreted by the Court of Appeals to mean that the Juvenile Court cannot deny a minor's application for consent to an abortion "for good cause" unless the court first finds that the minor was not mature enough to make her own decision, @ 188.028 provides a judicial alternative that is consistent with established legal standards. See Akron v. Akron Center for Reproductive Health, Inc., ante, at 439-440. Pp. 490-493.

JUSTICE O'CONNOR, joined by JUSTICE WHITE and JUSTICE REHNQUIST, concluded that:

1. The second-physician requirement of @ 188.030.3 is constitutional because the State has a compelling interest, extant throughout pregnancy, in protecting and preserving fetal life. P. 505.

2. The pathology-report requirement of @ 188.047 is constitutional because it imposes no undue burden on the limited right to undergo an abortion, and its validity is not contingent on the trimester of pregnancy in which it is imposed. P. 505.

3. Assuming, arguendo, that the State cannot impose a parental veto on a minor's decision to undergo an abortion, the parental consent provision of @ 188.028.2 is constitutional because it imposes no undue burden on any right that a minor may have to undergo an abortion. P. 505.

COUNSEL:
Frank Susman argued the cause and filed briefs for petitioners in No. 81-1255 and respondents in No. 81-1623.

John Ashcroft, Attorney General of Missouri, pro se, argued the cause for respondents in No. 81-1255 and petitioners in No. 81-1623. With him on the briefs was Michael L. Boicourt, Assistant Attorney General. +

+ Dennis J. Horan, Victor G. Rosenblum, Patrick A. Trueman, and Thomas J. Marzen filed a brief for Americans United for Life as amicus curiae urging reversal.

Briefs of amici curiae urging affirmance were filed by Sylvia A. Law, Nadine Taub, and Ellen J. Winner for the Committee for Abortion Rights and Against Sterilization Abuse et al.; and by James Bopp, Jr., for the National Right to Life Committee, Inc.

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Briefs of amici curiae were filed by Solicitor General Lee, Assistant Attorney General McGrath, and Deputy Solicitor General Geller for the United States; by Alan Ernest for the Legal Defense Fund for Unborn Children; by Judith Levin for the National Abortion Federation; by Phyllis N. Segal, Judith I. Avner, and Jemera Rone for the National Organization for Women; by Eve W. Paul and Dara Klassel for the Planned Parenthood Federation of America, Inc., et al.; by Nancy Reardan for Women Lawyers of Sacramento et al.; and by Susan Frelich Appleton and Paul Brest for Professor Richard L. Abel et al.

JUDGES:

POWELL, J., announced the judgment of the Court in Part VI and delivered the opinion of the Court with respect to Parts I and II, in which BURGER, C. J., and BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ., joined, and an opinion with respect to Parts III, IV, and V, in which BURGER, C. J., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in which BRENNAN, MARSHALL, and STEVENS, JJ., joined, post, p. 494. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part, in which WHITE and REHNQUIST, JJ., joined, post, p. 505.

OPINIONBY:

POWELL

OPINION:

[*478] [***737] [**2518] JUSTICE POWELL announced the judgment of the Court in Part VI and delivered the opinion of the Court with respect to Parts I and II and an opinion with respect to Parts III, IV, and V, in which THE CHIEF JUSTICE joins.

These cases, like City of Akron v. Akron Center for Reproductive Health, Inc., ante, p. 416, and Simopoulos v. Virginia, post, p. 506, present questions as to the validity of state statutes or local ordinances regulating the performance of abortions.

I

Planned Parenthood Association of Kansas City, Missouri, Inc., two physicians who perform abortions, and an abortion clinic (plaintiffs) filed a complaint in the District Court for the Western District of Missouri challenging, as unconstitutional, several sections of the Missouri statutes regulating the performance of abortions. The sections relevant here include Mo. Rev. Stat. @ 188.025 (Supp. 1982), requiring that abortions after 12 weeks of pregnancy be performed in a hospital; n1 @ 188.047, requiring [**2519] a pathology report for each abortion performed; n2 @ 188.030.3, requiring the presence of a second [*479] physician during abortions performed after viability; n3 and @ 188.028, requiring minors [***738] to secure parental or judicial consent. n4

----------Footnotes----------

n1 Missouri Rev. Stat. @ 188.025 (Supp. 1982) provides: "Every abortion performed subsequent to the first twelve weeks of pregnancy shall be performed in a hospital."

n2 Missouri Rev. Stat. @ 188.047 (Supp. 1982) provides:

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"A representative sample of tissue removed at the time of abortion shall be submitted to a board eligible or certified pathologist, who shall file a copy of the tissue report with the state division of health, and who shall provide a copy of the report to the abortion facility or hospital in which the abortion was performed or induced and the pathologist's report shall be made a part of the patient's permanent record."

n3 Missouri Rev. Stat. @ 188.030.3 (Supp. 1982) provides:

"An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion. During the performance of the abortion, the physician performing it, and subsequent to the abortion, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman."

n4 Missouri Rev. Stat. @ 188.028 (Supp. 1982) provides:

"1. No person shall knowingly perform an abortion upon a pregnant woman under the age of eighteen years unless:

"(1) The attending physician has secured the informed written consent of the minor and one parent or guardian; or

"(2) The minor is emancipated and the attending physician has received the informed written consent of the minor; or

"(3) The minor has been granted the right to self-consent to the abortion by court order pursuant to subsection 2 of this section, and the attending physician has received the informed written consent of the minor; or

"(4) The minor has been granted consent to the abortion by court order, and the court has given its informed written consent in accordance with subsection 2 of this section, and the minor is having the abortion willingly, in compliance with subsection 3 of this section.

"2. The right of a minor to self-consent to an abortion under subdivision (3) of subsection 1 of this section or court consent under subdivision (4) of subsection 1 of this section may be granted by a court pursuant to the following procedures:

"(1) The minor or next friend shall make an application to the juvenile court which shall assist the minor or next friend in preparing the petition and notices required pursuant to this section. The minor or the next friend of the minor shall thereafter file a petition setting forth the initials of the minor; the age of the minor; the names and addresses of each parent, guardian, or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis of the minor; that the minor has been fully informed of the risks and consequences of the abortion; that the minor is of

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sound mind and has sufficient intellectual capacity to consent to the abortion; that, if the court does not grant the minor majority rights for the purpose of consent to the abortion, the court should find that the abortion is in the best interest of the minor and give judicial consent to the abortion; that the court should appoint a guardian ad litem of the child; and if the minor does not have private counsel, that the court should appoint counsel. The petition shall be signed by the minor or the next friend;

. . . .

"(3) A hearing on the merits of the petition, to be held on the record, shall be held as soon as possible within five days of the filing of the petition. . . . At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the minor should be granted majority rights for the purpose of consenting to the abortion or whether the abortion is in the best interests of the minor;

"(4) In the decree, the court shall for good cause:

"(a) Grant the petition for majority rights for the purpose of consenting to the abortion; or

"(b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or

"(c) Deny the petition, setting forth the grounds on which the petition is denied;

. . . .

"3. If a minor desires an abortion, then she shall be orally informed of and, if possible, sign the written consent required by section 188.039 in the same manner as an adult person. No abortion shall be performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to a court order described in subdivision (4) of subsection 1 of this section that the abortion is necessary to preserve the life of the minor."

----------End Footnotes----------

[*480] [**2520] After hearing testimony from a number of expert witnesses, the District Court invalidated all of these sections except the pathology requirement. 483 F.Supp. 679, 699-701 (1980). n5 The Court of Appeals for the Eighth Circuit [*481] reversed the District [***739] Court's judgment with respect to @ 188.028, thereby upholding the requirement that a minor secure parental or judicial consent to an abortion. It also held that the District Court erred in sustaining @ 188.047, the pathology requirement. The District Court's judgment with respect to the second-physician requirement was affirmed, and the case was remanded for further proceedings and findings relating to the second-trimester hospitalization requirement. 655 F.2d 848, 872-873 (1981). On remand, the District Court adhered to its holding that the second-trimester hospitalization requirement was unconstitutional. The Court of Appeals affirmed this judgment. 664 F.2d 687, 691 (1981). We granted

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certiorari. 456 U.S. 988 (1982).

----------Footnotes----------

n5 The District Court also awarded attorney's fees for all hours claimed by the plaintiffs' attorneys. The Court of Appeals affirmed this allocation of fees. See 655 F.2d 848, 872 (CA8 1981). The petition for certiorari raises the issue whether an award of attorney's fees, made pursuant to 42 U. S. C. @ 1988 (1976 ed., Supp. V), should be proportioned to reflect the extent to which plaintiffs prevailed.

----------End Footnotes----------

The Court today in City of Akron, ante, at 426-431, has stated fully the principles that govern judicial review of state statutes regulating abortions, and these need not be repeated here. With these principles in mind, we turn to the statutes at issue.

II

[***HR1A] [***HR2] In City of Akron, we invalidated a city ordinance requiring physicians to perform all second-trimester abortions at general or special hospitals accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or by the American Osteopathic Association. Ante, at 431-432. Missouri's hospitalization requirements are similar to those enacted by Akron, as all second-trimester abortions must be performed in general, acute-care facilities. n6 For the reasons stated in City of [*482] Akron, we held that such a requirement "unreasonably infringes upon a woman's constitutional right to obtain an abortion." Ante, at 439. For the same reasons, we affirm the Court of Appeals' judgment that @ 188.025 is unconstitutional.

----------Footnotes----------

n6

[***HR1B] Missouri does not define the term "hospital" in its statutory provisions regulating abortions. We therefore must assume, as did the courts below, see 483 F.Supp. 679, 686, n. 10 (1980); 664 F.2d 687, 689-690, and nn. 3, 5, and 6 (1981), that the term has its common meaning of a general, acute-care facility. Cf. Mo. Rev. Stat. @ 188.015(2) (Supp. 1982) (defining "abortion facility" as "a clinic, physician's office, or any other place or facility in which abortions are performed other than a hospital"). Section 197.020.2 (1978), part of Missouri's hospital licensing laws, reads:

"'Hospital' means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four hours in any week of three or more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal physical conditions; or a place devoted primarily to provide for not less than twenty-four hours in any week medical . . . care for three or more nonrelated individuals. . . ."

Cf. Mo. Rev. Stat. @ 197.200(1) (1978) (defining "ambulatory surgical center" to include facilities "with an organized medical staff of physicians" and "with continuous physician services and registered professional nursing services

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whenever a patient is in the facility"); 13 Mo. Admin. Code @ 50-30.010(1)(A) (1977) (same). The regulations for the Department of Social Services establish standards for the construction, physical facilities, and administration of hospitals. @@ 50-20.010 to 50-20.030. These are not unlike those set by JCAH. See City of Akron, ante, at 432, and n. 16.

----------End Footnotes----------

III

We turn now to the State's second-physician requirement. In Roe v. Wade, 410 U.S. 113 (1973), the Court recognized [***740] that the State has a compelling interest in the life of a viable fetus: "[The] State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for [**2521] the preservation of the life or health of the mother." Id., at 164-165. See Colautti v. Franklin, 439 U.S. 379, 386-387 (1979); Beal v. Doe, 432 U.S. 438, 445-446 (1977). Several of the Missouri statutes undertake such regulation. Postviability abortions are proscribed except when necessary to preserve the life or the health of the woman. Mo. Rev. Stat. @ 188.030.1 (Supp. 1982). The [*483] State also forbids the use of abortion procedures fatal to the viable fetus unless alternative procedures pose a greater risk to the health of the woman. @ 188.030.2.

The statutory provision at issue in this case requires the attendance of a second physician at the abortion of a viable fetus. @ 188.030.3. This section requires that the second physician "take all reasonable steps in keeping with good medical practice . . . to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman." See n. 3, supra. It also provides that the second physician "shall take control of and provide immediate medical care for a child born as a result of the abortion."

The lower courts invalidated @ 188.030.3. n7 The plaintiffs, respondents [***741] here on this [**2522] issue, urge affirmance on the [*484] grounds that the second-physician requirement distorts the traditional doctor-patient relationship, and is both impractical and costly. They note that Missouri does not require two [*485] physicians in attendance for any other medical or surgical procedure, including childbirth or delivery of a premature infant.

----------Footnotes----------

n7 The courts below found, and JUSTICE BLACKMUN's partial dissenting opinion agrees, post, at 499-500, that there is no possible justification for a second-physician requirement whenever D&E is used because no viable fetus can survive a D&E procedure. 483 F.Supp., at 694; 655 F.2d, at 865. Accordingly, for them, @ 188.030.3 is overbroad. This reasoning rests on two assumptions. First, a fetus cannot survive a D&E abortion, and second, D&E is the method of choice in the third trimester. There is general agreement as to the first proposition, but not as to the second. Indeed, almost all of the authorities disagree with JUSTICE BLACKMUN's critical assumption, and as the Court of Appeals noted, the choice of this procedure after viability is subject to the requirements of @ 188.030.2. See id., at 865, and n. 28. Nevertheless, the courts below, in conclusory language, found that D&E is the "method of choice

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even after viability is possible." Id., at 865. No scholarly writing supporting this view is cited by those courts or by the partial dissent. Reliance apparently is placed solely on the testimony of Dr. Robert Crist, a physician from Kansas, to whom the District Court referred in a footnote. 483 F.Supp., at 694, n. 25. This testimony provides slim support for this holding. Dr. Crist's testimony, if nothing else, is remarkable in its candor. He is a member of the National Abortion Federation, "an organization of abortion providers and people interested in the pro-choice movement." 3 Record 415-416. He supported the use of D&E on 28-week pregnancies, well into the third trimester. In some circumstances, he considered it a better procedure than other methods. See id., at 427-428. His disinterest in protecting fetal life is evidenced by his agreement "that the abortion patient has a right not only to be rid of the growth, called a fetus in her body, but also has a right to a dead fetus." Id., at 431. He also agreed that he "[never] [has] any intention of trying to protect the fetus, if it can be saved," ibid., and finally that "as a general principle" "[there] should not be a live fetus," id., at 435. Moreover, contrary to every other view, he thought a fetus could survive a D&E abortion. Id., at 433-434. None of the other physicians who testified at the trial, those called both by the plaintiffs and defendants, considered that any use of D&E after viability was indicated. See 2 Record 21 (limiting use of D&E to under 18 weeks); 3 Record 381, 410-413 (Dr. Robert Kretzschmar) (D&E up to 17 weeks; would never perform D&E after 26 weeks); 5 Record 787 (almost "inconceivable" to use D&E after viability); 7 Record 52 (D&E safest up to 18 weeks); id., at 110 (doctor not performing D&E past 20 weeks); id., at 111 (risks of doing outpatient D&E equivalent to childbirth at 24 weeks). See also 8 Record 33, 78-81 (deposition of Dr. Willard Cates) (16 weeks latest D&E performed). Apparently Dr. Crist performed abortions only in Kansas, 3 Record 334, 368, 428, a State having no statutes comparable to @ 188.030.1 and @ 188.030.2. It is not clear whether he was operating under or familiar with the limitations imposed by Missouri law. Nor did he explain the circumstances when there were "contraindications" against the use of any of the procedures that could preserve viability, or whether his conclusory opinion was limited to emergency situations. Indeed, there is no record evidence that D&E ever will be the method that poses the least risk to the woman in those rare situations where there are compelling medical reasons for performing an abortion after viability. If there were such instances, they hardly would justify invalidating @ 188.030.3.

In addition to citing Dr. Crist in its footnote, the District Court cited -- with no elaboration -- Dr. Schmidt. His testimony, reflecting no agreement with Dr. Crist, is enlightening. Although he conceded that the attendance of a second physician for a D&E abortion on a viable fetus was not necessary, he considered the point mostly theoretical, because he "simply [did] not believe that the question of viability comes up when D&E is an elected method of abortion." 5 Record 836. When reminded of Dr. Crist's earlier testimony, he conceded the remote possibility of third-trimester D&E abortions, but stated: "I personally cannot conceive that as a significant practical point. It may be important legally, but [not] from a medical standpoint . . . ." Ibid. Given that Dr. Crist's discordant testimony is wholly unsupported, the State's compelling interest in protecting a viable fetus justifies the second-physician requirement even though there may be the rare case when a physician may think honestly that D&E is required for the mother's health. Legislation need not accommodate every conceivable contingency.

----------End Footnotes----------

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The first physician's primary concern will be the life and health of the woman. Many third-trimester abortions in Missouri will be emergency operations, n8 as the State permits these late abortions only when they are necessary to preserve the life or the health of the woman. It is not unreasonable for the State to assume that during the operation the first physician's attention and skills will be directed to preserving the woman's health, and not to protecting the actual life of those fetuses who survive the abortion procedure. Viable fetuses will be in immediate and grave danger because of their premature birth. A second physician, in situations where Missouri permits third-trimester abortions, may be of assistance to the woman's physician in preserving the health and life of the child.

----------Footnotes----------

n8 There is no clearly expressed exception on the face of the statute for the performance of an abortion of a viable fetus without the second physician in attendance. There may be emergency situations where, for example, the woman's health may be endangered by delay. Section @ 188.030.3 is qualified, at least in part, by the phrase "provided that it does not pose an increased risk to the life or health of the woman." This clause reasonably could be construed to apply to such a situation. Cf. H. L. v. Matheson, 450 U.S. 398, 407, n. 14 (1981) (rejecting argument that Utah statute might apply to individuals with emergency health care needs).

----------End Footnotes----------

[***HR3A] By giving immediate medical attention to a fetus that is delivered alive, the second physician will assure that the State's interests are protected more fully than the first physician alone would be able to do. And given the compelling interest that the State has in preserving life, we cannot say that the Missouri [***742] requirement of a second physician in those unusual [*486] circumstances where Missouri permits a third-trimester abortion is unconstitutional. Preserving the life of a viable fetus that is aborted may not often be possible, n9 but the State legitimately may choose to provide safeguards for the comparatively few instances of live birth that occur. We believe the second-physician requirement reasonably furthers the State's compelling interest in protecting the lives of viable fetuses, and we reverse the judgment of the Court of Appeals holding that @ 188.030.3 is unconstitutional.

----------Footnotes----------

n9 See American College of Obstetricians and Gynecologists (ACOG) Technical Bulletin No. 56, p. 4 (Dec. 1979) (as high as 7% live-birth rate for intrauterine instillation of uterotonic agents); Stroh & Hinman, Reported Live Births Following Induced Abortion: Two and One-Half Years' Experience in Upstate New York, 126 Am. J. Obstet. Gynecol. 83, 83-84 (1976) (26 live births following saline induced-abortions; 9 following hysterectomy; 1 following oxytocin-induced abortion) (1 survival out of 38 live births); 5 Record 728 (50-62% mortality rate for fetuses 26 and 27 weeks); id., at 729 (25-92% mortality rate for fetuses 28 and 29 weeks); id., at 837 (50% mortality rate at 34 weeks).

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----------End Footnotes----------

IV

In regulating hospital services within the State, Missouri requires that "[all] tissue surgically removed with the exception of such tissue as tonsils, adenoids, hernial sacs and prepuces, shall be examined by a pathologist, either on the premises or by arrangement outside of the hospital." 13 Mo. Admin. Code @ 50-20.030(3)(A)7 (1977). With respect to abortions, whether performed in hospitals or in some other facility, @ 188.047 requires the pathologist to "file a copy of the tissue report with the state division of health . . . ." See n. 2, supra. The pathologist also is required to [**2523] "provide a copy of the report to the abortion facility or hospital in which the abortion was performed or induced." Thus, Missouri appears to require that tissue following abortions, as well as from almost all other surgery performed in hospitals, must be submitted to a pathologist, not merely examined by the performing doctor. The narrow question before us is whether the State lawfully also may require the tissue removed following [*487] abortions performed in clinics as well as in hospitals to be submitted to a pathologist.

On its face and in effect, @ 188.047 is reasonably related to generally accepted medical standards and "[furthers] important health-related state concerns." City of Akron, ante, at 430. As the Court of Appeals recognized, pathology examinations are clearly "useful and even necessary in some cases," because "abnormalities in the tissue may warn of serious, possibly fatal disorders." 655 F.2d, at 870. n10 As a rule, it is accepted [***743] medical practice to submit all tissue to the examination of a pathologist. n11 This is particularly important following abortion, because questions remain as to the long-range [*488] complications and their effect on subsequent pregnancies. See App. 72-73 (testimony of Dr. Willard Cates, Jr.); Levin, Schoenbaum, Monson, Stubblefield, & Ryan, Association of Induced Abortion with Subsequent Pregnancy Loss, 243 J. A. M. A. 2495, 2499 (1980). Recorded pathology reports, in concert with abortion complication reports, provide a statistical basis for studying those complications. Cf. Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 81 (1976).

----------Footnotes----------

n10 A pathological examination is designed to assist in the detection of fatal ectopic pregnancies, hydatidiform moles or other precancerous growths, and a variety of other problems that can be discovered only through a pathological examination. The general medical utility of pathological examinations is clear. See, e. g., ACOG, Standards for Obstetric-Gynecologic Services 52 (5th ed. 1982) (1982 ACOG Standards); National Abortion Federation (NAF) Standards 6 (1981) (compliance with standards obligatory for NAF member facilities to remain in good standing); Brief for American Public Health Association as Amicus Curiae, O. T. 1982, Nos. 81-185, 81-746, 81-1172, p. 29, n. 6 (supporting the NAF standards for nonhospital abortion facilities as constituting "minimum standards").

n11 ACOG's standards at the time of the District Court's trial recommended that a "tissue or operative review committee" should examine "all tissue removed at obstetric-gynecologic operations." ACOG, Standards for Obstetric-Gynecologic Services 13 (4th ed. 1974). The current ACOG Standards also state as a general

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rule that, for all surgical services performed on an ambulatory basis, "[tissue] removed should be submitted to a pathologist for examination." 1982 ACOG Standards, at 52. JUSTICE BLACKMUN's partial dissent, however, relies on the recent modification of these Standards as they apply to abortions. ACOG now provides an "exception to the practice" of mandatory examination by a pathologist and makes such examination for abortion tissue permissive. Ibid. Not surprisingly, this change in policy was controversial within the College. See 5 Record 799-800. ACOG found that "[no] consensus exists regarding routine microscopic examination of aspirated tissue in every case," though it recognized -- on the basis of inquiries made in 29 institutions -- that in a majority of them a microscopic examination is performed in all cases. ACOG, Report of Committee on Gynecologic Practice, Item #6.2.1 (June 27-28, 1980).

----------End Footnotes----------

Plaintiffs argue that the physician performing the abortion is as qualified as a pathologist to make the examination. This argument disregards the fact that Missouri requires a pathologist -- not the performing physician -- to examine tissue after almost every type of surgery. Although this requirement is in a provision relating to surgical procedures in hospitals, many of the same procedures included within the Missouri statute customarily are performed also in outpatient clinics. No reason has been suggested why the prudence required in a hospital should not be equally appropriate in such a clinic. Indeed, there may be good reason to impose stricter standards in this respect on clinics performing abortions than on hospitals. n12 As the testimony [**2524] in the District [*489] Court indicates, [***744] medical opinion differs widely on this question. See 4 Record 623; 5 Record 749-750, 798-800, 845-847; n. 11, supra. There is substantial support for Missouri's requirement. In this case, for example, Dr. Bernard Nathanson, a widely experienced abortion practitioner, testified that he requires a pathologist examination after each of the 60,000 abortions performed under his direction at the New York Center for Reproductive and Sexual Health. He considers it "absolutely necessary to obtain a pathologist's report on each and every specimen of tissue removed from abortion or for that matter from any other surgical procedure which involves the removal of tissue from the human body." App. 143-144. See also id., at 146-147 (testimony of Dr. Keitges); 5 Record 798-799 (testimony of Dr. Schmidt). n13

----------Footnotes----------

n12 The professional views that the plaintiffs find to support their position do not disclose whether consideration was given to the fact that not all abortion clinics, particularly inadequately regulated clinics, conform to ethical or generally accepted medical standards. See Bellotti v. Baird, 443 U.S. 622, 641, n. 21 (1979) (Bellotti II) (minors may resort to "incompetent or unethical" abortion clinics); Planned Parenthood of Central Missouri v. Danforth , 428 U.S. 52, 91, n. 2 (1976) (Stewart, J., concurring). The Sun-Times of Chicago, in a series of special reports, disclosed widespread questionable practices in abortion clinics in Chicago, including the failure to obtain proper pathology reports. See The Abortion Profiteers, Chicago Sun-Times 25-26 (Special Reprint 1978). It is clear, therefore, that a State reasonably could conclude that a pathology requirement is necessary in abortion clinics as well as in general hospitals.

In suggesting that we make from a "comfortable perspective" the judgment that

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a State constitutionally can require the additional cost of a pathology examination, JUSTICE BLACKMUN's patial dissent suggests that we disregard the interests of the "woman on welfare or the unemployed teenager." Post, at 498. But these women may be those most likely to seek the least expensive clinic available. As the standards of medical practice in such clinics may not be the highest, a State may conclude reasonably that a pathologist's examination of tissue is particularly important for their protection.

n13 JUSTICE BLACKMUN's partial dissent appears to suggest that @ 188.047 is constitutionally infirm because it does not require microscopic examination, post, at 496-497, but that misses the point of the regulation. The need is for someone other than the performing clinic to make an independent medical judgment on the tissue. See n. 12, supra; 5 Record 750 (Dr. Pierre Keitges, a pathologist). It is reasonable for the State to assume that an independent pathologist is more likely to perform a microscopic examination than the performing doctor. See H. Cove, Surgical Pathology of the Endometrium 28 (1981) ("To the pathologist, abortions of any sort are evaluated grossly and microscopically for the primary purpose of establishing a diagnosis of intrauterine pregnancy") (emphasis added).

----------End Footnotes----------

[***HR4A] In weighing the balance between protection of a woman's health and the comparatively small additional cost of a pathologist's examination, we cannot say that the Constitution requires that a State subordinate its interest in health to minimize to this extent the cost of abortions. Even in the early weeks of pregnancy, "[certain] regulations that have no significant impact on the woman's exercise of her right [to [*490] decide to have an abortion] may be permissible where justified by important state health objectives." City of Akron, ante, at 430. See Danforth, supra, at 80-81. We think the cost of a tissue examination does not significantly burden a pregnant woman's abortion decision. The estimated cost of compliance for plaintiff Reproductive Health Services was $ 19.40 per abortion performed, 483 F.Supp., at 700, n. 48, and in light of the substantial benefits that a pathologist's examination can have, this small cost clearly is justified. In Danforth, this Court unanimously upheld Missouri's recordkeeping requirement as "useful to the State's interest in protecting the health of its female citizens, and [as] a resource that is relevant to decisions involving medical experience and judgment," 428 U.S., at 81. n14 We view the requirement for a pathology report as comparable and as a relatively insignificant burden. Accordingly, we reverse the judgment of the Court of Appeals on this issue.

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n14 The Danforth Court also noted that "[the] added requirements for confidentiality, with the sole exception for public health officers, and for retention for seven years, a period not unreasonable in length, assist and persuade us in our determination of the constitutional limits." 428 U.S., at 81. Missouri extends the identical safeguards found reassuring in Danforth to the pathology reports at issue here. See Mo. Rev. Stat. @@ 188.055.2, 188.060 (Supp. 1982).

----------End Footnotes----------

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[**2525] V

As we noted in City of Akron, the relevant legal standards with respect [***745] to parental-consent requirements are not in dispute. See ante, at 439; Bellotti v. Baird, 443 U.S. 622, 640-642, 643-644 (1979) (Bellotti II) (plurality opinion); id., at 656-657 (WHITE, J., dissenting). n15 A State's interest in [*491] protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial. It is clear, however, that "the State must provide an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests." n16 City of Akron, ante, at 439-440. n17 The issue here is one purely of statutory construction: whether Missouri [*492] provides a judicial alternative that is consistent with these established legal standards. n18

----------Footnotes----------

n15 The dissenters apparently believe that the issue here is an open one, and adhere to the views they expressed in Bellotti II. Post, at 503-504. But those views have never been adopted by a majority of this Court, while a majority have expressed quite differing views. See H. L. v. Matheson, 450 U.S. 398 (1981); Bellotti II (plurality opinion); 443 U.S., at 656-657 (WHITE, J., dissenting).

n16 The plurality in Bellotti II also required that the alternative to parental consent must "assure" that the resolution of this issue "will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained." Id., at 644. Confidentiality here is assured by the statutory requirement that allows the minor to use her initials on the petition. Mo. Rev. Stat. @ 188.028.2(1) (Supp. 1982). As to expedition of appeals, @ 188.028.2(6) provides in relevant part:

"The notice of intent to appeal shall be given within twenty-four hours from the date of issuance of the order. The record on appeal shall be completed and the appeal shall be perfected within five days from the filing of notice to appeal. Because time may be of the essence regarding the performance of the abortion, the supreme court of this state shall, by court rule, provide for expedited appellate review of cases appealed under this section."

We believe this section provides the framework for a constitutionally sufficient means of expediting judicial proceedings. Immediately after the effective date of this statutory enactment, the District Court enjoined enforcement. No unemancipated pregnant minor has been required to comply with this section. Thus, to this point in time, there has been no need for the State Supreme Court to promulgate rules concerning appellate review. There is no reason to believe that Missouri will not expedite any appeal consistent with the mandate in our prior opinions.

n17 Cf. H. L. v. Matheson, supra, at 406-407, and n. 14, 411 (upholding a parental notification requirement but not extending the holding to mature or emancipated minors or to immature minors showing such notification detrimental to their best interests). The lower courts found that @ 188.028's notice requirements was unconstitutional. 655 F.2d, at 873; 483 F.Supp., at 701. The State has not sought review of that judgment here. Thus, in the posture in which it appears before this Court for review, @ 188.028 contains no requirement

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for parental notification.

n18 The Missouri statute also exempts "emancipated" women under the age of 18 both from the requirement of parental consent and from the alternative requirement of a judicial proceeding. Plaintiffs argue that the word "emancipated" in this context is void for vagueness, but we disagree. Cf. H. L. v. Matheson, supra, at 407 (using word to describe a minor). Although the question whether a minor is emancipated turns upon the facts and circumstances of each individual case, the Missouri courts have adopted general rules to guide that determination, and the term is one of general usage and understanding in the Missouri common law. See Black v. Cole, 626 S. W. 2d 397, 398 (Mo. App. 1981) (quoting 67 C. J. S., Parent and Child @ 86, p. 811 (1950)); In re Marriage of Heddy, 535 S. W. 2d 276, 279 (Mo. App. 1976) (same); Wurth v. Wurth, 313 S. W. 2d 161, 164 (Mo. App. 1958) (same), rev'd on other grounds, 322 S. W. 2d 745 (Mo. 1959).

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[***746] The Missouri statute, @ 188.028.2, n19 in relevant part, provides:

"(4) In the decree, the court shall for good cause:

" [**2526] (a) Grant the petition for majority rights for the purpose of consenting to the abortion; or

"(b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or

"(c) Deny the petition, setting forth the grounds on which the petition is denied."

On its face, @ 188.028.2(4) authorizes Juvenile Courts n20 to choose among any of the alternatives outlined in the section. [*493] The Court of Appeals concluded that a denial of the petition permitted in subsection (c) "would initially require the court to find that the minor was not emancipated and was not mature enough to make her own decision and that an abortion was not in her best interests." 655 F.2d, at 858. Plaintiffs contend that this interpretation is unreasonable. We do not agree.

----------Footnotes----------

n19 See n. 4, supra. This Court in Danforth held unconstitutional Missouri's parental-consent requirement for all unmarried minors under the age of 18. 428 U.S., at 75. In response to our decision, Missouri enacted the section challenged here. This new statute became effective shortly before our decision in Bellotti II.

n20 We have indicated in prior opinions that a minor should have access to an "independent decisionmaker." H. L. v. Matheson, supra, at 420 (POWELL, J., concurring). Missouri has provided for a judicial decisionmaker. We therefore need not consider whether a qualified and independent nonjudicial decisionmaker would be appropriate. Cf. Bellotti II, 443 U.S., at 643, n. 22.

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----------End Footnotes----------

[***HR5A] Where fairly possible, courts should construe a statute to avoid a danger of unconstitutionality. The Court of Appeals was aware, if the statute provides discretion to deny permission to a minor for any "good cause," that arguably it would violate the principles that this Court has set forth. Ibid. It recognized, however, that before exercising any option, the Juvenile Court must receive evidence on "the emotional development, maturity, intellect and understanding of the minor." Mo. Rev. Stat. @ 188.028.2(3) (Supp. 1982). The court then reached the logical conclusion that "findings and the ultimate denial of the petition must be supported by a showing of 'good cause.'" 655 F.2d, at 858. The Court of Appeals reasonably found that a court could not deny a petition "for good cause" unless it first found -- after having received the required evidence -- that the minor was not mature enough to make her own decision. See Bellotti II, 443 U.S., at 643-644, 647-648 (plurality opinion). We conclude that the Court of Appeals correctly interpreted the statute and that @ 188.028, as interpreted, avoids any constitutional infirmities. n21

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n21 Plaintiffs also argue that, in light of the ambiguity of @ 188.028.2(4), as evidenced by the differing interpretations placed upon it, the appropriate course of judicial restraint is abstention. This Court has found such an approach appropriate. See Bellotti v. Baird, 428 U.S. 132, 146-147 (1976) (Bellotti I). Plaintiffs did not, however, argue in the Court of Appeals that the court should abstain, and Missouri has no certification procedure whereby this Court can refer questions of state statutory construction to the State Supreme Court. See 655 F.2d, at 861, n. 20; 17 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure @ 4248, p. 525, n. 29 (1978 and Supp. 1982). Such a procedure "greatly [simplified]" our analysis in Bellotti I, supra, at 151. Moreover, where, as here, a statute is susceptible to a fair construction that obviates the need to have the state courts render the saving construction, there is no reason for federal courts to abstain.

----------End Footnotes----------

[*494] [***747] VI

The judgment of the Court of Appeals, insofar as it invalidated Missouri's second-trimester hospitalization requirement and upheld the State's parental- and judicial-consent provision, is affirmed. The judgment invalidating the requirement of a pathology report for all abortions and the requirement that a second physician attend the abortion of any viable fetus is reversed. We vacate the judgment upholding an award of attorney's fees for all hours expended by plaintiffs' attorneys and remand for proceedings consistent with Hensley v. Eckerhart, 461 U.S. 424 (1983).

It is so ordered.

CONCURBY:
BLACKMUN (In Part); O'CONNOR (In Part)

DISSENTBY:
BLACKMUN (In Part); O'CONNOR (In Part)

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DISSENT:

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE STEVENS join, concurring in part and dissenting in part.

The Court's decision today in Akron v. Akron Center for Reproductive Health, Inc., ante, p. 416, [**2527] invalidates the city of Akron's hospitalization requirement and a host of other provisions that infringe on a woman's decision to terminate her pregnancy through abortion. I agree that Missouri's hospitalization requirement is invalid under the Akron analysis, and I join Parts I and II of JUSTICE POWELL's opinion in the present cases. I do not agree, however, that the remaining Missouri statutes challenged in these cases satisfy the constitutional standards set forth in Akron and the Court's prior decisions.

I

Missouri law provides that whenever an abortion is performed, a tissue sample must be submitted to a "board eligible [*495] or certified pathologist" for a report. Mo. Rev. Stat. @ 188.047 (Supp. 1982). This requirement applies to first-trimester abortions as well as to those performed later in pregnancy. Our past decisions establish that the performance of abortions during the first trimester must be left "'free of interference by the State.'" Akron, ante, at 430, quoting Roe v. Wade, 410 U.S. 113, 163 (1973). As we have noted in Akron, this does not mean that every regulation touching upon first-trimester abortions is constitutionally impermissible. But to pass constitutional muster, regulations affecting first-trimester abortions must "have no significant impact on the woman's exercise of her "right" and must be "justified by important state health objectives." Akron, ante, at 430; see ante, at 489-490.

Missouri's requirement of a pathologist's report is not justified by important health objectives. Although pathology examinations may be "useful and even necessary in some cases," ante, at 487, Missouri requires more than a pathology examination and a [***748] pathology report; it demands that the examination be performed and the report prepared by a "board eligible or certified pathologist" rather than by the attending physician. Contrary to JUSTICE POWELL's assertion, ibid., this requirement of a report by a pathologist is not in accord with "generally accepted medical standards." The routine and accepted medical practice is for the attending physician to perform a gross (visual) examination of any tissue removed during an abortion. Only if the physician detects abnormalities is there a need to send a tissue sample to a pathologist. The American College of Obstetricians and Gynecologists (ACOG) does not recommend an examination by a pathologist in every case:

"In the situation of elective termination of pregnancy, the attending physician should record a description of the gross products. Unless definite embryonic or fetal parts can be identified, the products of elective interruptions [*496] of pregnancy must be submitted to a pathologist for gross and microscopic examination.

. . . .

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". . . Aspirated tissue should be examined to ensure the presence of villi or fetal parts prior to the patient's release from the facility. If villi or fetal parts are not identified with certainty, the tissue specimen must be sent for further pathologic examination . . . ." ACOG, Standards for Obstetric-Gynecologic Services 52, 54 (5th ed. 1982). n1

Nor does the National Abortion Federation believe that such an examination is necessary:

"All tissue must be examined grossly at the time of the abortion procedure by a physician or trained assistant and the [**2528] results recorded in the chart. In the absence of visible fetal parts or placenta upon gross examination, obtained tissue may be examined under a low power microscope for the detection of villi. If this examination is inconclusive, the tissue should be sent to the nearest suitable pathology laboratory for microscopic examination." National Abortion Federation Standards 6 (1981) (emphasis deleted).

----------Footnotes----------

n1 See also ACOG, Standards for Obstetric-Gynecologic Services 66 (1982):

"Tissue removed should be submitted to a pathologist for examination. . . . An exception to the practice may be in elective terminations of pregnancy in which definitive embryonic or fetal parts can be identified. In such instances, the physician should record a description of the gross products. Unless definite embryonic or fetal parts can be identified, the products of elective interruptions of pregnancy must be submitted to a pathologist for gross and microscopic examination."

----------End Footnotes----------

As the Court of Appeals pointed out, there was expert testimony at trial that a nonpathologist physician is as capable of performing an adequate gross examination as is a pathologist, and that the "abnormalities which are of concern" are [*497] readily detectable by a physician. 655 F.2d 848, 871, n. 37 (CA8 1981); see App. 135. n2 While a pathologist may be better able to perform a microscopic examination, Missouri law does not require a microscopic examination unless "fetal parts or placenta [***749] are not identified." 13 Mo. Admin. Code @ 50-151.030(1) (1981). Thus, the effect of the Missouri statute is to require a pathologist to perform the initial gross examination, which is normally the responsibility of the attending physician and which will often make the pathologist's services unnecessary.

----------Footnotes----------

n2 The District Court made no findings on this point, noting only that some witnesses for the State had testified that "pathology should be done" for every abortion. 483 F.Supp. 679, 700, n. 49 (WD Mo. 1980).

----------End Footnotes----------

On the record before us, I must conclude that the State has not "met its

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burden of demonstrating that [the pathologist requirement] [furthers] important health-related State concerns." Akron, ante, at 430. n3 There has been no showing that tissue examinations by a pathologist do more to protect health than examinations by a nonpathologist physician. Missouri does not require pathologists' reports for any other surgical procedures performed in clinics, or for minor surgery performed in hospitals. 13 Mo. Admin. Code @ 50-20.030(3)(A)(7) (1977). Moreover, I cannot agree with JUSTICE POWELL that Missouri's pathologist requirement has "no significant impact" ante, at 489, on a woman's exercise of her right to an abortion. It is undisputed that this requirement may increase the cost of a first-trimester abortion by as much as $ 40. See 483 F.Supp. 679, 700, n. 48 (WD Mo. 1980). Although this increase may seem insignificant from the Court's comfortable perspective, I cannot say that it is equally insignificant to every woman seeking an abortion. [*498] For the woman on welfare or the unemployed teenager, this additional cost may well put the price of an abortion beyond reach. n4 Cf. Harper v. Virginia Board of Elections, 383 U.S. 663, 668 (1966) ($ 1.50 poll tax "excludes those unable to pay"); Burns v. Ohio, 360 U.S. 252, 255, 257 (1959) ($ 20 docket fee "[forecloses] access" to appellate review for indigents).

----------Footnotes----------

n3 JUSTICE POWELL appears to draw support from the facts that "questionable practices" occur at some abortion clinics, while at others "the standards of medical practice . . . may not be the highest." Ante, at 489, n. 12. There is no evidence, however, that such questionable practices occur in Missouri.

n4 A $ 40 pathologist's fee may increase the price of a first-trimester abortion by 20% or more. See 655 F.2d 848, 869, n. 35 (1981) (cost of first-trimester abortion at Reproductive Health Services is $ 170); F. Jaffe, B. Lindheim, & P. Lee, Abortion Politics: Private Morality and Public Policy 36 (1981) (cost of first-trimester clinic abortion ranges from approximately $ 185 to $ 235); Henshaw, Freestanding Abortion Clinics: Services, Structure, Fees, 14 Family Planning Perspectives 248, 255 (1982) (average cost of first-trimester clinic abortion is $ 190); National Abortion Federation Membership Directory 18-19 (1982/1983) (NAF clinics in Missouri charge $ 180 to $ 225 for first-trimester abortion).

----------End Footnotes----------

In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 81 (1976), the Court warned that the minor recordkeeping requirements upheld in that case "perhaps [approached] impermissible limits." Today in Akron, we have struck down restrictions on first-trimester abortions that "may in [**2529] some cases add to the cost of providing abortions." Ante, at 447-448; see ante, at 449-451. Missouri's requirement of a pathologist's report unquestionably adds significantly to the cost of providing abortions, and Missouri has not shown that it serves any substantial health-related purpose. Under these circumstances, I would hold that constitutional limits have been exceeded.

[***750] II

In Missouri, an abortion may be performed after viability only if necessary to preserve the life or health of the woman. Mo. Rev. Stat. @ 188.030.1 (Supp. 1982). When a postviability abortion is performed, Missouri law provides that

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"there [must be] in attendance a [second] physician . . . who [*499] shall take control of and provide immediate medical care for a child born as a result of the abortion." Mo. Rev. Stat. @ 188.030.3 (Supp. 1982). The Court recognized in Roe v. Wade, 410 U.S., at 164-165, that a State's interests in preserving maternal health and protecting the potentiality of human life may justify regulation and even prohibition of postviability abortions, except those necessary to preserve the life and health of the mother. But regulations governing postviability abortions, like those at any other stage of pregnancy, must be "tailored to the recognized state interests." Id., at 165; see H. L. v. Matheson, 450 U.S. 398, 413 (1981) ("statute plainly serves important state interests, [and] is narrowly drawn to protect only those interests"); Roe, 410 U.S., at 155 ("legislative enactments must be narrowly drawn to express only the legitimate state interests at stake").

A

The second-physician requirement is upheld in these cases on the basis that it "reasonably furthers the State's compelling interest in protecting the lives of viable fetuses." Ante, at 486. While I agree that a second physician indeed may aid in preserving the life of a fetus born alive, this type of aid is possible only when the abortion method used is one that may result in a live birth. Although Missouri ordinarily requires a physician performing a postviability abortion to use the abortion method most likely to preserve fetal life, this restriction does not apply when this method "would present a greater risk to the life and health of the woman." Mo. Rev. Stat. @ 188.030.2 (Supp. 1982).

The District Court found that the dilatation and evacuation (D&E) method of abortion entails no chance of fetal survival, and that it will nevertheless be the method of choice for some women who need postviability abortions. In some cases, in other words, maternal health considerations will preclude the use of procedures that might result in a live birth. 483 [*500] F.Supp., at 694. n5 When [***751] a D&E abortion is performed, the [**2530] second physician can do nothing to further the State's compelling interest in protecting potential life. His presence is superfluous. The second-physician requirement thus is overbroad and "imposes a burden on women in cases where the burden is not justified by any possibility of survival of the fetus." 655 F.2d, at 865-866.

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n5 The District Court relied on the testimony of Doctors Robert Crist and Richard Schmidt. Doctor Crist testified that in some instances abortion methods other than D&E would be "absolutely contraindicated" by the woman's health condition, 3 Record 438-439, giving the example of a recent patient with hemolytic anemia that would have been aggravated by the use of prostaglandins or other labor-inducing abortion methods, id., at 428. Doctor Schmidt testified that "[there] very well may be" situations in which D&E would be used because other methods were contraindicated. 5 Record 836. Although Doctor Schmidt previously had testified that a postviability D&E abortion was "almost inconceivable," this was in response to a question by the State's attorney regarding whether D&E would be used "[absent] the possibility that there is extreme contraindication for the use of prostaglandins or saline, or of hysterotomy." Id., at 787. Any inconsistencies in Doctor Schmidt's testimony apparently were resolved by the District Court in the plaintiffs' favor.

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The Court of Appeals upheld the District Court's factual finding that health reasons sometimes would require the use of D&E for postviability abortions. 655 F.2d, at 865. Absent the most exceptional circumstances, we do not review a District Court's factual findings in which the Court of Appeals has concurred. Branti v. Finkel, 445 U.S. 507, 512, n. 6 (1980).

----------End Footnotes----------

JUSTICE POWELL apparently believes that the State's interest in preserving potential life justifies the State in requiring a second physician at all postviability abortions because some methods other than D&E may result in live births. But this fact cannot justify requiring a second physician to attend an abortion at which the chance of a live birth is nonexistent. The choice of method presumably will be made in advance, n6 and any need for a second physician disappears when [*501] the woman's health requires that the choice be D&E. Because the statute is not tailored to protect the State's legitimate interests, I would hold it invalid. n7

----------Footnotes----------

n6 In addition to requiring the physician to select the method most likely to preserve fetal life, so long as it presents no greater risk to the pregnant woman, Missouri requires that the physician "certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed." Mo. Rev. Stat. @ 188.030.2 (Supp. 1982). This ensures that the choice of method will be a reasoned one.

n7 The State argues that its second-physician requirement is justified even when D&E is used, because "[if] the statute specifically excepted D&E procedures, abortionists would be encouraged to use it more frequently to avoid the expense of a second physician, to ensure a dead fetus, to prevent the presence of a second professional to observe malpractice or the choice of a questionable procedure from a safety viewpoint, a fetus-destroying procedure, or to avoid their own awakening to concern for the newborn." Brief for Petitioners in No. 81-1623, p. 44. The Court rejected this purported justification for a second physician in Doe v. Bolton, 410 U.S. 179, 199 (1973): "If a physician is licensed by the State, he is recognized by the State as capable of exercising acceptable clinical judgment. If he fails in this, professional censure and deprivation of his license are available remedies. Required acquiescence by co-practitioners has no rational connection with a patient's needs and unduly infringes on the physician's right to practice."

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B

In addition, I would hold that the statute's failure to provide a clear exception for emergency situations renders it unconstitutional. As JUSTICE POWELL recognizes, ante, at 485, n. 8, an emergency may arise in which delay could be dangerous to the life or health of the woman. A second physician may not always be available in such a situation; yet the statute appears to require one. It states, in unqualified terms, that a postviability abortion "shall be performed . . . only when there is in attendance" a second physician who "shall

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take control of" any child born as a result of the abortion, and it imposes certain duties on "the physician required by this section to be in attendance." Mo. Rev. Stat. @ 188.030.3 (Supp. 1982) (emphasis added). By requiring the attendance of a second physician even when the resulting delay may be harmful to the health of the pregnant woman, the statute [***752] impermissibly fails to make clear "that the woman's life and [*502] health must always prevail over the fetus' life and health when they conflict." Colautti v. Franklin, 439 U.S. 379, 400 (1979).

JUSTICE POWELL attempts to cure this defect by asserting that the final clause of the statute, requiring the two physicians to "take all reasonable steps . . . to preserve the life and health of the viable unborn child; provided that it does not pose an increased risk to the life or health of the woman," could be construed to permit emergency postviability abortions without a second physician. Ante, at 485, n. 8. This construction is contrary to the plain language of the statute; the clause upon which JUSTICE POWELL relies refers to the duties of both physicians during the performance of the abortion, but it in no way suggests that the second physician may be dispensed with.

Moreover, since JUSTICE POWELL's proposed construction is not binding on the [**2531] courts of Missouri, n8 a physician performing an emergency postviability abortion cannot rely on it with any degree of confidence. The statute thus remains impermissibly vague; it fails to inform the physician whether he may proceed with a postviability abortion in an emergency, or whether he must wait for a second physician even if the woman's life or health will be further imperiled by the delay. This vagueness may well have a severe chilling effect on the physician who perceives the patient's need for a postviability abortion. In Colautti v. Franklin, we considered a statute that failed to specify whether it "[required] the physician to make a 'trade-off' between the woman's health and additional percentage points of fetal survival." 439 U.S., at 400. The Court held there that "where conflicting duties of this magnitude are involved, the State, at the least, must proceed with greater precision before it may subject a physician to possible [*503] criminal sanctions." Id., at 400-401. n9 I would apply that reasoning here, and hold Missouri's second-physician requirement invalid on this ground as well. n10

----------Footnotes----------

n8 "Only the [Missouri] courts can supply the requisite construction, since of course 'we lack jurisdiction authoritatively to construe state legislation.'" Gooding v. Wilson, 405 U.S. 518, 520 (1972), quoting United States v. Thirty-seven Photographs, 402 U.S. 363, 369 (1971).

n9 A physician who fails to comply with Missouri's second-physician requirement faces criminal penalties and the loss of his license. Mo. Rev. Stat. @@ 188.065, 188.075 (1978 and Supp. 1982).

n10 Because I would hold the statute unconstitutional on these grounds, I do not reach the question whether Missouri's second-physician requirement impermissibly interferes with the doctor-patient relationship. I note, however, that Missouri does not require attendance of a second physician at any other medical procedure, including a premature birth. There was testimony at trial that a newborn infant, whether the product of a normal birth or an abortion, ordinarily remains the responsibility of the woman's physician until he turns

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its care over to another. App. 133; see ACOG, Standards for Obstetric-Gynecologic Services 31 (5th ed., 1982) ("The individual who delivers the baby is responsible for the immediate post-delivery care of the newborn until another person assumes this duty").

This allocation of responsibility makes sense. Consultation and teamwork are fundamental in medical practice, but in an operating room a patient's life or health may depend on split-second decisions by the physician. If responsibility and control must be shared between two physicians with the lines of authority unclear, precious moments may be lost to the detriment of both woman and child.

----------End Footnotes----------

[***753] III

Missouri law prohibits the performance of an abortion on an unemancipated minor absent parental consent or a court order. Mo. Rev. Stat. @ 188.028 (Supp. 1982).

Until today, the Court has never upheld "a requirement of a consent substitute, either parental or judicial," ante, at 491. In Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 74, the Court invalidated a parental-consent requirement on the ground that "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." In Bellotti v. Baird, 443 U.S. 622 (1979) (Bellotti II), eight Justices [*504] agreed that a Massachusetts statute permitting a judicial veto of a mature minor's decision to have an abortion was unconstitutional. See id., at 649-650 (opinion of POWELL, J.); id., at 654-656 (opinion of STEVENS, J.). Although four Justices stated in Bellotti II that an appropriately structured judicial-consent requirement would be constitutional, id., at 647-648 (opinion of POWELL, J.), this statement was not necessary to the result of the case and did not command a majority. Four other Justices concluded that any judicial-consent statute would suffer from the same flaw the Court identified in Danforth: it would give a third party an absolute veto over the decision of the physician and his patient. 443 U.S., at 655-656 [**2532] (opinion of STEVENS, J.).

I continue to adhere to the views expressed by JUSTICE STEVENS in Bellotti II :

"It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties. . . . As a practical matter, I would suppose that the need to commence judicial proceedings in order to obtain a legal abortion would impose a burden at least as great as, and probably greater than, that imposed on the minor child by the need to obtain the consent of the parent. Moreover, once this burden is met, the only standard provided for the judge's decision is the best interest of the minor. That standard provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor -- particularly when contrary to her own informed and reasonable decision -- is

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fundamentally at odds with privacy interests underlying the constitutional protection afforded to her decision." Ibid. (footnote omitted).

Because Mo. Rev. Stat. @ 188.028 (Supp. 1982) permits a parental or [***754] judicial veto of a minor's decision to obtain an abortion, I would hold it unconstitutional.

[*505] JUSTICE O'CONNOR, with whom JUSTICE WHITE and JUSTICE REHNQUIST join, concurring in the judgment in part and dissenting in part.

For reasons stated in my dissent in Akron v. Akron Center for Reproductive Health, ante, p. 416, I believe that the second-trimester hospitalization requirement imposed by @ 188.025 does not impose an undue burden on the limited right to undergo an abortion. Assuming, arguendo, that the requirement was an undue burden, it would nevertheless "reasonably [relate] to the preservation and protection of maternal health." Roe v. Wade, 410 U.S. 113, 163 (1973). I therefore dissent from the Court's judgment that the requirement is unconstitutional.

[***HR3B] I agree that the second-physician requirement contained in @ 188.030.3 is constitutional because the State possesses a compelling interest in protecting and preserving fetal life, but I believe that this state interest is extant throughout pregnancy. I therefore concur in the judgment of the Court.

[***HR4B] I agree that the pathology-report requirement imposed by @ 188.047 is constitutional because it imposes no undue burden on the limited right to undergo an abortion. Because I do not believe that the validity of this requirement is contingent in any way on the trimester of pregnancy in which it is imposed, I concur in the judgment of the Court.

[***HR5B] Assuming, arguendo, that the State cannot impose a parental veto on the decision of a minor to undergo an abortion, I agree that the parental-consent provision contained in @ 188.028 is constitutional. However, I believe that the provision is valid because it imposes no undue burden on any right that a minor may have to undergo an abortion. I concur in the judgment of the Court on this issue.

I also concur in the Court's decision to vacate and remand on the issue of attorney's fees in light of Hensley v. Eckerhart, 461 U.S. 424 (1983).

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LEXSEE 157 cal. app. 3rd 1076

FEMINIST WOMEN'S HEALTH CENTER, INC., et al., Plaintiffs and Appellants, v. ROBERT H. PHILIBOSIAN, as District Attorney, etc., et al., Defendants and Respondents; CATHOLIC LEAGUE, SOUTHERN CALIFORNIA CHAPTER, et al., Interveners and Respondents

Civ. No. 69838

Court of Appeal of California, Second Appellate District, Division Four

157 Cal. App. 3d 1076; 1984 Cal. App. LEXIS 2268; 203 Cal. Rptr. 918

June 29, 1984

SUBSEQUENT HISTORY:
[**1]

A petition for a rehearing was denied July 17, 1984, and the petitions of all respondents for a hearing by the Supreme Court were denied September 20, 1984. Lucas, J., was of the opinion that the petition should be granted.

PRIOR HISTORY:
Superior Court of Los Angeles County, No. C 413606, Eli Chernow, Judge.

DISPOSITION:
The judgment is reversed. The cause is remanded to the trial court which is directed to enter a declaratory judgment consistent with this opinion.

COUNSEL:
Fred Okrand, Carol Sobel, Eve Triffo and Gilbert Gaynor for Plaintiffs and Appellants.

De Witt W. Clinton, County Counsel, Robert C. Lynch, Assistant Chief Deputy County Counsel, and John McCauley, Deputy County Counsel, for Defendants and Respondents.

Paul L. Freese for Interveners and Respondents.

JUDGES:
Opinion by Woods, P. J., with Kingsley and McClosky, JJ., concurring.

OPINIONBY:
WOODS

OPINION:

[*1080] [***919] Feminist Women's Health Center appeals from summary adjudication of issues granted in favor of respondents, Los Angeles County District Attorney and Board of Supervisors, and interveners/respondents, the Catholic League of Southern California. Appellants sought to enjoin the

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district attorney from disposing of [**2] 16,500 fetuses in a private cemetery where the Catholic League planned a religious ceremony.

This appeal requires us to determine whether the district attorney may constitutionally proceed to bury 16,500 fetuses in a private cemetery that [*1081] has donated the space, after he is aware that the cemetery has independently contracted with a religious organization to hold a religious burial service and mark the burial site with a memorial plaque. We conclude that he may not and, therefore, reverse the judgment.

Respondent district attorney was contacted by a container company in February of 1982 when approximately 16,500 fetuses and laboratory records were found in a repossessed container at the Woodland Hills home of Malvin Weisberg, the owner of a defunct pathology laboratory in Santa Monica. Weisberg had contracts with various physicians, clinics and hospitals which provided that after preparing pathology reports on the embryonic and fetal tissues sent to him, he would dispose of the tissue in accordance with state law. State law requires such tissue to be interred or incinerated. (Health & Saf. Code, @@ 7054.3, 25957.) Weisberg stored the tissue properly but, apparently [**3] due to his financial difficulties, he did not dispose of it.

The district attorney placed an evidentiary hold on the fetuses and laboratory records and coordinated several county agencies to examine the fetuses to determine whether they constituted evidence of criminal conduct. One hundred and fifty fetuses were found to be of greater than 20-weeks' gestation. At that time, Health and Safety Code section 25953 prohibited abortions of fetuses after 20-weeks' gestation.

The district attorney requested an opinion from the Attorney General as to the constitutionality of the 20-week ban. In April of 1982, the Attorney General responded with an opinion that it was constitutionally enforceable except as to abortions of nonviable fetuses and when necessary to preserve the mother's health or life. (65 Ops.Cal.Atty.Gen. 261, 267 (1982).) The district attorney concluded that while only the greater than 20-week fetuses had primary evidentiary value, a defendant in one of the proposed prosecutions might claim that the remaining younger-than-20-week fetuses were of evidentiary value to him. Consequently, the district attorney preferred burial in cement vaults so that the evidence [***920] [**4] could be preserved and disinterred if necessary.

Meanwhile, various public officials, politicians and organizations became involved in the disposition of the fetal tissue.

In March 1982, the Board of Supervisors, after a motion by Michael Antonovich, instructed a Dr. Joseph Wood to perform "autopsies" on 13 of the fetuses. Dr. Wood is a member of the California Pro-Life Medical Association. Dr. Wood provided that organization with unauthorized photographs [*1082] of 42 "mangled" fetuses. The organization displayed some of these photographs at a news conference at the end of May, which was sponsored by two county supervisors and two state senators. The pictures were displayed on a large board entitled "American Holocaust."

State Senator Alex Garcia tried to claim the "bodies for the purpose of giving a proper decent burial and possibly some kind of memorial."

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On May 5, 1982, President Reagan wrote Dr. Dreisbach, the Secretary of the California Pro-Life Medical Association, congratulating the organization's decision "to hold a memorial service for these children."

A motion proposed by County Supervisor Michael Antonovich was approved May 18, 1982. It provided that the district [**5] attorney be requested to release the less than 20-week fetuses and to request the county counsel's opinion as to who would have the right to possess them.

The county counsel replied on May 28, 1983, that the district attorney was entitled to possession of the fetuses as long as necessary to carry out his duties and that upon completion of these duties, the district attorney had discretion to dispose of them by either interment or incineration.

On April 21, 1982, Robert White, Director of County Health Services, wrote a memorandum to "Each Supervisor," describing a meeting of representatives of various county agencies involved with the fetuses. In pertinent part, it stated: "The District Attorney has indicated his intention to release the fetuses, probably within two weeks, to the custody of the Right to Life organization's representative. . . . [para.] . . . [para.] Pierce Brothers Mortuary has indicated their organization would provide the service of interment of the specimens into a burial plot at no charge to the County. The only compensation mentioned is some equitable recognition for providing this service." Copies of the memorandum were sent to the chief administrative [**6] officer, county counsel, the executive officer of the board of supervisors and the district attorney.

At the end of May, the Los Angeles Herald Examiner reported that a spokesperson for the district attorney had confirmed that the county counsel opinion on the release of the fetuses appeared to remove any obstacle to releasing the tissue to a group wishing to hold a religious service.

Meanwhile, in early May, appellant Feminist Women's Health Center requested the district attorney to release the pregnancy tissue in order to dispose of it according to law. A group called Atheists United made the [*1083] same request. Neither request was granted. "Upon learning of indications that the District Attorney was preparing to release the aborted tissue . . . to anti-choice organizations which wished to dramatize their opposition to legalized abortion by holding a religious burial service for the aborted tissue, " appellants filed as taxpayers a first amended complaint for injunctive and declaratory relief in Los Angeles Superior Court on June 17, 1982. They argued that the district attorney's action violated the federal and state constitutionally guaranteed separation of church and [**7] state. n1

----------Footnotes----------

n1 Appellants also sought to enjoin the release of the fetal examination reports as autopsies because the records would contain private medical information and the identity of women who had undergone induced abortions is protected by Government Code section 6254, subdivision (c).

The complaint further sought to enjoin the district attorney from investigating the physicians who performed abortions and used the Weisberg

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laboratory. Appellants claimed the Attorney General incorrectly interpreted Health and Safety Code section 25953 and that the investigation for alleged criminal activity chilled the exercise of their fundamental right to chose whether or not to procreate.

----------End Footnotes----------

[***921] On June 29, 1982, the court issued a preliminary injunction preventing the district attorney from releasing any of the fetal tissue pending a trial on the merits.

In June or July of 1982, the Los Angeles Health Department apparently called a number of cemeteries to find one that would inter the tissue free of charge. Valhalla [**8] Memorial Park in Burbank agreed to inter the fetuses.

On September 30, 1982, the district attorney asked for a modification of the preliminary injunction to permit him to store and bury the less than 20-week tissue in concrete vaults at Valhalla Memorial Park in Burbank. The district attorney wanted to "lawfully inter" as well as "preserve this evidence for the defense of a possible prosecution."

The district attorney's intention to transfer the tissue to Valhalla was reported in the Los Angeles Times. In late September of 1982, the Catholic League of Southern California and its president Paul Freese, interveners and respondents herein, executed a contract with Valhalla permitting the league to hold a religious burial service as the tissue was "stored" and to place a memorial plaque at the site. n2

----------Footnotes----------

n2 The record does not reveal the wording of the memorial plaque but one of the intervener's declarations stated that a previous such plaque read: "Pray that a mother's love be strengthened that she does not turn against the child of her womb."

----------End Footnotes----------
[**9]

The Catholic League and Paul Freese sought to intervene in the action on October 7, 1982. Leave to intervene was granted on October 14, 1982.

[*1084] Appellants' motion to temporarily enjoin transfer of the tissue to Valhalla was granted on November 3, 1982. The interveners noticed an appeal from the temporary restraining order on November 12, 1982. The cause was then transferred to the trial department since the appeal negated the court's jurisdiction. The court ruled that the temporary restraining order would remain in effect pending a ruling on appeal.

In early December, both appellants and respondents moved for summary judgment or in the alternative for summary adjudication of the issues. After a hearing on both motions, the court decreed that: The contract between Valhalla and the Catholic League was made without any state participation or expenditure of public funds, and, therefore, the district attorney's "proposal to inter the fetal remains which are the subject of this case at Valhalla Memorial Park,

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where interveners intend to hold a religious ceremony over it, without organizing, holding or otherwise participating in that religious ceremony is not a violation [**10] of the First and Fourteenth Amendments to the United States Constitution or article I, section 4 and article IVI [sic], section 5 of the California Constitution. Accordingly, defendants are expressly permitted to dispose of the fetal remains in a manner consistent with this order." n3

----------Footnotes----------

n3 The judgment also provided that: (1) The prohibition of Health and Safety Code section 25953 against abortion after the twentieth week of pregnancy is unconstitutional; (2) the district attorney is permanently enjoined from prosecuting any person based on the length of gestation of a pregnancy when terminated; and (3) the district attorney is permanently enjoined from divulging the names of the women or doctors involved in the abortions which produced the fetal tissue. Respondents and interveners did not appeal.

----------End Footnotes----------

The court granted a 20-day stay of its order in accordance with the judgment. Appellants promptly petitioned for a writ of mandamus and temporary stay order. The petition was denied, but the order permitting [**11] the respondents to bury the fetal tissue was stayed until March 17. Appellants then petitioned the California Supreme Court for extraordinary relief. That court ruled that pending a final determination of any timely appeal, the stay of the order permitting burial was to remain in effect.

Appellants then appealed from the parts of the judgment declaring that burial at [***922] Valhalla was not constitutionally prohibited.

Appellants argue that the district attorney's burying the aborted tissue at Valhalla where the event will be commemorated by a religious ceremony and memorial plaque: (1) is unconstitutional because the state may not do indirectly that which it may not do directly, i.e., sponsor a religious ceremony; (2) violates the separation of church and state guaranteed by the [*1085] federal and state Constitutions; specifically, the establishment clause of both Constitutions and article XVI, section 5 of the California Constitution; (3) impermissibly undermines fundamental rights of privacy and procreative choice.

Respondents argue they had a mandatory duty to preserve potential evidence, that they now have a duty to promptly dispose of the tissue as required by [**12] law, and that it is within their discretion to choose between lawful alternative methods of disposal. They deny that the district attorney ever treated the tissue as human beings and claim there is an insufficient relationship between the district attorney and the Catholic League to constitute official support of the Catholic League's activities. Respondents argue their action has a secular purpose because its primary effect is to lawfully dispose of the remains, not to aid religion. Respondents further argue that their actions do not violate any provision of the California Constitution. Finally, respondents contend that appellants have no standing to assert the privacy rights of women not a party to this action, and that, in any event, no violation of privacy or right of procreative choice is threatened.

Interveners generally echo respondents' arguments but they also maintain that

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"the Constitution does not prohibit regard for the infant in the womb," and, therefore, "the question of life" is not a religious issue.

I

In their argument that the state cannot do indirectly what it is forbidden to do directly, appellants creatively use state action analysis drawn from equal protection [**13] cases to demonstrate impermissible state action in this case. We decline to follow this analysis because state action, in the context argued, is a tool for prohibiting private conduct by finding a sufficient relationship between the private conduct and the state. (Burton v. Wilmington Pkg. Auth. (1961) 365 U.S. 715 [6 L.Ed.2d 45, 81 S.Ct. 856].) The Catholic League's private conduct consisting of speech or the holding of religious services is protected by the Constitution of the United States and the Constitution of California. The public conduct which appellants seek to enjoin is clearly state action. The issue before us is whether the state action is unconstitutional.

II

The California Constitution prohibits the Legislature from making law "respecting an establishment of religion." The California establishment clause also states that the rights it guarantees are not dependent on those [*1086] guaranteed by the United States Constitution. (Cal. Const., art. I, @@ 4, 24.)

Some rights guaranteed by the California Constitution are not guaranteed by the United States Constitution. (Cal. Const., art. I, @ 24; People v. Brisendine (1975) 13 Cal.3d 528, [**14] 548-550 [119 Cal.Rptr. 315, 531 P.2d 1099].) With certain exceptions not here relevant, California courts alone determine the rights guaranteed by the California Constitution so long as those rights extend equal or greater protection to those guaranteed by the federal Constitution under totally similar provisions of the Bill of Rights. (Mandel v. Hodges (1976) 54 Cal.App.3d 596, 616 [127 Cal.Rptr. 244, 90 A.L.R.3d 728].) Therefore, we examine the constitutionality of the proposed action on independent state grounds. However, since only three California cases have considered our state's [***923] establishment clause, n4 we also consult principles of federal cases as they seem compelling guides to uncharted state grounds.

----------Footnotes----------

n4 Fox v. City of Los Angeles (1978) 22 Cal.3d 792 [150 Cal.Rptr. 867, 587 P.2d 663]; Johnson v. Huntington Beach Union High Sch. Dist. (1977) 68 Cal.App.3d 1 [137 Cal.Rptr. 43]; Mandel v. Hodges, supra, 54 Cal.App.3d 596.

----------End Footnotes----------

We note two factors at the [**15] outset. First, most of the federal cases analyzing the establishment clause test statutes to determine if they violate the clause. Here, there is no legislative action, instead we are asked to consider whether the district attorney's executive action violates the establishment clause.

The district attorney has discretion to initiate and conduct prosecutions. (Gov. Code, @ 26500; Taliaferro v. Locke (1960) 182 Cal.App.2d 752 [6 Cal.Rptr.

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813].) Since the fetuses came into his possession as potential evidence in a criminal investigation, the disposal of the evidence is his responsibility. His executive action in the proposed disposal is an outgrowth of the legislative act which conferred prosecutorial discretion upon him.

An executive action taken in the exercise of power vested in the executive by legislative enactments can be prohibited by the establishment clause. (Mandel v. Hodges, supra, 54 Cal.App.3d at p. 611.) Consequently, we apply the principles of case law which were formulated in the analysis of statutes even though we are dealing with an executive action.

Secondly, the case before us is factually distinguishable from all precedents. In our effort [**16] to apply existing principles to this unique situation, we will treat the classic methods for determining establishment clause violations [*1087] as "[touchstones] with which to identify instances where the objectives of the establishment clause have been compromised. [Citation.]" (Johnson v. Huntington Beach Union High Sch. Dist., supra, 68 Cal.App.3d at p. 11.) The establishment clause was written to protect against "'sponsorship, financial support, and active involvement of the sovereign in religious activity.'" (Meek v. Pittenger (1975) 421 U.S. 349, 358-359 [44 L.Ed.2d 217, 228, 95 S.Ct. 1753], quoting Walz v. Tax Commission (1970) 397 U.S. 664, 668 [25 L.Ed.2d 697, 701, 90 S.Ct. 1409].)

In 1971, the United States Supreme Court enunciated three tests for determining whether a given law complied with the establishment clause. "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion [citation]; finally, the statute must not foster 'an excessive government entanglement with religion.' [Citation.]" (Lemon v. Kurtzman (1971) 403 U.S. [**17] 602, 612-613 [29 L.Ed.2d 745, 755, 91 S.Ct. 2105].) These three tests "are intended to apply to laws affording a uniform benefit to all religions, and not to provisions . . . that discriminate among religions." (Larson v. Valente (1982) 456 U.S. 228, 252 [72 L.Ed.2d 33, 52-53, 102 S.Ct. 1673].) When the law at issue grants a denominational preference "we treat the law as suspect and . . . we apply strict scrutiny in adjudging its constitutionality." (Larson v. Valente, supra, at p. 246 [72 L.Ed.2d at p. 49].)

Appellants argue that the district attorney's action is unconstitutional under either the Lemon or Larson test, but that the strict scrutiny test is applicable here because the government action involved demonstrates official support for the religious views of a particular group. "[Not] all religions hold that aborted fetuses are 'persons' who must be buried, and equate abortion with homicide. But the Roman Catholic religion does, and the interveners are Catholics who adhere to those beliefs." The district attorney argues that his act is nondenominational because any other denomination is free to act with respect to the burial. Interveners [**18] claim that the "record does not justify any inference that the question about life is only a sectarian concern."

The United States Supreme Court has recently expressed its "unwillingness to be [***924] confined to any single test or criterion in this sensitive area. [Citations.]" (Lynch v. Donnelly (1984) U.S. , [79 L.Ed.2d 604, 613, 104 S.Ct. 1355].) n5 We concur in the conclusion that no one test is definitive. [*1088] However, in the case before us, applying either the Lemon or the Larson

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tests to the California establishment clause we conclude that the act of burying at Valhalla in the context described violates religious guarantees of the California Constitution.

----------Footnotes----------

n5 Nonetheless, Justice Brennan's dissent in Lynch v. Donnelly, supra, notes that only in Marsh v. Chambers (1983) 463 U.S. 783 [77 L.Ed.2d 1019, 103 S.Ct. 3330], was neither the Lemon analysis nor strict scrutiny applied. (Lynch v. Donnelly, supra, at p. , fn. 2 [79 L.Ed.2d at pp. 624-625] (dis. opn. of Brennan, J.).)

----------End Footnotes----------
[**19]

The strict scrutiny test is applied to an establishment clause issue when government activity shows a preference for one religion over another. (Larson v. Valente, supra, 456 U.S. at p. 246 [72 L.Ed.2d at pp. 48-49].) It is appropriate here because the Catholic League represents a particular religious view and the district attorney's purported action would, in effect, sponsor and approve that view.

In the application to intervene, Paul Freese, President of the Catholic League, stated: "Together with many other citizens having religious convictions, I believe, based both on religious and scientific information, that a fetus is an infant, a human and spiritual being, and my brother or sister in Christ. Catholics and others sharing spiritual perceptions of life have constitutional rights to assemble and to express views, religious or otherwise, about the spirituality of life through public prayer or other peaceful manifestations of belief and to convey thereby their opinion about the tragic defamation of life and soul as perceived in the occurrences and circumstances made known by the pleadings herein."

The reason alleged for intervention was because "it is necessary that [**20] representatives of religious viewpoints be allowed to intervene to protect their constitutional rights against infringement by a hostile philosophic group."

The complaint in intervention states that the Catholic League is a California corporation "specifically designed to assist Catholics and others in the protection of their civil rights and religious freedom of Americans." The Catholic League alleged that the purpose of Feminist Women's lawsuit was to prevent the district attorney "from giving proper and customary deference to persons who have a legitimate interest under the law in recovering possession of the bodies or in giving religious attention to what are regarded by [the Catholic League] as creatures of God having eternal destinies."

It is clear from the record that the Catholic League is a religious organization which regards a fetus as a human being and abortion as murder. While this specific belief may well cross sectarian lines, it is a belief not universally held. Consequently, any state action showing a preference for this belief will be strictly scrutinized and must be invalidated unless [*1089] it is justified by a compelling governmental interest with which [**21] "it is closely fitted to further [that] interest." (Larson v. Valente, supra, 456 U.S. at pp. 248-249 [72 L.Ed.2d at p. 50].)

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Originally, the district attorney maintained that his primary interest in interring the fetuses at Valhalla was so they could be disinterred if needed for evidence. The state's need to preserve the fetuses as evidence no longer exists. The court below permanently enjoined the district attorney from criminally prosecuting anyone under any statute based on the length of gestation of a pregnancy. That decision was not appealed.

In his brief to this court, the district attorney states he does not now intend to commence any criminal prosecution in connection with these fetuses. Therefore, the district attorney's only interest in regard to the fetuses is to dispose of them lawfully. Health and Safety Code sections 7054.3 and 25957 provide that fetal remains shall be [***925] promptly disposed of by interment or incineration.

The fetal remains of abortions performed at public medical facilities in Los Angeles County are incinerated without ceremony at county facilities or at private hospitals. The record reflects that although these fetuses [**22] are preserved in formaldehyde, they could still be disposed of in this manner. Thus, there is no compelling state interest to dispose of the fetuses in a private cemetery. The fact that Valhalla would dispose of the fetuses at no cost to the county is not sufficient compelling interest to justify the appearance of state sanction of a particular religious belief.

III

The same conclusion of unconstitutional behavior is reached through the three tests of Lemon v. Kurtzman, supra, 403 U.S. 602. We find no secular purpose in the proposed act; its primary effect enhances religion; and it creates excessive political entanglement with religion.

The right to injunctive relief must be determined as of the date of an appellate court's decision. (White v. Davis (1975) 13 Cal.3d 757, 773, fn. 8 [120 Cal.Rptr. 94, 533 P.2d 222].) Therefore, the fact that the fetuses need no longer be preserved as evidence eliminates the secular purpose of interring them at Valhalla. Governmental purpose may be inferred from the act itself to contradict the government's avowed purpose. (Stone v. Graham (1980) 449 U.S. 39, 41 [66 L.Ed.2d 199, 202, 101 S.Ct. 192].)

[*1090] [**23] We perceive the purpose test to be objective in nature. Here, in the context of earlier publicity stating the district attorney's intention to turn the fetuses over to a pro-life group for religious burial, the appearance of a religious purpose in interring the fetuses at Valhalla is sufficient to prohibit that action when no secular purpose exists for so doing and where other means exist which do not symbolically support a particular religious viewpoint. "[The] very symbolism of conspicuous governmental aid to identifiably religious enterprise is regarded as an independent evil. Indeed . . . nothing short of a concern with such symbolism could distinguish those cases of aid to the religious enterprise which the Court has deemed impermissible from those which the Court has readily tolerated. Apart from the significance of symbols in establishing precedents for a more dangerous incursion, the fact of symbolic governmental identification with a religious activity must be understood to constitute a separate evil in a system that regards matters of religious concern as ultimately delegated to individual and community

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conscience." (Tribe, American Constitutional Law (1978) p. 868.) [**24] The state must not only maintain the reality of separation with the church; it must also maintain the appearance of such separation. (Fox v. City of Los Angeles, supra, 22 Cal.3d at p. 804 (conc. opn. of Bird, C.J.).)

No clear secular purpose exists for burial at Valhalla; under the Lemon test this is conclusive of the unconstitutionality of that act. (Mandel v. Hodges, supra, 54 Cal.App.3d at p. 613.) We, nevertheless, apply the other Lemon criteria.

In denying that the primary effect of this action is the enhancement of religion, respondents and interveners argue that any religious effect from the burial ceremony arises from the protected expression of the Catholic League and not from any government action. We disagree.

The Catholic League has a constitutionally protected right to express their view that the fetuses are murdered humans and to publicly mourn them. They do not have the right, however, to have the state's imprimature on that expression.

Either the public act of disposing of the fetuses with no government display of religiosity, or the private expression of protected ideas would be proper. The impropriety comes from proceeding with the [**25] public act when the private group's intent to use that public act to frame and support the private expression is widely known.

[***926] The state's delivery of the fetuses is the reason for the planned event. The League asserts in its brief: "It is precisely because there may be a national [*1091] audience for any speeches made at the memorial service that the Appellants seek judicial suppression of the event."

The primary effect of the district attorney's burying the fetuses at Valhalla would be to give symbolic support to the religious views of the Catholic League. Consequently, to do so would violate the establishment clause.

Excessive entanglement of the state with religion can result from administrative entanglement (Lemon v. Kurtzman, supra, 403 U.S. at pp. 624-625 [29 L.Ed.2d at p. 762] (conc. opn. of Douglas J.)), or from political entanglement (Committee for Public Education v. Nyquist (1973) 413 U.S. 756, 797-798 [37 L.Ed.2d 948, 976-977, 93 S.Ct. 2955]). The potential for political divisiveness based on differences in religious views is a factor in judging the constitutionality of state action. (Committee for Public Education v. Nyquist, [**26] supra, at pp. 797-798 [37 L.Ed.2d at pp. 976-977]; Meek v. Pittenger, supra, 421 U.S. at p. 372 [44 L.Ed.2d at pp. 235-236]; Lynch v. Donnelly, supra, U.S. at p. [79 L.Ed.2d at pp. 628-630] (dis. opn. of Brennan, J.).)

"The potential divisiveness of political division along religious lines was one of the principal evils against which the First Amendment was intended to protect." (Zoetewey, Excessive Entanglement: Development of a Guideline for Assessing Acceptable Church-State Relationships (1976) 3 Pepperdine L.Rev. 279, 287, discussing Lemon v. Kurtzman, supra, 403 U.S. at p. 622 [29 L.Ed.2d at p. 761].)

The proposed burial at Valhalla does not present any administrative entanglement with religion since the district attorney plans to deliver the

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fetuses and leave. It does, however, cause political entanglement. The abortion issue is one of the most emotionally explosive issues in today's political firmament. The appearance of support by the state, of one side of this controversy over the other, is improper political entanglement. The act of indirectly turning the fetuses over to Valhalla for religious burial as murdered humans [**27] would vitiate the studied neutrality which is the state's constitutional course. The proposed action would aggravate an already volatile religious issue.

Under the federal Constitution, no case has held that political entanglement alone will support a finding of unconstitutionality. The potential political divisiveness of the district attorney's proposed action is, however, in the unique situation before us, an important factor in reaching that determination under the California Constitution.

[*1092] In conclusion we find the proposed burial at Valhalla would violate the establishment clause of the California Constitution.

IV

The "no preference of religion clause" of the California Constitution provides additional grounds for a finding of unconstitutionality. Article I, section 4 of the California Constitution states: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed . . . . The Legislature shall make no law respecting an establishment of religion." The California Supreme Court has interpreted this section as being broader than the federal guarantee because preference is forbidden even when there is no discrimination. (Fox [**28] v. City of Los Angeles, supra, 22 Cal.3d at p. 796.) Referring to this clause, the Attorney General's office has said: "It would be difficult to imagine a more sweeping statement of the principle of government impartiality in the field of religion." (25 Ops.Cal.Atty.Gen. 316, 319 (1955).)

In Fox, supra, the California Supreme Court held that a preference was unconstitutionally shown to one religion by the illumination of a huge cross on the Los Angeles City Hall at Christmas and Easter. The concurring opinion noted that even though the city's stated purpose was to [***927] promote "'peace and good fellowship toward all mankind,'" in fact a preference had occurred. " Whatever the city's subjective purpose, an impermissible religious preference has objectively resulted." (Fox v. City of Los Angeles, supra, 22 Cal.3d at p. 804 (conc. opn. of Bird, C. J.).) We find this principle particularly apt in the case before us. Whatever the district attorney's motive, a preference will be objectively demonstrated if the fetuses are delivered to Valhalla in these circumstances. As the concurring opinion observed in Fox: "We must never forget that the religious [**29] freedom of every person is threatened whenever government associates its powers with one particular religious tradition. The threat today may seem small, but the breach in principle is large." (Fox v. City of Los Angeles, supra, at p. 805.)

We find that the district attorney's proposed action would express an unconstitutional preference for the views of the Catholic League.

V

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Yet another basis for holding the proposed act unconstitutional under the California Constitution is article XVI, section 5, which forbids official aid to any "religious sect, church, creed, or sectarian purpose, . . ." This has been interpreted as banning "any official involvement, whatever its [*1093] form, which has the direct, immediate and substantial effect of promoting religious purposes." (California Educational Facilities Authority v. Priest (1974) 12 Cal.3d 593, 605, fn. 12 [116 Cal.Rptr. 361, 526 P.2d 513].) Article XVI, section 5 "was intended to insure the separation of church and state and to guarantee that the power, authority and financial resources of the government shall never be devoted to the advancement or support of religious or sectarian purposes." (Id., at [**30] p. 604.) The prohibited aid under this section includes aid "in the intangible form of prestige and power." (Fox v. City of Los Angeles, supra, 22 Cal.3d at p. 802 (conc. opn. of Bird, C. J.).)

We perceive that the intended burial ceremony will enlist the prestige and power of the state. This is constitutionally forbidden.

For all the reasons stated herein, it would be equally improper for the district attorney to release the tissue to any of the parties to this action.

VI

Given the conclusions reached as to the unconstitutionality of the proposed action, we need not and do not consider appellants' argument that the proposed method of burial violates the privacy rights of the parents of the fetuses and undermines procreative choice.

The judgment is reversed. The cause is remanded to the trial court which is directed to enter a declaratory judgment consistent with this opinion.

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LEXSEE 16 cal 4th 307

AMERICAN ACADEMY OF PEDIATRICS et al., Plaintiffs and Respondents, v. DANIEL E. LUNGREN, as Attorney General, etc., et al., Defendants and Appellants.

No. S041459.

SUPREME COURT OF CALIFORNIA

16 Cal. 4th 307; 940 P.2d 797; 1997 Cal. LEXIS 4411; 66 Cal. Rptr. 2d 210; 97 Cal. Daily Op. Service 6151; 97 Daily Journal DAR 10141

August 5, 1997, Decided

PRIOR HISTORY:
[***1] Superior Court of San Francisco County. Super. Ct. No. 884574. Maxine M. Chesney, Judge.

DISPOSITION:
For the foregoing reasons, we conclude that Assembly Bill 2274 violates the right of privacy set forth in article I, section 1, of the California Constitution. The judgment of the Court of Appeal, upholding the judgment of the trial court, is affirmed.

COUNSEL:

Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Assistant Attorney General, Charlton G. Holland III, Assistant Attorney General, Stephanie Wald and Ralph M. Johnson, Deputy Attorneys General, for Defendants and Appellants.

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Abigail English, Margaret C. Crosby, Ann Brick Carol Sobel, Morrison & Foerster, Linda E. Shostak, David G. Robertson Annette P. Carnegie and Lori A. Schechter for Plaintiffs and Respondents.

Louise H. Renne, City Attorney San Francisco, Paula Jesson, Deputy City Attorney, Dawn M. Schock, Mary Ann Soden, [***2] Mark I. Schickman, Amitai Schwartz, Jone Lemos Jackson, Renee Nordstrand, Jean A. Martin, Jenny E. Skoble, Catherine A. Porter, Janine Reagan, Elizabeth Mohr, Elizabeth E. Bader, Gilbert Gaynor, Geraldine Jaffe, Robert F. Kane, Joseph R. Grodin, Farella, Braun & Martell, Ann G. Daniels, Jill A. Thompson, Claudia A. Lewis, Steel, Clarence & Buckley, Nanci Clarence, Martin Guggenheim, McCutchen, Doyle & Enersen, McCutchen, Doyle, Brown & Enersen, Leslie G. Landau, Brandt Andersson, Beth H. Parker, Hope A. Schmeltzer, Shashikala Bhat, Howard, Rice, Nemerovski, Canady, Falk & Rabkin, Ethan P. Schulman, Lewis D'Amato, Brisbois & Bisgaard and Paula F. Henry as Amici Curiae on behalf of Plaintiffs and Respondents.

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JUDGES:
Opinion by George, C. J., with Werdegar and Chin, JJ., concurring. Concurring opinion by Kennard, J. Dissenting opinions by Mosk, Baxter, and Brown, JJ.

OPINIONBY:
GEORGE

OPINION:

[*313] [**800]

GEORGE, C. J.

In this case we must determine the validity, under the California Constitution, of a statutory provision that requires a pregnant minor (whether just short of her 18th birthday, or several years younger) to secure parental consent or judicial authorization [***3] before she may obtain an abortion. The trial court, after a lengthy court trial, concluded that the statute was unconstitutional, and the Court of Appeal unanimously agreed with that ruling and affirmed the judgment.

As in past cases involving the controversial subject of abortion, we emphasize at the outset that the morality of abortion is not at issue in this case. "The morality of abortion is not a legal or constitutional issue; it is a matter of philosophy, of ethics, and of theology. It is a subject upon which reasonable people can, and do, adhere to vastly divergent convictions and principles." (Committee to Defend Reproductive Rights v. Myers (1981) 29 [*314] Cal. 3d 252, 284 [172 Cal. Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118].) Our decision in this case does not turn upon the personal views of any justice with regard to that moral issue.

Nor is the desirability of parental involvement in a minor's decision whether to obtain an abortion or instead to give birth to a child in question here. No one would doubt the value to a pregnant minor of wise and caring parental guidance and support as she confronts a decision that will affect the rest of her life, assuming [***4] such support is available and the minor is willing to seek it. The statute at issue, however, applies not only to a pregnant minor who is willing to seek parental advice and consent, but rather has its most significant impact in those instances in which a pregnant minor is too frightened or too embarrassed to disclose her condition to a parent (or to a court).

The question before us is not whether, as a matter of policy, the challenged statute is wise or beneficial, but instead whether it is constitutional. We determine the validity of the legislative measure by applying the relevant legal principles embodied in the California Constitution, the preeminent expression of California law enacted by the people.

For the reasons explained hereafter, we conclude that both the trial court and the Court of Appeal correctly determined that the statute at issue violates the right of privacy guaranteed by article I, section 1, of the California Constitution. Accordingly, we shall affirm the judgment rendered by the Court of Appeal. n1

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----------Footnotes----------

n1 It bears emphasis that all of the lower court judges who have considered the validity of the statute in question have found that the statute violates the right of privacy guaranteed by the California Constitution.

----------End Footnotes----------
[***5]

I

The statutory provision in question--Assembly Bill No. 2274, 1987-1988 Regular Session (hereafter Assembly Bill 2274)--was enacted in 1987, but it has never been enforced because its application has been stayed by the lower courts pending determination of its validity. This measure constitutes just one part of a comprehensive statutory scheme governing the conditions and circumstances under which medical, surgical, and hospital care may be provided to minors in California. To place the challenged legislation in proper perspective, we review the history and evolution of the related California statutory provisions in this area.

At common law, minors generally were considered to lack the legal capacity to give valid consent to medical treatment or services, and consequently a parent, guardian, or other legally authorized person generally was [*315] required to provide the requisite consent. In the absence of an emergency, a physician who provided medical care to a minor without such parental or other legally authorized consent could be sued for battery. [**801] (See generally, IJA-ABA Joint Com. on Juvenile Justice Standards, Standards Relating to Rights of [***6] Minors (1984) std. 4.1, com., p. 51.) As with other common law rules relating to the legal "disability" of minority, the purpose of the general common law rule regarding medical care was to protect the health and welfare of minors, safeguarding them from the potential overreaching of third parties or the improvidence of their own immature decisionmaking, and leaving decisions concerning the minor's medical care in the hands of his or her parents, who were presumed to be in the best position to protect the health of their child. (See, e.g., Bonner v. Moran (D.C. Cir. 1941) 126 F.2d 121, 122-123 [75 App.D.C. 156, 139 A.L.R. 1366].)

The requirement that medical care be provided to a minor only with the consent of the minor's parent or guardian remains the general rule, both in California and throughout the United States. (See, e.g., Cobbs v. Grant (1972) 8 Cal. 3d 229, 243-244 [104 Cal. Rptr. 505, 502 P.2d 1]; Rainer v. Community Memorial Hosp. (1971) 18 Cal. App. 3d 240, 251, fn. 14 [95 Cal. Rptr. 901]; see generally, Annot. (1989) 67 A.L.R.4th 511, 516-517.) Over the past half-century, however, a number of significant statutory developments in California have modified [***7] the general rule relating to the provision of medical care to minors.

One development involves the Legislature's enactment of a number of discrete, so-called "medical emancipation" statutes, each of which has designated a general category of minors who--although not legally emancipated for all purposes--nonetheless are authorized to obtain medical, surgical, or hospital care in all contexts, without parental consent. In 1961, the Legislature enacted statutory provisions authorizing (1) any lawfully married minor, and (2) any

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minor on active duty with any of the United States armed services, to consent to all hospital, medical, and surgical care without parental approval. (Stats. 1961, ch. 1407, @ 1, p. 3212 [enacting former Civ. Code, @ 25.6]; Stats. 1961, ch. 1407, @ 2, p. 3213 [enacting former Civ. Code, @ 25.7].) n2 And in 1968, the Legislature adopted a somewhat broader medical emancipation statute, providing that "a minor 15 years of age or older who is living separate and apart from his parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of [*316] the duration of such separate residence, and who is managing his [***8] own financial affairs, regardless of the source of his income," may consent to any hospital, medical, or surgical care without parental approval. (Stats. 1968, ch. 371, @ 1, p. 785 [enacting former Civ. Code, @ 34.6, now Fam. Code, @ 6922]; see Carter v. Cangello (1980) 105 Cal. App. 3d 348 [164 Cal. Rptr. 361].)

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n2 In 1978, in adopting a new, comprehensive Emancipation of Minors Act, the Legislature provided that any person who has entered into a valid marriage or is on active duty with any of the armed forces of the United States is an emancipated minor for all purposes. (See Stats. 1978, ch. 1059, @ 1, p. 3267, enacting former Civ. Code, @ 62, subds. (a), (b), now Fam. Code, @ 7002, subds. (a), (b).)

----------End Footnotes----------

In addition to this first category of what might be characterized as "general medical emancipation" statutes, California has adopted a considerable number of additional statutory provisions that fall within a second category of what might be termed "limited medical emancipation" statutes, [***9] i.e., statutes that authorize minors, without parental consent, to obtain medical care only for specific, designated conditions, without authorizing the minor to consent to medical care for other medical needs. These limited medical emancipation statutes identify circumstances in which a minor in need of medical care may be reluctant, for a variety of reasons, to inform his or her parents of the situation or condition that has created the minor's need for such care, and in which, because of such reluctance, there is a substantial risk that minors would fail to seek medical care--"to the detriment of themselves, their families, and society" (Wadlington, Medical Decision Making for and by Children: Tensions Between Parent, State and Child (1994) 1994 U.Ill.L.Rev. 311, 323-324)--were minors required to inform their parents and obtain parental consent before being allowed to receive medical care. (See generally, Wadlington, Consent to Medical Care for Minors, in Children's Competence to Consent (Melton et al. edits. 1983) pp. 61-64.)

[**802] Over the past 40 years, California has enacted a variety of such limited medical emancipation statutes. The initial [***10] statute falling within this category--the amended version of which is challenged in this case--was enacted in 1953 and authorized an unmarried pregnant minor, without parental consent, to obtain hospital, medical, and surgical care related to pregnancy. (Stats. 1953, ch. 1654, @ 1, p. 3383, enacting former Civ. Code, @ 34.5, now Fam. Code, @ 6925.) (We shall review the specific language and evolution of this statute in more detail below.) In 1968, the Legislature adopted a similar provision authorizing any minor, 12 years of age or older, to obtain, without parental consent, medical care related to the diagnosis or

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treatment of any infectious, contagious, or communicable disease, including a sexually transmitted disease. (Stats. 1968, ch. 417, @ 1, p. 859, enacting former Civ. Code, @ 34.7, now Fam. Code, @ 6926.) In 1977, an analogous provision was adopted authorizing any minor, 12 years of age or older, to obtain, without parental consent, medical care related to the diagnosis and treatment of rape. (Stats. 1977, ch. 354, @ 1, p. 1325, enacting former Civ. Code, @ 34.8, now Fam. Code, @ 6927.) That same year, the Legislature adopted another statute [*317] [***11] authorizing a minor (of any age) to obtain, without parental consent, medical care relating to sexual assault. (Stats. 1977, ch. 935, @ 1, p. 2859, enacting former Civ. Code, @ 34.9, now Fam. Code, @ 6928 .) n3 And in 1977 the Legislature also adopted a statute authorizing any minor, 12 years or older, without parental consent, to obtain medical care and counseling relating to the diagnosis and treatment of a drug or alcohol related problem. (Stats. 1977, ch. 979, @ 1, p. 2953, enacting former Civ. Code, @ 34.10 , now Fam. Code, @ 6929.) n4 Finally, in 1979, another, somewhat comparable statute was adopted by the Legislature, authorizing a minor, 12 years or older, to obtain, without parental consent, mental health treatment or counseling on an outpatient basis. (Stats. 1979, ch. 832, @ 1, p. 2887, enacting former Civ. Code, @ 25.9, now Fam. Code, @ 6924.)

----------Footnotes----------

n3 The provision authorizing a minor to consent to medical care relating to sexual assault contains a provision directing the professional who renders such medical treatment to attempt to contact the minor's parent or parents, but also provides that such contact need not be attempted if the professional believes that the parent committed the sexual assault. [***12]

n4 Although authorizing a minor to obtain medical care for drug and alcohol abuse problems without parental consent, the statute also provides that "[t]he treatment plan of a minor authorized by this section shall include the involvement of the minor's parent, parents, or legal guardian, if appropriate, as determined by the professional person or treatment facility treating the minor." (Stats. 1977, ch. 979, @ 1, p. 2953.)

----------End Footnotes----------

As this list demonstrates, over the past four decades the Legislature has recognized that, in a variety of specific contexts, the protection of the health of minors may best be served by permitting a minor to obtain medical care without parental consent. These statutes do not reflect a legislative determination that a minor who, for example, has been raped or has contracted a sexually transmitted disease would not benefit from the consultation and advice of a supportive parent. Indeed, as noted, a few of the statutes specifically call upon the treating physician or health care provider to notify and attempt to involve the minor's parents in the treatment process, so [***13] long as the circumstances suggest to the health care provider that such involvement will not be detrimental to the health or interests of the minor. (See ante, fns. 3, 4.) Nor do these statutes imply that a minor who, for example, has been sexually assaulted or has a drug or alcohol abuse problem is more mature or knowledgeable than other minors of similar age; a minor who may obtain medical care for such conditions still must obtain parental consent before she or he may obtain, for example, an appendectomy.

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Instead, each of these statutory provisions embodies a legislative recognition that, particularly in matters concerning sexual conduct, minors frequently are reluctant, either because of embarrassment or fear, to inform their parents of medical conditions relating to such conduct, and consequently that there is a considerable risk that minors will postpone or avoid [*318] seeking needed medical care if they are required to obtain parental consent before receiving medical care for such conditions. [**803] To protect their health in these particular circumstances, the statutes authorize minors to receive medical care for these designated conditions without [***14] parental consent.

As already noted, the present case involves the constitutional validity of a legislative measure that amends the oldest of California's limited medical emancipation statutes, the one pertaining to a minor's access to medical care relating to pregnancy. We now proceed to review the history of that measure in some detail.

As originally enacted in 1953, former Civil Code section 34.5 provided in full: "Notwithstanding any other provision of the law, an unmarried, pregnant minor may give consent to the furnishing of hospital, medical and surgical care related to her pregnancy, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of an unmarried, pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to her pregnancy." (Stats. 1953, ch. 1654, @ 1, p. 3383.) Under the terms of the statute, an unmarried pregnant minor was authorized to receive, without parental notification or consent, the full range of medical care related to her pregnancy that a pregnant adult could receive.

At the time former Civil Code section 34.5 was enacted in 1953, the applicable California [***15] statute narrowly limited the right of any pregnant woman to obtain an abortion, providing that a physician lawfully could perform an abortion only when such a procedure was "necessary to preserve" the life of the pregnant woman. (Former Pen. Code, @ 274; see, e.g., People v. Ballard (1959) 167 Cal. App. 2d 803, 814 [335 P.2d 204] [interpreting the scope of the statute].) Although no published decision addressed the question, it appears that at this time a pregnant minor, like a pregnant adult, lawfully could obtain an abortion only when the procedure was "necessary to preserve" the minor's life within the meaning of former Penal Code section 274. Under the terms of former Civil Code section 34.5, however, whenever such an abortion lawfully could be performed, a minor could obtain such medical and surgical care without parental involvement.

In 1967, the Legislature passed the Therapeutic Abortion Act (Stats. 1967, ch. 327, @ 1, p. 1521, enacting former Health & Saf. Code, @ 25950- 25954). This act expanded the circumstances under which a woman lawfully could obtain an abortion, authorizing such a surgical procedure when (1) there was a substantial risk that continuation [***16] of the pregnancy would gravely impair the woman's physical or mental health, or (2) the pregnancy was the result [*319] of rape or incest. (Under the Therapeutic Abortion Act, the determination whether a woman was eligible for an abortion was to be made by a committee composed of members of the medical staff of the hospital at which the abortion was to be performed.)

In Ballard v. Anderson (1971) 4 Cal. 3d 873 [95 Cal. Rptr. 1, 484 P.2d 1345,

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42 A.L.R.3d 1392], this court was presented with the question whether a pregnant minor, by virtue of former Civil Code section 34.5, was authorized to consent to the same medical and surgical procedures relating to her pregnancy to which a pregnant adult could consent under the Therapeutic Abortion Act. Finding nothing in the language of the act that would preclude a pregnant minor from consenting to an abortion under the conditions set forth in the act, the court in Ballard concluded that because an abortion constituted surgical care related to pregnancy within the meaning of former Civil Code section 34.5, under that provision a pregnant minor lawfully could consent to a therapeutic abortion. The court in Ballard declared: [***17] "There is no rational basis for discriminatorily singling out therapeutic abortion as the only type of pregnancy-related surgical care which requires parental consent." (4 Cal. 3d at p. 883.)

Thus, the decision in Ballard confirmed that, under the then existing provisions of former Civil Code section 34.5, a pregnant minor could obtain, without parental consent, the full range of medical care relating to her pregnancy that a pregnant adult lawfully could obtain. Shortly after the Ballard decision, judicial decisions in this court and the United States Supreme Court (People v. Barksdale (1972) 8 Cal. 3d 320, 332 [105 Cal. Rptr. 1, 503 P.2d 257]; Roe v. Wade (1973) 410 U.S. 113 [93 S. Ct. 705, 35 L. Ed. 2d 147]; [**804] Doe v. Bolton (1973) 410 U.S. 179 [93 S. Ct. 739, 35 L. Ed. 2d 201]), as well as the electorate's adoption of an explicit California constitutional right of privacy in November 1972, provided additional protection of a pregnant individual's right to choose whether to continue or terminate her pregnancy. Because the provisions of former Civil Code section 34.5 remained unchanged in all relevant respects, n5 California law [***18] continued to afford pregnant minors the right to obtain, without parental consent, the same, full range of medical and surgical care relating to pregnancy that a pregnant adult could obtain.

----------Footnotes----------

n5 In 1975, former Civil Code section 34.5 was amended to authorize an unmarried minor to obtain, without parental consent, not only medical and surgical care relating to pregnancy, but care, other than sterilization, relating to "the prevention . . . of pregnancy," e.g., the prescription and furnishing of contraceptive drugs and devices. (Stats. 1975, ch. 820, @ 1, p. 1873.)

----------End Footnotes----------

From its enactment in 1953 until its amendment in 1987, former Civil Code section 34.5 drew no distinction on the basis of whether or not a [*320] pregnant minor chose to continue or to terminate her pregnancy. The statute provided simply that a minor could obtain medical and surgical care "relating to pregnancy" without parental consent, affording a pregnant minor unencumbered access to medical care relating to her pregnancy without regard [***19] to whether the minor chose to continue or to terminate her pregnancy.

In 1987, the Legislature enacted Assembly Bill 2274 (Stats. 1987, ch. 1237, @ 1-7, pp. 4396-4399), which left unchanged the general language of former Civil Code section 34.5 ("[n]otwithstanding any other provision of law, an unemancipated minor may give consent to the furnishing of hospital, medical and surgical care related to the prevention or treatment of pregnancy . . . [and

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t]he consent of the parent or parents of such minor shall not be necessary in order to authorize the hospital, medical, and surgical care"), but added a concluding clause that declares the section shall not be construed "to authorize an unemancipated minor to receive an abortion without the consent of a parent or guardian other than as provided in Section 25958 of the Health and Safety Code." n6

----------Footnotes----------

n6 Former Civil Code section 34.5, as amended, read in full:

"Notwithstanding any other provision of law, an unemancipated minor may give consent to the furnishing of hospital, medical and surgical care related to the prevention or treatment of pregnancy, and that consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such minor shall not be necessary in order to authorize the hospital, medical, and surgical care.

"This section shall not be construed to authorize a minor to be sterilized without the consent of his or her parent or guardian [or] to authorize an unemancipated minor to receive an abortion without the consent of a parent or guardian other than as provided in Section 25958 of the Health and Safety Code." (Stats. 1987, ch. 1237, @ 2, p. 4396.)

----------End Footnotes----------
[***20]

Former section 25958 of the Health and Safety Code (now @ 123450), which was added by Assembly Bill 2274, in turn provides that (1) "[e]xcept in a medical emergency requiring immediate medical action, no abortion shall be performed upon an unemancipated minor unless she first has given her written consent to the abortion and also has obtained the written consent of one of her parents or legal guardian," and (2) "[i]f one or both of an unemancipated, pregnant minor's parents or her guardian refuse to consent to the performance of an abortion, or if the minor elects not to seek the[ir] consent . . ., an unemancipated pregnant minor may file a petition with the juvenile court[,] . . . set[ting] forth with specificity the minor's reasons for the request." Declaring that the minor's identity is to be treated as confidential in such a proceeding, Health and Safety Code former section 25958 goes on to provide that (1) if the court finds that the minor "is sufficiently mature and sufficiently informed to make the decision on her own regarding an abortion, and that the minor has, on that basis, consented thereto, the court shall grant the petition," and (2) if the court finds that [***21] the minor is not [*321] sufficiently mature and informed, "the court shall then consider whether performance of the abortion would be in the best interest of the minor," and shall grant the petition if the court finds that the performance of an abortion would be in the minor's best interest and deny the petition if it finds that the performance of an abortion would not be in the [**805] minor's best interest. The section also includes a number of provisions intended to ensure that the so-called "judicial bypass" proceeding is held and decided expeditiously, and, if the trial court denies the petition, that the denial is subject to expedited appellate review. Finally, the section provides that any person who knowingly performs an abortion on a minor without complying with the section's provisions is guilty of a misdemeanor (punishable by a fine or incarceration). n7

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----------Footnotes----------

n7 Health and Safety Code section 25958, as added by Assembly Bill 2274 (Stats. 1987, ch. 1237, @ 3, pp. 4396-4398), reads in full:

"(a) Except in a medical emergency requiring immediate medical action, no abortion shall be performed upon an unemancipated minor unless she first has given her written consent to the abortion and also has obtained the written consent of one of her parents or legal guardian.

"(b) If one or both of an unemancipated, pregnant minor's parents or her guardian refuse to consent to the performance of an abortion, or if the minor elects not to seek the consent of one or both of her parents or her guardian, an unemancipated pregnant minor may file a petition with the juvenile court. If, pursuant to this subdivision, a minor seeks a petition, the court shall assist the minor or person designated by the minor in preparing the petition and notices required pursuant to this section. The petition shall set forth with specificity the minor's reasons for the request. The court shall ensure that the minor's identity is confidential. The minor may file the petition using only her initials or a pseudonym. An unemancipated pregnant minor may participate in the proceedings in juvenile court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel upon request. The hearing shall be set within three days of the filing of the petition. A notice shall be given to the minor of the date, time, and place of the hearing on the petition.

"(c) At the hearing on a minor's petition brought pursuant to subdivision (b) for the authorization of an abortion, the court shall consider all evidence duly presented, and order either of the following:

"(1) If the court finds that the minor is sufficiently mature and sufficiently informed to make the decision on her own regarding an abortion, and that the minor has, on that basis, consented thereto, the court shall grant the petition.

"(2) If the court finds that the minor is not sufficiently mature and sufficiently informed to make the decision on her own regarding an abortion, the court shall then consider whether performance of the abortion would be in the best interest of the minor. In the event that the court finds that the performance of the abortion would be in the minor's best interest, the court shall grant the petition ordering the performance of the abortion without consent of, or notice to, the parents or guardian. In the event that the court finds that the performance of the abortion is not in the best interest of the minor, the court shall deny the petition.

"Judgment shall be entered within one court day of submission of the matter.

"(d) The minor may appeal the judgment of the juvenile court by filing a written notice of appeal at any time after the entry of the judgment. The Judicial Council shall prescribe, by rule, the practice and procedure on appeal and the time and manner in which any record on appeal shall be prepared and filed. These procedures shall require that the notice of the date, time, and place of hearing, which shall be set within five court days of the filing of

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notice of appeal, shall be mailed to the parties by the clerk of the court. The appellate court shall ensure that the minor's identity is confidential. The minor may file the petition using only her initials or a pseudonym. Judgment on appeal shall be entered within one court day of submission of the matter.

"(e) No fees or costs incurred in connection with the procedures required by this section shall be chargeable to the minor or her parents, or either of them, or to her legal guardian.

"(f) It is a misdemeanor, punishable by a fine of not more than one thousand dollars ($ 1000), or by imprisonment in the county jail of up to 30 days, or both, for any person to knowingly perform an abortion on an unmarried or unemancipated minor without complying with the requirements of this section." (Stats. 1987, ch. 1237, @ 3, pp. 4396-4398.)

----------End Footnotes----------
[***22] [*322]

Accordingly, as revised by Assembly Bill 2274, the applicable California statutes continue to authorize a pregnant minor to obtain medical care relating to her pregnancy without parental consent or judicial authorization so long as the minor chooses to continue her pregnancy, but provide that the minor may obtain a medically safe abortion only if she first obtains parental consent or judicial authorization.

II

Plaintiffs filed the present action challenging the constitutionality of Assembly Bill 2274 in November 1987, shortly after the statute was enacted and before it was scheduled to go into effect on January 1, 1988. n8 [**806] Plaintiffs contended that the statute violated the right of privacy secured by article I, section 1, of the California Constitution and denied them equal protection of the laws in violation of article I, section 7, of the California Constitution, and sought a preliminary injunction to enjoin its operation.

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n8 Plaintiffs in this action are the American Academy of Pediatrics, California District IX; the California Medical Association; the American College of Obstetricians and Gynecologists, District IX; Planned Parenthood of Alameda-San Francisco; and Dr. Philip Darney, a board-certified specialist in obstetrics and gynecology. Defendants are the Attorney General of the State of California and the district attorneys of each California county.

----------End Footnotes----------
[***23]

In December 1987, the superior court issued a preliminary injunction prohibiting state officials from enforcing the newly enacted legislation pending the resolution of plaintiffs' constitutional challenge. Defendants appealed from the order granting a preliminary injunction, and further proceedings with regard to the merits of the action were stayed pending that appeal. In October 1989, the Court of Appeal affirmed the trial court's order, concluding that in view of the substantiality of plaintiffs' constitutional challenge and the balance of

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relative hardships, the trial court did not err in granting the preliminary injunction. (American Academy of Pediatrics v. Van de Kamp (1989) 214 Cal. App. 3d 831 [263 Cal. Rptr. 46] (American Pediatrics I).) In reaching this conclusion, the Court of Appeal in American Pediatrics I determined that the provisions of Assembly Bill 2274 represented a significant infringement on a pregnant minor's intimate and fundamental constitutional right to choose whether or not to continue her pregnancy, and that to sustain the constitutionality of the provision "the burden at [*323] trial will be upon the People to prove they have a compelling [***24] interest in the regulation of unemancipated minors' consent to an abortion . . . [and] that this legislation is the least intrusive alternative available and is so narrowly drawn as to impinge upon the constitutionally protected area no more than is necessary to accomplish the state's legitimate goals." (214 Cal. App. 3d at pp. 846-847.) The Court of Appeal in American Pediatrics I further held that, in view of this court's decision in Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252, "[t]he court at trial will have to determine if minors who have abortions have needs different from those of minors choosing to carry to term and, if not, whether legislation reasonably can be drafted which does not impermissibly discriminate between classes of minors." (214 Cal. App. 3d at p. 848.) The matter then was returned to the superior court for further proceedings.

In October and November 1991, the case was tried to the superior court, sitting without a jury. At trial, 25 witnesses testified, and the deposition testimony of 6 other witnesses was admitted into evidence. The witnesses represented a broad spectrum of experts with training and experience in [***25] the fields of health care, adolescent development, and the application of judicial bypass procedures in other states. The testimony covered a wide range of subjects, including the relative medical and psychological risks posed to pregnant minors by abortion and childbirth, the general maturity of minors seeking abortion, the existing guidelines and practices with regard to the counseling provided to minors seeking abortion, and the general efficacy (or lack thereof) of the judicial bypass process in other jurisdictions.

At the conclusion of the trial, the court issued a lengthy opinion, reviewing the evidence that had been presented at trial and making extensive findings on the basis of the evidence presented. The trial court concluded that although the two interests upon which the state relied to support the legislation--namely, the protection of the physical, emotional, and psychological health of minors, and the furtherance of the parent-child relationship --constituted "compelling state interests" for purposes of the relevant constitutional analysis, the state had failed to prove that the challenged legislation would, in fact, further these interests. Indeed, the trial court [***26] found that the evidence at trial overwhelmingly established that the legislation would not advance these worthy objectives, but rather would be counterproductive and detrimental both to the health of pregnant minors and to the parent-child relationship. In addition, the trial court found that defendants had failed to justify the distinction drawn by the legislation between pregnant minors who choose to undergo abortions and [**807] pregnant minors who choose to carry to term, i.e., by requiring minors who seek to terminate their pregnancy to obtain parental consent or judicial authorization before they obtain medical [*324] care, but permitting pregnant minors who choose to continue their pregnancy to obtain medical care without parental consent or judicial authorization.

On the basis of its factual findings and legal conclusions, the trial court

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concluded that Assembly Bill 2274 is unconstitutional, violating the right of privacy guaranteed by article I, section 1, of the California Constitution and denying the equal protection of the laws guaranteed by article I, section 7, of the California Constitution. The court issued a judgment permanently enjoining [***27] the statute's enforcement. Defendants appealed from the judgment.

While the appeal was pending in the Court of Appeal, our court decided the case of Hill v. National Collegiate Athletic Assn. (1994) 7 Cal. 4th 1 [26 Cal. Rptr. 2d 834, 865 P.2d 633], concluding that an athletic drug testing program, administered by a private organization, did not violate the state constitutional right of privacy. In the course of the decision in Hill, our court addressed a number of issues related generally to the proper scope and application of the state constitutional right of privacy. Although the trial court's decision in the present case preceded our decision in Hill, the Court of Appeal concluded that there was no need to remand this matter to the trial court for further proceedings in light of Hill, n9 and further concluded that, on the basis of the trial court record and the applicable privacy principles set forth and reaffirmed in Hill, the trial court correctly had concluded that Assembly Bill 2274 violates the state constitutional right of privacy. Accordingly, the Court of Appeal affirmed the trial court judgment, permanently enjoining the application of Assembly [***28] Bill 2274. n10

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n9 Neither plaintiffs nor defendants have challenged the Court of Appeal's conclusion that the present record provides an adequate basis upon which to decide the constitutional issue.

n10 Having concluded that the statute violated the state constitutional right of privacy, the Court of Appeal found no need to consider or resolve the state equal protection issue.

----------End Footnotes----------

We granted defendants' petition for review in order to consider the important issue presented by this case.

III

In challenging the decisions of both the trial court and the Court of Appeal, defendants rely heavily upon the circumstance that the United States Supreme Court, in a series of decisions, has upheld the validity under the federal Constitution of abortion/parental consent laws--similar to that embodied in Assembly Bill 2274 --that have been enacted in other states. n11 Indeed, it is quite clear that in drafting and enacting Assembly Bill 2274 in [*325] 1987, the California Legislature itself relied heavily [***29] upon the prior United States Supreme Court decisions in this area. Most of the express "legislative findings" set forth in section 1 of Assembly Bill 2274 are either verbatim quotations or close paraphrases of language from opinions of the United States Supreme Court, n12 and the judicial bypass [**808] provisions of Health and Safety Code former section 25958 clearly were drafted to comply with the requirements set forth in the applicable federal decisions. Defendants maintain that just as the United States Supreme Court has found such a statutory scheme permissible under the federal Constitution, we similarly should find the

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enactment permissible under the California Constitution.

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n11 The United States Supreme Court has addressed the validity of parental notice and consent provisions in abortion statutes in the following decisions: Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52 [96 S. Ct. 2831, 49 L. Ed. 2d 788]; Bellotti v. Baird (1979) 443 U.S. 622 [99 S. Ct. 3035, 61 L. Ed. 2d 797] (hereafter Bellotti II); H. L. v. Matheson (1981) 450 U.S. 398 [101 S. Ct. 1164, 67 L. Ed. 2d 388]; Planned Parenthood Assn. v. Ashcroft (1983) 462 U.S. 476 [103 S. Ct. 2571, 76 L. Ed. 2d 733]; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416 [103 S. Ct. 2481, 76 L. Ed. 2d 687] (hereafter Akron I); Hodgson v. Minnesota (1990) 497 U.S. 417 [110 S. Ct. 2926, 111 L. Ed. 2d 344]; Ohio v. Akron Center for Reproductive Health (1990) 497 U.S. 502 [110 S. Ct. 2972, 111 L. Ed. 2d 405]; Planned Parenthood of Southeastern Pa. v. Casey (1992) 505 U.S. 833 [112 S. Ct. 2791, 120 L. Ed. 2d 674] (hereafter Casey); Lambert v. Wicklund (1997) 520 U.S. [117 S. Ct. 1169, 137 L. Ed. 2d 464]. [***30]

n12 Section 1 of Assembly Bill 2274 reads in full: "THE LEGISLATURE FINDS AS FOLLOWS: (a) the medical, emotional, and psychological consequences of an abortion are serious and can be lasting, particularly when the patient is an immature minor; (b) the capacity to become pregnant and the capacity for exercising mature judgment concerning the wisdom of an abortion are not logically related; (c) minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences of their actions; (d) parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning a minor child; and (e) parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention subsequent to her abortion." (Stats. 1987, ch. 1237, @ 1, p. 4396.)

The first four of these findings either directly quote or paraphrase language from two United States Supreme Court opinions. Findings (a), (b), and (d) correspond to language in H. L. v. Matheson, supra, 450 U.S. 398, 408, 411 [101 S. Ct. 1164, 1170-1171, 1172], and finding (c) corresponds to language in the lead opinion in Bellotti II, supra, 443 U.S. 622, 640 [99 S. Ct. 3035, 3046].

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[***31]

As defendants acknowledge, however, it is well established that the California Constitution "is, and always has been, a document of independent force" (People v. Brisendine (1975) 13 Cal. 3d 528, 549-550 [119 Cal. Rptr. 315, 531 P.2d 1099]), and that the rights embodied in and protected by the state Constitution are not invariably identical to the rights contained in the federal Constitution. (See generally, Raven v. Deukmejian (1990) 52 Cal. 3d 336, 351-355 [276 Cal. Rptr. 326, 801 P.2d 1077].) California cases long have recognized the independence of the California Constitution (see, e.g., Gabrielli v. Knickerbocker (1938) 12 Cal. 2d 85, 89 [82 P.2d 391]), and article I, section 24, of the California Constitution expressly confirms that the rights "guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." Past cases make clear that [*326] even when the terms of the California Constitution are textually identical to those of the

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federal Constitution, the proper interpretation of the state constitutional provision is not invariably identical to the federal courts' interpretation of the corresponding provision [***32] contained in the federal Constitution. (See, e.g., Raven v. Deukmejian, supra, 52 Cal. 3d 336, 352-354; People v. Brisendine, supra, 13 Cal. 3d 528, 548-551.)

Furthermore, with respect to the specific constitutional right at issue in this case--the constitutional right of privacy--there is a clear and substantial difference in the applicable language of the federal and state Constitutions. The federal Constitution contains no provision expressly setting forth or guaranteeing a constitutional right of "privacy"; the recent federal cases recognizing and protecting an individual's privacy interest in the area of reproductive rights have found such a right implied within the more general constitutional protection of "liberty" embodied in the Fifth and Fourteenth Amendments. (See, e.g., Casey, supra, 505 U.S. 833, 846-853 [112 S. Ct. 2791, 2804-2808].) The California Constitution, by contrast, contains in article I, section 1, an explicit guarantee of the right of "privacy." n13 This explicit reference to the right of privacy was added to the California Constitution in November 1972, when the electorate approved an initiative measure whose purpose [***33] was to provide explicit protection of the right of privacy in the state Constitution. (See Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972), argument in favor of Prop. 11, pp. 26-27; id., rebuttal to argument against Prop. 11, p. 28.)

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n13 Article I, section 1, of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Italics added.)

----------End Footnotes----------

Finally, and most significantly, not only is the state constitutional right of privacy embodied in explicit constitutional language not present in the federal Constitution, but past California cases establish that, in many contexts, the scope and application of the state constitutional right of privacy is broader and more protective of privacy than the federal constitutional right of privacy as interpreted [***34] by the federal courts. (Compare Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1, 15-20 [**809] [state constitutional right of privacy applies to private, as well as to state, action] with Skinner v. Railway Labor Executives' Assn. (1989) 489 U.S. 602, 614 [109 S. Ct. 1402, 1411-1412, 103 L. Ed. 2d 639] [federal privacy right applies only to governmental action]; City of Santa Barbara v. Adamson (1980) 27 Cal. 3d 123 [164 Cal. Rptr. 539, 610 P.2d 436, 12 A.L.R.4th 219] [for purposes of determining validity of zoning ordinance, state privacy right protects right to reside with [*327] unrelated persons] with Village of Belle Terre v. Boraas (1974) 416 U.S. 1 [94 S. Ct. 1536, 39 L. Ed. 2d 797] [contra].)

Indeed, a past decision of this court involving the same aspect of the right of privacy as that involved in the present case--namely, the right of a pregnant woman to choose whether to continue her pregnancy or to have an abortion --clearly demonstrates that the state Constitution has been interpreted to

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provide greater protection of a woman's right of choice than that provided by the federal Constitution as interpreted [***35] by the United States Supreme Court. In Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252 (Myers), this court was faced with the question of the validity, under the California Constitution, of state Budget Act provisions that afforded full funding of medical expenses incurred by an indigent pregnant woman if she chose to continue her pregnancy and bear a child, but that, at the same time, generally denied public funding of medical expenses to an indigent women if she chose to have an abortion. In defending the constitutionality of the provisions challenged in Myers, the state relied upon a then recent decision of the United States Supreme Court that had upheld the validity, under the federal Constitution, of a similar funding scheme under which the federal government paid the medical expenses of an indigent pregnant woman if she chose to continue her pregnancy but did not pay for necessary medical expenses if the woman chose to have an abortion. (See Harris v. McRae (1980) 448 U.S. 297 [100 S. Ct. 2671, 65 L. Ed. 2d 784]; see also Maher v. Roe (1977) 432 U.S. 464 [97 S. Ct. 2376, 53 L. Ed. 2d 484] [upholding similar state regulation [***36] against federal constitutional challenge].) In Myers, this court concluded that the federal precedent was not controlling as to the validity of the challenged funding scheme under the state Constitution, and, applying state constitutional principles, went on to find that the unequal funding scheme violated the protection afforded a pregnant woman's right of privacy by the privacy provision of article I, section 1, of the California Constitution that had been adopted several years earlier.

In the more than 15 years that have elapsed since the Myers decision, California courts repeatedly and uniformly have recognized that "our state Constitution has been construed to provide California citizens with privacy protections encompassing procreative decisionmaking--broader, indeed, than those recognized by the federal Constitution." (Johnson v. Calvert (1993) 5 Cal. 4th 84, 100 [19 Cal. Rptr. 2d 494, 851 P.2d 776], italics added [citing Myers]; see also Urbaniak v. Newton (1991) 226 Cal. App. 3d 1128, 1136 [277 Cal. Rptr. 354] ["the state right of privacy has been held to be broader than the federal right," citing Myers]; American Pediatrics I, [***37] supra, 214 Cal. App. 3d 831, 839 ["the California Constitution . . . expressly recognizes a right to privacy . . . which is broader than the federal right to privacy," [*328] citing Myers]; Chico Feminist Women's Health Center v. Scully (1989) 208 Cal. App. 3d 230, 241 [256 Cal. Rptr. 194] ["our state privacy guaranty is broader than the federal privacy right," citing Myers]; Planned Parenthood Affiliates v. Van de Kamp (1986) 181 Cal. App. 3d 245, 277 [226 Cal. Rptr. 361] ["[t]he California Supreme Court has declared the state constitutional right to be much broader than the privacy rights guaranteed by the federal Constitution," citing Myers]; accord, Chico Fem. Women's Hlth. Cr. v. Butte Glenn Med. S. (E.D.Cal. 1983) 557 F. Supp. 1190, 1203 ["the right of procreative choice protected by Article I, @ 1 has already been established as significantly broader than the comparable federal right," citing Myers].)

Because the applicable California authority establishes that the protection afforded by the California Constitution of a pregnant woman's right of choice is broader than the constitutional protection afforded by the federal [***38] [**810] Constitution as interpreted by the United States Supreme Court, the circumstance that the federal high court has concluded that abortion/parental consent statutes similar to Assembly Bill 2274 do not violate the federal Constitution, does not establish that Assembly Bill 2274 is compatible with the

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governing constitutional privacy principles established by the California Constitution. To decide that issue, it is necessary for us to evaluate Assembly Bill 2274 under applicable state constitutional principles.

IV

In determining whether Assembly Bill 2274 violates the state constitutional right of privacy, we examine the challenged statute under the standards and principles set forth in this court's prior decisions interpreting and applying article I, section 1, of the California Constitution.

In Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1 (Hill), a case involving a state constitutional challenge to a drug testing program imposed by a private organization (the National Collegiate Athletic Association (NCAA)) upon student athletes engaged in intercollegiate competition sponsored by the organization, our court conducted an exhaustive [***39] review of the history and past application of the state constitutional privacy clause, and attempted to clarify a number of issues concerning the proper application of this provision. Because of the breadth of the inquiry conducted in Hill, we believe that it is helpful to begin our analysis of the state constitutional privacy issue with a discussion of that decision.

The initial issue addressed by the court in Hill was whether the state constitutional privacy clause properly should be interpreted to protect individuals only from invasions of privacy by governmental entities or other [*329] "state actors," or instead also protects an individual's privacy from infringement or invasion by private persons or entities, such as the NCAA. After reviewing the background of the state constitutional provision, the court in Hill concluded that the state right of privacy, unlike its federal counterpart, is not limited to "state action," and applies to the actions of the NCAA at issue in Hill. n14

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n14 In the present case, of course, plaintiffs' state constitutional privacy challenge is directed at a statutory measure enacted by the Legislature that limits the circumstances under which a pregnant minor may obtain an abortion, and thus there is no question that even if "state action" were required to bring into play the state constitutional privacy clause, such a requirement would be satisfied here.

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[***40]

Having found that the state constitutional privacy clause applies to the actions of the NCAA, the court in Hill turned to the question of the appropriate legal standard to be applied in determining whether the challenged drug testing program violated state constitutional privacy principles. The lower courts in Hill had ruled that the NCAA was required to prove both that its drug testing program was supported by a "compelling state interest" and that there were no less intrusive alternative means by which the interest served by the drug testing program could be achieved. After reviewing the history and background of the state constitutional privacy clause and prior California case law applying the provision, the court in Hill concluded that the lower courts had erred in

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suggesting "that every assertion of a privacy interest under article I, section 1, must be overcome by a 'compelling interest,' " or that a defendant invariably was required to demonstrate that the objective involved could not be met by less intrusive means. (7 Cal. 4th at pp. 34-35.) Noting that although some prior California privacy decisions "use 'compelling interest' language[,] others appear to rely [***41] on balancing tests giving less intense scrutiny to nonprivacy interests," the court in Hill explained: "The particular context, i.e., the specific kind of privacy interest involved and the nature and seriousness of the invasion and any countervailing interests, remains the critical factor in the analysis. Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g., freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a ' compelling interest' must be present to overcome the vital privacy interest. If, in contrast, the privacy interest is [**811] less central, or in bona fide dispute, general balancing tests are employed." (7 Cal. 4th at p. 34, fn. omitted.)

With respect to the particular privacy interests implicated by the athletic drug testing program at issue in Hill, the court ultimately determined that a general balancing test, rather than a compelling interest test, was applicable. (Hill, supra, 7 Cal. 4th at pp. 43-44, 53-54.) On the other hand, as the above [*330] quotation indicates, the court recognized in Hill that when a challenged action or regulation [***42] directly invades "an interest fundamental to personal autonomy, . . . a 'compelling interest' must be present to overcome the vital privacy interest." (Id. at p. 34.) As we explain below, the statute at issue in the case now before us intrudes upon just such "an interest fundamental to personal autonomy," and we conclude that the statute thus is subject to scrutiny under the "compelling interest" test. (See, post, pp. 340-342.)

After clarifying that the "compelling interest" test does not apply to all intrusions upon privacy interests protected by the state constitutional right of privacy, the court in Hill went on to consider "the correct legal standard to be applied in assessing plaintiffs' claims for invasion of privacy" (7 Cal. 4th at p. 35), setting forth three "elements" of a cause of action for violation of the state constitutional right of privacy and discussing the "defenses" that might be raised in opposition to such a claim. (Id. at pp. 35-39.) The court summarized its conclusions as follows: "[A] plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected [***43] privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." (Id. at pp. 39-40.) "A defendant may prevail in a state constitutional privacy case by negating any of the three elements just discussed or by pleading and proving, as an affirmative defense, that the invasion of privacy is justified because it substantively furthers one or more countervailing interests." (Id. at p. 40.) n15 The court further explained that "[t]he plaintiff, in turn, may rebut a defendant's assertion of countervailing interests by showing there are feasible and effective alternatives to defendant's conduct which have a lesser impact on privacy interests." (Id. at p. 40.)

----------Footnotes----------

n15 In further explaining this point, the court in Hill observed: "The diverse and somewhat amorphous character of the privacy right necessarily requires that

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privacy interests be specifically identified and carefully compared with competing or countervailing privacy and nonprivacy interests in a 'balancing test.' The comparison and balancing of diverse interests is central to the privacy jurisprudence of both common and constitutional law. [P] Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest. Legitimate interests derive from the legally authorized and socially beneficial activities of government and private entities. Their relative importance is determined by their proximity to the central functions of a particular public or private enterprise. Conduct alleged to be an invasion of privacy is to be evaluated based on the extent to which it furthers legitimate and important competing interests." (7 Cal. 4th at pp. 37-38.)

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[***44]

As explained in the lead opinion in the recent decision in Loder v. City of Glendale (1997) 14 Cal. 4th 846, 891 [59 Cal. Rptr. 2d 696, 927 P.2d 1200] (Loder): "The three 'elements' set forth in Hill--a legally protected privacy interest, reasonable expectation of privacy, and serious invasion of privacy --should not be interpreted as establishing significant new requirements or hurdles that a plaintiff must meet in order to demonstrate a [*331] violation of the right to privacy under the state Constitution--hurdles that would modify substantially the traditional application of the state constitutional privacy provision (and diminish the protection provided by that provision), by authorizing, in a wide variety of circumstances, the rejection of constitutional challenges to conduct or policies that intrude upon privacy interests protected by the state constitutional privacy clause, without any [**812] consideration of the legitimacy or importance of a defendant's reasons for engaging in the allegedly intrusive conduct and without balancing the interests supporting the challenged practice against the severity of the intrusion imposed by the practice." [***45] (Lead opn. by George, C. J.)

Instead, "the three 'elements' set forth in Hill properly must be viewed simply as 'threshold elements' that may be utilized to screen out claims that do not involve a significant intrusion on a privacy interest protected by the state constitutional privacy provision. These elements do not eliminate the necessity for weighing and balancing the justification for the conduct in question against the intrusion on privacy resulting from the conduct in any case that raises a genuine, nontrivial invasion of a protected privacy interest. As we have noted, Hill was the first case in which our court addressed the question whether the state constitutional privacy clause applies to private as well as to governmental entities. Having concluded that that privacy clause applies to private entities and also that the legal concept of 'privacy' potentially has a very broad sweep, the court in Hill determined that it was appropriate to articulate several threshold elements that may permit courts to weed out claims that involve so insignificant or de minimis an intrusion on a constitutionally protected privacy interest as not even to require an explanation [***46] or justification by the defendant. Hill cannot properly be read, however, to have adopted a sweeping new rule under which a challenge to conduct that significantly affects a privacy interest protected by the state Constitution may be rejected without any consideration of either the legitimacy or strength of the defendant's justification for the conduct." (Loder, supra, 14 Cal. 4th 846, 893-894, fn. omitted (lead opn. by George, C. J.).)

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We proceed to analyze the validity of Assembly Bill 2274 under the broad general framework discussed in Hill.

V

We conclude initially that the state constitutional privacy claim advanced by plaintiffs in this case clearly satisfies the "threshold elements" set forth in Hill in order to screen out claims that do not involve a significant intrusion upon a privacy interest protected by the state constitutional privacy clause. Indeed, as we shall see, Assembly Bill 2274 intrudes significantly on a [*332] privacy interest that past California decisions have identified as "clearly among the most intimate and fundamental of all constitutional rights." (Myers, supra, 29 Cal. 3d 252, 275.)

A

As the court noted in [***47] Hill, "[t]he first essential element of a state constitutional cause of action for invasion of privacy is the identification of a specific, legally protected privacy interest." (Hill, supra, 7 Cal. 4th 1, 35.) Accordingly, we begin by determining whether Assembly Bill 2274 implicates a "protected privacy interest" that falls under the aegis of the state constitutional privacy clause.

As the court in Hill observed, "[l]egally recognized privacy interests are generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy'); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')." (Hill, supra, 7 Cal. 4th 1, 35.) Because we conclude that Assembly Bill 2274 significantly intrudes upon a fundamental autonomy privacy interest protected by the state privacy clause, and further conclude that defendants have failed to establish that the statute's intrusion on this autonomy privacy interest is necessary to serve the interests proffered in support of Assembly Bill 2274, we shall [***48] confine our analysis to the autonomy privacy interest, and need not determine whether Assembly Bill 2274's impact on any informational privacy interest is sufficient to satisfy the threshold elements of Hill and, if so, whether the proffered state interests are sufficient to justify any such intrusion on informational privacy.

[**813] Past California cases firmly and unequivocally establish that the interest in autonomy privacy protected by the California constitutional privacy clause includes a pregnant woman's right to choose whether or not to continue her pregnancy. (See, e.g., People v. Belous (1969) 71 Cal. 2d 954, 963-964 [80 Cal. Rptr. 354, 458 P.2d 194]; Ballard v. Anderson, supra, 4 Cal. 3d 873, 879-881; People v. Barksdale, supra, 8 Cal. 3d 320, 326-327; Myers, supra, 29 Cal. 3d 252, 274-275.) As these decisions explain, the right to choose whether to continue or to terminate a pregnancy implicates a woman's fundamental interest in the preservation of her personal health (and in some instances the preservation of her life), n16 her interest in retaining [*333] personal control over the integrity of her own body, n17 [***49] and her interest in deciding for herself whether to parent a child. And our court also has made clear the profound importance of this constitutional right: "This right of personal choice is central to a woman's control not only of her own body, but

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also to the control of her social role and personal destiny. . . . 'The implications of an unwanted child for a woman's education, employment opportunities and associational opportunities (often including marriage opportunities) are of enormous proportion.' [Citation.]" (Myers, supra, 29 Cal. 3d at p. 275, italics added.) The right of choice may also implicate a woman's deepest philosophical, moral, and religious concerns, including her personal beliefs regarding the meaning of human existence and the beginning of human life. (Accord, Casey, supra, 505 U.S. 833, 851 [112 S. Ct. 2791, 2807] (lead opn.) ["[P]ersonal decisions relating to . . . procreation . . . involv[e] the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy . . . [and] to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own [***50] concept of existence, of meaning, of the universe, and of the mystery of human life."].) In Myers, supra, 29 Cal. 3d 252, 275, we declared that a pregnant woman's constitutional right of choice is "clearly among the most intimate and fundamental of all constitutional rights."

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n16 "[T]he choice between childbirth and abortion in some instances involves potential risks to the life of the pregnant woman. Moreover, even when a life-threatening condition is not present, the constitutional choice directly involves the woman's fundamental interest in the preservation of her personal health." (Myers, supra, 29 Cal. 3d at p. 274.)

n17 " 'If a man is the involuntary source of a child--if he is forbidden, for example, to practice contraception--the violation of his personality is profound; the decision that one wants to engage in sexual intercourse but does not want to parent another human being may reflect the deepest of personal convictions. But if a woman is forced to bear a child--not simply to provide an ovum but to carry the child to term--the invasion is incalculably greater . . . . [I]t is difficult to imagine a clearer case of bodily intrusion, even if the original conception was in some sense voluntary.' [Citation.]" (Myers, supra, 29 Cal. 3d at p. 274.)

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[***51]

All of the fundamental autonomy privacy interests embodied in the constitutional right of choice clearly are implicated by the statute at issue in this case, because the statute prohibits a pregnant minor from obtaining the medical care necessary safely to terminate her pregnancy unless she first obtains either the consent of a parent or judicial authorization. There would be no question, of course, that a provision applicable to a pregnant adult would impinge upon a woman's constitutionally protected interest in autonomy privacy if it conditioned her right to obtain the medical care necessary safely to terminate her pregnancy upon the woman's obtaining the consent of another person (for example, a spouse, parent, or other relative), or obtaining a judicial order authorizing an abortion. Such a statute clearly would intrude upon the woman's right, as an individual, to retain personal control over the fundamental autonomy interests involved in the decision whether to continue [*334] or to terminate her pregnancy. Defendants contend, however, that because Assembly Bill 2274 applies only to pregnant minors, and requires only parental consent (or judicial authorization), [***52] it should not be viewed as intruding upon a

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protected privacy interest for purposes of [**814] determining whether the initial "threshold element" of the Hill analysis is satisfied.

We do not agree. Although the circumstances that Assembly Bill 2274 applies to minors and involves parental consent certainly are relevant considerations in evaluating the adequacy of the justifications for the statute, in our view a statute that restricts a pregnant individual's ability to decide on her own whether to continue or to terminate her pregnancy unquestionably implicates a constitutionally protected privacy interest of a pregnant minor (as well as a pregnant adult) for purposes of the initial threshold element of Hill.

To begin with, it is well established that, as a general matter, "minors as well as adults are 'persons' under the Constitution who are entitled to the protection" provided by our constitutional rights. (In re Roger S. (1977) 19 Cal. 3d 921, 927 [141 Cal. Rptr. 298, 569 P.2d 1286]; see also In re Scott K. (1979) 24 Cal. 3d 395 [155 Cal. Rptr. 671, 595 P.2d 105].) Furthermore, article I, section 1, of the California Constitution specifically [***53] declares that "[a]ll people are by nature free and independent and have inalienable rights[, including] enjoying and defending life and liberty, acquiring, possessing, and protecting property, . . . and privacy" (italics added). Significantly, the ballot argument accompanying the measure that added the privacy clause to article I, section 1, expressly confirms that the constitutional right of privacy afforded by this provision was intended to apply to "every Californian," including "every man, woman and child in this state." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972), argument in favor of Prop. 11, pp. 26, 27, underlining omitted, italics added.) Accordingly, there can be no question but that minors, as well as adults, possess a constitutional right of privacy under the California Constitution.

Indeed, a few examples will make it clear that the constitutional right of privacy widely has been recognized as applying to minors as well as adults. As numerous decisions have pointed out (see, e.g., White v. Davis (1975) 13 Cal. 3d 757, 774-775 [120 Cal. Rptr. 94, 533 P.2d 222]; Hill, supra, 7 [***54] Cal. 4th 1, 21), the ballot argument supporting the privacy measure establishes that one principal objective of the privacy clause is to protect individuals from the unnecessary collection, and improper use, of personal information about them. Nothing in the language or history of the privacy provision suggests that minors, unlike adults, do not enjoy constitutional protection with regard [*335] to the improper use of such information, and past cases have not drawn any distinction between the informational privacy rights of minors and adults. n18 Thus, if a governmental entity or business enterprise were to obtain private information concerning a minor for a particular purpose and then use or disclose the information for a different, unauthorized purpose, no one reasonably could maintain that the conduct would not implicate a constitutionally protected privacy interest simply because the privacy of a minor, rather than of an adult, was infringed. Similarly, if a group or an individual--perhaps motivated by an unusually strong ideological opposition to teenagers becoming mothers--were to compel a pregnant minor to undergo an abortion against her will, there would be no question [***55] but that the offending conduct, in addition to violating any number of penal statutes and tort doctrines, also would constitute a direct intrusion upon a constitutionally protected autonomy privacy interest of the minor. Thus, it is clear that the circumstance that Assembly Bill 2274 is [**815] directed to minors is not a valid basis for concluding that the statute does not impinge upon a protected privacy interest. n19

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n18 In Porten v. University of San Francisco (1976) 64 Cal. App. 3d 825 [134 Cal. Rptr. 839], the Court of Appeal held that the defendant's alleged unauthorized disclosure and use of information that had been submitted to the school as part of an application for admission constituted a violation of the applicant's right of privacy under article I, section 1, of the California Constitution. Nothing in Porten suggests that the validity of the plaintiff's action depended upon whether the applicant was over or under 18 years of age when the misuse of information occurred. Similarly, a number of this court's decisions have discussed the applicability of article I, section 1, to students in a collegiate setting, and have not suggested that the application of the privacy provision to the circumstances of those cases turned on whether the plaintiffs were over or under the age of majority. (See, e.g., White v. Davis, supra, 13 Cal. 3d 757; Hill, supra, 7 Cal. 4th 1.) [***56]

n19 This is not to say that the constitutional privacy clause grants to minors all of the privacy rights that are enjoyed by adults. No case has suggested, for example, that the Legislature does not have greater latitude to regulate or proscribe voluntary sexual activity by or with a minor than it does with regard to voluntary sexual activity engaged in by an adult. (See, e.g., Michael M. v. Superior Court (1979) 25 Cal. 3d 608, 611-613 [159 Cal. Rptr. 340, 601 P.2d 572]; id. at p. 624 (dis. opn. by Mosk, J.); Pen. Code, @ 261.5.) The issue presented by this case, of course, does not concern any claim that a minor enjoys a constitutional right to engage in sexual activity, but rather concerns whether a minor who already has become pregnant has a constitutional right to determine whether she will continue or terminate her pregnancy.

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The question whether a statute or rule intrudes upon a minor's state constitutional right of privacy admittedly becomes more complex when the only effect of the statute or rule is to condition the minor's exercise of his or her constitutional privacy [***57] right upon parental consent. As a general matter, parents during a child's minority have the legal right (and obligation) to act on behalf of their child to protect their child's rights and interests, and in most instances this general rule would apply to interests of the minor that are protected by the state constitutional right of privacy as well as to other rights [*336] and interests of the minor. Thus, for example, although past cases have established that the state constitutional right of privacy generally guarantees an individual's right to consent to, or to refuse to consent to, medical treatment or medication (see, e.g., Thor v. Superior Court (1993) 5 Cal. 4th 725, 733-738 [21 Cal. Rptr. 2d 357, 855 P.2d 375]; Bartling v. Superior Court (1984) 163 Cal. App. 3d 186, 195 [209 Cal. Rptr. 220]), we believe it is clear that, at least with respect to most medical treatment relating to a minor, the Legislature may grant a parent the authority to make medical decisions on behalf of his or her child. No one reasonably could suggest that a serious state constitutional privacy question would be presented, for example, whenever a parent, over a child's objection, requires [***58] the child to go to the dentist or to take his or her medicine. n20

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n20 Similarly, we have no occasion in this case to question the validity of statutes that, for example, prohibit a minor from using a tanning facility without parental consent (Bus. & Prof. Code, @ 22706, subd. (b)(3) & (4)), prohibit a minor, without parental consent, from undergoing voluntary sterilization (Fam. Code, @ 6925, subd. (b)(1)) or indeed, prohibit a minor, with or without parental consent, from receiving a permanent tattoo (Pen. Code, @ 653).

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But while in most instances a statute that simply recognizes a parent's authority or responsibility to exercise a child's privacy right on the child's behalf (and in his or her interest) would raise no serious constitutional question, that is not the case with respect to the particular privacy right that is here at issue, namely the right to decide whether a pregnant minor will continue or terminate her pregnancy. As Justice Powell explained in his plurality opinion for the United States [***59] Supreme Court in Bellotti II, supra, 443 U.S. 622, 642 [99 S. Ct. 3035, 3047-3048]: "The abortion decision differs in important ways from other decisions that may be made during minority. . . . [P] The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy. [P] Moreover, the potentially severe detriment facing a pregnant [minor] . . . is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. . . . In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible."

We agree. As we explained in another [***60] context in In re Jasmon O. (1994) 8 Cal. 4th 398, 419 [33 Cal. Rptr. 2d 85, 878 P.2d 1297]: "Children are [*337] not simply chattels belonging [**816] to the parent, but have fundamental interests of their own that may diverge from the interests of the parent." (See also In re Roger S., supra, 19 Cal. 3d 921, 929-931 [parent may not waive a minor's right to due process before commitment to a mental hospital]; In re Scott K., supra, 24 Cal. 3d 395, 403-404 [parent may not waive a minor's right to be free of unreasonable search and seizure].) The fundamental values and principles that a parent has transmitted to his or her daughter of course will play a substantial, and often a determinative, role in shaping a minor's decision in this matter. Nonetheless, because the decision whether to continue or terminate her pregnancy has such a substantial effect on a pregnant minor's control over her personal bodily integrity, has such serious long-term consequences in determining her life choices, is so central to the preservation of her ability to define and adhere to her ultimate values regarding the meaning of human existence and life, and (unlike [***61] many other choices) is a decision that cannot be postponed until adulthood, we conclude that a minor who is pregnant has a protected privacy interest under the California Constitution in making the decision whether to continue or to terminate her own pregnancy --and that this interest is intruded upon by the provisions of Assembly Bill 2274. n21

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n21 To avoid any misunderstanding, our conclusion in this regard is not intended, of course, to suggest that a pregnant minor's protected privacy interest in this setting is any greater than the interest of a pregnant adult. Assembly Bill 2274 makes no distinction with regard to different stages of pregnancy, and requires a pregnant minor to obtain parental consent or judicial authorization before obtaining an abortion at even the earliest stage, when a pregnant adult clearly would have the right to determine for herself whether to continue her pregnancy or have an abortion. We conclude that the state constitutional privacy provision accords a pregnant minor a similar protected privacy interest.

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[***62]

As already noted, our conclusion that Assembly Bill 2274 intrudes upon a pregnant minor's protected autonomy privacy interest does not mean that the circumstances that the statute involves minors rather than adults, and is concerned with furthering the parent-child relationship, are irrelevant to the ultimate resolution of the constitutional issue presented by this case. These circumstances are in fact directly relevant in assessing the nature and strength of the state interests that may justify the legislation's impact upon the constitutionally protected privacy interests at issue. Under the framework established in Hill, however, we consider potential justifications for a challenged statute at a subsequent stage of the analysis, and not in determining the threshold question whether the statute implicates a protected privacy interest. n22

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n22 We note that there is absolutely no basis for suggesting that this interpretation of the California constitutional privacy clause--namely, as affording constitutional protection to a minor's interest in determining, for herself, whether to continue or to terminate her pregnancy--constitutes an impermissible infringement of the federal constitutional right of a parent to direct the upbringing of his or her child. The United States Supreme Court has explained that "[a]ny independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant" (Planned Parenthood of Missouri v. Danforth, supra, 428 U.S. 52, 75 [96 S. Ct. 2831, 2844]). The high court has further held that even if a pregnant minor is not competent to give informed consent, a state must permit such a minor to obtain an abortion, without parental consent, if a judge or similar official determines that an abortion is in the minor's best interest. (Bellotti II, supra , 443 U.S. 622, 643-644 [99 S. Ct. 3035, 3048-3049] (plur. opn. of Powell, J.); Casey, supra, 505 U.S. 833, 899 [112 S. Ct. 2791, 2832].) Thus, the federal cases make clear that a parent's right under the federal Constitution to direct the upbringing of one's child does not include the right to decide whether a pregnant daughter will continue her pregnancy or have an abortion.

Indeed, if such an argument were sound, it would follow that a state would be prohibited, by the federal Constitution, from enacting a statute authorizing a

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minor to obtain an abortion without parental consent. As we have seen, California long had such a statutory provision, and defendants have cited no authority, and we are aware of none, holding that the federal Constitution precludes a state from adopting such a medical emancipation statute.

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B

We also conclude that plaintiff's constitutional challenge satisfies the second [**817] threshold element of Hill--"a reasonable expectation of privacy."

In discussing the application of this element to the athletic drug testing program challenged in Hill, the court in Hill explained that "the reasonable expectation of privacy of plaintiffs (and other student athletes) . . . must be viewed within the context of intercollegiate athletic activity and the normal conditions under which it is undertaken." (Hill, supra, 7 Cal. 4th 1, 41.) Thus, Hill indicates that this element contemplates an inquiry into whether there is something in the particular circumstances in which an alleged intrusion of privacy arises that demonstrates the plaintiff has no reasonable expectation of privacy in that context, so that the alleged intrusion would not violate the state Constitution even if there were no justification for the allegedly intrusive conduct.

In the present case, the challenged statutory requirements apply to all pregnant minors and, unlike the drug testing program in Hill, are not confined to a specific setting or limited [***64] context. Because, as we have explained in the previous section, Assembly Bill 2274 impinges upon a fundamental autonomy privacy interest of pregnant minors protected by the state constitutional privacy clause, and because the statute applies to all such minors (whether 17 years of age, or much younger), there is absolutely nothing in the circumstances of the present case that would support a conclusion that the pregnant minors affected by this legislation do not have a "reasonable expectation of privacy" for purposes of the second element of the Hill test. Although it has been suggested that, in light of the general statutory rule requiring a minor to obtain parental consent for medical care, [*339] and the existence of numerous abortion/parental consent statutes in other states, a minor has no reasonable expectation of privacy in this context, it plainly would defeat the voters' fundamental purpose in establishing a constitutional right of privacy if a defendant could defeat a constitutional claim simply by maintaining that statutory provisions or past practices that are inconsistent with the constitutionally protected right eliminate any "reasonable expectation of privacy" [***65] with regard to the constitutionally protected right.

C

Finally, in regard to the threshold elements, we conclude that the constitutional challenge to Assembly Bill 2274 also clearly satisfies the third threshold element of Hill--"a serious invasion of a privacy interest." As explained in the lead opinion in the recent decision in Loder, the application of this element in Hill demonstrates "that this element is intended simply to screen out intrusions on privacy that are de minimis or insignificant." (Loder,

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supra, 14 Cal. 4th 846, 895, fn. 22 (lead opn. by George, C. J.).)

In the present case, the effect of Assembly Bill 2274 upon a pregnant minor's constitutional right of privacy cannot, by any stretch of the imagination, properly be characterized as "de minimis or insignificant." The statute significantly intrudes upon autonomy privacy by denying a pregnant minor the ability to obtain a medically safe abortion on her own, and instead requiring her to secure parental consent or judicial authorization in order to obtain access to the medical care she needs to terminate her pregnancy safely. In this respect, the statute denies a pregnant minor, who believes [***66] it is in her best interest to terminate her pregnancy rather than have a child at such a young age, control over her own destiny. In addition, the statutory requirement that the minor obtain parental consent or judicial authorization will delay the minor's access to a medically safe abortion in many instances, and thereby will increase, at least to some extent, the health risks posed by an abortion. Finally, in some instances, a minor who does not wish to continue her pregnancy but who is too frightened to tell her parents about her condition or go to court may be led by the statutory restrictions to attempt to terminate the pregnancy herself or seek a "back-alley abortion"--courses of conduct that in the past have produced truly tragic results--or, alternatively, to postpone action until it is too late to terminate her pregnancy, leaving her no choice but to bear an unwanted child. Of course, such consequences unquestionably [**818] would represent a most significant intrusion on the minor's protected privacy interest.

D

In sum, plaintiffs' constitutional challenge to Assembly Bill 2274 satisfies the three threshold elements set forth in Hill. Accordingly, [***67] under the Hill [*340] framework, to determine the validity of Assembly Bill 2274 we must consider whether the statute's intrusion on a pregnant minor's constitutional right of privacy is justified by the state interests relied upon in support of the legislation. (Hill, supra, 7 Cal. 4th 1, 38.)

VI

In analyzing the adequacy of the justifications tendered by defendants to support the challenged legislation, we begin by addressing two preliminary points. First, we determine the appropriate "standard" or "test" that the proffered justifications must satisfy. Second, we consider how the analysis of defendants' proffered justifications is affected by the circumstance that the constitutional challenge in this case is a "facial" challenge to the statute as a whole, rather than an "as applied" challenge to the statute's application to a particular individual or in a particular setting. We turn first to the question of the appropriate constitutional "standard" or "test" that the justifications must satisfy in this case.

A

As we already have noted, in discussing the issue of the appropriate "standard" or "test" that a proposed justification must meet, the court in [***68] Hill, supra, 7 Cal. 4th 1, while "declin[ing] to hold that every assertion of a privacy interest under article I, section 1 must be overcome by a 'compelling interest' " (Hill, supra, 7 Cal. 4th 1, 34-35, italics added),

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explained that "[t]he particular context, i.e., the specific kind of privacy interest involved and the nature and the seriousness of the invasion and any countervailing interests, remains the critical factor in the analysis. Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g., freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a 'compelling interest' must be present to overcome the vital privacy interest. If, in contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are employed." (Id. at p. 34, italics added, fn. omitted.)

As we have explained, the statute at issue in this case unquestionably impinges upon "an interest fundamental to personal autonomy," indeed an interest that is "clearly among the most intimate and fundamental of all constitutional rights." (Myers, supra, 29 Cal. 3d 252, 275.) [***69] Under Hill and prior decisions of this court (see, e.g., People v. Belous, supra, 71 Cal. 2d 954, 964; Conservatorship of Valerie N. (1985) 40 Cal. 3d 143, 164 [219 Cal. Rptr. 387, 707 P.2d 760]), statutory provisions that intrude or impinge upon such a fundamental autonomy privacy interest properly must be evaluated under the " compelling interest" standard, i.e., the defendant must [*341] demonstrate "a 'compelling' state interest which justifies the [intrusion] and which cannot be served by alternative means less intrusive on fundamental rights." (White v. Davis, supra, 13 Cal. 3d 757, 772.)

Defendants argue that although the "compelling interest" standard may constitute the appropriate test for analyzing a statutory provision that impinges upon a pregnant adult's constitutional right of choice, a less rigorous standard should apply to a statute--such as Assembly Bill 2274 --that affects the right of choice of a pregnant minor. Defendants note that federal decisions have adopted, for purposes of federal constitutional analysis, a less rigorous standard for evaluating the validity of statutes affecting pregnant minors. (See, e.g., Planned [***70] Parenthood of Missouri v. Danforth, supra, 428 U.S. 52, 75 [96 S. Ct. 2831, 2844] [burden on minor's privacy right may be justified by the state's showing of "any significant state interest . . . that is not present in the case of an adult"].) On the other [**819] hand, at least one other state supreme court, in applying an explicit state constitutional privacy provision to an abortion/parental consent statute, has concluded that its state constitutional provision mandates application of the compelling interest standard to a statute that impinges upon fundamental, constitutionally protected privacy rights of minors as well as to a statute that impinges upon similar rights of adults. (In re T.W. (Fla. 1989) 551 So.2d 1186, 1195.)

We conclude that, under the California constitutional privacy clause, the statute here at issue must be evaluated under the "compelling interest" standard. When a statute significantly intrudes upon a fundamental, autonomy privacy interest of a minor, we believe that proper respect for a minor's state constitutional right of privacy requires a showing that the intrusion upon such a basic and fundamental right is necessary to [***71] further a "compelling"--i.e., an extremely important and vital--state interest. (See American Pediatrics I, supra, 214 Cal. App. 3d 831, 843-845; accord, Conservatorship of Valerie N., supra, 40 Cal. 3d 143, 164 [applying "compelling interest" standard in evaluating validity of statute restricting fundamental, autonomy privacy interest of incompetent adult].) As Hill indicates, under article I, section 1, of the California Constitution a statutory intrusion upon

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an autonomy privacy interest of such a fundamental nature may not be justified simply by showing that the statute serves a legitimate "competing interest" sufficient to justify an impingement upon a "less central" privacy interest. (Hill, supra, 7 Cal. 4th at p. 34.)

In applying a test less rigorous than the "compelling interest" standard to evaluate statutes that impinge upon a minor's privacy right, the federal decisions have relied upon a state's "somewhat broader authority to regulate the activities of children . . . ." (Planned Parenthood of Missouri v. Danforth, supra, 428 U.S. 52, 74 [96 S. Ct. 2831, 2843].) As we already have [*342] indicated, the circumstance that the [***72] statute at issue is directed at minors unquestionably is relevant in determining the nature and strength of the state interests that defendants contend are served by Assembly Bill 2274. Numerous California decisions recognize that the state has a special and particularly compelling interest in protecting the health and welfare of children. (See, e.g., Michael M. v. Superior Court, supra, 25 Cal. 3d 608, 611-612; People v. Stritzinger (1983) 34 Cal. 3d 505, 512 [194 Cal. Rptr. 431, 668 P.2d 738].) As these decisions demonstrate, a statute's relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is "compelling." Because the statute's impact on minors is taken into account in assessing the importance of the state interest ostensibly served by the infringement, in our view it is not appropriate additionally to lower the applicable constitutional standard under which the statute is to be evaluated simply because the privacy interests at stake are those of minors.

We conclude that, under the California constitutional privacy clause, a statute that impinges upon the fundamental autonomy privacy [***73] right of either a minor or an adult must be evaluated under the demanding "compelling interest" test.

B

Next, we consider the effect of the circumstance that this case involves a challenge to the constitutionality of the statute "on its face," rather than to the constitutionality of the statute "as applied" to a particular person, group of persons, or setting covered by the statute. Defendants contend that because this case involves a facial challenge to the statute, their burden of justification may be satisfied simply by demonstrating that the provisions of the statute constitutionally may be applied in even a single circumstance covered by the statute. Thus, defendants maintain that this facial challenge to the statute must be rejected if they are able to establish, for example, that the statutory requirement for parental consent or judicial authorization is justified as applied to the relatively small subclass of pregnant minors who lack the mental capacity to give informed consent to [**820] an abortion, even though the statute is not limited to this class of minors--and even if the statute is invalid as to all other pregnant minors.

As we shall explain, [***74] defendants' contention lacks merit. If the analytical approach proposed by defendants were valid, even the broadest statutory prohibition on abortion--a statute that, for example, prohibited abortion under all circumstances--could not be found unconstitutional on its face, because the statute would encompass some circumstances--for example, a [*343] late-term abortion completely unrelated to the protection of the life or

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health of the pregnant woman--in which an abortion constitutionally could be prohibited. Similarly, a statute that prohibited all adult women from obtaining an abortion without first securing either the consent of a spouse, parent, or guardian, or authorization from a court, likewise could not be found unconstitutional on its face, because such a law might be valid as applied to the small class of pregnant adult women who are legally incompetent to give informed consent to the procedure. No California decision has taken such a restrictive approach in evaluating a facial constitutional challenge to a law, such as that at issue here, that directly and substantially impinges upon fundamental constitutional privacy rights in the vast majority of its applications. [***75]

On the contrary, under the constitutional analysis traditionally applied in past California privacy cases, when, as here, a statute, as written, broadly impinges upon fundamental constitutional privacy rights in its general, normal, and intended application, a court, in assessing the statute's constitutionality, must determine whether the justifications for the statute outweigh its impingement on privacy rights and the statute is narrowly drawn to avoid unnecessary impingement on such rights. A statute that imposes substantial burdens on fundamental privacy rights with regard to a large class of persons may not be sustained against a facial constitutional attack simply because there may be a small subclass of persons covered by the statute as to whom a similar but much more narrowly drawn statute constitutionally could be applied. Thus, contrary to defendants' contention, a facial challenge to a statutory provision that broadly impinges upon fundamental constitutional rights may not be defeated simply by showing that there may be some circumstances in which the statute constitutionally could be applied, when, as here, there is nothing in the language or legislative history of the [***76] provision that would afford a reasonable basis for severing the asserted constitutionally permissible applications of the statute from the provision's unconstitutional applications.

Past California cases make this point clear. For example, in City of Carmel-by-the-Sea v. Young (1970) 2 Cal. 3d 259 [85 Cal. Rptr. 1, 466 P.2d 225, 37 A.L.R.3d 1313], one of this court's earliest decisions affording explicit protection to a constitutional right of privacy, the court concluded that the financial disclosure statute at issue in that case, which applied to an extremely broad range of local and state public officers (as well as candidates for such offices) and required extensive disclosure of private financial information, was unconstitutional as a violation of the constitutional right of privacy. Although the court in City of Carmel-by-the-Sea explicitly acknowledged that "[i]t may well be that such extensive disclosure rules [as those [*344] embodied in the challenged statute] may appropriately be imposed by the Legislature upon its own members" and "may also be appropriate for other public officials or employees" (2 Cal. 3d at p. 272)--classes of public officials that [***77] fell within the scope of the challenged statute--the court nonetheless determined that the statute properly should be held unconstitutional on its face, explaining: "When, as here, a statute contains unconstitutionally broad restrictions and its language is such that a court cannot reasonably undertake to eliminate its invalid operation by severance or construction, the statute is void in its entirety regardless of whether it could be narrowly applied to the facts of the particular case before the court. The only way in which the statute now at issue could be limited to a proper scope with respect to the officials and employees of plaintiff city would be by reading into it numerous

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qualifications and exceptions, thereby performing a wholesale rewriting of the statute which the courts cannot reasonably [**821] be expected to undertake. [Citations.] We conclude that the statute is unconstitutional in its entirety." (Ibid., italics added.)

In like manner, this court's decision in Myers, supra, 29 Cal. 3d 252 found that a statute that provided public funding for the medical expenses of an indigent pregnant woman who chose to bear a child, but denied [***78] similar funding for medical expenses if such a woman chose to have an abortion, was unconstitutional on its face, even though some indigent women covered by the statute may have been able to obtain funding for an abortion from private charitable sources. (See 29 Cal. 3d at pp. 275-276; accord, e.g., Blair v. Pitchess (1971) 5 Cal. 3d 258, 282 [96 Cal. Rptr. 42, 486 P.2d 1242, 45 A.L.R.3d 1206] ["It is, of course, an accepted principle of judicial review that 'courts will limit the operation of a statute by construction or severance of the language to avoid unconstitutionality. Where, however, unconstitutionality cannot reasonably be avoided in this way, a statute cannot be upheld merely because a particular factual situation to which it is applicable may not involve the objections giving rise to its invalidity. [Citations.] If the rule were otherwise, the determination of constitutionality would be a piecemeal and unpredictable process. [Citations.]" (Italics added.)]; Mulkey v. Reitman (1966) 64 Cal. 2d 529, 543-545 [50 Cal. Rptr. 881, 413 P.2d 825]; In re Blaney (1947) 30 Cal. 2d 643, 655-656 [184 P.2d 892].)

Thus, past California cases do not [***79] support defendant's claim that a statute whose broad sweep directly impinges upon the fundamental constitutional privacy rights of a large class of persons may not be found invalid on its face so long as there are any circumstances in which the statute's restrictions constitutionally may apply.

The United States Supreme Court has followed a similar approach in addressing facial constitutional challenges to statutory restrictions on abortion. In Roe v. Wade, supra, 410 U.S. 113, for example, the court invalidated [*345] in its entirety a Texas statute, concluding that it "sweeps too broadly [because it] makes no distinction between abortions performed early in pregnancy and those performed later, and . . . limits to a single reason, 'saving' the mother's life, the legal justification for the procedure." (Id. at p. 164 [93 S. Ct. at p. 732].) Thus, even though, under the principles enunciated in Roe, the Texas statute constitutionally could have been applied to at least some pregnant women who fell within the statute's coverage (i.e., those women in their last trimester for whom an abortion was not necessary to preserve their life or health), the court [***80] nonetheless invalidated the law in its entirety, rejecting the argument--explicitly advanced in a dissenting opinion--that because the restrictions imposed by the law constitutionally could be applied to some women covered by the statute, the court was precluded from striking down the statute on its face. (Id. at pp. 177-178 [93 S. Ct. at p. 739] (dis. opn. of Rehnquist, J.).)

Similarly, in its more recent decision in Casey, supra, 505 U.S. 833, the high court adopted a comparable approach in striking down, on its face, a spousal-notification provision contained in the abortion statute before it. The plurality opinion in Casey explained that "[r]espondents attempt to avoid the conclusion that [the spousal-notification provision] is invalid by pointing out

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that it imposes almost no burden at all for the vast majority of women seeking abortions. They begin by noting that only about 20 percent of the women who obtain abortions are married. They then note that of these women about 95 percent notify their husbands of their own volition. Thus, respondents argue, the effects of [the challenged provision] are felt by only one percent of the women who obtain abortions. [***81] Respondents argue that since some of these women will be able to notify their husbands without adverse consequences or will qualify for one of the exceptions, the statute affects fewer than one percent of women seeking abortions. For this reason, it is asserted, the statute cannot be invalid on its face." (Id. at p. 894 [112 S. Ct. at p. 2829], italics added.)

The plurality opinion in Casey, supra, 505 U.S. 833, speaking in this passage for a majority of the court (see id. at p. 922 [112 S. Ct. at pp. 2843-2844] [**822] (opn. by Stevens, J.); ibid. (opn. by Blackmun, J.)), rejected the argument, explaining: "We disagree with respondents' basic method of analysis. [P] The analysis does not end with the one percent of women upon whom the statute operates; it begins there. Legislation is measured for consistency with the Constitution by its impact on those whose conduct it affects. . . . The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant. [P] . . . [A]s we have said, [the spousal-notification provision's] real target . . . is married women seeking [***82] abortions who do not wish to notify their [*346] husbands of their intentions and who do not qualify for one of the statutory exceptions to the notice requirement. The unfortunate yet persisting conditions we document above will mean that in a large fraction of the cases in which [the spousal-notification provision] is relevant, it will operate as a substantial obstacle to a woman's choice to undergo an abortion. It is an undue burden, and therefore invalid." (Id. at pp. 894-895 [112 S. Ct. at pp. 2829-2830], italics added.) n23

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n23 Contrary to the suggestion in Justice Brown's dissent (dis. opn. of Brown, J., post, at p. 423, fn. 3), the paragraph in Casey that follows the above passage (Casey, supra, 505 U.S. 833, 895 [112 S. Ct. 2791, 2829-2830]) does not suggest that Casey's analysis of the circumstances in which an abortion statute properly may be invalidated on its face does not apply to a facial challenge to a parental consent statute. Instead, that paragraph in Casey simply reflects the high court's conclusion that, as a substantive matter, its invalidation of the spousal consent provision was not inconsistent with its prior decisions upholding parental consent statutes.

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[***83]

Thus, Casey, supra, 505 U.S. 833, makes it clear that, under the federal Constitution, a facial constitutional challenge to a statute that significantly impinges upon a woman's fundamental constitutional right of choice may not be defeated simply by showing that there may be some circumstances in which the statute constitutionally might be applied. Under Casey, if a statute operates as a substantial obstacle to such choice "in a large fraction" of the cases to which the statute applies (id. at p. 895 [112 S. Ct. at pp. 2829-2830]), the statute is unconstitutional on its face. And in Casey, as in Roe v. Wade, supra, 410 U.S. 113, the court's determination that the challenged provision was

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unconstitutional on its face was plainly a considered decision, reached in the face of a dissenting opinion that explicitly argued, as defendants argue here, that in order to prevail in a facial challenge to such a provision the opponents of the provision "must 'show that no set of circumstances exist under which the [provision] would be valid.' [Citation.]" (Casey, supra, 505 U.S. at pp. 972-974 & fn. 2 [112 S. Ct. at p. 2870] (dis. opn. of Rehnquist, [***84] C. J.); see also Fargo Women's Health Org. v. Schafer (1993) 507 U.S. 1013, 1014 [113 S. Ct. 1668, 1669, 123 L. Ed. 2d 285] (conc. opn. of O'Connor, J., joined by Souter, J.) [discussing this aspect of Casey in an opinion accompanying a denial of a stay request]; Janklow v. Planned Parenthood, Sioux Falls Clinic (1996) 517 U.S. 1174, 1175 [116 S. Ct. 1582, 1583, 134 L. Ed. 2d 679] (Stevens, J., mem. re: den. of cert.) n24

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n24 Indeed, most of the United States Supreme Court decisions in the abortion context have involved facial constitutional challenges to statutory provisions, and whenever the court has determined that the defenders of a measure have failed to provide a sufficient justification to support a challenged provision's overall impingement upon the constitutional rights at issue, the court has struck down the provision "on its face," even if the statute may encompass at least some situations in which its provisions would not unduly burden the constitutional right. (See, e.g., Hodgson v. Minnesota, supra, 497 U.S. 417, 450-455 [110 S. Ct. 2926, 2945-2948] [striking down two-parent notification provision on its face, even though the opinion acknowledged there are some families in which such a requirement would not unduly burden the minor's right]; Akron I, supra, 462 U.S. 416, 434-438 [103 S. Ct. 2481, 2494-2497] [invalidating, on its face, a requirement that all second trimester abortions be performed in a hospital, even though the court recognized that there are some circumstances in which the health risks associated with a particular pregnancy could justify such a requirement]; Doe v. Bolton, supra, 410 U.S. 179, 193-195 [93 S. Ct. 739, 748-749] [invalidating, on its face, a requirement that all abortions, including first trimester abortions, be performed in a licensed hospital].)

Although three justices of the United States Supreme Court recently have questioned the soundness of Casey's approach to the facial invalidity question (see Janklow v. Planned Parenthood, Sioux Falls Clinic, supra, 517 U.S. 1174, 1176-1181 [116 S. Ct. 1582, 1584-1587] (dis. from den. of cert. by Scalia, J., joined by Rehnquist, C. J., and Thomas, J.), these justices' views did not prevail on this point in Casey, supra, 505 U.S. 833.

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[***85] [*347]

[**823] Contrary to defendants' contention, language in this court's decision in Tobe v. City of Santa Ana (1995) 9 Cal. 4th 1069, 1084 [40 Cal. Rptr. 2d 402, 892 P.2d 1145] (Tobe) is in no way inconsistent with the foregoing principles. The language in Tobe upon which defendants rely states: " ' "To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute . . . . Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with

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applicable constitutional prohibitions." ' (Arcadia Unified School Dist. v. State Dept. of Education (1992) 2 Cal. 4th 251, 267 [5 Cal. Rptr. 2d 545, 825 P.2d 438], quoting Pacific Legal Foundation v. Brown (1981) 29 Cal. 3d 168, 180-181 [172 Cal. Rptr. 487, 624 P.2d 1215].)" (Tobe, supra, 9 Cal. 4th 1069, 1084, original italics.)

The decision in Tobe, supra, 9 Cal. 4th 1069, and the decisions in Arcadia Unified School Dist. v. [***86] State Dept. of Education (1992) 2 Cal. 4th 251 [5 Cal. Rptr. 2d 545, 825 P.2d 438], and Pacific Legal Foundation v. Brown (1981) 29 Cal. 3d 168 [172 Cal. Rptr. 487, 624 P.2d 1215], from which Tobe drew the language in question, make it clear that a law may not be held unconstitutional on its face simply because those challenging the law may be able to hypothesize some instances in which application of the law might be unconstitutional. In each of these cases, the court found that the statute in question clearly was constitutional in its general and ordinary application, and explained that such a law could not be struck down "on its face" merely because there might be some instances in which application of the law might improperly impinge upon constitutional rights. (See also Superior Court v. County of Mendocino (1996) 13 Cal. 4th 45, 59-61 [51 Cal. Rptr. 2d 837, 913 P.2d 1046].) None of the cases suggests, however, that where a statute broadly impinges upon fundamental constitutional rights, the statute may not be held invalid on its face so long as there is any person covered by the law as to whom the statute's requirements constitutionally may be applied. [***87] (See, e.g., Tobe, supra, 9 Cal. 4th 1069, 1109 [" [A] facial challenge to a law [that [*348] directly impinges upon a fundamental constitutional right] on grounds that it is overbroad . . . is an assertion that the law is invalid in all respects and cannot have any valid application [citation] or a claim that the law sweeps in a substantial amount of constitutionally protected conduct." (Second italics added.)].) Instead, as noted above, our cases establish that when a statute broadly and directly impinges upon the fundamental constitutional privacy rights of a substantial portion of those persons to whom the statute applies, the statute can be upheld only if those defending the statute can establish that, considering the statute's general and normal application, the compelling justifications for the statute outweigh the statute's impingement on constitutional privacy rights and cannot be achieved by less intrusive means.

Accordingly, we now turn to the question whether defendants have met that burden here.

VII

In defending the challenged statutory provisions, defendants rely upon two interests assertedly furthered by Assembly Bill 2274: (1) the [***88] protection of the physical, emotional, and psychological health of minors, and (2) the preservation and promotion of the parent-child relationship. The trial court concluded that both of these interests are "compelling interests" for purposes of constitutional analysis, and on appeal plaintiffs have not taken issue with that determination. We agree that the state's interests in protecting the health of minors and in preserving and fostering the parent-child relationship are extremely important interests that rise to the level of "compelling interests" for purposes of constitutional analysis.

After determining that these two interests or purposes constitute "compelling interests, [**824] " however, the trial court went on to find, on the basis

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of the evidence presented at trial, that defendants had failed to establish that the provisions of Assembly Bill 2274 actually would further either of these interests. On the contrary, the trial court found that the provisions of Assembly Bill 2274 were likely to harm rather than protect the health of pregnant minors, and that the statute also was likely to be detrimental to the parent-child relationship.

On appeal, the parties [***89] dispute the weight that properly should be given to the trial court's findings in this regard. Plaintiffs contend that the evidence clearly supports the trial court's findings and that they should be confirmed by this court, but defendants maintain that the trial court failed to give proper deference to the legislative findings accompanying the statute.

As a general rule, "[i]t is not the judiciary's function . . . to reweigh the 'legislative facts' underlying a legislative enactment." (American Bank & Trust Co. v. Community Hospital (1984) 36 Cal. 3d 359, 372 [204 [*349] Cal. Rptr. 671, 683 P.2d 670, 41 A.L.R.4th 233].) n25 When an enactment intrudes upon a constitutional right, however, greater judicial scrutiny is required. (See, e.g., Spiritual Psychic Science Church v. City of Azusa (1985) 39 Cal. 3d 501, 514 [217 Cal. Rptr. 225, 703 P.2d 1119] ["[T]he ordinary deference a court owes to any legislative action vanishes when constitutionally protected rights are threatened. 'The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice.' [***90] [Citations.] . . . [W]e would abandon our constitutional duty if we took at face value the municipality's determination . . . ."].)

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n25 The United States Supreme Court decision in Minnesota v. Clover Leaf Creamery Co. (1981) 449 U.S. 456 [101 S. Ct. 715, 66 L. Ed. 2d 659] exemplifies the general rule. In that case, a Minnesota law prohibiting the retail sale of milk in plastic nonreturnable, nonrefillable containers, but permitting such sale in other nonreturnable, nonrefillable containers such as paperboard milk cartons, was challenged on the ground that, as an empirical matter, the legislation would not serve the legislative purposes--promoting resource conservation, easing solid waste disposal problems, and conserving energy--that the statute was designed to promote. The trial court conducted extensive evidentiary hearings into the statute's probable consequences, and, after finding the evidence in sharp conflict, concluded that it was obliged to weigh and evaluate the evidence itself. The trial court ultimately resolved the evidentiary conflict in favor of those challenging the legislation, concluding that the legislation " 'will not succeed in effecting the Legislature's published policy goals . . .' " (449 U.S. at p. 460 [101 S. Ct. at p. 722]), and on this basis the trial court found the statute unconstitutional. On appeal, the United States Supreme Court reversed, explaining that in cases in which the "rational basis" test is applicable, "[s]tates are not required to convince the courts of the correctness of their legislative judgments. . . . [P] . . . Where there was evidence before the legislature reasonably supporting the classification, litigants may not procure invalidation of the legislation merely by tendering evidence that the legislature was mistaken." (449 U.S. at p. 464 [101 S. Ct. at p. 724]; see also Firemen v. Chicago, R. I. & P. R. Co. (1968) 393 U.S. 129, 138-139, 143 [89 S. Ct. 323, 327-328, 330, 21 L. Ed. 2d 289].)

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In a different context, in rejecting the contention that a Georgia capital punishment statute should be held unconstitutional on the ground that it had not been empirically established that the death penalty is, in fact, an effective deterrent, the United States Supreme Court explained in Gregg v. Georgia (1976) 428 U.S. 153 [96 S. Ct. 2909, 49 L. Ed. 2d 859] that the question of the deterrent value of capital punishment effectively involves a policy decision that appropriately should be left to the legislative branch. The court stated: "Statistical attempts to evaluate the worth of the death penalty as a deterrent to crimes by potential offenders have occasioned a great deal of debate. . . . [P] Although some of the studies suggest that the death penalty may not function as a significantly greater deterrent than lesser penalties, there is no convincing empirical evidence either supporting or refuting this view. . . . [P] The value of capital punishment as a deterrent of crime is a complex factual issue the resolution of which properly rests with the legislatures, which can evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts. . . ." (428 U.S. at pp. 184-186 [96 S. Ct. at pp. 2930-2931], fns. omitted.)

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[***91]

Numerous decisions establish that when a statute impinges upon a constitutional right, legislative findings with regard to the need for, or probable effect of, the statutory provision cannot be considered determinative for [*350] constitutional purposes. As we explained in our recent decision in Professional Engineers v. Department of Transportation (1997) 15 Cal. 4th 543, 569 [63 Cal. Rptr. 2d 467, [**825] 936 P.2d 473]: "Although courts must give legislative findings great weight and should uphold them unless unreasonable or arbitrary, '. . . we also must enforce the provisions of our Constitution and "may not lightly disregard or blink at . . . a clear constitutional mandate." . . .' . . . '[T]he deference afforded to legislative findings does "not foreclose [a court's] independent judgment on the facts bearing on an issue of constitutional law." . . .' " (Citations omitted.) n26 Accordingly, in this case we must go beyond the legislative findings accompanying the statute to determine whether the provisions of Assembly Bill 2274 can be sustained, as defendants maintain, on the basis of the state's interests in protecting the health of minors and in [***92] preserving and promoting the parent-child relationship.

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n26 Federal decisions, reviewing federal constitutional challenges to statutes affecting reproductive rights, are in accord. (See, e.g., Casey, supra, 505 U.S. 833, 887-898 [112 S. Ct. 2791, 2825-2831] [invalidating provision imposing spousal-notification requirement; court rejected the legislative determination that such a requirement promoted the family relationship]; Hodgson v. Minnesota, supra, 497 U.S. 417, 450-455 [110 S. Ct. 2926, 2945-2948] [invalidating a statute imposing a two-parent notification requirement; the court rejected the legislative determination that such notification would enhance family relations and provide added protection for minors]; Akron I, supra, 462 U.S. 416, 434-438 [103 S. Ct. 2481, 2494-2497] [invalidating an ordinance that required all second trimester abortions to be performed in a hospital; the court rejected a legislative determination that such a requirement was a reasonable health regulation]; Carey v. Population Services International (1977) 431 U.S. 678, 696

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[97 S. Ct. 2010, 2022, 52 L. Ed. 2d 675] [invalidating a statute prohibiting distribution of contraceptives to minors; the court rejected the state's claim, unsupported by evidence, that such a ban could be justified as a means of discouraging early sexual behavior].)

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[***93]

The Florida Supreme Court addressed a virtually identical issue in the case of In re T.W., supra, 551 So.2d 1186. In that case, the court was faced with the question whether a Florida abortion/parental consent statute violated the express constitutional right of privacy contained in the Florida Constitution. n27 As defendants contend here, the State of Florida argued that the statute should be upheld on the basis of the state's interests in protecting the health of minors and in preserving the parent-child relationship. After explaining that the applicable constitutional test for evaluating the statute under the Florida Constitution was the "compelling interest" standard (551 So.2d at p. 1192), the Florida court went on to address, and reject, the state's [*351] contention that the challenged statute could be sustained on the basis of the two interests proffered by the state.

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n27 Article I, section 23, of the Florida Constitution, enacted by the voters in 1980, provides: "Right of privacy.--Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

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[***94]

The Florida Supreme Court stated in this regard: "We agree that the state's interests in protecting minors and in preserving family unity are worthy objectives. Unlike the federal Constitution, however, which allows intrusion based on a 'significant' state interest, the Florida Constitution requires a 'compelling' state interest in all cases where the right to privacy is implicated. [Citation.] We note that Florida does not recognize these two interests as being sufficiently compelling to justify a parental consent requirement where procedures other than abortion are concerned. . . . [P] Under [the applicable Florida] statute, a minor may consent, without parental approval, to any medical procedure involving her pregnancy or her existing child--no matter how dire the possible consequences--except abortion. Under In re Guardianship of Barry, 445 So.2d 365 (Fla. 2d DCA 1984) (parents permitted to authorize removal of life support system from infant in permanent coma), this could include authority in certain circumstances to order life support discontinued for a comatose child. In light of this wide authority that the state grants an unwed mother to make life-or-death decisions [***95] concerning herself or an existing child without parental consent, we are unable to discern a special compelling interest on the part of the state under Florida law in protecting the minor only where abortion is concerned. We fail to see the [**826] qualitative difference in terms of impact on the well-being of the minor between allowing the life of an existing child to come to an end and terminating a pregnancy, or between undergoing a highly dangerous medical

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procedure on oneself and undergoing a far less dangerous procedure to one's pregnancy. If any qualitative difference exists, it certainly is insufficient in terms of state interest. Although the state does have an interest in protecting minors, 'the selective approach employed by the legislature evidences the limited nature of the . . . interest being furthered by these provisions.' [Citation.] We note that the state's adoption act similarly contains no requirement that a minor obtain parental consent prior to placing a child for adoption, even though this decision is clearly fraught with intense emotional and societal consequences." (In re T.W., supra, 551 So.2d 1186, 1195, fn. omitted.)

In our view, [***96] the Florida Supreme Court's reasoning in In re T.W., supra, 551 So.2d 1186, is persuasive. As the court observed, the state's contention that the imposition of a parental consent requirement in the abortion context was necessary in order to protect the physical, emotional, or psychological health of the minor and to preserve the parent-child relationship was belied by the numerous, analogous circumstances in which Florida authorized a [*352] pregnant minor to obtain other medical care, or to make equally significant decisions affecting herself and her child, without parental consent. n28

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n28 Although we agree with the reasoning of the Florida decision in In re T.W., supra, 551 So.2d 1186, some of the language of the opinion is potentially confusing. The court in In re T.W. states that other statutory provisions indicate that the state's interests in protecting minors and in preserving family unity are not "sufficiently compelling to justify a parental consent requirement." The opinion's analysis makes it clear, however, that the court in In re T.W. was not suggesting that the interests of "protecting minors" and "preserving family unity" were not, in themselves, sufficiently important or vital interests to be characterized as "compelling," but rather was explaining that the other Florida statutes to which it referred demonstrated that imposition of a parental consent requirement was not necessary to serve or further those important interests.

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[***97]

This same reasoning applies to Assembly Bill 2274. Defendants' contention that the restrictions imposed by that statute upon a minor's constitutionally protected right of privacy are necessary to protect the physical and emotional health of a pregnant minor is undermined by the circumstance that California law authorizes a minor, without parental consent, to obtain medical care and make other important decisions in analogous contexts that pose at least equal or greater risks to the physical, emotional, and psychological health of a minor and her child as those posed by the decision to terminate pregnancy. As we have seen, like the Florida statute noted in In re T.W., supra, 551 So.2d 1186, Assembly Bill 2274 authorizes a pregnant minor, without parental advice or consent, to make the decision to continue her pregnancy and give birth to a child (rather than have an abortion), a decision that often will have exceedingly far-reaching consequences for the minor's future. (See, e.g., Michael M. v. Superior Court, supra, 25 Cal. 3d 608, 612.) n29 Furthermore, Assembly Bill 2274 authorizes a minor who has decided to

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continue her pregnancy to obtain medical care, without parental [***98] consent, for all conditions relating to pregnancy, thus permitting a minor who, for example, develops life-threatening medical complications during her pregnancy to make medical decisions relating both to her own health and to her fetus's survival, without parental consent, in circumstances that may pose much greater risks than generally are presented in undergoing an abortion. (See, e.g., 25 Cal. 3d at p. 611.) n30

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n29 In upholding the constitutional validity of California's statutory rape provision in Michael M., the court, quoting a then recently published article, observed: " 'The social consequences of teenage childbearing are even more pervasive than the health consequences. Thus, eight out of 10 women who first become mothers at age 17 or younger never complete high school--twice as high a proportion as those who do not give birth until they are 20 or older. A recent study clearly finds that the pregnancy directly causes the dropout, independent of any effect of antecedent education achievement or aptitude.' [Citation.]" (Michael M. v. Superior Court, supra, 25 Cal. 3d 608, 612.) [***99]

n30 As the court noted in Michael M., "births to teenage mothers pose substantially increased medical risks as evidenced by the record of complications reported on the birth certificates in one-fourth of recent teenage pregnancies. [Citation.]" (Michael M. v. Superior Court, supra, 25 Cal. 3d 608, 611.)

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[**827] In addition, when a minor gives birth to a child, California law, like the applicable Florida law noted in In re T.W., supra, 551 So.2d 1186, 1195, [*353] authorizes the minor to decide, without parental advice or consent, whether or not to give her child up for adoption. (See Fam. Code, @ 8700, subd. (b), 8814, subd. (d).) It is particularly difficult to reconcile defendants' contention--that parental or judicial involvement in the abortion decision is necessary to protect a minor's emotional or psychological health--with these statutory provisions authorizing a minor who has given birth to consent, on her own, to the adoption of her child. "The decision to relinquish motherhood after giving birth would seem to have at least as great a potential [***100] to cause long-lasting sadness and regret as the decision not to bear a child in the first place." (Donovan, Our Daughters' Decisions: The Conflict in State Law on Abortion and Other Issues (Alan Guttmacher Institute, 1992) p. 21.)

Moreover, the existence in California of numerous other "limited medical emancipation" statutes that authorize minors, without parental consent, to obtain medical care in a variety of settings relating to sexual activity further undermines defendants' claim that Assembly Bill 2274 is necessary to protect the health of minors or to sustain the parent-child relationship. As noted at the outset of this opinion, over the past 30 years the Legislature has enacted a series of statutes authorizing minors, without parental consent, to obtain medical care related to the diagnosis or treatment of sexually transmitted diseases (Fam. Code, @ 6926), rape (Fam. Code, @ 6927), and sexual assault (Fam. Code, @ 6928). As is indicated by our earlier discussion of these provisions (see, ante, pp. 316-317), the statutes in question reflect a long-standing

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legislative recognition that (1) minors frequently are reluctant to disclose to their parents medical [***101] needs arising out of the minor's involvement in sexual activity and may postpone or avoid seeking such care if parental consent is required, and (2) as a consequence, the health of minors generally will be protected best in this setting by authorizing minors to obtain medical care relating to such activity without parental consent.

The premise underlying these numerous and well-established statutes authorizing a minor, in analogous circumstances, to obtain medical care without parental consent is fundamentally inconsistent with defendants' contention that Assembly Bill 2274's imposition of a parental consent (or judicial authorization) requirement before a pregnant minor may obtain a physician-performed abortion is necessary to protect the health of such minor or to support the parent-child relationship. Indeed, these numerous statutes suggest that Assembly Bill 2274's imposition of a parental consent or judicial authorization requirement is likely to impair, rather than protect, the health of pregnant minors who do not wish to bear a child. In this context, the introduction of a parental consent or judicial authorization [*354] requirement may well lead those minors who are [***102] too frightened or ashamed to tell their parents or a judge about their condition either to forgo proper medical care and seek to terminate their pregnancy through a dangerous self-induced or back-alley abortion, or, alternatively, to postpone action until it is too late safely to terminate pregnancy, at which point such minors will have no choice but to endure the increased physical, emotional, and psychological risks posed by an unwanted full-term pregnancy and birth.

Accordingly, like the Florida Supreme Court in In re T.W., supra, 551 So.2d 1186, we conclude that in view of the numerous statutes authorizing a minor, without parental consent, to obtain medical care or make other fundamental decisions for herself and her child in other, analogous settings, Assembly Bill 2274 cannot properly be sustained on the ground that its requirements are necessary either to protect the health of a pregnant minor or to protect the minor's relationship [**828] with her parent. (Accord, Denver Area Educ. Tel. v. FCC (1996) 518 U.S. 727 [116 S. Ct. 2374, 2393, 135 L. Ed. 2d 888] (lead opn. of Breyer, J.) ["[W]e can take Congress' different . . . treatment of a highly [***103] similar problem at least as some indication that more restrictive means are not 'essential' (or will not prove very helpful). Cf. Boos v. Barry, 485 U.S. 312, 329 . . . (1988) (existence of a less restrictive statute suggested that a challenged ordinance, aimed at the same problem, was overly restrictive)." (Italics omitted.)]; Hodgson v. Minnesota, supra, 497 U.S. 417, 455 [110 S. Ct. 2926, 2947] ["These [other] statutes provide testimony to the unreasonableness of the Minnesota two-parent notification requirement and to the ease with which the State can adopt less burdensome means to protect the minor's welfare."].) n31

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n31 The Supreme Judicial Court of Massachusetts recently upheld its state's abortion/parental consent law against a state constitutional challenge (except for a provision of the law requiring the minor to obtain the consent of both parents). (Planned Parenthood v. Attorney General (1997) 424 Mass. 586 [677 N.E.2d 101].) The Massachusetts Constitution, however, unlike the California and Florida Constitutions, does not contain an explicit privacy provision, and under Massachusetts law (again unlike California and Florida law) the parental consent

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statute in question was not subject to scrutiny under the demanding "compelling interest" test. (See 677 N.E.2d at pp. 103-104 & fn. 4.) For these reasons, we believe the decision of the Florida Supreme Court in In re T.W., supra, 551 So.2d 1186, constitutes the more relevant authority.

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[***104]

This conclusion, moreover, is supported not only by consideration of the numerous related California statutory provisions, but also by the overwhelming evidence, much of it uncontested, that was introduced at the trial in this case. As the Court of Appeal observed in its decision below: "The evidence was nothing less than overwhelming that the legislation would not protect these interests, and would in fact injure the asserted interests of the health of minors and the parent-child relationship." (Italics in original.) [*355]

As we have seen, prior to the enactment of Assembly Bill 2274 pregnant minors in California for many years had been authorized to obtain medically safe abortions without parental consent. Defendants presented no empirical studies or other comparable evidence at trial to demonstrate that this long-standing policy had proven detrimental to the physical, emotional, or psychological health of pregnant minors or had affected family relationships adversely. To the contrary, the testimony of the numerous expert witnesses called by plaintiffs established that the pre-Assembly Bill 2274 statutory provision was successful both in protecting the physical, emotional, [***105] and psychological health of minors and in supporting parent-child relation ships. This testimony further indicated that the imposition of a statutory requirement compelling a pregnant minor to obtain parental consent or judicial authorization before obtaining a medically safe abortion was likely to be detrimental both to the health of such minors and to their family relationships.

The testimony revealed, in this regard, that an abortion, when performed by qualified medical personnel, is one of the safest medical procedures, and that the risk of medical complications resulting from continuing a pregnancy and giving birth is considerably greater than that posed by an abortion. The testimony also revealed that the overwhelming majority of minors who become pregnant have the requisite maturity and capacity to give informed consent to an abortion, and that the interests of those relatively few pregnant minors who do not have the capacity to provide informed consent remain fully protected under the pre-Assembly Bill 2274 statute, because a physician may not perform any medical procedure, including an abortion, unless he or she determines that the patient is capable of giving (and has given) [***106] informed consent. (See Ballard v. Anderson, supra, 4 Cal. 3d 873, 883.) Of course, physicians are well qualified to determine a minor's capacity to provide informed consent and regularly do so in providing medical care under California's numerous medical emancipation statutes.

The evidence introduced at trial further established that the majority of pregnant minors consult their parents before obtaining an abortion, without being compelled to do so [**829] by statute, and that many minors who do not voluntarily consult their parents have good reason to fear that informing their parents will result in physical or psychological abuse to the minor (often because of previous abusive conduct or because the pregnancy is the result of intrafamily sexual activity). The testimony disclosed that the primary

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determinant of whether a pregnant minor will consult her parent or parents is the quality of the parent-child relationship that existed before the minor became pregnant, and not the presence or absence of a parental [*356] consent statute such as Assembly Bill 2274. n32 The evidence further indicated that to the extent the provisions of Assembly Bill 2274 were [***107] to cause a pregnant minor from an abusive or potentially abusive family to seek parental consent, the statute would endanger the minor by leading her to place herself at physical or mental risk and would exacerbate the instability and dysfunctional nature of the family relationship.

----------Footnotes----------

n32 The evidence at trial indicated that health clinics that provide pregnancy counseling and treatment routinely encourage minors to consult with their parents except in circumstances in which such consultation is likely to lead to abuse.

----------End Footnotes----------

Finally, the testimony also indicated that although the judicial bypass procedure in Assembly Bill 2274 provides a mechanism by which a pregnant minor may avoid informing her parents of her pregnancy, resort to this judicial procedure inevitably will delay the minor's access to a medically safe abortion, thereby increasing the medical risks posed by the abortion procedure, and will inflict emotional and psychological stress upon a minor without providing any greater protection of the interests [***108] of either a mature or immature minor than what is provided by the minor's own health care provider under the pre-Assembly Bill 2274 law. Furthermore, several witnesses testified that past experience in other jurisdictions demonstrates that at least some minors who are too frightened or ashamed to consult their parents also will be too frightened or ashamed to go to court (often fearing that their presence at the courthouse might be discovered and disclosed by a neighbor or acquaintance), and may resort to the dangerous alternatives of either attempting to terminate their pregnancy themselves or seeking an illegal, back-alley abortion. (See also Note, Hodgson v. Minnesota: Chipping Away at Roe v. Wade in the Aftermath of Webster (1991) 18 Pepperdine L.Rev. 955, 955-956 [describing the tragic case of Becky Bell, a 17-year-old Indiana girl who, too frightened to seek parental consent or judicial authorization, died after obtaining an illegal abortion].)

In sum, as the Court of Appeal observed, the evidence introduced at trial overwhelmingly indicated that Assembly Bill 2274 would not serve--but rather would impede--the state's interests in protecting the health of minors and enhancing [***109] the parent-child relationship.

Accordingly, when we consider the numerous, analogous California statutory provisions authorizing a minor, without parental consent, to make medical and other significant decisions with regard to her own and her child's health and future, as well as the overwhelming evidence introduced at trial, we conclude that both the trial court and the Court of Appeal correctly determined that defendants have failed to establish that Assembly Bill 2274's infringement upon a pregnant minor's fundamental constitutional [*357] privacy interest is necessary to further the state's interests in protecting the health of minors or the parent-child relationship.

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Finally, an amicus curiae brief filed in this case suggests that Assembly Bill 2274 may be justified by the state's interest in ensuring that the determination whether a pregnant minor is sufficiently competent and mature to consent to an abortion is made in a fair and unbiased manner. The brief acknowledges that, even in the absence of Assembly Bill 2274, a health care provider may not provide medical or surgical care relating to pregnancy unless the provider determines that the minor is capable of giving [***110] "informed consent" to the procedure (see Ballard v. Anderson, supra, 4 Cal. 3d 873, 883), but argues that a health care provider who agrees to perform an abortion at a minor's request may have a conflict of interest (pecuniary, ideological, or both) that would impair the provider's ability [**830] to make an unbiased decision with regard to whether the minor is capable of providing informed consent. As a consequence, the amicus curiae brief maintains, Assembly Bill 2274 permissibly requires that the determination of the minor's competence or maturity be made by the minor's parent or by a court.

We conclude that Assembly Bill 2274 cannot be sustained on this theory. Nothing in the record justifies an assumption that licensed health care providers cannot be trusted to make an unbiased determination as to whether a minor is capable of giving informed consent to an abortion, or, indeed, suggests that the Legislature entertained any such view. None of the legislative findings supports such a proposition. n33 It is clear that a statute that impinges upon a fundamental constitutional right cannot be upheld on the [*358] basis of unsupported speculation that [***111] the Legislature believed that health care professionals would not perform their duties in an honest and ethical manner. (Accord, Carey v. Population Services International, supra, 431 U.S. 678, 696 [97 S. Ct. 2010, 2022] ["when a State . . . burdens the exercise of a fundamental right, its attempt to justify that burden as a rational means for the accomplishment of some significant state policy requires more than a bare assertion, based on a conceded complete absence of supporting evidence, that the burden is connected to such a policy"]; Mississippi University for Women v. Hogan (1982) 458 U.S. 718, 730 [102 S. Ct. 3331, 3339, 73 L. Ed. 2d 1090] ["although the State recited a 'benign, compensatory purpose,' it failed to establish that the alleged objective is the actual purpose underlying the discriminatory classification"].) Indeed, as we have seen, in numerous analogous contexts the Legislature has authorized minors to obtain medical care without parental consent or judicial authorization, thus recognizing the general competence of health care professionals to determine whether a minor is capable of giving informed consent. (See, e.g., Fam. Code, @ 6925 [prenatal [***112] care], 6926 [care for communicable disease], 6927 [care for rape], 6928 [care for sexual assault], 6929 [care for drug or alcohol related problem].) There simply is no basis on the present record for concluding that a physician is capable of determining whether a pregnant minor is competent to give informed consent to necessary medical care when the minor chooses to proceed with her pregnancy, but is incapable of determining whether such a minor is competent to give informed consent when the minor chooses to terminate her pregnancy.

----------Footnotes----------

n33 Justice Brown's dissent asserts that the opinion is mistaken in stating that nothing in the record suggests that the Legislature entertained the view that health care providers cannot be trusted to make unbiased determinations with regard to a minor's capacity to give informed consent to an abortion. (Dis. opn. of Brown, J., post, at pp. 434-435.) As support, the dissent quotes a passage

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from a document it cites as "Legis. Analysis Supporting Assem. Bill No. 2274." (Ibid.) Although the cited document bears the self-styled title of "Legislative Analysis Supporting Assembly Bill 2274," the document was not prepared by a sponsoring member of the Legislature or by legislative staff, but, as the dissent notes, rather is an "alternative analysis," written and submitted by an organization supporting the legislation because of the organization's dissatisfaction with the bill analysis that had been prepared by the Senate committee staff itself. (Christian Action Council, unofficial analysis designated as "Legislative Analysis Supporting Assembly Bill 2274 (Frazee), As Amended in Assembly June 25, 1987," submitted to Sen. Com. on Health and Human Services, pp. 1-2.) Even if it were appropriate to take judicial notice of this document (no one has requested that we do so; the document simply is appended to an amicus curiae brief filed in this matter), its existence does not alter our view that there is nothing in the record that suggests that the Legislature entertained the view that licensed health care providers cannot be trusted to make unbiased determinations as to whether a minor is capable of giving informed consent to an abortion. As we have noted, none of the legislative findings included in the legislation supports such a proposition.

----------End Footnotes----------
[***113]

The dissenting opinions of Justices Baxter and Brown advance an argument related to that raised by amicus curiae, suggesting that if it is constitutionally permissible to require a physician to determine that a pregnant minor has the requisite understanding and maturity to give informed consent before performing an abortion without parental consent, it must be constitutionally permissible to require that the informed consent decision be made by a judge rather than a physician. (See dis. [**831] opn. of Baxter, J., post, at pp. 410-411; dis. opn. of Brown, J., post, at p. 434.) The suggested conclusion, however, does not follow from the premise. A physician must also determine that an adult woman has the capacity to give informed consent before performing an abortion at her request, or--for that matter--any medical procedure. That does not mean, however, that the state constitutionally may require all pregnant women, before they may obtain an abortion, to secure a court order certifying that they are competent to provide informed consent. A legislative measure that requires a woman to go to court, to reveal her condition to a judge, and to submit to a judicial [***114] determination of competency obviously imposes a substantially greater intrusion on privacy than one that permits a woman to obtain an abortion from a physician in the same manner [*359] as she may obtain other medical care. And the increased intrusion on autonomy privacy imposed by a judicial authorization requirement may be even greater with regard to pregnant minors, because minors frequently may be too embarrassed or frightened to seek judicial authorization and may endanger their health or forfeit their right of choice rather than venture into an unfamiliar and intimidating court setting. Further, as already noted, there is no reasonable basis for concluding that a physician is able to determine the competency of a pregnant minor to provide informed consent when the minor chooses to continue her pregnancy but that the competency determination must be made by a judicial officer when the minor chooses to terminate her pregnancy. n34

----------Footnotes----------

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n34 Furthermore, we do not agree with the suggestion that one effect of the trial court's judgment in this case--invalidating Assembly Bill 2274 as a whole, including the provision establishing a judicial bypass procedure--would be to leave a pregnant minor (who a treating health care provider finds lacks the capacity to give informed consent) without any means of obtaining a medically safe abortion if the minor reasonably fears that informing a parent will place her in physical danger or if her parent, once notified, refuses to consent to an abortion. Under the applicable federal decisions, a state that in general requires a pregnant minor to secure parental consent before obtaining an abortion must provide the minor with the option of obtaining an abortion without parental consent by demonstrating to an unbiased official (who has the power to authorize the abortion) either that the minor is sufficiently mature to make the decision on her own or, if not sufficiently mature, that it is in the best interests of the minor to terminate her pregnancy. (See, e.g., Bellotti II, supra, 443 U.S. 622, 643-644 [99 S. Ct. 3035, 3048-3049] (plur. opn.); Casey, supra, 505 U.S. 833, 899 [112 S. Ct. 2791, 2832].) Thus, even without an explicit statutorily prescribed "judicial bypass" procedure, a pregnant minor who is denied medical care relating to pregnancy because of a doctor's determination that she lacks the capacity to give informed consent, but who is too frightened to seek--or unable to obtain--a parent's consent for such care, is entitled to seek a court order authorizing such medical care. A similar procedure is available, for example, when a parent, on the basis of his or her own religious beliefs, refuses to consent to a blood transfusion or other medical care for a child that a treating physician concludes is necessary for the child's health. (See, e.g., In re Eric B. (1987) 189 Cal. App. 3d 996 [235 Cal. Rptr. 22].) We see no reason why a similar procedure cannot be invoked on behalf of a pregnant minor who is incapable of giving informed consent to treatment relating to her pregnancy. (Cf. Akron I, supra, 462 U.S. 416, 441 [103 S. Ct. 2481, 2498] ["[A] state court presented with a state statute specifically governing abortion consent procedures for pregnant minors will attempt to construe the statute consistently with constitutional requirements."].)

----------End Footnotes----------
[***115]

In sum, as concluded by the courts below, defendants have failed to demonstrate adequate justification for the statute's intrusion upon a pregnant minor's right of privacy under the California Constitution.

VIII

For the foregoing reasons, we conclude that Assembly Bill 2274 violates the right of privacy set forth in article I, section 1, of the California Constitution. The judgment of the Court of Appeal, upholding the judgment of the trial court, is affirmed. [*360]

Werdegar, J., and Chin, J., concurred.

CONCURBY:
KENNARD

DISSENTBY:
MOSK; BAXTER; BROWN

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DISSENT:

KENNARD, J.

I concur in the judgment. Before this court granted a rehearing in this matter, I authored a dissenting opinion setting forth my views, which have not changed and which are in substantial agreement with the reasoning of the plurality opinion. Because that [**832] dissenting opinion no longer appears in the Official Reports (see Cal. Rules of Court, rule 976(d)), I reiterate that opinion here in relevant part, with additions in brackets and deletions reflected as [].

California's parental consent law, which prohibits abortions for women under [***116] the age of 18 years without either the consent of one parent or judicial authorization, may at first glance appear so eminently reasonable that its constitutional validity could scarcely be in doubt. But evidence received at the trial of this case, much of it based on the experience of other states with similar laws, shows that the benevolent appearance of parental involvement laws is deceiving; the laws have serious adverse effects and yield few benefits for children or society.

In brief, the relevant facts are these: Most adolescent women who become pregnant will consult a parent voluntarily, and those who do not frequently have good reasons for not doing so. With a parental consent law in effect, some pregnant adolescents who do not voluntarily consult a parent will seek and obtain judicial authorization, but the delay caused by the procedure will increase the medical risks of the abortion significantly without in any way enhancing the process by which the adolescent makes the abortion decision. Others will reveal their pregnancy to a parent and request consent, but will derive little or no benefit from parental consultation that is legally coerced rather than voluntary. Finally, [***117] there will be some pregnant adolescents who cannot or will not obtain parental consent for an abortion and who will not seek judicial authorization because they perceive this process as unbearably intimidating, dangerous, or humiliating. Some of these adolescents will risk their health and their very lives with illegal or self-induced abortion, while others will delay any decision until abortion is no longer feasible and will bear a child they are ill equipped to care for.

Determining the constitutional validity of a law having such paradoxical and potentially serious effects is no easy task. Indeed, this case presents a confluence of state constitutional issues of great complexity and delicacy. We must adjudicate rights under the state constitutional right of privacy in the always thorny context of abortion, rendered all the more volatile and challenging because the rights at issue are those of adolescents rather than adults. And we must do so using a test newly established in Hill v. National [*361] Collegiate Athletic Assn. (1994) 7 Cal. 4th 1 [26 Cal. Rptr. 2d 834, 865 P.2d 633]. Without question this is one of the most important and difficult cases we have decided [***118] in many years.

[]

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I [join in] [] affirm[ing] the judgment of the Court of Appeal holding that California's parental consent law violates the right of privacy guaranteed by our state Constitution. As the evidence received at the trial of this case persuasively demonstrates, the great majority of pregnant adolescents who do not voluntarily consult their parents are sufficiently mature to make the abortion decision by themselves and should be permitted to do so in consultation with their physicians and without requiring parental consent or judicial authorization.

There is a very small group of pregnant adolescents for whom parental consent is not an available option but who are too immature to give informed consent to an abortion. Almost all members of this group are under the age of 14 years. Because the Legislature has not enacted a parental consent law applying solely to these younger adolescents, and thus the issue is not now before this court, I do not decide whether a parental consent law so narrowed in focus would violate the state constitutional right of privacy, although I note that the interests of these younger adolescents would be better served by a law that [***119] allowed their physicians or others concerned with their welfare to petition for judicial authorization on their behalf. The present parental consent [law], by contrast, requires the adolescent herself to shoulder the entire burden of initiating legal proceedings to obtain judicial authorization.

I

Preliminarily, it is essential to state what this case is not about.

The morality of abortion is not at issue in this case. As this court has noted, the morality of abortion is "a subject upon which [**833] reasonable people can, and do, adhere to vastly divergent convictions and principles." (Committee to Defend Reproductive Rights v. Myers (1981) 29 Cal. 3d 252, 284 [172 Cal. Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118] (lead opn. by Tobriner, J.), fn. omitted.) The United States Supreme Court has made the same point: "Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. . . . Our obligation is to define the liberty of all, not to mandate our own moral code." (Planned Parenthood of Southeastern Pa. v. Casey [***120] (1992) 505 U.S. 833, 850 [112 S. Ct. 2791, 2806, 120 L. Ed. 2d 674].) [*362]

Nor is this case about the value of parental involvement in the decision of a pregnant adolescent to continue or terminate her pregnancy. On the contrary, all parties and all members of this court agree that, in general, an adolescent who learns she is pregnant and is considering an abortion will benefit substantially from consultation with a parent and should be encouraged to do so. Parental assistance is important and beneficial because, in general, no one knows the child as well, or cares as deeply about the child's welfare, as the parent.

Likewise, all parties and all members of this court agree that parental involvement will not benefit every pregnant adolescent. Not every pregnant adolescent has parents out of the comforting and idyllic world of a Norman Rockwell painting. Indeed, anyone familiar with the dependency cases heard in this state's juvenile courts understands that many pregnant adolescents have no competent and caring parent to consult, and that for them parental consultation

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is simply not an option.

What is this case about? The primary issues are these: (1) Will [***121] the parental consent law advance the state's interest in protecting the physical and mental health of adolescent women []? (2) If the law will accomplish this purpose for only a small percentage of the adolescents affected by its provisions, is there some other way to do so without the substantial adverse effects that will arise from the legally mandated invasion of the privacy rights of the many adolescents who wish to have an abortion, are capable of giving informed consent, and cannot or will not obtain parental consent?

This court is fortunate to have a well-developed factual record [] with which to resolve these issues. At the trial, 25 witnesses testified in person and 6 others by deposition. The witnesses included distinguished professionals in the fields of medicine, psychology, adolescent development, reproductive health statistics, and family violence, as well as lawyers, counselors, and judges who have participated in the implementation of similar laws in other states. Based on this evidence, the superior court issued a 39-page statement of decision containing many findings of fact. On appeal, the state has not challenged the sufficiency of the evidence to support [***122] these findings.

In its statement of decision, the superior court acknowledged that "the State has a compelling interest in the protection of minors from physical, psychological and emotional harm." But the court found no evidence that the parental consent law would further that interest. In particular, the court found:

1. "[A]n abortion is one of the safest medical procedures available for all women and, in particular, for teenagers. The risk of complications in [*363] pregnancy and childbirth are significantly higher for all women and particularly for younger teenagers." n1

----------Footnotes----------

n1 Michael Policar, a medical doctor who is board certified in obstetrics and gynecology and a member of the faculty of the Medical School of the University of California at San Francisco, testified that "abortion is the safest operation which is available in the United States . . . it has the lowest rate of deaths associated with it and also has the lowest rate of serious complications in comparison to any other operation which is widely performed in this country." He testified that adolescents are even less likely than adults to experience medical complications after abortion.

Philip Darney, a medical doctor who is board certified in obstetrics, gynecology and preventative medicine, similarly testified that "[e]lective abortion has a very low complication rate at [San Francisco General Hospital] and at other institutions" and that this low complication rate "applies to teens as well."

In Hodgson v. Minnesota (1990) 497 U.S. 417 [110 S. Ct. 2926, 111 L. Ed. 2d 344], Justice Thurgood Marshall cited a study concluding that a "minor's overall risk of dying from childbirth is over nine times greater than [the] risk of dying from [a] legal abortion." (Id. at p. 467 [110 S. Ct. at p. 2954] (conc. & dis. opn. of Marshall, J.), citing Greydanus & Railsback, Abortion in

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Adolescence (1985) 1 Seminars in Adolescent Med. 213, 214.)

----------End Footnotes----------
[***123]

[**834] 2. "The medical history relevant to the abortion procedure is the type of information the minor herself would best know and, in fact, might be hesitant to disclose in the presence of a parent." n2

----------Footnotes----------

n2 Dr. Darney (see fn. 1, ante) testified: "I have never in the course of more than 15 years of doing abortions of teenagers and others felt that I didn't get an adequate history from the patient to deal with problems that might come up in the course of an abortion."

Dr. Policar (see fn. 1, ante) testified that adolescents are able to provide a medical history for abortion "as well as any other group of individuals" but also that teens are reluctant to disclose some relevant facts, such as previous abortions or sexually transmitted diseases, in the presence of their parents.

Curtiss Eugene Weidmar, a medical doctor and the Director of Public Health for El Dorado County, testified that a medical history is necessary to determine contraindications before prescribing oral contraceptives, and that this history is routinely taken from the minor without involving the parent.

----------End Footnotes----------
[***124]

3. "[M]inors rarely, if ever, experience complications following an abortion. "

4. "[F]or most women, abortion poses no threat to their psychological or emotional well-being. . . . [A]dolescents are at no special risk and are actually less likely than adult women to experience any adverse psychological reaction to abortion." n3

----------Footnotes----------

n3 Nancy Adler, a professor of medical psychology in the Department of Psychiatry and Pediatrics of the University of California at San Francisco, testified that she was part of an expert panel appointed by the American Psychological Association to survey the scientific literature on the psychological responses to abortion. This survey resulted in an article of which Dr. Adler was the lead author. (Adler et al., Psychological Responses After Abortions (1990) 248 Science 41.) From the literature review, Dr. Adler concluded that "for the vast majority of women having their first trimester procedure, . . . there is no hazard to mental health, that the predominant responses to abortion are positive and that the negative responses tend to be mild and transient." She also found that there was no evidence that adolescents were particularly vulnerable to serious adverse psychological responses to abortion.

Nada Logan Stotland, a board-certified psychiatrist who is also associate

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professor of clinical psychiatry and associate professor of clinical obstetrics and gynecology at the University of Chicago, testified that she had reviewed the scientific literature on psychiatric consequences of abortion and "according to the published literature, the majority of women who undergo abortions experience relief afterwards. Some smaller proportion experience loss and some guilt and, again, in the reported literature, the vast majority of those responses are transient and self-limited. That is they don't require intervention by a professional." She also testified that "[i]n every study, the incidence [of adverse psychiatric sequelae] following childbirth is considerably higher, on the order of four times as high following childbirth as following abortion." She also testified that age by itself was not a risk factor, that adolescents were no more likely than adults to experience adverse psychiatric effects. These conclusions appear in a chapter she wrote in a peer reviewed book, of which she was the editor, that was published by the American Psychiatric Press, which is the press of the American Psychiatric Association. (Stotland, Psychiatric Issues in Abortion in Psychiatric Aspects of Abortion (Stotland edit. 1991).) She noted that the 1991 literature review published by the American Psychiatric Association reached similar conclusions. (Dagg, The Psychological Sequelae of Therapeutic Abortions--Denied and Completed (1991) 148 Am. J. of Psychiatry 578.)

This finding is also supported by the testimony of Laurie Schwab Zabin, Ph.D., an associate professor at Johns Hopkins School of Hygiene and Public Health. In her expert opinion, based on her own research (Zabin et al., When Urban Adolescents Choose Abortion: Effects on Education, Psychological Status and Subsequent Pregnancy (1989) 6 Fam. Planning Perspectives 248) and that of others in the field, abortion does not have any negative psychological effect on adolescents.

This conclusion is further supported by the testimony of Dr. Policar (see fn. 1, ante), who testified that emotional reaction to abortion "serious enough to require consultation with a psychiatrist . . . literally never occurs" and that less serious emotional reactions, which would be referred to a social worker, are rare for all women and even more so for teens.

David Elkind, a child psychologist and professor of child study at Tufts University, testified: "In terms of negative impact, I think it's been well-established in studies that there are, so far as we know, no negative sequelae to abortion long-term."

----------End Footnotes----------
[***125] [*364]

5. "[P]arental involvement in this specific area may have an adverse psychological effect . . . if it takes on a coercive character, and . . . the ability to make an autonomous decision about abortion is an important predictor [**835] of a minor's satisfaction with her decision." n4

----------Footnotes----------

n4 Dr. Adler (see fn. 3, ante) testified that a woman is more likely to have negative psychological responses following abortion if the woman was coerced by her parents or partner to terminate a pregnancy that she would have preferred to continue.

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Dr. Stotland (see fn. 3, ante) testified that lack of autonomy or control over the abortion decision is associated with a negative psychiatric outcome and that pressure from a parent can therefore have a negative impact on the psychiatric outcome of an adolescent's abortion decision.

Based on her research, Dr. Laurie Zabin (see fn. 3, ante) testified that whether an adolescent is later satisfied with her decision to terminate a pregnancy by abortion is not significantly related to whether the adolescent consulted a parent before making the decision. Those who independently made the decision to terminate or not terminate the pregnancy were significantly more likely to be satisfied with the decision than those who succumbed to pressure from a parent or other adult.

----------End Footnotes----------
[***126] [*365]

6. "[W]ith the exception of the small percentage of very young adolescents, again the great majority of minors possess the cognitive ability and maturity to make a fully-informed choice as to abortion and are competent to give informed consent to abortion . . . ." n5

----------Footnotes----------

n5 The evidence supporting this finding is discussed in the text, post, at pages 371 through 373.

----------End Footnotes----------

7. "[A]s to that small percentage of minors who are not competent to give informed consent, medical ethics and practices preclude abortion in the absence of parental approval." n6

----------Footnotes----------

n6 Dr. Policar (see fn. 1, ante) testified that the "vast majority" of adolescents are capable of giving informed consent and that he would not perform an abortion on an adolescent or any other patient without informed consent.

Adele D. Hofmann, a medical doctor and professor of pediatrics and director of adolescent medicine at the University of California at Irvine, testified that generally adolescents are capable of giving informed consent and that no adolescent can be treated on her own consent unless that consent is informed. Dr. Stotland (see fn. 3, ante) testified to the same effect.

----------End Footnotes----------
[***127]

The superior court then considered whether the parental consent law would further the state's compelling interest in "preserving and fostering the parent-child relationship." On this point, the court made these findings:

1. "[A] majority of minors voluntarily consult with a parent as to their decision to have an abortion."

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2. "[P]arental involvement laws do not serve to change the numbers [that is, do not increase the number of minors who consult with a parent as to their decision to have an abortion]." n7

----------Footnotes----------

n7 Robert Blum, a medical doctor and professor of pediatrics at the University of Minnesota, testified to a 1984 study based on interviews with minors who were at clinics awaiting abortions in Minnesota (which had a two-parent notification law) and Wisconsin (which had no parental involvement law). The study concluded that the Minnesota law had no effect on the number of minors who consulted one parent, and only a slight effect on the number who consulted both parents. (Blum et al., The Impact of a Parental Notification Law on Adolescent Abortion Decision-making (1987) 77 Am. J. Pub. Health 619.)

----------End Footnotes----------
[***128]

3. "Rather than legislation, the chief determinant of whether a minor consults a parent appears to be the quality of the relationship established between the parent and child before the pregnancy." n8

----------Footnotes----------

n8 Based on his study (see fn. 7, ante), Dr. Blum testified that the most important factors influencing whether a pregnant minor consulted a parent (almost invariably her mother) were the quality of the relationship, the age of the minor (younger minors being far more likely to consult), and the family's socio-economic status.

----------End Footnotes----------

4. "[I]f a trusting and supportive relationship between a parent and child has not already been established, it is unlikely that the State can create in a moment of crisis what the parents were unable to develop over the course of the preceding years." [*366]

5. "[F]or a significant number of minors, parental consultation is not a realistic option." n9

----------Footnotes----------

n9 In states with parental involvement laws, the reasons minors give for not consulting their parents include fear of a physically or emotionally abusive parent, fear of being ejected from the home, concern that the parent will not keep the information confidential, and an unwillingness to give upsetting news to a parent who is physically or emotionally fragile.

Although the experts who testified did not agree on the percentage of families that qualify as dysfunctional or abusive, they agreed that the number of such families was significant. Moreover, evidence in the record indicates that for teens who become pregnant, the percentage of families that are abusive and/or dysfunctional is much higher than for teens generally.

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Lenore E. A. Walker, a psychologist specializing in family violence and abuse, testified that approximately 25 to 30 percent of families in the United States "will have some form of domestic or family violence at some part of their life history" and that an adolescent revealing her pregnancy to her parents is likely to trigger violence or some other form of abuse in such families. (See also Hodgson v. Minnesota, supra, 497 U.S. 417, 439 [110 S. Ct. 2926, 2939] [referring to "the distressingly large number of cases in which family violence is a serious problem"]; testimony of social worker Jeth Gold stating that some parents "react very violently when they find out their child is sexually active"; testimony of Dr. Adele Hofmann (see fn. 6, ante) citing instances of a parent inflicting physical injury on the adolescent after learning of her pregnancy.)

Charles R. Figley, a psychologist and a professor at Florida State University, testified that approximately 10 percent of families would not have any of the characteristics necessary for providing appropriate support to a pregnant minor. He also testified that forcing a pregnant adolescent to involve her parents in the abortion decision would be inappropriate if the parents are psychologically or physically abusive.

W. Robert Beavers, a psychiatrist and clinical professor of psychiatry at the University of Texas, Southwestern Medical Center, testified about a test (the Beavers System Model) he developed to rate family competence. Using this test, he found that 5 percent of families attained the optimal level of competence, 38 percent were judged "adequate," 38 percent were judged "mid-range," 16 percent were "borderline," and 3 percent were "severely dysfunctional." He also testified that child abuse occurs in 3 to 5 percent of American families. He conceded that some teens cannot involve parents in the abortion decision.

----------End Footnotes----------
[***129]

[**836] Regarding the effect of a judicial bypass procedure, the superior court found that in other states with parental consent laws, "rather than further the State's interest in the health of its minors, or even having no effect at all, the legislation actually had a detrimental effect." IN PARTICULAR, THE COURT FOUND:

1. The bypass procedure delays the performance of the abortion, and "increases the likelihood of a second trimester abortion." This delay significantly increases the medical risks of abortion. n10

----------Footnotes----------

n10 Anita Lorraine Nelson, a medical doctor who is board certified in obstetrics and gynecology, an assistant professor at the School of Medicine at the University of California at Los Angeles, and the medical director of women's health clinics in the Los Angeles area, testified that in her opinion implementation of California's parental consent law would cause minors to delay abortions, resulting in significantly increased medical risks. Dr. Adler (see fn. 3, ante) testified to the same effect, adding that delay increases the psychological as well as the medical risks.

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Dr. Policar (see fn. 1, ante) testified that the risk of complications in an abortion increases 50 percent per week for each week after the 10th week of pregnancy.

Jamie Ann Sabino, a Massachusetts attorney who is cochair of the Judicial Consent for Minors Lawyer Referral Panel in that state, testified that for minors who use the Massachusetts bypass procedure, "there is at least a week but more like a 2-week delay."

----------End Footnotes----------
[***130] [*367]

2. "In addition to adverse medical consequences, the bypass procedure entails serious psychological and emotional consequences." n11

----------Footnotes----------

n11 Gerald Martin, a Minnesota district court judge from the Duluth area, testified: "It's clearly a very nerve-racking, tense, stressful experience for them."

Lynne MacBean, the volunteer coordinator of the Guardian Ad Litem Program in Minneapolis, Minnesota, testified that the judicial bypass procedure is very difficult and frightening for minors even though the judges who hear the petitions are careful to act in a nonthreatening manner. (See also Hodgson v. Minnesota, supra, 497 U.S. 417, 441 [110 S. Ct. 2926, 2940] ["The court experience produced fear, tension, anxiety, and shame among minors . . . ."]; testimony of social worker Jeth Gold that "[t]he court system is a fearful, anxiety-producing, intimidating experience for most kids.")

Jamie Ann Sabino (see fn. 10, ante) testified: "I see a very high level of stress in the young women going to court that I have represented including crying, freezing in court, wringing of their hands, telling me how scared they are, telling me that they have had nightmares, that they can't sleep."

----------End Footnotes----------
[***131]

3. The bypass procedure does not assist pregnant minors in making "a mature and informed decision." n12

----------Footnotes----------

n12 The judges testifying that judicial bypass procedures provide no benefit to minors were Minnesota District Court Judges Gerald Martin and Allen Oleisky, and former Massachusetts Superior Court Judge Rudolph F. Pierce.

Lynne MacBean (see fn. 11, ante) testified that the judicial bypass process does not assist minors in deciding whether to continue or terminate their pregnancies because their decisions have already been made when they seek judicial authorization. Jamie Ann Sabino (see fn. 10, ante) testified to the same effect. She added that, in her opinion, the Massachusetts parental involvement law "has created a substantial burden for the young women in Massachusetts and that it has not met--it is not substantively working, it has

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not met any of the stated goals of the statute or the state interests involved." She noted that during the 10 years the law had been in effect, Massachusetts courts had ruled on approximately 9,000 bypass petitions, of which all but 13 were granted. All 13 denials were appealed and only one was affirmed (in that case the parents gave consent and the minor obtained the abortion). The overwhelming majority of petitions (97-98 percent) were granted on the ground of maturity.

Paula Marie Wendt, the director of an abortion facility in Minnesota, cited similar statistics for Minnesota: Of three thousand bypass petitions heard during a five-year period, only nine were initially denied and most of those nine were eventually granted. She also testified that in her opinion the Minnesota parental involvement law did not assist minors' decisionmaking and provided no benefit to minors.

In Hodgson v. Minnesota, supra, 497 U.S. 417, 441, footnote 29 [110 S. Ct. 2926, 2940], Justice John Paul Stevens cited similar testimony by a judge to the effect that judicial bypass serves no useful public purpose. When judicial bypass is invoked, authorization is granted so routinely that judges view the procedure as a "rubber stamp." (See id. at p. 436, fn. 21 [110 S. Ct. at p. 2937] (conc. opn. of Stevens, J.) [noting that of 3,573 petitions filed in Minnesota courts, 6 were withdrawn, 9 were denied, and 3,558 were granted]; id. at p. 477 [110 S. Ct. at p. 2959] (conc. & dis. opn. of Marshall, J.) [citing judge's testimony characterizing the bypass as a "rubber stamp"].)

----------End Footnotes----------

[***132] [*368]

[**837] Summing up, the superior court made this finding:

"One must conclude from all of the evidence presented as to the effectiveness of the judicial bypass procedure that the procedure has no effect on a minor's ultimate decision with respect to abortion nor on the process by which that decision is made. Further, rather than providing a benefit to minors, the bypass procedure poses a gratuitous threat to their physical and emotional well-being."

Concluding that the parental consent law violates the right of privacy guaranteed by article I, section 1, of the California Constitution, the superior court declared the law invalid and permanently enjoined its enforcement. On appeal, a unanimous Court of Appeal affirmed.

II

The issue before this court is whether California's parental consent law violates the privacy rights of minors guaranteed by the California Constitution.

Unlike the federal Constitution, the California Constitution expressly recognizes and safeguards the right of privacy. In article I, section 1, the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying [***133] and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Italics added.) The words "and privacy" were added by an initiative adopted by the voters on November 7, 1972 (hereafter the Privacy Initiative).

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The elements of a cause of action for invasion of the state constitutional right to privacy are: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy on the plaintiff's part; and (3) an invasion of the privacy interest that is "serious" rather than "slight or trivial." (Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1, 35-37.) Once a plaintiff has established these elements, the defendant may defend on the basis "that the invasion of privacy is justified because it substantively furthers one or more countervailing interests." (Id. at p. 40.) If this defense is raised, the plaintiff may rebut it by "showing there are feasible and effective alternatives to defendant's conduct which have a lesser impact on privacy interests." (Ibid.)

A. Legally Protected Privacy Interest

Privacy interests are of two kinds: (1) autonomy privacy, which [***134] is the interest "in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference"; and (2) informational privacy, which is the interest in preventing "dissemination or misuse [*369] of sensitive and confidential information." (Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1, 35.)

[**838] A woman's decision to continue or terminate a pregnancy implicates both of these privacy interests, but I will focus here only on the interest in autonomy privacy. Because I conclude that the parental consent law is an unconstitutional invasion of the autonomy interest, I need not and do not address whether it is also an unconstitutional invasion of the informational privacy interest.

"It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties." (Bellotti v. Baird (1979) 443 U.S. 622, 655 [99 S. Ct. 3035, 3054, 61 L. Ed. 2d 797] (conc. opn. of Stevens, J.).) Few decisions are more intimate or more important in determining the subsequent course of a woman's [***135] life than her decision to continue or terminate a pregnancy. Not surprisingly, this court has recognized that the state constitutional right of privacy protects a woman's right to choose whether or not to give birth, including the right to terminate a pregnancy by abortion. (See Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252, 262; People v. Belous (1969) 71 Cal. 2d 954, 963 [80 Cal. Rptr. 354, 458 P.2d 194].)

[]

The term "interest" generally means "having a share or concern" in some thing so that one is "liable to be affected or prejudiced" depending on its condition or outcome. (Estate of Brown (1938) 24 Cal. App. 2d 573, 575 [75 P.2d 658].) The term may be used to refer to "the object of any human desire" (Rest.2d Torts, @ 1, p. 2), whether beneficial or not, or only to "that which is 'truly good for a person whether he desires it or not.' " (Houlgate, The Child & the State, A Normative Theory of Juvenile Rights (1980) p. 105, quoting Feinberg, Social Philosophy (1973) p. 26; see also Scott v. McPheeters (1939) 33 Cal. App. 2d 629, 631 [92 P.2d 678] [defining "interest" as "anything that is profitable or beneficial"].) But [***136] the term "interest," by itself, "carries no

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implication that the interest is or is not given legal protection." (Rest.2d Torts, @ 1, com. a, p. 2.) When an interest has legal protection, it is then referred to as a "right." (Id., @ 1, com. b, p. 2.)

Every pregnant woman, regardless of age, is vitally affected by the decision to continue or terminate her pregnancy and stands to gain or lose depending upon whether that decision is made without interference by the state or any other third party and without public disclosure. Thus, the privacy [*370] interest in procreative choice does not vary based on the age or maturity of the pregnant woman whose choice is at issue.

This is not to say that a child's privacy right in procreative choice under the state Constitution is equal in all respects to that of an adult. Generally speaking, children's constitutional rights are not coextensive with those of adults in similar situations. (See, e.g., McKeiver v. Pennsylvania (1971) 403 U.S. 528, 545 [91 S. Ct. 1976, 1986, 29 L. Ed. 2d 647] [no right to jury trial in juvenile court delinquency adjudication]; Prince v. Massachusetts (1944) 321 U.S. 158, 170 [***137] [64 S. Ct. 438, 444, 88 L. Ed. 645] [stating that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults"].) But this is not because of any inherent qualitative difference between the interests of children and those of similarly situated adults; rather, it is because children's interests are counterbalanced by other significant interests, including the interest of the state, as parens patriae, in protecting youth, the interest of parents in preserving their relationships with and their authority over their children, and the interests shared by children and their parents in family autonomy and family privacy. (See Mnookin et al., In the Interest of Children (1985) p. 32; Keiter, Privacy, Children, and Their Parents: Reflections on and Beyond the Supreme Court's Approach (1982) 66 Minn. L.Rev. 459, 492-493.)

Under Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1, a court considers these countervailing interests in due course after it has found the elements of a privacy cause of action: (1) a significant, legally protected privacy interest; (2) a reasonable expectation [**839] [***138] of privacy under the circumstances; and (3) an actual or threatened invasion of this privacy interest that is sufficiently serious to warrant constitutional protection. If these elements are present, the scope of the right of privacy in a given context can be determined only by undertaking the full analysis mandated by this court's decision in Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1.

[]

[] [N]othing in the history or language of the privacy provision of the California Constitution suggests that it was intended for adults alone or that children were to receive only some greatly watered-down protection. The ballot pamphlet argument in support of the Privacy Initiative advised voters that the initiative "creates a legal and enforceable right of privacy for every Californian" and, even more explicitly, that "[t]here should be no ambiguity about whether our constitutional freedoms are for every man, woman and child in this state." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972) argument in favor of Prop. 11, pp. 26-27, underlining deleted, italics added.) [*371]

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B. Reasonable [***139] Expectation of Privacy

During childhood and adolescence, a person prepares for life as an adult, gradually assuming greater control and responsibility over his or her life. The pace of this developmental process should be regulated so that it is neither too fast nor too slow. The emerging adults should be neither charged with responsibilities they are not yet competent to handle nor deprived of control over matters they are perfectly able to deal with on their own.

During the process of human growth, therefore, the individual's competence gradually increases, accompanied by a gradual increase in the control a person exercises over his or her life. This expanding competence and control, in turn, supplies the individual with a reasonable expectation that he or she will be permitted to exercise that control without undue interference from parents or others who are charged with supervising the child's development. Accordingly, we may conclude that an adolescent has a reasonable expectation of autonomy privacy --that is, the power to make a decision without outside interference, observation, or disclosure--as to decisions that are within that person's competence and that are protected [***140] by the right of privacy for adults.

An adult woman's decision to either continue a pregnancy to term or terminate it by abortion is protected by the right of privacy under both the state and federal Constitutions. (Roe v. Wade (1973) 410 U.S. 113 [93 S. Ct. 705, 35 L. Ed. 2d 147]; Doe v. Bolton (1973) 410 U.S. 179 [93 S. Ct. 739, 35 L. Ed. 2d 201]; Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252, 262.) An adolescent woman may reasonably expect the same privacy protection if she is mature enough to make the decision competently by herself. The question, then, is this: At what point in a woman's growth from childhood to adulthood does she acquire the competence to make this decision?

After considering the evidence presented by the parties in this case, the superior court found that "with the exception of the small percentage of very young adolescents . . . the great majority of minors [who have become pregnant] possess the cognitive ability and maturity to make a fully-informed choice as to abortion and are competent to give informed consent to abortion."

The evidence at trial amply supports this finding. Gary Melton, a professor [***141] of psychology, testified that after the United States Supreme Court's decisions in Bellotti v. Baird, supra, 443 U.S. 622 and H. L. v. Matheson (1981) 450 U.S. 398 [101 S. Ct. 1164, 67 L. Ed. 2d 388], the American [*372] Psychological Association set up an interdivisional committee to study issues related to adolescent abortion. Professor Melton was selected to chair this committee. After surveying the relevant scientific literature, this committee determined, among other things, that although a number of relevant studies had been performed, there was no basis in existing research to conclude that adolescents as a group were less competent than adults to [**840] make decisions concerning abortion. (See Am. Psychological Assn., Interdivisional Committee on Adolescent Abortion, Adolescent Abortion: Psychological and Legal Issues (Jan. 1987) 42 Am. Psychologist 73.) These conclusions were published in book form, and were later reviewed and adopted by the National Academy of Sciences. Professor Melton testified that "at least from the age of 14 or so" adolescents have the ability to "comprehend the information that's given to them and to weigh it [***142] rationally at adult-like levels." He further testified that adolescents are "able to reason about real life situations and to do so in

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ways that show a good comprehending of circumstances and a rational logical process of dealing with that information." Finally, he testified that this evidence of adolescents' competence in making decisions applies to health care decisions in general and to decisions concerning abortion in particular.

Michael Saks, a social psychologist and professor at the University of Iowa College of Law, testified about a working paper he wrote for the Office of Technology Assessment of the United States Congress addressing this question: "At what age are adolescents competent to make their own health care decisions?" After surveying the relevant psychological studies, he concluded that there are no detectable differences between mid-adolescents and young adults in their 20's regarding their ability to make such decisions, and thus adolescents are competent to consent to general health care by the age of 14.

Based on her own research and her review of another study, Nancy Adler, a professor of medical psychology in the Department of Psychiatry and Pediatrics [***143] at the University of California at San Francisco, testified that in her opinion adolescents do not differ from adults in their ability to understand the risks and benefits of abortion. (See also, Houlgate, The Child & the State, A Normative Theory of Juvenile Rights, supra, at p. 72 [stating that available empirical evidence "does not give any support to the claim that children over the age of thirteen or fourteen years lack the capacity for rational choice"].)

[]

[] [T]he [] concept of legal minority, or nonage, embodies an assumption of incompetence to exercise the full panoply of rights and privileges available to adults. Our laws have established various age restrictions for voting, [*373] driving motor vehicles, purchasing alcoholic beverages, and the like. Because individuals mature at different rates, these age limits are a necessarily inexact and therefore arbitrary measure of maturity, but they have nonetheless been accepted as constitutionally valid for most purposes. But not for all.

There are some decisions so fundamental and so "life-shaping" that age limits are not constitutionally acceptable as a means of conclusively determining that an adolescent [***144] below the prescribed age is not yet ready to assume sole responsibility for those decisions. The decision to continue or terminate a pregnancy is one such decision. The United States Supreme Court has so held. (Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52, 74 [96 S. Ct. 2831, 2843, 49 L. Ed. 2d 788]; Bellotti v. Baird, supra, 443 U.S. 622, 643 & fn. 23 [99 S. Ct. 3035, 3048].)

The abortion decision is different not only because [] a pregnancy decision fundamentally affects the subsequent course of a woman's life, but also because, unlike a decision concerning marriage or sterilization [], the abortion decision is highly time sensitive. Although marriage and sterilization can be postponed to adulthood, the option of abortion "effectively expires in a matter of weeks from the onset of pregnancy." (Bellotti v. Baird, supra, 443 U.S. 622, 642 [99 S. Ct. 3035, 3047].) "[T]he abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences." (Id. at p. 643 [99 S. Ct. at p. 3048].)

Regardless of age restrictions, therefore, an adolescent's expectation of privacy is reasonable as [***145] to decisions with the following

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characteristics: (1) they are protected by the right of privacy for adults, (2) they are within the adolescent's competence, (3) they have serious and enduring consequences, and (4) they cannot be postponed to the age of legal [**841] majority. (See Keiter, Privacy, Children, and Their Parents: Reflections on and Beyond the Supreme Court's Approach, supra, 66 Minn. L.Rev. 459, 503, 517.)

For those adolescents of sufficient maturity (that is, generally, adolescents of 14 years or older), the decision to continue or terminate a pregnancy has each of these characteristics. These adolescents therefore have a reasonable expectation of autonomy privacy in the making of this decision.

C. Seriousness of the Invasion

An important purpose of the Privacy Initiative was to "safeguard[] certain intimate and personal decisions from government interference in the form of penal and regulatory laws." (Hill v. National Collegiate Athletic Assn., supra, [*374] 7 Cal. 4th 1, 36.) The parental consent law at issue here is both penal and regulatory--it imposes criminal sanctions on any doctor who performs an abortion in violation [***146] of its provisions, and it regulates abortions by requiring a pregnant adolescent woman who has decided to terminate her pregnancy to obtain either the consent of a parent or judicial authorization for the abortion procedure.

Although the parental consent law does not absolutely preclude mature adolescent women from obtaining abortions without parental consent, the trial court record convincingly demonstrates that resort to the judicial bypass procedure by those adolescents unable or unwilling to obtain parental consent is time-consuming and emotionally traumatic, and it exposes the affected minors to significantly increased medical risks occasioned by the delay attributable to the procedure. (See Bellotti v. Baird, supra, 443 U.S. 622, 642-643 [99 S. Ct. 3035, 3047-3048] [stating that the right to terminate a pregnancy "effectively expires in a matter of weeks"].)

That pregnant adolescents find the judicial bypass procedure highly repugnant and that it operates as a major obstacle to their exercise of free choice are illustrated by the tragic story of Becky Bell, who died at the age of 17 as a result of complications from an illegal abortion. When she learned she [***147] was pregnant, she also learned that under the law of her state (Indiana) she could obtain a legal abortion without parental consent only by applying to a juvenile court judge for a waiver of the consent requirement. "What does a judge have to do with this?" she reportedly asked a counselor. Unwilling to reveal her very personal decision for scrutiny by a judge, she resorted to an illegal abortion, a choice that cost her her life. (See Note, Hodgson v. Minnesota: Chipping Away at Roe v. Wade in the Aftermath of Webster (1991) 18 Pepperdine L.Rev. 955; Tribe, Abortion: The Clash of Absolutes (1990) p. 203; Indiana Dad in S.F. to Tell How Abortion Law Led to Death, S.F. Chronicle (Jan. 22, 1996) p. A15, cols. 1-4.)

I therefore agree with the Court of Appeal that the parental consent law invades the privacy interests of pregnant adolescents in a way that is not "slight or trivial." (Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1, 37.)

[]

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[Although California law long required parental consent for many medical procedures,] [] an abortion is unlike [other medical procedures] [] in constitutionally significant ways. As previously mentioned, [***148] the decision to continue or terminate a pregnancy is exceptional and virtually unique among [*375] decisions that an adolescent woman might be called upon to make, because it both has profound nonmedical implications for the subsequent course of a woman's life and is time sensitive, requiring a decision within days or at most weeks. (Bellotti v. Baird, supra, 443 U.S. 622, 642-643 [99 S. Ct. 3035, 3047-3048].) Similarly, as a medical procedure, an abortion is exceptional; if the pregnancy is proceeding normally, abortion is an elective procedure, yet one that is medically time sensitive and that has far-reaching nonmedical implications for the subsequent course of the patient's life. It is also a medical procedure for which the utmost confidentiality is generally expected.

In addition, the Legislature has generally not required parental consent for medical procedures relating to sexuality and procreation. [**842] For example, minors are "medically emancipated"--that is, they may obtain medical treatment without parental consent--for purposes of prescribing and furnishing contraceptive drugs and devices (Fam. Code, @ 6925), for medical treatment [***149] relating to pregnancy (ibid.), for the diagnosis and treatment of sexually transmitted diseases, rape, and sexual assault (id., @ 6925-6928), and for testing for HIV infection (Health & Saf. Code, @ 121020, subd. (a)(1) [minors 12 years and older deemed competent to consent]). Indeed, except for sterilization, abortion is the only medical procedure related to sexuality and procreation for which the Legislature has required parental consent. Accordingly, the statutory scheme regarding medical treatment for persons under the legal age of majority, [] provides an additional ground for concluding that the parental consent law at issue here is a serious invasion of the privacy interests of pregnant adolescents.

[] [Although] a number of other states have enacted parental consent laws[,] [] the Florida Supreme Court, the only other state court to consider the constitutionality of a parental involvement law under a state constitutional right of privacy, [has] concluded that the [Florida parental consent] law violated the right of privacy guaranteed by the Florida Constitution. (In re T.W. (Fla. 1989) 551 So.2d 1186, 1194.)

Plaintiffs have established the [***150] elements of a cause of action for invasion of the state constitutional right of privacy--a legally protected privacy interest, a reasonable expectation of privacy, and a serious invasion of the protected privacy interest. Therefore, the burden shifts to the state to establish justification for the parental consent law.

D. Legal Standard

The [] proper legal standard by which to judge the state's asserted justification for the parental consent law is the compelling state interest standard []. [*376]

The compelling state interest standard is required by this court's previous decision in Hill. Without qualification, we there said: "Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g.,

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freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a 'compelling interest' must be present to overcome the vital privacy interest." (Hill v. National Collegiate Athletic Assn., supra, 7 Cal. 4th 1, 34; see also id. at pp. 59 (conc. & dis. opn. of Kennard, J.), 62 (conc. & dis. opn. of George, J.), 73 (dis. opn. of Mosk, J.).) The burdens that the parental consent law imposes on a [***151] pregnant adolescent's decision to terminate her pregnancy constitute an obvious invasion of an interest fundamental to personal autonomy. Therefore, the compelling interest standard applies.

The compelling interest standard is no less applicable because the parental consent law's burdens are imposed on minors rather than adults. As previously mentioned, the state Constitution's privacy guarantee extends equally to "every man, woman and child in this state." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972), argument in favor of Prop. 11, p. 27, italics added.)

E. Justification

The [] [state argues that the parental consent law furthers] the state's []interest in protecting the physical and mental health of unemancipated minors.[] The superior court considered this interest compelling, as do I. But I also agree with the superior court's conclusion that the state has failed to demonstrate that the parental consent law advances this interest.

The [] [state has argued] that the parental consent law will protect the physical and mental health of pregnant adolescents because, for those pregnant adolescents who cannot [***152] or will not obtain parental consent, it affords them a judicial bypass procedure through which a judge may authorize the abortion upon determining either that the adolescent is mature enough to make the decision by herself or, if not, that the abortion would be in her best interests. [] [Although] the adolescent's physician is required to make the same determination of maturity in deciding whether the adolescent has given informed consent to the abortion [], [] [**843] [the state argues] that an additional maturity determination by a judge will better protect the adolescent's physical and mental health because (1) unlike the physician, the judge has no pecuniary interest in the decision and is thus more objective [], and (2) if the adolescent is not sufficiently mature to give informed consent to an abortion, the judge can authorize the abortion upon a finding that it is in the adolescent's best interests, whereas the adolescent's physician may not proceed without the informed consent of either the adolescent or her parents []. [] [*377]

[] [In] determining whether a law furthers an identified state interest, a court must consider both the [***153] positive and negative impacts of the law on that interest. Only by such a balanced inquiry may a court determine whether, considering all effects of the legislation, both positive and negative, the legislation on balance advances the interest offered to justify it. Accordingly, I will consider first the claimed beneficial effects of the legislation, and then any detrimental effects, as they relate to the physical and mental health of pregnant adolescents seeking abortions.

1. Superiority of judges over physicians in making the maturity determination

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[] The [] [state's argument] that doctors may not be relied upon to act impartially "is necessarily somewhat degrading to the conscientious physician, particularly the obstetrician, whose professional activity is concerned with the physical and mental welfare, the woes, the emotions, and the concern of his [or her] female patients." (Doe v. Bolton, supra, 410 U.S. 179, 196 [93 S. Ct. 739, 750].) Determining whether a patient has given informed consent to a proposed medical procedure is an integral part of the practice of medicine with respect to patients of all ages (see Arato v. Avedon (1993) 5 Cal. 4th [***154] 1172, 1182-1184 [23 Cal. Rptr. 2d 131, 858 P.2d 598]; Riese v. St. Mary's Hospital & Medical Center (1987) 209 Cal. App. 3d 1303, 1322-1323 [271 Cal. Rptr. 199]), and the physician's license provides sufficient assurance that the physician will do so competently, fairly, and objectively (see Doe v. Bolton, supra, 410 U.S. 179, 199-200 [93 S. Ct. 739, 751-752]). Should a particular physician fail to do so, the consequences would include professional censure, revocation or suspension of the medical license, and tort liability to the patient for negligence or battery. The state has not demonstrated that these safeguards are inadequate.

Indeed, the [] assertion that physicians cannot be relied upon to make the maturity determination accurately, fairly, and objectively is supported by no evidence in the present record. Mere supposition, even when plausible, is insufficient. When a state law burdens the exercise of a fundamental right, the government's "attempt to justify that burden as a rational means for the accomplishment of some significant state policy requires more than a bare assertion, based on a conceded complete absence of supporting evidence, that the [***155] burden is connected to such a policy." (Carey v. Population Services International (1977) 431 U.S. 678, 696 [97 S. Ct. 2010, 2022, 52 L. Ed. 2d 675], fn. omitted (plur. opn. by Brennan, J.); see also id., p. 702 [97 S. Ct. at p. 2025] (conc. opn. of White, J.) ["the State has not demonstrated that the prohibition against distribution of contraceptives to minors measurably contributes to the deterrent purposes which the State advances as justification [*378] for the restriction"]; New Jersey Citizen Action v. Edison TP. (3d Cir. 1986) 797 F.2d 1250, 1257 ["when, as here, fundamental free speech interests are patently burdened, the district court not only is free to but indeed is required to overturn regulations that are premised on legislative assumptions contradicted by facts in the record"].)

Finally, the state has less restrictive alternatives available. It could by statute regulate the manner in which physicians make the informed consent determination for adolescents seeking abortion, just as it may regulate other aspects of medical treatment, to ensure that the determination is made according to the highest professional standards.

2. Best interests [***156] authorization for immature minors

The [] [state has argued] that the judicial bypass option furthers the physical and mental [**844] health of pregnant immature minors who seek an abortion without parental consent because it permits judicial authorization of abortions for these minors if abortion would be in their best interests. I agree that the law as it exists without the parental consent legislation does not well serve the needs of pregnant immature minors who seek an abortion but cannot obtain parental consent.

But immature minors (that is, generally, those below the age of 14)

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constitute only a very small percentage, certainly less than 5 percent, of the entire class of adolescents who seek abortions without parental consent. n13 This is so for two reasons: the pregnancy rate for adolescents below the age of fourteen is much lower and their rate of voluntary parental involvement much higher than for older adolescents. (See Alan Guttmacher Inst., Sex and America's Teenagers (1994) pp. 49, 81, fn. 151.) Because the group of immature minors is so small compared with the larger class of pregnant minors affected by the parental consent law, and because a [***157] law could easily be tailored to affect only this group, the parental consent law may not be justified on the ground that it advances the welfare of pregnant immature minors who seek an abortion without parental consent.

----------Footnotes----------

n13 Jamie Ann Sabino (see fn. 10, ante) testified that "probably under three or four percent" of the adolescents who sought judicial authorization for abortion in Massachusetts were 14 years of age or under.

----------End Footnotes----------

As I mentioned at the outset, because the parental consent law at issue in this case applies to all unemancipated minors, I need not and do not decide whether a more narrowly drawn law, applying only to adolescents under the age of 14 years, would violate the state constitutional right of privacy. I note, however, that California's existing parental consent law [] is subject to [*379] criticism insofar as it requires a child who is or may be immature to herself shoulder the burden of initiating and pursuing legal proceedings to obtain judicial authorization for an abortion. [***158] By comparison, the Legislature has established a judicial authorization procedure for adults who lack the capacity to give informed consent to a medical procedure (Prob. Code, @ 3200 et seq.), but the Legislature has provided that proceedings to obtain this authorization may be commenced not only by the patient, but also by his or her physician, spouse, relative, friend, "or other interested person" (id., @ 3203, subd. (c)). Thus, the Legislature has implicitly recognized that it may be unreasonable to require an adult who is incapable of giving informed consent to a medical procedure to undertake the task of commencing legal proceedings for judicial authorization. For an immature adolescent seeking an abortion without parental consent, it seems equally unreasonable to expect the adolescent to apply for judicial authorization. The physician who has determined that the adolescent is too immature to give informed consent to an abortion, or another individual counseling the adolescent, should be able to request judicial authorization on the adolescent's behalf. (See Keiter, Privacy, Children, and Their Parents: Reflections on and Beyond the Supreme Court's Approach, supra, [***159] 66 Minn. L.Rev. 459, 514 & fn. 272.)

3. Detrimental effects of bypass procedure--delay and emotional distress

The superior court found that the judicial bypass option would in many cases delay performance of the abortion until the second trimester, thereby significantly increasing the medical risks and the cost of the procedure. [] The evidence presented at trial supports the superior court's conclusion []. For example, Dr. Policar (see fn. 1, ante) testified that after the 10th week of pregnancy, the medical risks "go up quite precipitously" and in fact increase at the rate of "50 percent for every week beyond the tenth week." Paula Marie Wendt

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(see fn. 12, ante) testified that delay associated with the judicial bypass procedure in Minnesota has caused some abortions to be performed in the second trimester (that is, after the thirteenth week of pregnancy) that otherwise would have [been] performed during the first trimester. I note also that in Hodgson v. Minnesota, supra, 497 U.S. 417, United States Supreme Court Justice Thurgood Marshall cited [**845] a study finding that "for women 19 years old and younger, the number of deaths per [***160] 100,000 abortions was 0.2 for the first 8 weeks of pregnancy, 0.6 for weeks 9 through 12, 3.4 for weeks 13 through 16, and 7.8 for week 17 and after." (Id. at pp. 465-466 [110 S. Ct. at pp. 2953-2954] (conc. & dis. opn. of Marshall, J.), citing Cates et al., The Risks Associated With Teenage Abortion (1983) 309 New Eng. J. Med. 621, 623.)

The superior court also found that the judicial bypass option would subject the adolescents who use it to considerable emotional trauma. [] [Although [*380] this] emotional distress [usually] would be transitory, causing no adverse psychological effects long term, [] the true significance of the emotional distress occasioned by judicial bypass lies not in its long-term psychological impact but in its short-term behavioral impact. Adolescents will be extremely reluctant to use a procedure they perceive and experience as stressful, dangerous, and humiliating, n14 and they will go to great lengths to avoid such a procedure, turning instead to illegal abortions or self-induced abortions, or delaying all action until abortion is no longer feasible, thereby allowing the decision to be made by default rather than by careful and mature [***161] reflection and deliberate choice.

----------Footnotes----------

n14 Jeth Gold, a social worker in San Francisco, testified that adolescents find any court appearance stressful because they "perceive court as a place you go when you have committed a crime," because they may be required to answer questions even if they would prefer not to, because their answers may cause trouble for parents or friends or sexual partners, and because the result of the court proceeding may profoundly affect their lives. He added that the stress would increase if the adolescents expected to be questioned about intimate topics like sexuality. Dr. Anita Lorraine Nelson (see fn. 10, ante) testified that in California many Hispanic adolescents have the particular fear that going to court could lead to the deportation of parents or other relatives who are illegal immigrants. Jamie Ann Sabino (see fn. 10, ante) testified that adolescents seeking judicial authorization for abortion in Massachusetts worry that authorization will be denied, that they will be forced to reveal intimate details of their lives to a stranger, and that confidentiality may be lost if they encounter an acquaintance of their parents at the courthouse. Paula Marie Wendt (see fn. 12, ante) testified that adolescents seeking abortions in Minnesota "are afraid that they are going to be recognized, that somebody will see them, that their confidentiality will not be protected" and they "feel like they are a criminal if they go to court and that's going to be a record against them or somebody can use it against them in the future." As a result, she added, "[s]ome are just too afraid to even think about going to court." Dr. Lenore E. A. Walker (see fn. 9, ante) testified that it would be particularly difficult for adolescents from abusive families to seek judicial authorization because such adolescents have "learned secrecy" and "do not see authority figures as helpful to them."

----------End Footnotes----------

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[***162]

[]

Furthermore, judicial bypass will not be a realistic option for many adolescents in rural, sparsely populated counties because of the long distances required to reach a courthouse and because of the unacceptable risk that confidentiality will be lost by a chance encounter with a relative, neighbor, or acquaintance at the courthouse. Also, many counties in California have no providers for second trimester abortions (see trial testimony of Dr. Michael Policar), so that delays occasioned by the judicial bypass procedures may effectively preclude abortions for some minors living in these counties.

Like the superior court and the Court of Appeal, I conclude that any beneficial effect of the parental consent law on the physical and emotional well-being of pregnant adolescent minors seeking abortion would be outweighed by the detrimental effect of the judicial bypass, and thus that on [*381] balance the parental consent law would not further the state's compelling interest in the physical and emotional well-being of children.

4. Increasing parental involvement in adolescents' abortion decisions

To justify the parental consent law's serious invasion of the privacy interests [***163] of pregnant adolescents seeking abortion, the [] [state asserts] that the law will increase parents' involvement in their children's abortion decisions. [] [Indeed,] to many disinterested observers[,] increasing parental involvement may appear to be the legislation's primary purpose.

The law existing before and apart from the parental consent law permitted but did not require parental involvement; it left to the pregnant adolescent herself the decision [**846] whether or not to consult her parents. Under the parental consent law also, parental involvement is permitted but not required, the only difference being that a pregnant adolescent who chooses not to involve a parent must obtain judicial authorization for an abortion. Is this change likely to increase the rate or incidence of parental involvement that would occur in the law's absence by causing at least some minors who would not otherwise do so to consult a parent before making the abortion decision?

After considering evidence concerning the experience with parental involvement laws in Massachusetts and Minnesota, the superior court found that these laws do not in fact increase the number of [***164] minors who consult their parents about the abortion decision. [] [T]he evidence to support this finding is far from conclusive but is probably sufficient to support the more cautious finding that any increase in parental involvement resulting from parental involvement laws is probably not great.

Of greater significance, in my view, is the superior court's related finding that when a pregnant adolescent consults a parent against her better judgment and only to avoid having to apply for judicial authorization, the adolescent is unlikely to derive any of the benefit that would normally be expected from parental consultation. The superior court reasoned that an adolescent's initial reluctance to consult a parent often evidences a significant underlying problem or dysfunction in the parent-child relationship. Although facing and jointly resolving a crisis situation--such as an adolescent's unplanned pregnancy (which

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must be resolved under the time constraints imposed by the steeply escalating medical risks of abortion as the pregnancy progresses beyond the 10th week)--can strengthen a parent-child relationship that is fundamentally sound, a flawed relationship is likely to further [***165] deteriorate or unravel under this sort of pressure, resulting in emotional, psychological, and even physical harm to the child. Thus, it is [*382] doubtful that parental consultation that is coerced by a parental consent law will, on balance, benefit or strengthen parent-child relationships. This reasoning is supported by the evidence presented at the trial in superior court. (See fn. 4, ante; see also Rhode, Politics and Pregnancy: Adolescent Mothers and Public Policy (1991) 1 S. Cal. Rev. L. & Women's Stud. 99, 126 [stating that "[v]irtually every major professional study has concluded that compulsory parental involvement ill serves adolescent needs and family relationships"]; Keiter, Privacy, Children, and Their Parents: Reflections on and Beyond the Supreme Court's Approach, supra , 66 Minn. L.Rev. 459, 500-501 [stating that "[w]henever notification or consent requirements mandate parental involvement, conflict between the parent and child portending severe disruption of the family is likely"].)

If the goal is to encourage beneficial parent-child communications about a pregnant adolescent's options, there are feasible and effective alternatives having [***166] a lesser impact on privacy interests.

For example, the state could act to ensure that before an abortion is performed adolescents are advised in an effective but noncoercive manner to consult their parents, n15 and that adolescents who are reluctant to do so receive appropriate professional assistance in working with their parents. The evidence at trial revealed that in California many and perhaps most pregnancy tests are performed in health clinics that receive state funding. The state may attach conditions to this funding, including adherence to counseling protocols. Through such protocols, the state may insist that adolescents who have tested positive for pregnancy are encouraged to consult their parents. To ensure that this encouragement is effective, the state may provide written materials and videos to use either as training aids for the counselors or to be [**847] shown or given directly to the adolescents. n16 In addition, the state could ensure that the clinics make their facilities available, or the state could provide its own facilities, so that adolescents may discuss their pregnancies with their parents in a neutral setting and in the presence of a trained [***167] and supportive counselor or family therapist. (See Rhode, Politics and Pregnancy: Adolescent Mothers and Public Policy, supra, 1 S. Cal. Rev. L. & Women's Stud. 99, 126 [advocating "voluntary parental outreach [*383] programs" that "seek to improve family communication and adolescent decision-making skills while avoiding the notice or consent requirements that deter teenagers from seeking assistance"].)

----------Footnotes----------

n15 A number of witnesses at the trial testified about the "options counseling" given at health clinics in California to adolescents who have tested positive for pregnancy. Without exception, they testified that during this counseling adolescents are encouraged to discuss the fact of their pregnancy, and their plans for dealing with it, with their parents. (See, e.g., testimony of Dr. Nelson, Dr. Policar, Dr. Hofmann, Catherine Dodd, Ellen Eidem.)

n16 For example, Catherine Dodd, the former director of the Women's Health

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Center at San Francisco General Hospital, testified that the clinic has prepared a pamphlet entitled, Talk to My Parents? which it provides to teens to assist them in discussing sensitive issues such as contraception and abortion with their parents.

----------End Footnotes----------
[***168]

I conclude that the state has failed to justify the parental consent law's serious invasion of the privacy interests of pregnant adolescents.

Conclusion

California's parental consent law was enacted to protect the physical and mental health of pregnant adolescents and to give these adolescents the benefit of consultation with a caring and supportive parent. Laudable purposes, to be sure. But the parental consent law also seriously invades the privacy interests of adolescents, and when a law burdens fundamental rights, "merely stating a laudable purpose" is insufficient. (People v. Glaze (1980) 27 Cal. 3d 841, 848 [166 Cal. Rptr. 859, 614 P.2d 291].) The constitutionality of a law is judged not by the value of the policies it seeks to implement, but by "the objective effect of the legislative terms." (County of Los Angeles v. Superior Court (1975) 13 Cal. 3d 721, 727 [119 Cal. Rptr. 631, 532 P.2d 495].)

Benefiting from the experience of other states with similar laws, and a well-developed trial record, this court is equipped to assess the "objective effect" of the parental consent law. What the trial record shows is that most pregnant teenagers consult their parents [***169] voluntarily, and that there are a variety of reasons why the others do not. Some merely wish to spare their parents' feelings, but others do not consult their parents because the parents are physically or emotionally abusive or because parent-child relations have broken down or would break down completely if the pregnancy were disclosed. The delays caused by the judicial bypass option will move many abortions into the second trimester, significantly increasing medical risks. To avoid having to reveal their pregnancy to a judge and submit to the judge's questioning about their decision to terminate the pregnancy, some pregnant teenagers will obtain illegal abortions, and may die as a result, and others will delay taking any action until an abortion is no longer feasible. As Professor Laurence Tribe has summed it up, "parental consent and notice requirements may sound like moderate recognitions of the parents' central role in family life but are likely in practice to achieve little and to cause great grief." (Tribe, Abortion: The Clash of Absolutes, supra, p. 203.)

[]

As United States Supreme Court Justice Lewis Powell has written, "[t]he need to preserve the constitutional [***170] right and the unique nature of the abortion [*384] decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter." (Bellotti v. Baird, supra, 443 U.S. 622, 642 [99 S. Ct. 3035, 3047] (lead opn. by Powell, J.).) California's parental consent law, though certainly well intentioned, lacks the sensitivity required to satisfy the privacy guarantee of our state Constitution. Because the parental consent law seriously invades the privacy interests of minors, and because its

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practical effects are such that it does not significantly advance any countervailing interest of either the state, the pregnant minor women, or their parents, I [] [concur in the judgment] uphold[ing] the decisions of the superior court and the Court of Appeal declaring unconstitutional and enjoining the enforcement of the parental consent law on the ground that it [**848] violates the right of privacy guaranteed to every Californian--man, woman, and child--by our state Constitution.

MOSK, J.

I dissent.

The plurality hold that Assembly Bill No. 2274, which prohibits unemancipated [***171] minors--including girls as young as nine years old--from obtaining abortions without either consent by a parent or a legal guardian or authorization by a neutral juvenile court judge, violates article I, sections 1 and 7 of the California Constitution. As I shall explain, I strongly disagree. Setting aside any personal beliefs concerning the morality--and politics--of abortion, I conclude the law is valid and should not be enjoined. Accordingly, I would reverse the judgment of the Court of Appeal.

I.

Enacted by the Legislature in 1987 (Stats. 1987, ch. 1237, @ 2, 3), Assembly Bill No. 2274 amends former Civil Code section 34.5 (now Family Code section 6925) to exclude abortion from the medical procedures for which an unemancipated minor may give consent "[without] disaffirmance because of minority." (Fam. Code, @ 6921.) It also added former section 25958 to the Health and Safety Code (now Health & Saf. Code, @ 123450, in subd. (a)) providing that "[e]xcept in a medical emergency requiring immediate medical action, no abortion shall be performed upon an unemancipated minor unless she first has given her written consent to the abortion and also has obtained the written consent [***172] of one of her parents or legal guardian."

Assembly Bill No. 2274 includes judicial bypass provisions, with the following requirements. If an unemancipated minor's parent or guardian is unavailable or refuses consent, or if the unemancipated minor elects not to [*385] seek consent, she may file a petition in the juvenile court. (Health & Saf. Code, @ 123450, subd. (b).) The court must assist her, or a person she designates, in preparing the petition and notices; it must also advise her that she has a right to court-appointed counsel, and it may appoint a guardian ad litem. (Ibid.) A hearing must be set within three days of filing the petition. (Ibid.) At the hearing, the juvenile court must determine whether the unemancipated minor is "sufficiently mature and sufficiently informed to make the decision on her own regarding an abortion." (Id., subd. (c).) If it finds that she is, and that she has consented on that basis, it must grant the petition. (Id., subd. (c)(1).) If it determines that she is not sufficiently mature, it must grant the petition nevertheless if an abortion would be in her " best interest," but must otherwise deny the petition. (Id., subd. [***173] (c)(2).)

The Judicial Council adopted rules and developed forms to implement the judicial bypass provisions. (Cal. Rules of Court, rule 240; Cal. Standards Jud. Admin., @ 23.) Those rules require, inter alia, that the hearings "be conducted

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informally in the chambers of a judge of the superior court, sitting as a juvenile court." (Cal. Rules of Court, rule 240(e).) The petitioner may, if she desires, be accompanied by a "support person" and "one or more parents or a guardian." (Ibid.) The hearing "may be conducted immediately if a courtroom or chambers is available; otherwise it shall be scheduled and conducted not more than three calendar days after the date of filing." (Id., rule 240(d).) If the court grants the petition, it must "immediately provide [the] petitioner with two certified copies of the Order Authorizing Abortion Without Parental Consent and the Confidential Affidavit of Minor," and explain to the petitioner that, to establish her identity, she should take one copy of each document to the provider of any abortion. (Id., rule 240(g).) If the court denies the petition, it must make "findings of facts and state the evidence supporting each finding in its [***174] order of denial." (Id., rule 240(h).) Moreover, if the court denies the petition, it must advise the petitioner of her right to appeal, that the appeal will be decided within five court days of filing the notice of appeal, that she is entitled to an attorney, and that the appeal and the attorney will not cost her or her parents or guardian any money. (Id., rule 240(i).) The court must immediately appoint counsel if petitioner has not been represented at the hearing. (Ibid.)

[**849] Assembly Bill No. 2274 was to become effective January 1, 1988. Before that date, in November 1987, plaintiffs American Academy of Pediatrics, California District IX; the California Medical Association; the American College of Obstetricians and Gynecologists, District IX; Planned Parenthood of Alameda-San Francisco; and Philip Darney, M.D., sought declaratory and injunctive relief, on the ground that the legislation violates the right to privacy under article I, section 1 of the California Constitution. [*386]

In December 1987, the superior court issued a preliminary injunction enjoining enforcement of any provision of Assembly Bill No. 2274. The People appealed. In October [***175] 1989, the Court of Appeal affirmed the order granting issuance of the preliminary injunction and remanded for trial. n1 In October and November 1991, the superior court conducted a 16-day trial, without a jury. Twenty-five expert witnesses testified, including physicians, psychologists, lawyers, counselors, and judges; an additional six expert witnesses were heard by deposition.

----------Footnotes----------

n1 The Court of Appeal concluded, inter alia, that the right to privacy under the California Constitution extends to the decision whether to undergo childbirth, does not distinguish between the right to privacy of adults and children, and may not be intruded upon absent a compelling state interest.

----------End Footnotes----------

In June 1992, the trial court issued a lengthy statement of decision and a judgment declaring Assembly Bill No. 2274 unconstitutional and permanently enjoining its enforcement. Specifically, it ruled that the legislation violates the rights to "autonomy" and "informational" privacy under California Constitution, article I, section 1, [***176] and the right to equal protection of the laws under article I, section 7.

The People appealed from the judgment. While the appeal was pending, we laid

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down, in Hill v. National Collegiate Athletic Assn. (1994) 7 Cal. 4th 1 [26 Cal. Rptr. 2d 834, 865 P.2d 633] (Hill), the standard for deciding claims under the state constitutional right to privacy. The Court of Appeal concluded that "although the superior court could not and did not specifically employ the approach established in Hill, its decision remains valid." It affirmed the judgment on the ground that Assembly Bill No. 2274 violates an unemancipated minor's right to autonomy privacy. It declined to decide whether it also violates her rights to informational privacy or to equal protection. We granted review.

II.

In resolving the present challenge to Assembly Bill No. 2274 under the California Constitution, we are bound by the " 'incontrovertible conclusion that the California Constitution is, and always has been, a document of independent force.' " (Committee to Defend Reproductive Rights v. Myers (1981) 29 Cal. 3d 252, 261 [172 Cal. Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118] (plur. opn. of Tobriner, [***177] J.).) Thus, although we may derive guidance from the numerous decisions of the United States Supreme Court concerning comparable statutes, we are not bound by its determinations. n2 Just as the rights guaranteed by the [**850] California Constitution are "not dependent on those [*387] guaranteed by the United States Constitution" (Cal. Const., art. I, @ 24), our interpretation of those rights, including the right to privacy, is not dependent on analogous federal decisions.

----------Footnotes----------

n2 The United States Supreme Court has addressed the constitutionality of parental notice and consent requirements in numerous decisions, recently in Lambert v. Wicklund (1997) 520 U.S. [117 S. Ct. 1169, 137 L. Ed. 2d 464]. (See also Planned Parenthood of Southeastern Pa. v. Casey (1992) 505 U.S. 833 [112 S. Ct. 2791, 120 L. Ed. 2d 674]; Ohio v. Akron Center for Reproductive Health (1990) 497 U.S. 502 [110 S. Ct. 2972, 111 L. Ed. 2d 405]; Hodgson v. Minnesota (1990) 497 U.S. 417 [110 S. Ct. 2926, 111 L. Ed. 2d 344]; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416 [103 S. Ct. 2482, 76 L. Ed. 2d 687]; Planned Parenthood Assn. v. Ashcroft (1983) 462 U.S. 476 [103 S. Ct. 2517, 76 L. Ed. 2d 733]; H. L. v. Matheson (1981) 450 U.S. 398 [101 S. Ct. 1164, 67 L. Ed. 2d 388]; Bellotti v. Baird (1979) 443 U.S. 622 [99 S. Ct. 3035, 61 L. Ed. 2d 797]; Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52 [96 S. Ct. 2831, 49 L. Ed. 2d 788].) Most recently, in Casey, a majority of the court upheld a Pennsylvania statute requiring that before an unemancipated minor under the age of 18 may obtain an abortion she must obtain the consent of one of her parents or opt for a judicial procedure that allows her to bypass the consent requirement. (505 U.S. at p. 899 [112 S. Ct. at p. 2832] (opn. of O'Connor, Kennedy, and Souter, JJ.) ["Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided that there is an adequate judicial bypass procedure."]; and id. at pp. 970-971 [112 S. Ct. at p. 2869] (conc. & dis. opn. of Rehnquist, C. J.) ["We think it beyond dispute that a State 'has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.' [Citation.] A requirement of parental consent to abortion, like myriad other restrictions placed upon minors in other contexts, is reasonably designed to further this important and legitimate state

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interest."].)

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Nor are the California and United States Constitutions identical. In 1972, the electors added the explicit right to "privacy" to the other inalienable rights enumerated in article I, section 1 of the state Constitution; "[t]he federal constitutional right of privacy, by contrast, enjoys no such explicit constitutional status." (Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252, 262-263 (plur. opn. of Tobriner, J.), italics in original.)

Moreover, "we have on numerous occasions construed the California Constitution as providing greater protection than that afforded by parallel provisions of the United States Constitution." (Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d at p. 261, fn. 4 (plur. opn. of Tobriner, J.).) Thus, we recognized state constitutional right of procreative choice in People v. Belous (1969) 71 Cal. 2d 954 [80 Cal. Rptr. 354, 458 P.2d 194], four years before the United States Supreme Court acknowledged the existence of a comparable right under the Fourteenth Amendment, in Roe v. Wade (1973) 410 U.S. 113 [93 S. Ct. 705, 35 L. Ed. 2d 147]: "The fundamental right of the woman to choose whether [***179] to bear children follows from the Supreme Court's and this court's repeated acknowledgment of a 'right of privacy' or 'liberty' in matters related to marriage, family, and sex." (People v. Belous, supra, 71 Cal. 2d at p. 963.) In Committee to Defend Reproductive Rights v. Myers, supra, a plurality reiterated the "basic recognition that, for a woman, the constitutional right of choice is essential to her ability to retain [*388] personal control over her own body." (29 Cal. 3d at p. 274 (plur. opn. of Tobriner, J.).)

Recently, in Hill, this court reaffirmed that the right to privacy under the California Constitution, including "central, autonomy-based privacy rights" in the area of procreation, is distinct from, and in some respects broader than, the federal right. (Hill, supra, 7 Cal. 4th at p. 49; see also id. at pp. 73-86 (dis. opn. of Mosk, J.).) For example, unlike under the Fourteenth Amendment, the right to privacy under the California Constitution applies to nongovernmental as well as governmental action.

Nevertheless, it bears emphasis that the present case, concerning the right of unemancipated minors to privacy in the area of reproductive [***180] choice, involves a question of first impression. Although Myers and Belous upheld an adult woman's right to be free of undue intrusion or burden in making the intimate and fundamental decision whether to bear a child, those precedents are not readily applicable to young adolescents who may lack the maturity and understanding to exercise informed choice without parental or other adult oversight.

This case is not about the morality of abortion. "The morality of abortion is not a legal or constitutional issue; it is a matter of philosophy, of ethics, and of theology. It is a subject upon which reasonable people can, and do, adhere to vastly divergent convictions and principles." (Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d at p. 284, fn. omitted (plur. opn. of Tobriner, J.).) Rather, "[o]ur obligation is to define the liberty of

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all, not to mandate our own moral code." (Planned Parenthood of Southeastern Pa. v. Casey, supra, 505 U.S. at p. 850 [112 S. Ct. at p. 2806].)

Nor, despite some of the more rhetorical assertions of the parties and amici curiae, does this case require us to choose between two extreme results, i.e., either [***181] "forc[ing] at least some minor mothers to carry unwanted pregnancies to term" or "prohibit[ing] parental involvement in an unemancipated minor's decision to terminate a pregnancy by abortion." Similarly, we are not called upon to [**851] approve or disapprove of Assembly Bill No. 2274 as a matter of social policy.

Instead, we must undertake the more modest, if difficult, task of determining whether Assembly Bill No. 2274 survives under those provisions of our Constitution protecting the rights to privacy and equal protection. I conclude that it does. [*389]

III.

The plurality purport to apply the standard articulated in our recent decision in Hill, supra, 7 Cal. 4th 1, for deciding claims under the state constitutional right to privacy. Instead, they reverse the principle, sub silentio.

a.

Under Hill, "a plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by [a] defendant constituting a serious invasion of privacy." (Hill, [***182] supra, 7 Cal. 4th at pp. 39-40.) Only then does the burden shift to the defendant to plead and prove "as an affirmative defense, that the invasion of privacy is justified because it substantively furthers one or more countervailing interests." (Id. at p. 40.)

As to the third threshold element–"conduct by a defendant constituting a serious invasion of privacy" (Hill, supra, 7 Cal. 4th at p. 40)–Hill emphasized that the invasion must be substantial. "No community could function if every intrusion into the realm of private action, no matter how slight or trivial, gave rise to a cause of action for invasion of privacy. . . . Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right." (Id. at p. 37; accord, id. at p. 68 (conc. & dis. opn. of George, J.) ["Under the third element adopted by the majority, a plaintiff is not entitled even to put a defendant to the burden of presenting a justification for its conduct unless the plaintiff can establish not only that the defendant's conduct infringes upon a constitutionally [***183] protected privacy interest, but that the invasion of privacy is 'sufficiently serious in [its] nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right.' "], italics in original; see also Heller v. Norcal Mutual Ins. Co. (1994) 8 Cal. 4th 30, 44 [32 Cal. Rptr. 2d 200, 876 P.2d 999].) n3

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n3 The test crafted by the majority in Hill was obviously intended to confine privacy litigation in the area of personal autonomy rights to invasions that are truly serious, i.e., offensive to a reasonable person. The majority in Hill appears to have been particularly concerned that, unless we so confined the right to privacy, it would become a "back door" legal theory in employment cases. I was the only member of the court dissenting in Hill. (7 Cal. 4th at pp. 73-110 (dis. opn. of Mosk, J.).) Two members of the present plurality filed concurring and dissenting opinions. (See id. at pp. 62-73 (conc. & dis. opn. of George, J.) [dissenting from the majority opinion "insofar as it fashions a novel general legal standard for the evaluation of privacy claims arising under the California Constitution" (id. at p. 62) but concurring in the disposition]; id. at pp. 58-62 (conc. & dis. opn. of Kennard, J.) [concurring in the "basic legal analysis" (id. at p. 58) but dissenting from the disposition].)

----------End Footnotes----------
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Plainly, Assembly Bill No. 2274 does not constitute an "egregious breach of the social norms underlying the privacy right" of unemancipated minors. [*390] It requires parental consent or a determination from a juvenile court judge that an unemancipated minor seeking an abortion is mature, or, even if not, that terminating her pregnancy is in her best interest. California has long required parental consent before an unemancipated minor can undergo most medical procedures. There is, moreover, under our statutes, a general presumption that an unemancipated minor, unlike an emancipated minor or an adult woman, is incapable of informed consent. n4

----------Footnotes----------

n4 Even under the medical emancipation provisions, the right to consent is limited to a handful of medical procedures and treatment. (See, e.g., Fam. Code, @ 6924, subd. (b)(1) & (2) [minor 12 years or older may consent to mental health treatment if, in the opinion of the attending professional, he or she is "mature enough to participate intelligently" in the services and would present a danger of serious physical or mental harm to self or to others without the treatment or is the alleged victim of incest or child abuse]; id., @ 6926 [minor 12 years of age or older may consent to medical care related to diagnosis or treatment of infectious, contagious, or communicable disease]; id., @ 6927 [minor 12 years of age or older may consent to medical care related to diagnosis or treatment for rape]; id., @ 6928 [minor may consent to medical care related to diagnosis and treatment for sexual assault]; id. @ 6929 [minor 12 years of age or older may consent to medical care and counseling related to diagnosis and treatment of drug or alcohol related problem].) Moreover, many of the provisions require parental notice and involvement. Thus, treatment for mental health problems, sexual assault, and alcohol or drug abuse requires involvement of the minor's parent or guardian unless, in the opinion of the professional treating or counseling the minor, it would be inappropriate. (Id., @ 6924, subd. (b)(2)(B), 6928, subd. (c), 6929, subd. (c).) The right of even an "independent minor" to confidentiality as against his or her parents is also limited under the "medical emancipation" statutes. Thus, although a minor 15 years of age or older may consent to medical care if he or she is living separate and apart from parents or guardian and is financially independent, "[a] physician and surgeon or dentist may, with or without the consent of the minor patient, advise the minor's parent or guardian of the treatment given or needed if the physician and

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surgeon or dentist has reason to know, on the basis of the information given by the minor, the whereabouts of the parent or guardian." (Id., @ 6922, subd. (c), italics added.)

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[***185]

[**852] Nor do our social values and traditions exist in a vacuum. Thus, it is of some significance that most states have required parental notice or consent before an unemancipated minor can terminate her pregnancy by an abortion. n5

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n5 States with consent or notification requirements for minors in force include: Alabama, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, West Virginia, Wisconsin, and Wyoming. Evidently the people in a majority of states, acting through their Legislatures, have rejected the conclusion that a requirement of parental consent or judicial authorization is detrimental to the health of such minors and to their family relationships.

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Moreover, the United States Supreme Court, in upholding parental notice and consent statutes, has repeatedly emphasized that such requirements [***186] are consistent with our national social norms about the interests of unemancipated minors. That an unemancipated minor might prefer, for any number of [*391] reasons, not to be required to obtain consent from a parent or appear before a juvenile court judge--and may not have been required to do so previously--does not mean, as the Court of Appeal concluded, that the legislative act is an "egregious breach of social norms" in requiring her to do so.

Although they advert to the Hill standard, a plurality now appear to have had second thoughts, at least with regard to how it applies in this case. Rather than return to first principles, however, they prefer to maintain the fiction that they are merely following the true holding in Hill, while, in effect, returning to a slightly modified version of the "compelling interest" standard expressly rejected in Hill. (See Hill, supra, 7 Cal. 4th at pp. 32-35; id. at pp. 62-70 (conc. and dis. opn. of George, J.).) Under their revised standard, to establish a "serious" invasion of privacy, a plaintiff need only establish a more than "de minimis" intrusion. Not surprisingly, they conclude that plaintiffs have done so [***187] here.

b.

No longer compelled by the old Hill standard--which now apparently fails to command a majority of the court--and unpersuaded by a new plurality's revised standard, I prefer to apply neither in assessing the validity of Assembly Bill No. 2274.

In my dissent in Hill, I reviewed, in its full context, the right to privacy declared in article I, section 1 of the California Constitution. I set out the

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law relating to a plaintiff's right of action thereunder as follows: "[T]he plaintiff must plead that he has a right of privacy and that it was interfered with by the defendant. The defendant may then plead, beyond simple denial, that any conduct on his part adversely affecting the right of privacy was justified by a compelling public need if it rose to the level of abridgment or that it was [**853] allowed as reasonable if it did not. The plaintiff must prove his right of privacy and the defendant's interference therewith by shouldering the generally applicable burden of proof by a preponderance of the evidence [citation]. The defendant must prove under the same burden the justification or allowance of his conduct." (Hill, supra, 7 Cal. 4th [***188] at pp. 85-86 (dis. opn. of Mosk, J.).)

Under that test, I conclude that plaintiffs have not properly pleaded and proved that Assembly Bill No. 2274 interferes with the right to privacy of unemancipated minors. That is because, with respect to whether an unemancipated minor has a legally protected privacy interest concerning reproductive choice, our consistent precedents compel the conclusion that she has such an interest but it is neither coequal with that of an adult, nor, in the case [*392] of an immature unemancipated minor, absolute even in the early stages of pregnancy. It is not the case, as the plurality erroneously conclude, that the legally protected privacy interest in procreative choice does not vary based on the maturity or cognitive ability of the person whose choice is at issue. n6

----------Footnotes----------

n6 It bears emphasis that the present case, concerning the right of unemancipated minors to privacy in the area of reproductive choice, involves a question of first impression. Although we have previously affirmed "[t]he fundamental right of [a] woman to choose whether to bear children" (People v. Belous, supra, 71 Cal. 2d at p. 963), that precedent is not readily applicable to young adolescent girls who may lack the maturity and understanding to exercise informed choice without parental or other adult oversight.

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[***189]

The privacy provision of the California Constitution does not expressly distinguish between adults and minors. It provides that "All people . . . have inalienable rights. Among these are . . . privacy." (Cal. Const., art. I, @ 1, italics added.) Nor does the ballot argument in favor of Proposition 11, which added the express right to privacy to the California Constitution, offer relevant extrinsic evidence on this point. It appears to draw no distinction between adults and children. "This amendment creates a legal and enforceable right of privacy for every Californian." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972), argument in favor of Prop. 11, p. 26.) Its definition refers broadly to the right to privacy as "the right to be left alone." (Id. at p. 27.)

Although we have not previously addressed the point in the context of the right to privacy, our analysis of the closely related right to liberty under the California Constitution requires the conclusion that the privacy interests of an unemancipated minor are qualitatively different from those of an adult and subject both to reasonable regulation by the state to an extent [***190] not permissible with adults and to control by the unemancipated minor's parents to

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an even greater extent.

In In re Roger S. (1977) 19 Cal. 3d 921 [141 Cal. Rptr. 298, 569 P.2d 1286], we assessed the state constitutional right of a 14-year-old unemancipated minor, committed to a state hospital on the application of his parent, to an opportunity for a precommitment hearing before a neutral fact finder. We concluded that "the personal liberty interest of a minor is less comprehensive than that of an adult, and a parent or guardian not only may but must curtail that interest in the proper exercise of his obligation to guide the child's development . . . ." (Id. at p. 927.)

We emphasized that although " '[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority,' " "the liberty interest of a minor is not coextensive with that of an adult." (In re Roger S., supra, 19 Cal. 3d at pp. 927-928.) An unemancipated [*393] minor's liberty interest is more limited both as related to his or her parents and as against the state. "Parents, of course, have powers greater than that of the state to curtail a [***191] child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected 'liberty' includes the right to 'bring up children. . . .' " (Id. at p. 928.) This parental right involving an unemancipated minor is not unlimited; it may be curtailed by the state " 'if it appears that parental decisions [**854] will jeopardize the health or safety of the child, or have a potential for significant social burdens.' " (Ibid.) "We emphasize here our assumption that the great majority of parents are well motivated and act in what they reasonably perceive to be the best interest of their children. That fact cannot, however, detract in any way from the child's right to procedures that will protect him from arbitrary curtailment of his liberty interest in . . . a drastic manner no matter how well motivated." (Id. at p. 936.)

The state may also curtail an unemancipated minor's constitutional right to liberty. " '[E]ven where there is an invasion of protected freedoms "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults." ' " (In re Roger S., supra, 19 Cal. 3d [***192] at p. 928.)

In In re Roger S., we balanced the liberty interest of a 14-year-old unemancipated minor as against his parents and as against the state regarding the right to due process in proceedings to admit him to a state mental hospital. We determined that "no interest of the state or a parent sufficiently outweighs the liberty interest of a minor old enough to independently exercise his right to due process to permit the parent to deprive him of that right." (In re Roger S., supra, 19 Cal. 3d at p. 931.) The unemancipated minor's liberty interest did not, however, entitle him to all the same procedural protections as an adult in the same situation. (Id. at p. 935.)

Although In re Roger S. involved the state constitutional right to liberty, a similar analysis applies to the closely related right to privacy. n7 Here, as in In re Roger S., we must balance the constitutional rights of an unemancipated [*394] minor--in this case the right to make the fundamentally private decision whether or not to bear a child--with the right of the parent, and of the state in loco parentis, to oversee critical decisions that may affect the welfare of the unemancipated [***193] minor, and, if appropriate, to decide what is in her best interest.

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n7 Indeed, in In re Roger S., we repeatedly relied on decisions of the United States Supreme Court concerning the right to privacy, including decisions specifically involving the right of minors to obtain abortions. Thus, we cited Planned Parenthood of Missouri v. Danforth, supra, 428 U.S. 52, in support of our conclusion that the liberty interest of a minor is qualitatively different from that of an adult. (In re Roger S., supra, 19 Cal. 3d at p. 931.) Danforth underscored the state's "somewhat broader authority to regulate the activities of children than of adults" and emphasized that, in holding the legislation at issue in that case invalid, it did not "suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy." (Planned Parenthood of Missouri v. Danforth, supra, 428 U.S. at pp. 74-75 [96 S. Ct. at pp. 2843-2844].) In a recent case implicating the privacy rights of unemancipated minors, the United States Supreme Court observed: "Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination--including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." (Vernonia School Dist. 47J v. Acton (1995) 515 U.S. 646, 654 [115 S. Ct. 2386, 2391, 132 L. Ed. 2d 564].) Significantly, the plurality not only decline to be guided by the numerous federal precedents directly in point, but also ignore our own precedents concerning the rights, and limitations thereon, of unemancipated minors, including In re Roger S.

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[***194]

From In re Roger S. we may derive the following principles. First, an unemancipated minor's constitutional rights are not equal to, but are more limited than, those of an adult, both as against his or her parents and as against the state. Second, an unemancipated minor has a right to procedures that will protect him or her from arbitrary and drastic curtailment of constitutional rights by his or her parents, or, presumably, the state, no matter how well motivated. Third, a mature unemancipated minor, as opposed to one who is immature, has an increased right to exercise her constitutional rights, but even a mature unemancipated minor is not entitled to all of the same procedural protections as an adult in the same situation. n8

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n8 In reviewing a Massachusetts abortion consent statute, Justice Powell wrote: "We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." (Bellotti v. Baird, supra, 443 U.S. at p. 634 [99 S. Ct. at p. 3043] (lead opn. of Powell, J.).) These grounds for distinguishing the rights of children from those of adults are deeply rooted in our culture and society. They are based on normative assumptions about the family, including the mutual interests of children and their parents and the benefits to children of parental guidance and control. As such, although not immutable or even pellucid, they are not subject to simple "proof" by the preponderance of the evidence through a

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battle of the experts, or to the vagaries of the adversarial process. In this case, the parties presented evidence and the trial court made extensive factual findings concerning the cognitive abilities of adolescents to make critical decisions and about the importance of the parental role in a child's exercise of her privacy interest concerning the decision to have an abortion. Those findings prove to be of limited application to an assessment of the constitutional interests involved in this case.

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[***195]

[**855] Applying those principles to the privacy right asserted here yields several elementary conclusions.

First, as a general matter, the right to privacy of an unemancipated minor is more limited than that of an adult. An unemancipated minor has limited privacy rights as against the state. The state can intervene in his or her interests, including by requiring or precluding medical treatment. (See, e.g., [*395] In re Roger S., supra, 19 Cal. 3d at p. 933; cf. Bellotti v. Baird, supra, 443 U.S. at p. 635 [99 S. Ct. at p. 3044] (lead opn. of Powell, J.) ["[T]he States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences."].)

By statute, the Legislature has in numerous areas curtailed an unemancipated minor's ability to make choices implicating privacy. Thus, before the age of 18, a minor is not "capable of consenting to and consummating marriage" without parental consent and a court order (Fam. Code, @ 302); nor can an unmarried minor legally consent to sexual intercourse (Pen. Code, @ 261.5). Among other restrictions implicating [***196] privacy, an unemancipated minor cannot obtain most medical and dental treatment, including most surgical procedures and even routine X-rays, without parental notification and/or consent, or, in certain circumstances, court consent. (Fam. Code, @ 6910, 6911, 6922; Health & Saf. Code, @ 123930; Pen. Code, @ 11171.) An unemancipated minor may not, before the age of 18, undergo voluntary sterilization, with or without parental consent. (Fam. Code, @ 6925, subd. (b)(1); Cal. Code Regs., tit. 22, @ 70701, subd. (a)(1).) No minor may, before the age of 18, donate any part of his body in the event of his death (Health & Saf. Code, @ 7150.5) or receive a permanent tattoo (Pen. Code, @ 653), again regardless of parental consent. Minors are also restricted from obtaining a driver's license (Veh. Code, @ 17700, 17701), or even using a tanning facility (Bus. & Prof. Code, @ 22706, subd. (b)(3) & (4)), without parental consent.

Such restrictions are based, in large part, on an unemancipated minor's disability of nonage, including the inability to enter into a binding contract. (See Civ. Code, @ 1556 ["All persons are capable of contracting, except minors, persons of unsound mind, and [***197] persons deprived of civil rights."].) They are premised on a fundamental social tenet that children require protection against their own immaturity and vulnerability in making decisions that may have serious consequences for their health and well-being. (See Ballard v. Anderson (1971) 4 Cal. 3d 873, 878 [95 Cal. Rptr. 1, 484 P.2d 1345, 42 A.L.R.3d 1392] [" 'The right of the infant to avoid his contracts is one conferred by law for his protection against his own improvidence and the designs of others.' "]; Stanford v. Kentucky (1989) 492 U.S. 361, 395 [109 S. Ct. 2969, 2989, 106 L. Ed. 2d 306] (dis. opn. of Brennan, J.) ["[M]inors are treated differently from adults in our

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laws, which reflects the simple truth derived from communal experience that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life. [P] . . . Adolescents 'are more vulnerable, more impulsive, and less self-disciplined than adults,' and are without the same 'capacity to control [*396] their conduct and to think in long-range terms.' "]; accord, Hodgson v. Minnesota, [***198] supra, 497 U.S. at p. 459 [110 S. Ct. at pp. 2949-2950] (conc. opn. of O'Connor, J.); Bellotti [**856] v. Baird , supra, 443 U.S. at p. 635 [99 S. Ct. at p. 3044] (lead opn. of Powell, J.) ["Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.' "].) n5

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n5 Some of the more obvious areas in which minors have fewer "rights" and greater restrictions on privacy and liberty than adults include the right to vote (Cal. Const., art. II, @ 2) and the "right" to purchase or consume alcoholic beverages (Bus. & Prof. Code, @ 25658, subd. (b)) or tobacco products (Pen. Code, @ 308, subd. (b)). Minors must also attend school (Ed. Code, @ 49100) and may be subject to curfews not imposed on adults (see In re Nancy C. (1972) 28 Cal. App. 3d 747, 758 [105 Cal. Rptr. 113]).

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[***199]

The Legislature has the power to remove the disability in certain instances, as in the so-called medical emancipation statutes. (Fam. Code, @ 6920 et seq.; see also Ballard v. Anderson, supra, 4 Cal. 3d at p. 878 [discussing express limitations on the power of unemancipated minors to disaffirm their contracts for medical services].) It is not, however, constitutionally required to do so. I discern no basis for concluding that the addition by the electors of an express privacy provision to article I, section 1 of the California Constitution was intended to remove entirely an unemancipated minor's disability of nonage--even though that disability necessarily places limits on liberty and privacy interests that do not apply to adults.

Unemancipated minors also have limited privacy interests as against a parent. We have recognized a parent's right to direct his or her child's upbringing as " 'a compelling one, ranked among the most basic of civil rights.' " (In re Roger S., supra, 19 Cal. 3d at p. 934; cf. Pierce v. Society of Sisters (1925) 268 U.S. 510, 535 [45 S. Ct. 571, 573, 69 L. Ed. 1070, 39 A.L.R. 468] ["The child is not the mere creature of the State; [***200] those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."].) Those rights include extensive power to direct the education of a child and to make critical decisions concerning medical treatment. The interest of a child in privacy yields to the necessity for parental guidance and oversight. A parent may, if he or she deems it advisable, give consent to most medical treat ment of his or her unemancipated minor children, so long as it will not jeopardize health or safety--even if the child objects. Certainly, a parent can compel an obdurate six-year-old--or sixteen-year-old--to submit to a tetanus vaccination.

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As observed by Richard M. Mosk, Motion Picture Ratings in the United States (1997) 15 Cardozo Arts & Ent. L.J. 135, 140, "Many aspects of our [*397] legal system are premised on the principle that parents have certain responsibilities toward their children. . . . If we do not recognize and act upon what we consider parental responsibility, we risk erosion of parental accountability." Indeed, parents have a statutory responsibility to properly supervise the well-being of their children. [***201] (Pen. Code, @ 270.)

Second, an unemancipated minor has a right to procedures that will protect her from arbitrary and drastic curtailment of her privacy interest by her parents, or, presumably, by the state, no matter how well motivated.

In In re Roger S., supra, 19 Cal. 3d 921, we held that the physical restraint and injury to reputation of involuntary confinement in a mental hospital are consequences so severe that an unemancipated minor who is mature enough to participate intelligently in the decision must be permitted to assert her right to due process. Although pregnancy involves a different set of considerations, arbitrary curtailment of a pregnant unemancipated minor's privacy interest may result in emotional, physical, and psychological detriment. "[T]he potentially severe detriment facing a pregnant woman [citation] is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like the attainment of the age of majority, [***202] is one of the traditional criteria for [**857] the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible. [P] Yet, an abortion may not be the best choice for the minor." (Bellotti v. Baird, supra, 443 U.S. at p. 642 [99 S. Ct. at pp. 3047-3048] (lead opn. of Powell, J.).)

Justice Powell emphasized the "unique nature of the abortion decision, especially when made by a minor," which requires the state "to act with particular sensitivity when it legislates to foster parental involvement in this matter." (Bellotti v. Baird, supra, 443 U.S. at p. 642 [99 S. Ct. at p. 3047] (lead opn. of Powell, J.).) Because of the gravity of the decision whether to bear a child, I am persuaded that an unemancipated minor's interest in privacy under the California Constitution is at least as strong as that under the United States Constitution: Neither a parent nor the state can exercise an absolute veto over a mature unemancipated minor's decision to terminate a pregnancy. (See Planned Parenthood of Missouri v. Danforth, [***203] supra, 428 U.S. at p. 74 [96 S. Ct. at p. 2843] ["[T]he State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent."]; Bellotti v. Baird, supra, 443 U.S. at p. 643 [99 S. Ct. at p. 3048] (lead opn. of Powell, [*398] J.) [if the state requires parental consent, it must provide for an alternative procedure for obtaining authorization for abortion].) The constitutionally protected interest in privacy of an unemancipated minor includes terminating her pregnancy if it is in her best interest to do so, or, if she is mature, if it is her informed decision to do so--even if her parent denies consent.

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Third, although an unemancipated minor has a privacy interest if she is mature, even a mature unemancipated minor is not entitled to all of the same freedoms and protections as an adult in the same situation. Her interest in privacy is subject to greater restrictions, which may include parental consent or notice or judicial authorization that would not be required in [***204] the case of an adult woman.

In In re Roger S., supra, we rejected the petitioner's suggestion that a minor is entitled to all the procedures needed before an adult may be involuntarily committed to a state mental institution. Instead, we required only that before a minor could be committed by his parents to a mental institution, he must be afforded procedures to ensure "a fair opportunity to establish that (1) he is not mentally ill or disordered, or that, (2) even if he is, confinement in a state mental hospital is unnecessary to protect him or others and might harm rather than improve his condition." (19 Cal. 3d at p. 935.) We emphasized that "[p]rocedures designed to establish these facts are necessary to accommodate both the parent's right to control his child's development and the state's interest in limiting parental control when parental action may harm the physical or mental health of the child." (Ibid.)

Assembly Bill No. 2274 accommodates the same balance of interests: The parent's right to control his child's development is advanced by the consent requirement, while the state's interest in limiting parental control when it might harm the physical or mental [***205] health of the child is advanced by providing a judicial bypass that includes a prompt hearing before a juvenile court judge, confidentiality, and a right to counsel. As in In re Roger S., supra, the procedures adequately "protect [her] from arbitrary curtailment of [her privacy] interest in such a drastic manner no matter how well motivated." (19 Cal. 3d at p. 936.)

The legislation at issue here alters the procedure for an unemancipated minor obtaining an abortion, but it does not impose a restriction that could fairly be said to violate her interest in privacy. Indeed, the legislation facilitates the ability of a mature unemancipated minor to obtain an abortion, regardless of parental consent, if she so chooses. It also facilitates the ability of an immature unemancipated minor to obtain an abortion, again regardless of parental consent, if it is in her best interest. Moreover, it preserves the confidentiality of the decision-making process. [*399]

[**858] IV.

Even under the plurality's newly revised standard, I conclude that Assembly Bill No. 2274 passes constitutional scrutiny.

Accepting the plurality's conclusion that plaintiffs have [***206] met the threshold requirement of establishing a more than "de minimis" breach of a privacy interest, the burden has shifted to the state to establish that Assembly Bill No. 2274 advances a compelling interest and is narrowly tailored. It has done so. The intrusion on any right to privacy enjoyed by an unemancipated minor is justified because it "substantively furthers one or more countervailing"--and, indeed, "compelling"--interests of the state.

The state unquestionably has an interest in protecting the physical and mental health of unemancipated minors. That interest is both legitimate and

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compelling. It includes assuring that an unemancipated minor who desires an abortion is capable of giving informed consent or, even if not, that an abortion is in her best interest.

Under prior law, absent any statutory requirement to the contrary, the determination of informed consent was left to the physician: "A minor of any age who is unable to convince competent medical authorities that she has the requisite understanding and maturity to give an informed consent for any medical treatment, including a therapeutic abortion, will be denied such treatment without the consent of either a parent [***207] or legal guardian." (Ballard v. Anderson, supra, 4 Cal. 3d at p. 883, fn. omitted.) As the trial court here underscored: "[t]he physician who performs the abortion must be satisfied that the minor is, in fact, capable of giving informed consent for that procedure and that her decision to have an abortion, is, in fact, the result of such informed consent. If the physician is not satisfied in this regard, he/she cannot and will not perform an abortion."

Assembly Bill No. 2274 provides that the determination of informed consent will, instead, be made by a parent or a juvenile court judge. It presumes that a parent--as opposed to a physician--is the person most likely to have knowledge of an unemancipated minor's maturity and ability to give informed consent, and, unlike a physician, is capable of determining, in the case of an unemancipated immature minor, what is in her best interest. It provides, however, that when that presumption fails, or when an unemancipated minor either cannot or, for whatever reason, will not, seek consent from a parent, a neutral juvenile court judge, as opposed to a physician, must make the determination whether she is mature enough to give informed [***208] consent, or, as a physician cannot do, authorize an abortion that is nonetheless in her best interest.

The trial court concluded that the legislation, though perhaps reasonable in purpose, does not, in fact, advance any compelling interest. It based the [*400] conclusion on extensive findings of fact and conclusions of law. Principally, it determined that abortion is "one of the safest medical procedures available for all women and, in particular, for teenagers"; that "for the great majority of minors, abortion has no serious medical, emotional, or psychological consequences and poses no significant risk to their physical well-being"; and that "with the exception of the small percentage of very young adolescents, again the great majority of minors possess the cognitive ability and maturity to make a fully informed choice."

The state contends that the evidence on these issues was conflicting and subject to debate; some of the findings are supported by studies whose results are, at the very least, counterintuitive, e.g., the finding that "adolescents as a group do not differ from adults as a group with respect to how they make the decision as to whether or not to have an [***209] abortion." n10 Moreover, it suggests [**859] that most of the statutes requiring parental consent for medical procedures are founded on the counterassumption that unemancipated minors are not, as a group, as capable as adults of making decisions about shortand long-term effects of medical procedures. In any event, it argues that the factual findings are immaterial; because the Legislature reasonably believed it was furthering legitimate interests, we must accept as true its "findings" to that effect. n11

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n10 For example, amici curiae point to an article criticizing the studies on which the trial court relied as overstating what is known about the cognitive ability of minors to make decisions concerning health care, including decisions about abortion. The article stresses that there are "few data supporting the assertion of equivalent decision-making competence . . . [and] few studies in which subjects made decisions or in which adolescent and adult abilities were compared." (Gardner et al., Asserting Scientific Authority: Cognitive Development and Adolescent Legal Rights (June 1989) Am. Psychologist 895, 898.) The authors conclude that "[t]he assertion of equal decision-making capacity was unwarranted . . . because at present little is known about the relative decision-making competence of adolescents and adults." (Id. at p. 899.) [***210]

n11 The legislative "findings," culled from opinions of the United States Supreme Court, are as follows: "(a) the medical, emotional, and psychological consequences of an abortion are serious and can be lasting, particularly when the patient is an immature minor; (b) the capacity to become pregnant and the capacity for exercising mature judgment concerning the wisdom of an abortion are not logically related; (c) minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences of their actions; (d) parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning a minor child; and (e) parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention subsequent to her abortion." (Stats. 1987, ch. 1237, @ 1, p. 4396.)

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We need not decide whether the trial court's findings, if supported by substantial evidence, are binding on this court, and whether they can override contrary legislative findings. Even accepting those [***211] findings by the trial court that are supportable, I conclude they do not establish that the compelling interest of protecting the physical and mental health of unemancipated [*401] minors is not substantively advanced. That is, in large part, because the determination whether any individual unemancipated minor is sufficiently mature to make a fully informed choice about abortion cannot rest on statistics about "adolescents as a group" or generalities about "the great majority of minors." Although this is particularly crucial in the case of "very young adolescents," absent a bright line rule concerning when an unemancipated minor is "mature," someone must in every case make the determination whether an individual unemancipated minor is capable of giving informed consent, or, if not, whether the procedure is in her best interest. (Ballard v. Anderson, supra , 4 Cal. 3d at p. 883.) n12

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n12 As Justice Powell noted in Bellotti, "the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors." (Bellotti v. Baird, supra, 443 U.S. at p. 644, fn. 23 [99 S. Ct. at p. 3049] (lead opn. of Powell, J.).) "Not only is it difficult to define, let alone determine, maturity, but also the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended." (Id.

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at pp. 643-644, fn. 23.) Indeed, one of plaintiffs' own experts testified that "[t]o assume a 13-year old with a physical appearance of someone five years her senior has advanced cognitive skills is to run the risk of failing to reach the patient: it is akin to a misdiagnosis." Significantly, in oral argument, plaintiffs conceded that the capacity to give informed consent varies in the case of each individual unemancipated minor; thus, in response to our question whether a 17-year-old is capable of giving informed consent, counsel answered, "Maybe, maybe not."

For the same reason, I also reject the notion that Assembly Bill No. 2274 might be deemed constitutional as applied to unemancipated minors under the age of 14 and unconstitutional only as to minors 14 years and older. As Justice Brennan observed, "18 is the dividing line that society has generally drawn, the point at which it is thought reasonable to assume that persons have the ability to make, and a duty to bear responsibility for their, judgments." (Stanford v. Kentucky, supra, 492 U.S. at p. 396 [109 S. Ct. at p. 2989] (dis. opn. of Brennan, J.).) It is true that a minor 14 years or older may, inter alia, petition for emancipation (Fam. Code, @ 7120), for a guardian (Prob. Code, @ 1510, subd. (a)) or for a guardian ad litem (Code Civ. Proc., @ 373), obtain a "junior permit" to operate a motor vehicle (Veh. Code, @ 12513), or, under certain conditions, be detained in jail (Welf. & Inst. Code, @ 207.1, subd. (d)), or found not to be a "fit and proper subject to be dealt with under the juvenile . . . law" (id., @ 707, subd. (a)). None of these statutes, however, suggests that a 14-year-old unemancipated minor must or should ordinarily be treated as an adult--indeed, they implicitly recognize that he or she is usually not mature enough to be so treated. Moreover, although some of these statutes arguably recognize the age of 14 as a dividing line between childhood and adolescence (as opposed to adulthood), the medical consent statutes have never created any bright line rule for adolescents of 14 years or older. Nor, in any event, was the evidence presented in the trial court sufficient to establish 14 as the age at which adolescents achieve sufficient maturity to give informed consent to medical procedures.

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[***212]

[**860] The Legislature could reasonably determine that the decision should not be left in the hands of the treating physician, if for no other reason than that, in the case of an unemancipated minor, unlike an adult, there is no presumption that she is capable of giving informed consent. n13 Nor, of course, is a physician's determination that an unemancipated minor has given informed [*402] consent legally dispositive. Moreover, a physician is ethically barred from performing an abortion without parental consent or judicial authorization--even if it is in the unemancipated minor's best interest --if she is not sufficiently mature to give informed consent. (Ballard v. Anderson, supra, 4 Cal. 3d at p. 883.) Assembly Bill No. 2274 facilitates a determination of whether abortion is in the unemancipated minor's best interest in such cases, even if she cannot, or will not, obtain parental consent. n14

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n13 In the leading case of Cobbs v. Grant (1972) 8 Cal. 3d 229, 242 [104 Cal. Rptr. 505, 502 P.2d 1], we held that "a person of adult years and in sound mind" has the right to determine whether to submit to lawful medical treatment. (

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Italics added; see also Health & Saf. Code, @ 7185.5, subd. (a) ["The Legislature finds that an adult person has the fundamental right to control the decisions relating to the rendering of his or her own medical care . . ."].) In the case of an unemancipated minor, however, there is no such absolute postulate. [***213]

n14 I do not, of course, doubt the professional integrity of conscientious physicians, including obstetricians. That does not mean, however, that the Legislature could not reasonably determine that the legal determination of an unemancipated minor's maturity should be made by judges, who, after all, are professionals of equal integrity.

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There are, of course, additional considerations. In any individual case, factors beyond mere medical judgment may weigh in favor of, or against, an abortion. A parent may offer a more complete and accurate perspective on those factors than a physician; so also might a neutral juvenile court judge in a bypass procedure. Further, unlike a parent acting in the unemancipated minor's overall best interest or a neutral judge, a physician may have a " 'direct, personal, substantial, pecuniary interest in reaching a conclusion' " (People v. Belous, supra, 71 Cal. 2d at p. 972), or a personal bias in favor of--or against--abortion. As Justice Stewart observed: "There can be little doubt that the State furthers a constitutionally permissible end by encouraging [***214] an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision of whether or not to bear a child. . . . It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." (Planned Parenthood of Missouri v. Danforth, supra, 428 U.S. at p. 91 [96 S. Ct. at p. 2851], fn. omitted (conc. opn. of Stewart, J.).) By the same token, she may not obtain objective counsel and support from the attending physician at an antiabortion, or "pro-life," pregnancy clinic.

The trial court's findings do not establish that voluntary parental involvement is detrimental. Indeed, on the contrary, the trial court determined, based on extensive uncontroverted evidence, that, ordinarily, encouraging unemancipated minors to consult with a parent about an abortion decision serves to promote the physical and emotional welfare of children. The legislation advances the state's compelling purpose to the extent that it encourages unemancipated minors to obtain parental consent.

The trial court also found, however, that "parental involvement laws do [***215] not serve to change the numbers." The finding is based primarily on a single [*403] study comparing the rate of involvement of parents in the abortion decisions of minors in Minnesota, which requires consent, and Wisconsin, which does not. (Blum et al., The Impact of a Parental Notification Law on Adolescent Abortion Decision-making (1987) 77 Am.J. Pub. Health 619.) The study is doubtful authority for the conclusion that enactment of the Minnesota parental involvement law had no effect on the percentage of adolescents who involved their parents in the abortion decision. n15 The additional evidence in point was [**861] conflicting and largely anecdotal. n16

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n15 The study involved interviews with a sample of minors from both states--148 in Minnesota and 37 in Wisconsin--who were about to undergo abortions at abortion clinics. More than half were 16 and 17 years old. None of the participants in the study was a minor who had decided to carry her pregnancy to term. The author of the study testified that the small number of minors interviewed in Wisconsin was not even intended to yield data from which to draw any conclusions about the rate of parental consent in Wisconsin. On the limited data, however, he concluded that the percentage of minors notifying one parent was about the same in both states. Significantly, under the Minnesota statute, enacted in 1981, a minor notifying only one parent must still obtain judicial authorization. (Minn. Stat. Ann. @ 144.343, subd. (6) (West 1989); see Hodgson v. Minnesota, supra, 497 U.S. at p. 481 [110 S. Ct. at p. 2961] (conc. & dis. opn. by Kennedy, J.) [holding that a Minnesota provision requiring two-parent notification of abortion decision of a minor unless she obtains a judicial bypass is constitutional].) The data indicated that the percentage of minors notifying two parents was greater in Minnesota than Wisconsin. [***216]

n16 Thus, one witness for plaintiffs testified about her personal knowledge of instances in which minors had informed their parents rather than opt for a judicial bypass under the Minnesota law. Another witness for plaintiffs offered the contrary opinion concerning the Massachusetts law, testifying that she did not believe it has encouraged parental involvement or communication. She also testified, however, that no statistics were kept concerning the number of minors involving their parents in abortion decisions prior to the enactment of the statute. She was also unaware of any study in any other state that has implemented a consent statute concerning the percentage of minors who involve their parents in their abortion decision. The trial court also relied on a Michigan study conducted between 1974 and 1975, before the implementation of a parental consent requirement, indicating that 57 percent involved a parent in the decision, roughly the same percentage who did so in Minnesota according to the results of the Blum study. According to Professor Blum's testimony, however, it would be "plain and simply bad science" to derive any conclusions about the impact of a consent statute by comparing studies involving different time periods and different data sets in that manner.

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In any event, however, even if the rate of parental involvement remained the same, that fact would not be dispositive. The legislation takes into account that not all emancipated minors will seek parental consent; a significant number may not. Indeed, in some instances, it could be positively detrimental to an unemancipated minor to inform her parents. Again, that does not mean that a physician should--or can--make the determination whether the unemancipated minor is mature, or whether an abortion is nevertheless in her best interest. The Legislature has provided for a judicial bypass in those instances. [*404]

The trial court concluded that a judicial bypass does not advance the state's purpose and would "result in more harm than help" for those unemancipated minors who lack a "realistic option" of consulting with their parents. The conclusion is unsound.

The trial court stated that the judicial bypass procedure "is of absolutely no benefit to minors": It "has no effect on a minor's ultimate decision with

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respect to abortion . . . [and] rather than providing a benefit to minors . . . poses a gratuitous threat to their physical and emotional well-being." The statements [***218] are based exclusively on expert testimony and submissions concerning judicial bypass procedures in other states. The trial court placed great emphasis on the testimony of three judges--two judges from Minnesota and one from Massachusetts--that they felt like "a rubber stamp" and did not "make any difference" in the decisions of the minors who petitioned for a judicial bypass. It also stressed the testimony of some out-of-state witnesses that adolescents using the bypass procedure manifest anxiety and find the experience "nerve-racking." n17

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n17 By contrast, a Minnesota judge, who had heard over a thousand petitions between 1981 and 1986, characterized the demeanor of the teenagers as "very calm. . . . I didn't really feel they were under a great deal of stress."

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Evidence concerning the way different statutes have operated in different states is of limited value in evaluating the constitutionality of Assembly Bill No. 2274. n18 Any [**862] assessment of the bypass system in the California [***219] juvenile courts must of necessity await implementation of the statute. We cannot determine, in advance of its implementation, that the judicial bypass under our legislation is pointless or unduly intimidating to minors, let alone that it poses a "threat to their physical and emotional well-being."

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n18 It is merely speculative to conclude that the California judicial bypass will resemble those of Minnesota or Massachusetts. First, the applicable statutes are different in crucial ways. Assembly Bill No. 2274 requires the consent of only one parent; the Minnesota statute, as discussed, requires notice to both parents or judicial authorization; the Massachusetts statute requires consent of both parents or judicial authorization. (Minn. Stat. Ann. @ 144.343, subd. (6); Mass. Gen. Laws Ann. ch. 112, @ 12S (West 1995).) Thus, in both states, as opposed to California, even if one parent is notified and consents, a minor must invoke a judicial bypass. No evidence was presented concerning the judicial bypass in any of the states requiring only one parent's consent. Moreover, we cannot derive a general conclusion from the experience of only two states out of the more than twenty-five with judicial bypass procedures. As one amicus curiae points out, the Indiana judicial bypass procedure (which requires written consent from one parent or judicial authorization) has apparently not operated as a "rubber stamp": "[W]hat is routine in Massachusetts is all but unheard of in Indiana . . . ." (Quoting Parental Consent to Abortion: How Enforcement Can Vary, New York Times (May 28, 1992) p. A1.)

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The findings are, moreover, largely beside the point. The purpose of the California judicial bypass is not to have an "effect" one way or another on a [*405] mature unemancipated minor's "ultimate decision with respect to abortion." Its purpose, instead, is to determine whether an unemancipated minor

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is, in fact, mature enough to give informed consent, and, if not, whether an abortion is in her best interest. Thus, even if the findings are accepted, i.e., that in most cases, an unemancipated minor seeking a judicial bypass will receive authorization for an abortion, the judicial bypass nonetheless advances substantial purposes not addressed by the prior law. It provides for a neutral judicial determination of each individual unemancipated minor's ability to give informed consent; it also allows immature unemancipated minors who cannot, for whatever reason, obtain parental consent, to obtain a determination by a juvenile court judge whether abortion is in her best interest and, if it is, authorization for the procedure.

Although requiring an unemancipated minor to obtain parental consent or a judicial bypass may result in some delay in obtaining an abortion, plaintiffs have [***221] not demonstrated that the legislation will result in a substantially increased health risk to unemancipated minors seeking abortion. An unemancipated minor who obtains parental consent may suffer no delay at all. Even if she uses the judicial bypass, once she files a petition with the juvenile court, the legislation requires that a hearing be set within three days and judgment must be entered within one day of submission of the matter. (Health & Saf. Code, @ 123450, subds. (b) & (c).) Any appeal must be set within five days of filing the notice for appeal and judgment must be entered within one court day of submission of the matter. (Id., subd. (d).) Use of the judicial bypass, then, may, at most, result in a delay of approximately two weeks. Although there is some degree of increased risk with delay, abortion remains, as the trial court found, "one of the safest medical procedures available for all women and, in particular, for teenagers." One physician testified that "it has the lowest rate of deaths associated with it and also the lowest rate of serious complications in comparison to any other operation which is widely performed in this country." n19

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n19 There is, in fact, no empirical evidence before us that the California law will actually result in a greater number of delayed abortions. A study on the impact of the Minnesota parental notification law over the period between August 1981 through March 1986 suggests that parental notification requirements may result in an overall decrease in the number of abortions for unemancipated minors--including late abortions. (Rogers et al., Impact of the Minnesota Parental Notification Law on Abortion and Birth (1991) 81 Am.J. Pub. Health 294, 296.) Thus, over the nearly six-year period covered by the study, "[t]he pre-enactment to post-enactment late abortion rate substantially declines for women of 15-17 years . . . ." (Id. at p. 296.) Although the late-to-early abortion rate increased, "a steep decline in early abortions, not an increase in late abortions, accounts for the increased late-to-early abortion ratio in 15-17 year old women." (Ibid.) The authors account for the increase in the proportion of late abortions as follows: "First, the law may have been more successful in preventing pregnancy among minors who would have had early abortions than among minors who would have had late abortions. A second possibility is that the law caused delays for a greater percentage of a declining number of minors seeking abortions. Regardless, the claim that the law caused more minors to obtain late abortions is unsubstantiated. In fact, the reverse is true. For ages 15-17, the number of late abortions per 1,000 women decreased following the enactment of the law. Therefore, an increased medical hazard due to a rising number of late abortions was not realized." (Id. at p. 297.)

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[**863] I also conclude that the judicial bypass is minimally intrusive: it is speedy, informal, and confidential. There is no substantial evidence supporting the [*406] trial court's "finding" that requiring an unemancipated minor to appear before a juvenile court judge for an expedited, informal hearing on these important questions--even if somewhat intimidating--poses a "gratuitous threat" to the physical and emotional well-being of either a mature or an immature unemancipated minor.

The state has carried its burden of showing that the legislation substantively furthers a "compelling interest" and that there were no less intrusive means of accomplishing its legitimate objectives. Accordingly, I proceed to the additional issues raised: whether Assembly Bill No. 2274 violates an unemancipated minor's right to informational privacy, and whether it violates the equal protection clause of article I, section 7 of the California Constitution.

V.

The trial court erred in concluding that the judicial bypass procedures violate an unemancipated minor's right to informational privacy, i.e., the interest in preventing dissemination or misuse of sensitive confidential [***223] information.

As Hill emphasized, informational privacy is the "core value furthered by the Privacy Initiative." (Hill, supra, 7 Cal. 4th at p. 35.) "A particular class of information is private when well-established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity." (Ibid.) The right to informational privacy is not, however, absolute. "Invasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest. . . . [P] . . . [I]f intrusion is limited and confidential information is carefully shielded from disclosure except to those who have a legitimate need to know, privacy concerns are assuaged." (Id. at p. 38.)

The disclosures required under Assembly Bill No. 2274 do not violate an unemancipated minor's reasonable expectation of privacy or seriously invade her privacy interest. An unemancipated minor who seeks parental consent for an abortion will be required to disclose the fact of her pregnancy to her parents. In light of an unemancipated minor's limited privacy interest [*407] [***224] as against her parents, I conclude that her reasonable expectation of privacy is not violated. She may, of course, elect not to tell her parents anything at all and seek a judge's authorization.

An unemancipated minor who seeks judicial authorization for an abortion will be required to provide certain confidential information to the juvenile court. The disclosures required are minimal; Assembly Bill No. 2274 requires no more information than is necessary to satisfy the state's compelling interest in protecting the physical and mental health of unemancipated minors, by providing a judicial bypass for determining whether an unemancipated minor seeking an

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abortion is mature, or, if she is not, whether an abortion is in her best interest.

Thus, Assembly Bill No. 2274 permits a petitioner to use only her initials or a pseudonym and requires the juvenile court to ensure that the unemancipated minor's identity is held confidential. (Health & Saf. Code, @ 123450, subd. (b).) Although the petitioner must file an affidavit with her real name and date of birth, any declarations bearing her real name must be sealed in an envelope marked confidential; all documents filed in any proceeding may [***225] be inspected only by the judge, specifically authorized court personnel, the petitioner, her attorney, and her guardian ad litem. (Id., subd. (c); Cal. Rules of Court, rule 240(c) & (j); Judicial Council Forms, form AB-110.)

The medical information required to be disclosed is minimal. The forms adopted by the Judicial Council require the unemancipated minor to state how she knows she is pregnant, how many weeks pregnant she is, whether she has talked to someone about the medical and emotional consequences, and where she receives her usual health care. They do not require disclosure of detailed [**864] medical information or history. (Cal. Rules of Court, rule 240 (j); Judicial Council Forms, form AB-105.)

VI.

Citing a plurality opinion in Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252, the trial court also concluded that Assembly Bill No. 2274 violates equal protection by distinguishing between two similarly situated groups: pregnant unemancipated minors who choose abortion and pregnant unemancipated minors who choose to carry their pregnancies to term. It concluded that because unemancipated minors who carry their pregnancies [***226] to term may obtain medical care without parental consent, unemancipated minors who seek to terminate their pregnancies cannot be required to obtain consent or judicial authorization.

I disagree. Assembly Bill No. 2274 does not unfairly discriminate on the basis of an unemancipated minor's reproductive choice. [*408]

In Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d 252, a plurality emphasized that "the decision whether to bear a child or to have an abortion is so private and so intimate that each woman in this state--rich or poor--is guaranteed the constitutional right to make that decision as an individual, uncoerced by governmental intrusion." (Id. at p. 284 (plur. opn. of Tobriner, J.), italics in original.) Accordingly, Myers invalidated budget act restrictions that eliminated Medi-Cal funding of abortion while maintaining Medi-Cal funding of prenatal care and childbirth, on the ground that the restrictions lacked compelling justification. Myers rejected the suggestion that restrictions on the funding of abortions relate to a legitimate state interest in encouraging childbirth: once the state " 'chooses to enter the constitutionally [***227] protected area of [reproductive] choice, it must do so with genuine indifference.' " (Id. at p. 285 (plur. opn. of Tobriner, J.).)

Myers is not controlling. n20

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n20 Nor, of course, is the Florida Supreme Court decision in In re T.W. (Fla. 1989) 551 So.2d 1186, on which the plurality place undue emphasis. The reasoning in that case is similar to Myers and should be rejected for the same reasons. I am more persuaded by the reasoning of the Massachusetts Supreme Court in Planned Parenthood v. Attorney General (1997) 424 Mass. 586 [677 N.E.2d 101] on the same point. "The claim that a pregnant unmarried minor is denied equal protection of the law fails because the classification made by [the statute] has a rational basis. The differences between an adult and a minor . . . and between the special considerations applicable to an abortion as opposed to some other intrusive medical procedure justify the special treatment that [it] accords to an unmarried pregnant minor who seeks to terminate her pregnancy." (Id. at p. 595, fn. 10 [677 N.E.2d at p. 106].)

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First, Assembly Bill No. 2274 does not effectively nullify the constitutional right to abortion, through the "power of the purse" or otherwise. (See Committee to Defend Reproductive Rights v. Myers, supra, 29 Cal. 3d at p. 284 (plur. opn. of Tobriner, J.).) Nor does it involve imposing a condition on the enjoyment of publicly conferred benefits. The Court of Appeal's attempt to draw an analogy between the benefit of government funding and "the 'benefit' of consent without parental involvement" is wholly unpersuasive; indeed, the parties agree that for most unemancipated minors, parental involvement--not its absence--is beneficial. More fundamentally, unlike the legislation in Myers, Assembly Bill No. 2274 affects unemancipated minors, whose rights and interests, as discussed, are distinct from those of adult women.

Plaintiffs contend that because the "right" to give birth is not burdened with a consent requirement, no such burden can be imposed on the "right" to an abortion. They argue that the Legislature's decision to burden only abortion cannot be justified as promoting the welfare of teenagers because the medical, psychological, and social consequences of choosing [***229] teenage [*409] motherhood are more profound than the consequences of terminating an unplanned pregnancy. Their suggestion that any burden on an unemancipated minor's reproductive choice must be "equal" FAILS TO WITHSTAND SCRUTINY: an unemancipated minor seeking an abortion and an unemancipated [**865] minor carrying a pregnancy to term are not similarly situated. n21

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n21 Plaintiffs' argument both proves too much and too little. Sterilization, which also implicates the right to privacy and to reproductive choice, is unavailable to unemancipated minors regardless of parental consent. (Cal. Code Regs., tit. 22, @ 70707.1, subd. (a)(1); Conservatorship of Valerie N. (1985) 40 Cal. 3d 143, 161 [219 Cal. Rptr. 387, 707 P.2d 760] ["[S]terilization is encompassed within the right to privacy," i.e., "the right of women to exercise procreative choice 'as they see fit.' "].) Yet, if plaintiffs' analysis is carried to its logical extension, the state could not preclude unemancipated minors from consenting to that procedure because it would discriminate on the basis of reproductive choice. On the other hand, although plaintiffs urge that every legislative finding in favor of mandatory parental or judicial consent for abortion applies with greater force to medical care for childbirth, they do not suggest that the Legislature could require a pregnant unemancipated minor to

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obtain consent from a parent or authorization from a judge to give birth or not to have an abortion. Nor do they suggest that the Legislature must withhold vital prenatal care from a pregnant unemancipated minor in the absence of parental consent if it requires consent for an abortion.

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Thus, the Legislature could legitimately require that a pregnant unemancipated minor's interest in consenting to medical treatment differs depending on whether she chooses to carry her fetus to term or to obtain an abortion. It could reasonably, and neutrally, determine, as a matter of policy, that in the case of an unemancipated minor who is pregnant and intends to bear a child the public health interest in allowing her to obtain medical care for herself and her fetus is overriding, regardless of parental approval and whether or not the unemancipated minor is mature. It is widely accepted that early prenatal care can reduce medical risks and assure a healthy outcome for both mother and child. At the same time, the Legislature could neutrally determine that voluntary abortion, which ordinarily involves an optional surgical procedure with significant consequences, requires mature consent or a determination that it is in the unemancipated minor's best interest.

Plaintiffs implicitly concede as much when they acknowledge that the Legislature may recognize legitimate differences between the needs of women who choose childbirth or abortion. A fortiori, it may also do so in the case [***231] of unemancipated minors making the same choice, whose needs and interests may require protections distinct from those accorded to adult women. n22

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n22 Although they fail to acknowledge their reliance on Myers, the plurality's reasoning is clearly derivative of the lead opinion in that case. The gist of their argument is that the Legislature cannot require parental consent for abortion because it permits unemancipated minors to obtain prenatal care and some other limited medical treatment without parental consent. As discussed, I disagree with the plurality's conclusion that the existence of limited medical emancipation statutes implicating reproductive choice establishes that Assembly Bill No. 2274 is "unnecessary" to protect the health of a minor or to support the parent-child relationship--is, indeed, positively detrimental to those compelling interests--and is, therefore, unconstitutional.

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Because I conclude, for all the foregoing reasons, that Assembly Bill No. 2274 withstands the constitutional [***232] challenges raised by plaintiffs, I would reverse the judgment of the Court of Appeal.

BAXTER, J.

I respectfully dissent.

Missing from the plurality and concurring opinions (hereafter majority) is a

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concise and accurate description of the change in California law occasioned by Assembly Bill No. 2274. This statute simply shifts the ultimate responsibility of determining whether a child is sufficiently mature to give informed consent to an abortion from the abortion provider to a neutral judge when a parent of the child has not consented to the abortion. Moreover, even when the judge concludes that a child is incapable of giving informed consent, an abortion may be ordered if the judge concludes it is in the child's best interest. Assembly Bill No. 2274 represents the collective judgment of the Legislature, patterned after numerous precedents of the United States Supreme Court, that this shift of responsibility is in the best interests of pregnant children and their parents.

The plurality opinion asserts that this shift of responsibility violates the California Constitution because the requirement that a court determine competence when a child seeks an abortion unless a [***233] parent has consented [**866] to the procedure impermissibly intrudes on the child's autonomy privacy. The opinion claims the Legislature has no reasonable basis for a conclusion that a physician, who is permitted to determine competence when a child seeks other pregnancy-related treatment, is unable to do so when the child wants an abortion. Moreover, it is suggested, mandating judicial consent is unreasonable because a child may be intimidated and reluctant to seek approval for an abortion if she must approach a judicial officer.

The plurality opinion simply substitutes the views and conclusions of the justices who ascribe to that opinion for those of the Legislature and ultimately constitutes judicial legislation. That physicians determine the competence of an adult to consent to abortion is irrelevant since children do not have the same autonomy privacy rights as adults. The observation that a physician may determine a child's competence to consent to other pregnancy-related medical treatment is also irrelevant. When a child seeks treatment related to a continuing pregnancy, the physician is not called upon to assess the child's competence to decide to continue [***234] the pregnancy. [*411]

The Legislature can reasonably conclude, based on universally acknowledged facts, that children do not have the same capacity for mature decisionmaking as adults. For that reason, and because children are more vulnerable to outside pressures, a higher degree of care in assessing competence and assured neutrality in making that assessment is necessary for their protection. The ipse dixit of the plurality opinion--that there is no reasonable basis upon which the Legislature might conclude that physicians are not able to determine a child's competence to consent to an abortion--is misdirected therefore. The ability of any particular physician to assess a child's competence to consent to abortion is not in issue. Rather, the question is whether the Legislature can reasonably conclude that children who seek abortion are in need of additional protection.

In concluding that either parental consent or a judicial determination of competence should be required, the Legislature has considered the potential impact on pregnant children of requiring parental consent and of shifting the responsibility for assessing the competence of a child unwilling to seek parental [***235] consent to the court. The Legislature has weighed the competing considerations and, following United States Supreme Court precedent, has reasonably concluded that the need for neutrality and extra protection outweighs the burden imposed on the child. Nothing in the California Constitution permits a court to override that legislative judgment.

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In short, the conclusion that a neutral judge rather than an abortion provider who may have an interest in the minor's decision should assess competence has been made by the Legislature. This court cannot say that the conclusion is wrong. Instead of acknowledging this constitutional reality, the plurality opinion focuses on implementing procedures which, with a single exception, have passed constitutional muster in every other state in which they have been challenged, and conclude that the California Constitution somehow prohibits imposing the burden of seeking judicial authorization for abortion on a pregnant minor. The child, they hold, must be permitted to seek an abortion without parental consent or a judicial determination that the child is either sufficiently mature to make such an important decision without parental guidance or that the [***236] abortion will be in the child's best interest.

That holding fails to accord deference to the Legislature, whose statement of its findings is more than adequate to explain the intent and purpose underlying Assembly Bill No. 2274. It is also sufficient to establish that the state has a substantial, and even compelling, interest in requiring that a neutral judge rather than an interested provider of abortions assess the child's ability to give voluntary and informed consent or determine whether [*412] an abortion is in the child's best interest. Moreover, in reaching a contrary conclusion, the majority's construction of the privacy provision of article I, section 1 of the California Constitution (article I, section 1) departs radically from any defensible view of the voters' intent when they added a right of privacy to the Declaration of Rights in 1972 and undermines the fundamental and constitutionally [**867] protected right of parents to guide and control the upbringing of their children.

I agree with Justices Mosk and Brown, who accurately and persuasively refute the claim of the majority that the precedents on which their opinions rest support a conclusion [***237] that Assembly Bill No. 2274 is invalid. I write separately, however, to emphasize both the limited nature of the change in minor's abortion rights brought about by Assembly Bill No. 2274 and the extent to which the majority are forced to revise, overturn, and ignore precedent that would otherwise compel the court to uphold Assembly Bill No. 2274 in order to invalidate this carefully crafted legislative effort.

I. REVISION OF THE LEGAL RULES GOVERNING FACIAL CHALLENGESTO THE CONSTITUTIONAL VALIDITY OF STATUTES

Only last year, this court, in a unanimous opinion, recognized and applied the well-established rule that a facial challenge to the constitutional validity of a statute must fail unless the statute is invalid in all of its applications, i.e., it must be invalid "under any and all circumstances." (Superior Court v. County of Mendocino (1996) 13 Cal. 4th 45, 60 [51 Cal. Rptr. 2d 837, 913 P.2d 1046], original italics.) Until today the rule in civil actions challenging the validity of a statute was: " ' "To support a determination of facial unconstitutionality, voiding the statute as a whole, . . . petitioners must demonstrate that the act's provisions inevitably pose [***238] a present total and fatal conflict with applicable constitutional prohibitions." ' " (Tobe v. City of Santa Ana (1995) 9 Cal. 4th 1069, 1084 [40 Cal. Rptr. 2d 402, 892 P.2d 1145].) n1

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n1 As we recognized in Tobe v. City of Santa Ana, supra, 9 Cal. 4th at pages 1095-1096, a criminal defendant challenging a statute on vagueness grounds may assert its facial invalidity if the statute prohibits a substantial amount of constitutionally protected conduct, but that rule does not apply to persons who are not presently charged with violating the statute.

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One might assume that, having conceded that there are children who are too immature to give informed consent to an abortion, as to whom a requirement of parental or judicial consent is constitutionally permissible, the majority would conclude that this attack on the facial validity of Assembly Bill No. 2274 fails. But no. Now the rules have changed, as they must if [*413] the majority is to invalidate this statute. Today the rule is that a facial [***239] challenge will be entertained if the statute "substantially impinges upon fundamental constitutional privacy rights in the vast majority of its applications." (Plur. opn. of George, C. J., ante, at p. 343.) It matters not that no minor is a party to this suit. No such exception to the rules governing facial challenges appears in this court's past decisions.

II. FAILURE TO ACCORD DEFERENCE TO LEGISLATIVE FINDINGS

The majority again (see Professional Engineers v. Department of Transportation (1997) 15 Cal. 4th 543 [63 Cal. Rptr. 2d 467, 936 P.2d 473]) decline to recognize the deference due legislative findings. The plurality opinion declares that no deference need be given if a statute affects a fundamental constitutional right. The concurring opinion of Justice Kennard appears to agree. Committee hearings, consideration of precedents of our nation's highest court, empirical research, and data from consultants, constituents, lobbyists, and others are henceforth irrelevant. The findings of a co-equal branch of government are meaningless. Instead, even in actions presenting only a facial challenge to a statute, evidence may be taken to demonstrate that the Legislature's conclusion [***240] that a statutory change is necessary or appropriate is wrong. The findings of a trial judge who hears only the evidence the parties to a single lawsuit choose, and can afford, to present will be paramount.

With due respect, that has not been and should not be the governing rule. "[D]ecisions dating back to the turn of the century require the courts to always presume that the Legislature acts with integrity and with [**868] an honest purpose to keep within constitutional restrictions and limitations. [Citations.] '[U]nder the doctrine of separation of powers neither the trial nor appellate courts are authorized to "review" legislative determinations.' [Citation.] Thus, the Legislature's determination of the facts warranting its action ' "must not be set aside or disregarded by the courts, unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted . . . ." ' [Citations.] In other words, legislative determinations are not to be judicially nullified unless they are manifestly unreasonable, arbitrary or capricious. [Citations.] Judges may not substitute their [***241] judgment for that of the Legislature if there is any reasonable justification for the latter's action. [Citations.] This means that if reasonable minds may differ as to the reasonableness of a legislative enactment [citations], or if the reasonableness of the enactment is fairly debatable [citation], the enactment must be upheld." [*414] (Professional

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Engineers v. Department of Transportation, supra, 15 Cal. 4th at pp. 575-576, fn. omitted (dis. opn. of Baxter, J.).)

The majority's refusal to accord due deference to the Legislature's findings so as to invalidate Assembly Bill No. 2274 thus violates the separation of powers doctrine and results in a further step toward government by the judiciary.

When the Legislature adopted Assembly Bill No. 2274, it recited the findings which satisfied that body of the need for a change in California law. As the majority concede, those findings are derived in part from opinions of the United States Supreme Court which accept the accuracy of stated factual propositions as support for their conclusions that statutes like Assembly Bill No. 2274 would not violate any privacy interest a pregnant minor has under the United States [***242] Constitution. (See, e.g., H. L. v. Matheson (1981) 450 U.S. 398, 408, 411 [101 S. Ct. 1164, 1172, 67 L. Ed. 2d 388]; Bellotti v. Baird (1979) 443 U.S. 622, 640 [99 S. Ct. 3035, 3046-3047, 61 L. Ed. 2d 797] (lead opn. by Powell, J.).) The majority nonetheless reject both the conclusions of the Supreme Court and those of the California Legislature, a co-equal branch of government and the branch charged with resolving policy questions such as those arising in the debate over minors' abortion rights, in favor of findings by a single trial judge which support the majority view that Assembly Bill No. 2274 is invalid.

As I, and Justice Ardaiz in his dissenting opinion in Professional Engineers v. Department of Transportation, supra, 15 Cal. 4th at page 586, have observed, a rule which permits a court to summarily disregard legislative findings has no support in our case law and does violence to the constitutional doctrine of separation of powers. (Cal. Const., art. III, @ 3.)

III

Rewriting Article I, Section 1, to Abrogate Parental Rights

In 1972, concerned that theretofore private information was too easily accessible in an age of increased "surveillance [***243] and data collection" (White v. Davis (1975) 13 Cal. 3d 757, 774 [120 Cal. Rptr. 94, 533 P.2d 222]), the citizens of this state added "privacy" to the rights secured in the Declaration of Rights of the California Constitution. At that time there was no reason to [*415] believe that this right of privacy encompassed anything other than informational privacy. n2

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n2 "[T]he moving force behind the new constitutional provision was a more focussed privacy concern, relating to the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society. The new provision's primary purpose is to afford individuals some measure of protection against this most modern threat to personal privacy.

"The principal objectives of the newly adopted provision are set out in a statement drafted by the proponents of the provision and included in the state's election brochure. The statement begins: 'The proliferation of government snooping and data collecting is threatening to destroy our traditional freedoms.

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Government agencies seem to be competing to compile the most extensive sets of dossiers of American citizens. Computerization of records makes it possible to create 'cradle-to-grave' profiles of every American. [P] At present there are no effective restraints on the information activities of government and business. This amendment creates a legal and enforceable right of privacy for every Californian.' (Italics in original.)

"The argument in favor of the amendment then continues: 'The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us.

" 'Fundamental to our privacy is the ability to control circulation of personal information. [(Italics in original.)] This is essential to social relationships and personal freedom. The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.

" 'Even more dangerous is the loss of control over the accuracy of government and business records of individuals. Obviously if the person is unaware of the record, he or she cannot review the file and correct inevitable mistakes. . . . [P] The average citizen . . . does not have control over what information is collected about him. Much is secretly collected . . . .' " (White v. Davis, supra, 13 Cal. 3d at pp. 774-775.)

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[***244]

[**869] Today, culminating a quarter-century of increasingly expansive reading of the privacy provision of article I, section 1, the majority hold that, by adopting a constitutional right to privacy, the voters of this state intended to grant children the right to obtain abortions without the knowledge or consent of their parents or even of a judicial officer acting in the best interest of a child too immature to give consent. They do so notwithstanding their acknowledgment that in this state a child's right to obtain any type of medical care has always been subject to parental and legislative control, and despite their recognition that other aspects of this newly recognized right of minors to "autonomy privacy" in reproductive matters, i.e., the sexual conduct necessary to exercise this "right," is also subject to parental and legislative control. (See, e.g., Pen. Code, @ 261.5.)

Nothing in the history of the privacy provision of article I, section 1, suggests that it was the intent of the voters that parents be denied their [*416] fundamental right to direct this aspect of the upbringing of their children, a right that finds its source in the federal Constitution [***245] n3 and that is also protected by the California Constitution. We have described this right of parents as "a compelling one, ranked among the most basic of civil rights." (In re B.G., supra, 11 Cal. 3d at p. 688.) Yet, abrogation of parental rights is the inevitable result of the majority's opinions. One looks in vain to

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the history and wording of the privacy provision to find an intent to limit parental rights. No such intent may be presumed, since parental rights are protected not only by the state Constitution, but also by the federal Constitution and may not be restricted by the state. Nor, even by the closest scrutiny of the entrails of the 1972 constitutional change can we discern a basis for concluding that the voters realized that they had excised, and intended to excise, from all other parental and state authority over minors, the right of parents and the state to control a child's access to abortion.

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n3 See Wisconsin v. Yoder (1972) 406 U.S. 205, 230 [92 S. Ct. 1526, 1540-1541, 32 L. Ed. 2d 15]; In re Roger S. (1977) 19 Cal. 3d 921, 934 [141 Cal. Rptr. 298, 569 P.2d 1286]; In re B.G. (1974) 11 Cal. 3d 679, 688 [114 Cal. Rptr. 444, 523 P.2d 244].)

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Moreover, the majority next relegate a competing constitutional interest--parental rights--to the status of simply another factor to be weighed as part of the state interest in Assembly Bill No. 2274. The majority fail to acknowledge that state and federal constitutional rights of a parent are not only a "compelling state interest" per se, but rights that were in no way diminished by the addition of a right of privacy to article I, section 1.

Of course, nothing said in these opinions has any impact on parents' rights under the federal Constitution. Whether the California Constitution, as construed by the majority to condition a parent's involvement in a minor daughter's decision to undergo an abortion on the child's willingness to seek the parent's advice and counsel, impermissibly intrudes on the parent's rights may yet be decided in [**870] another forum. The majority's wholesale abdication of the judiciary's obligation to protect and preserve parental rights under the California Constitution should not be overlooked, however.

Once again, past precedent is overlooked or ignored in the downgrading of the parents' constitutional rights. Until today, a court [***247] was obligated to use every effort to avoid finding that a newly adopted statute or constitutional provision effected a pro tanto repeal of an existing provision. Finding a pro tanto repeal is disfavored and is recognized only when there is a clear legislative intent that a newly enacted statute repeal existing legislation. (Manufacturers Life Ins. Co. v. Superior Court (1995) 10 Cal. 4th 257, 267 [41 Cal. Rptr. 2d 220, 895 P.2d 56].) That rule was equally applicable to possibly conflicting constitutional provisions. Rather than finding a conflict [*417] and resulting pro tanto repeal, whenever possible the two were to be harmonized so as to give effect to both to the extent possible. (City and County of San Francisco v. County of San Mateo (1995) 10 Cal. 4th 554, 563 [41 Cal. Rptr. 2d 888, 896 P.2d 181].)

Were these well-established rules applied here, of course, the majority would be hard pressed to explain their implicit conclusion that when a right to privacy was added to article I, section 1, the electorate intended a pro tanto repeal of existing, fundamental, constitutionally protected, parental rights. In Assembly Bill No. 2274 the Legislature has acted [***248] to preserve and

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advance parental rights by creating a procedure which encourages parental involvement in a child's decision on whether or not to undergo an abortion. There is nothing unreasonable, irrational, or capricious in the Legislature's conclusion that parental consent should be required wherever possible and that when it is not feasible for a pregnant minor to consult with a parent, a judge, rather than an abortion provider, should decide if the minor child is sufficiently mature to give informed consent. In the constitutional world of the majority, by contrast, any third party, even one interested in avoiding parental responsibility--the father of the unborn child--may "assist" the minor in a round of "physician shopping" until a doctor is found who can be convinced that the minor is capable of giving informed consent.

IV. THE REVISION OF HILL

This court has long since expanded the privacy right found in article I, section 1, to encompass "autonomy" as well as "informational" privacy. (See Committee to Defend Reproductive Rights v. Myers (1981) 29 Cal. 3d 252, 275 [172 Cal. Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118]; cf. People v. Privitera (1979) 23 Cal. 3d [***249] 697 [153 Cal. Rptr. 431, 591 P.2d 919, 5 A.L.R.4th 178]; White v. Davis, supra, 13 Cal. 3d 757.) Now, only three years after enunciating, in a carefully crafted opinion, the elements identi fied in Hill v. National Collegiate Athletic Assn. (1994) 7 Cal. 4th 1 [26 Cal. Rptr. 2d 834, 865 P.2d 633] (Hill), as necessary to establish a violation of that right of privacy, the plurality opinion finds Hill too restrictive. What appeared to be a relatively insignificant modification of those elements in the lead opinion in Loder v. City of Glendale (1997) 14 Cal. 4th 846 [59 Cal. Rptr. 2d 696, 927 P.2d 1200] (Loder), in which an "egregious" breach of social norms became a "serious" breach, now accelerates into a wholesale erosion of the threshold elements.

The plurality opinion confirms what Loder presaged. It is no longer necessary that a plaintiff establish the threshold elements identified in Hill [*418] before the state must justify challenged legislation. According to the lead opinion in Loder, a not too subtle "stalking horse" for this opinion, and now repeated in this plurality opinion, Hill did not establish any new requirements. [***250] The threshold elements are simply irrelevant if the court considering a privacy claim believes the complaint alleges conduct which "significantly affects" a protected privacy interest. It is no longer necessary to determine at the outset whether a reasonable expectation of privacy exists in the circumstances. (Hill, supra, 7 Cal. 4th at p. 40.) Were that still necessary, of course, the plurality opinion might have to focus immediately on whether and why minors have expectation of privacy in circumstances [**871] that have been subject to parental and state control since California joined the union, and how the procedures established by Assembly Bill No. 2274 constitute any "breach of the social norms underlying [a child's] privacy right." (Hill, supra, 7 Cal. 4th at p. 37.) Having not so subtly revised Hill, the plurality opinion is able to postpone discussion of this otherwise dispositive question until it is subsumed in its examination of "compelling state interest."

As with beauty, what may "significantly affect" a privacy interest lies in the eye of the judicial beholder. What is clear to this majority may be cloudy in the eyes of another [***251] court. The plurality opinion reformulates the crucial Hill threshold elements and the concurring opinion misapplies them leaving both the bench and bar asea in an ocean of uncertainty over the reach of the privacy provision of article I, section 1. Presumably a judge will know a

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violation when he or she sees one.

BROWN, J.,

Dissenting.--

I. INTRODUCTION

Today, the court invalidates the Legislature's effort to increase the involvement of parents in the abortion decisions of their unemancipated minor daughters, concluding the enactment cannot survive the exacting scrutiny of a compelling state interest test. To reach this result, the plurality must ignore the historic limits of the federal Constitution, rewrite the privacy provision of the state Constitution, and abrogate the constitutional interests of parents in an opinion that cannot survive any level of scrutiny, much less strict scrutiny.

In 1987, our Legislature enacted Assembly Bill No. 2274, 1987-1988 Regular Session (hereafter Assembly Bill 2274), which prohibits a physician from performing an abortion on an unemancipated minor without either the written consent of one of her parents or judicial authorization. [***252] Assembly Bill 2274 embodies a legislative effort to accommodate the competing interests [*419] involved in an unemancipated minor's abortion decision--the minor's interests, the interests of her parents, and the state's interest in her health and welfare. As this court and the United States Supreme Court have repeatedly cautioned, when dealing with the sensitive subject of abortion, "[o]ur obligation is to define the liberty of all, not to mandate our own moral code." (Planned Parenthood of Southeastern Pa. v. Casey (1992) 505 U.S. 833, 850 [112 S. Ct. 2791, 2806, 120 L. Ed. 2d 674] (hereafter Casey).) n1

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n1 Unless otherwise indicated, all further undesignated citations to Casey are to portions of the plurality opinion reflecting the views of a majority of the United States Supreme Court. (See Casey, supra, 505 U.S. at p. 922 [112 S. Ct. at pp. 2843-2844] (conc. and dis. opn. of Stevens, J.) [joining portions of the plurality opinion]; ibid. (conc. and dis. opn. of Blackmun, J.) [same].)

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In our assessment of liberty interests, we would do well to heed the advice of Justice Holmes: "[T]he word 'liberty' . . . is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law." (Lochner v. New York (1905) 198 U.S. 45, 76 [25 S. Ct. 539, 547, 49 L. Ed. 937] (dis. opn. of Holmes, J.).) "The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. . . . No

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formula could serve as a substitute, in this area, for judgment and restraint." (Poe v. Ullman (1961) 367 U.S. 497, 542 [81 S. Ct. 1752, 1776, 6 L. Ed. 2d 989] (dis. opn. [***254] of Harlan, J.).)

This is such a case. Its resolution demands delicate balance and exquisite restraint. We are faced with one of the most troubling paradoxes of human endeavor. Although liberty may find "no refuge in a jurisprudence of doubt" (Casey, supra, 505 U.S. at p. 844 [112 S. Ct. at p. 2803]), "[t]he spirit of liberty is the spirit which is not too sure that it is right" (Hand, The Spirit of Liberty, in [**872] The Spirit of Liberty (Dilliard edit. 1974) p. 190), for too much certainty is the surest way to extinguish liberty altogether. (Cf. Washington v. Glucksberg (1997) U.S. , [117 S. Ct. 2258, 2275, 138 L. Ed. 2d 772] ["Throughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide. Our holding permits this debate to continue, as it should in a democratic society."].)

Courts must speak with clarity and precision when the available tools are adequate to the task at hand, but when the claim at issue involves fundamentally moral and philosophical questions as to which there is no clear answer, [*420] [***255] courts must remain tentative, recognizing the primacy of legislative prerogatives. The temptation always exists for judges to "wrap up their veto" of a legislative policy in a "protective veil of adjectives such as . . . 'reasonable,' 'inherent,' [or] 'fundamental,' . . . whose office usually, though quite innocently, is to disguise what they are doing and impute to it a derivation far more impressive than their personal preferences, which are all that in fact lie behind the decision." (Hand, The Bill of Rights (Harv.U. Press 1958) p. 70.) Whether judges act innocently or deliberately, the harm to the body politic is the same. The very real danger we face when "courts foreclose ordinary politics in one area after another" is that the "democratic elements in our republican experiment will wither away, while new forms of tyranny by the powerful few arise." (Scalia, Comment by Glendon in A Matter of Interpretation (Princeton U. Press 1997) p. 113.) "WHOM SHOULD WE FEAR MORE: an aroused populace, or the vanguard who know better than the people what the people should want?" (Ibid.)

The danger is most acute when the language to be interpreted is amorphous, vague, or general enough [***256] to provide broad scope for judicial policymaking and the court insists on creating its own standard, untethered to either the language, as used by its authors or, in the case of a constitution, the apparent intent of those who ratified it. The word "privacy" as used in the California Constitution, for example, has a meaning which can easily be derived from its history, context, and text. The controlling opinion reads this history backwards to infuse "privacy" with a meaning it did not clearly possess at the time of its enactment. As Jefferson warned us, "Laws are made for men of ordinary understanding, and should, therefore, be construed by the ordinary rules of common sense. Their meaning is not to be sought for in metaphysical subtleties, which may make anything[] mean everything or nothing, at pleasure." (15 The Writings of Thomas Jefferson (Lipscomb edit. 1903) p. 450.)

The plurality goes to extraordinary lengths to declare Assembly Bill 2274 unconstitutional. The fundamental flaw running throughout its analysis is the utter lack of deference to the ordinary constraints of judicial decisionmaking--deference to state precedent, to federal precedent, to the

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collective judgment [***257] of our Legislature, and, ultimately, to the people we serve. The plurality begins by reinventing the legal standards governing facial constitutional challenges and proceeds to misapply its own new standards. Then, without any analytical foundation, it invokes the doctrine of independent state grounds, thereby disposing of two decades of highly pertinent United States Supreme Court precedent. Next, the plurality all but eliminates the threshold elements of a state privacy cause of action and misanalyzes what little remains of the elements. Finally, it subjects Assembly Bill 2274 to an [*421] inherently insurmountable level of scrutiny, expressly disavowing any requirement of deference to the Legislature along the way.

A justice "is not to innovate at pleasure. He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness." (Cardozo, The Nature of the Judicial Process, in Selected Writings of Benjamin Nathan Cardozo (Hall edit. 1947) p. 164.) It is impossible to know the motives of any other judge. I do not purport to do so here. It is fair, however, to criticize the reasoning and justifications presented in a judicial opinion. In this case, [***258] the court's reliance on highly questionable premises to invalidate so eminently reasonable a statute invites cynicism.

I dissent.

II. [**873] FACIAL CONSTITUTIONALITY OF ASSEMBLY BILL 2274

Not until two-thirds of the way through its opinion does the plurality address a dispositive procedural fact--namely, that this case involves a facial challenge to Assembly Bill 2274. "To support a determination of facial unconstitutionality, voiding the statute as a whole, [plaintiffs] cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute . . . . Rather, [plaintiffs] must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (Pacific Legal Foundation v. Brown (1981) 29 Cal. 3d 168, 180-181 [172 Cal. Rptr. 487, 624 P.2d 1215], second italics added; see also Superior Court v. County of Mendocino (1996) 13 Cal. 4th 45, 60-61 [51 Cal. Rptr. 2d 837, 913 P.2d 1046]; Tobe v. City of Santa Ana (1995) 9 Cal. 4th 1069, 1084 [40 Cal. Rptr. 2d 402, 892 P.2d 1145]; [***259] Arcadia Unified School Dist. v. State Dept. of Education (1992) 2 Cal. 4th 251, 267 [5 Cal. Rptr. 2d 545, 825 P.2d 438].) In order to succeed on a facial challenge, plaintiffs must show that a statute or ordinance is unconstitutional "under any and all circumstances." (Superior Court v. County of Mendocino, supra, 13 Cal. 4th at p. 60, original italics; see also Tobe v. City of Santa Ana, supra, 9 Cal. 4th at p. 1111 (conc. opn. of Werdegar, J.) ["in all its possible applications."].) Plaintiffs have failed to make the requisite showing in this case.

There can be no question that Assembly Bill 2274 is constitutional as to minors who lack the capacity to give informed consent. As the plurality acknowledges (see plur. opn., ante, at pp. 355, 357), under our decision in Ballard v. Anderson (1971) 4 Cal. 3d 873 [95 Cal. Rptr. 1, 484 P.2d 1345, 42 A.L.R.3d 1392], "there is an additional limitation implicit in each of the medical emancipation statutes: the minor must be of sufficient maturity to [*422] give an informed consent to any treatment procedure. [Citation.] A minor of any age who is unable to convince competent medical authorities [***260] that she has the requisite understanding and maturity to give an informed

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consent for any medical treatment, including a therapeutic abortion, will be denied such treatment without the consent of either a parent or legal guardian." (Id. at p. 883, second italics added & fn. omitted.) Subsequent to our decision in Ballard, the United States Supreme Court held that a minor's federal constitutional right to an abortion includes a right to nontherapeutic abortions and requires that, in lieu of parental consent, "the State must provide an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests." (Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416, 439-440 [103 S. Ct. 2481, 2497-2498, 76 L. Ed. 2d 687].) Thus, as the plurality must ultimately concede, the bypass procedure established by Assembly Bill 2274 is not only constitutional but constitutionally mandated for minors who are not capable of giving informed consent. (See plur. opn., ante, at p. 359, fn. 34.) The state must provide such [***261] a minor with a bypass option in addition to parental consent. (See People v. Brisendine (1975) 13 Cal. 3d 528, 548 [119 Cal. Rptr. 315, 531 P.2d 1099 [state court's interpretation of state law cannot "restrict the liberties guaranteed the entire citizenry under the federal charter"].) n2 Because Assembly Bill 2274 is [**874] not unconstitutional in all its possible applications, it clearly survives a facial constitutional challenge.

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n2 At oral argument, plaintiffs' counsel suggested that when a minor is not capable of giving informed consent and does not want to seek parental consent, her physician should initiate a child protective services investigation. This suggestion is both grossly overintrusive and legally insufficient to comply with the governing federal constitutional mandate. The plurality's suggestion that a common law judicial bypass procedure could be invoked for such immature minors (plur. opn., ante, at p. 359, fn. 34) is equally unworkable. How a minor who is too immature to give informed consent can possibly be expected to navigate the perils of an uncodified judicial bypass procedure escapes me. Assembly Bill 2274, by contrast, assists such a minor by authorizing the appointment of a guardian ad litem and by guaranteeing the right to court-appointed counsel. (See former Health & Saf. Code, @ 25958, subd. (b), now @ 123450, subd. (b).)

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Since Assembly Bill 2274 does not inevitably pose a present total and fatal conflict with applicable constitutional prohibitions, the plurality must resort to an overbreadth analysis. According to the plurality, such an analysis is required when "a statute, as written, broadly impinges upon fundamental constitutional privacy rights in its general, normal, and intended application." (Plur. opn., ante, at p. 343; see also ibid. [direct and substantial impingement]; id. at p. 348 [broad and direct impingement].) Whatever the merits of this assertion in the abstract, there is no basis for resorting to the doctrine of overbreadth in this case. At the very most, the evidence at trial established what Assembly Bill 2274 was "likely" to do, "in some instances," "at least to some extent." (Plur. opn., ante, at pp. 355, 359; see also post, [*423] at p. 439.) The statute does not impose a broad, direct, and substantial impingement in its general, normal, and intended application. n3 (See post, at pp. 429-439.)

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n3 Nor does federal law support the use of an overbreadth analysis. Although the plurality asserts that Casey, supra, 505 U.S. 833, extended the overbreadth doctrine to the abortion context (see plur. opn., ante, at pp. 345-346), in reality this is an open question. (See Washington v. Glucksberg, supra, U.S. at p. [117 S. Ct. at p. 2275] (conc. opn. of Stevens, J.) [the issue is "the subject of debate" within the high court].) In any event, even if the passage the plurality quotes from Casey could somehow be deemed to have extended the doctrine, the very next paragraph of Casey, which the plurality fails to quote, explicitly limits the extension to adult women: "This conclusion is in no way inconsistent with our decisions upholding parental notification or consent requirements. [Citations.] Those enactments, and our judgment that they are constitutional, are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart. We cannot adopt a parallel assumption about adult women." (Casey, supra, 505 U.S. at p. 895 [112 S. Ct. at p. 2830].)

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Moreover, as one of the plurality's principal authorities explains, before a court declares a statute to be unconstitutional on overbreadth grounds, it must be "convinced that the [legislative] purpose can be achieved by regulations drawn more narrowly and precisely than is attempted by the statute [at issue]." (City of Carmel-by-the-Sea v. Young (1970) 2 Cal. 3d 259, 270 [85 Cal. Rptr. 1, 466 P.2d 225, 37 A.L.R.3d 1313].) Although the plurality suggests "there may be a small subclass of persons covered by [Assembly Bill 2274] as to whom a similar but much more narrowly drawn statute constitutionally could be applied" (plur. opn., ante, at p. 343), in fact, the line drawn by the statute--age 18--is the only sensible one to draw. Plaintiffs themselves concede that the capacity to give informed consent varies in the case of each individual unemancipated minor. Thus, in response to our inquiry whether a 17-year-old girl is capable of giving informed consent, counsel answered, "Maybe, maybe not." (See Bellotti v. Baird (1979) 443 U.S. 622, 643-644, fn. 23 [99 S. Ct. 3035, 3048, 61 L. Ed. 2d 797] (plur. opn. of Powell, J.) (hereafter Bellotti II) ["[T]he peculiar [***264] nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors."]; see also Akron v. Akron Center for Reproductive Health, supra, 462 U.S. at pp. 441-442 [103 S. Ct. at pp. 2498-2499] [same]; Stanford v. Kentucky (1989) 492 U.S. 361, 396 [109 S. Ct. 2969, 2989, 106 L. Ed. 2d 306] (dis. opn. of Brennan, J.) [". . . 18 is the dividing line that society has generally drawn, the point at which it is thought reasonable to assume that persons have an ability to make, and a duty to bear responsibility for[,] their[] judgments. . . . [A]ge 18 is a necessarily arbitrary social choice as a point at which to acknowledge a person's maturity and responsibility[.] [G]iven the different developmental rates of individuals, it is in fact 'a conservative estimate of the dividing line between adolescence and adulthood. Many of the psychological and emotional changes that an [**875] adolescent experiences in maturing do not actually occur until the early 20s.' "].) [*424]

Assembly Bill 2274 does not inevitably pose a present total and fatal conflict with applicable constitutional prohibitions, [***265] and there is no

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basis for applying an overbreadth analysis in this case. Plaintiffs' facial challenge to the statute should be rejected on this basis alone.

III. INDEPENDENT STATE GROUNDS

The plurality candidly acknowledges that the Legislature drafted Assembly Bill 2274 to comply with well-established United States Supreme Court precedent. (See plur. opn., ante, at pp. 324-325.) Nevertheless, the plurality, without any analysis or discussion, relegates nine United States Supreme Court decisions addressing the validity of parental involvement statutes to a single footnote (see id. at p. 324, fn. 11), resurrecting their language out of context only when necessary to reach its ultimate destination. (See, e.g., id. at pp. 333, 336, 337-338, fn. 22, 344, 350, fn. 26, 354, 359, fn. 34.) The plurality's wholesale departure from more than 20 years of high court precedent is itself wholly unprecedented.

In an attempt to justify the departure, the plurality relies on the fact that under the California Constitution the right to privacy is explicit whereas under the United States Constitution the right is implicit. (See plur. opn., ante, at p. 326.) Granted. [***266] The express phrase "and privacy" was added to article I, section 1 of the California Constitution by an initiative adopted by the voters on November 7, 1972 (hereafter the Privacy Initiative). But it does not follow that we should ignore United States Supreme Court precedent in defining the state right. To the contrary, one of the principal sources we look to in order to discern the meaning of "privacy" as used in the Privacy Initiative is the "federal constitutional right, derived from various provisions of the Bill of Rights, that took distinct shape in United States Supreme Court decisions in the 1960's safeguarding the rights of individuals and private entities from government invasion." (Hill v. National Collegiate Athletic Assn. (1994) 7 Cal. 4th 1, 23 [26 Cal. Rptr. 2d 834, 865 P.2d 633] (hereafter Hill).) "The ballot arguments refer to the right to privacy as 'an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, and Ninth Amendments to the U.S. Constitution,' thereby invoking the federal constitutional right to privacy as recognized in decisions of the United States Supreme Court. [Citation.] [P] The [***267] Privacy Initiative was placed before the voters following a two-thirds vote of each house of the Legislature. (Cal. Const., art. XVIII, @ 1.) Testimony before the Assembly Constitution Committee, together with staff reports and analyses prepared for that committee and the Senate Constitution Committee, makes explicit reference to the federal constitutional right to privacy, particularly as it developed beginning with Griswold v. Connecticut (1965) 381 U.S. 479 [14 L. Ed. 2d 510, 85 S. Ct. 1678]." (Hill, supra, 7 Cal. 4th at p. 28.) [*425]

Where, as here, a state constitutional protection was modeled on a federal constitutional right, we should be extremely reticent to disregard United States Supreme Court precedent delineating the scope and contours of that right. As this court unanimously recognized in Raven v. Deukmejian (1990) 52 Cal. 3d 336 [276 Cal. Rptr. 326, 801 P.2d 1077], relied on by the plurality, "[a]s early as 1938, we stated that 'cogent reasons must exist before a state court in construing a provision of the state Constitution will depart from the construction placed by the Supreme Court of the United States on a similar provision in the [***268] federal Constitution.' [Citations.] [P] [Our cases] acknowledge and support a general principle or policy of deference to United States Supreme Court decisions, a policy applicable [**876] in the absence of

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good cause for departure or deviation therefrom." (Id. at p. 353, italics omitted; see also id. at p. 356 (conc. and dis. opn. of Mosk, J.) [joining the majority opinion on this issue].)

In the context of an unemancipated minor's abortion decision, it is particularly appropriate to seek guidance from the high court and to follow this general policy of deference. The nine decisions addressing the constitutionality of parental involvement statutes reflect the collective wisdom of sixteen Supreme Court justices gleaned over the course of more than two decades. In Casey, the most recent parental consent decision, eight of the court's nine justices concluded that parental consent statutes such as California's were constitutional. (See Casey, supra, 505 U.S. at pp. 899-900 [112 S. Ct. at p. 2832] (plur. opn. of O'Connor, Kennedy, and Souter, JJ.); id. at p. 922, fn. 8 [112 S. Ct. at pp. 2843-2844] (conc. and dis. opn. of Stevens, [***269] J.); id. at pp. 970-971 [112 S. Ct. at pp. 2868-2869] (conc. and dis. opn. of Rehnquist, C. J.).) As I explain in greater detail below (see post, at pp. 429-439), the Supreme Court's decisions in this area reflect a delicate balancing of a number of competing interests.

The only "cogent reason" the plurality articulates for departing from federal precedent is that the plurality opinion in Committee to Defend Reproductive Rights v. Myers (1981) 29 Cal. 3d 252 [172 Cal. Rptr. 866, 625 P.2d 779] (hereafter Myers), "clearly demonstrates that the state Constitution has been interpreted to provide greater protection of a woman's right of choice than that provided by the federal Constitution as interpreted by the United States Supreme Court." (Plur. opn., ante, at p. 327, italics added.) Myers does not support this proposition. The Myers opinion concluded only that "the protection afforded the woman's right of procreative choice as an aspect of the right of privacy under the explicit provisions of our Constitution is at least as broad as that described in Roe v. Wade [(1973) 410 U.S. 113 (93 S. Ct. 705, 35 L. Ed. 2d 147)]." (Myers, supra, [***270] 29 Cal. 3d at p. 281, italics added (plur. opn. of Tobriner, J.); see also Conservatorship of Valerie [*426] N. (1985) 40 Cal. 3d 143, 163 [219 Cal. Rptr. 387, 707 P.2d 760] [state and federal Constitutions afford "similar protection" to procreative choice].) Only by broadly misreading Myers can the plurality here avoid the analytical force of federal authority.

Assuming arguendo the state Constitution does afford greater protection to procreative choice, United States Supreme Court precedent surely remains relevant. n4 More importantly, in the context of this case, the fact that the state right to privacy may afford greater protection does not alter the fundamental nature of the interests to be balanced. Rather, to the extent the state right to privacy affords greater protection to an unemancipated minor's procreative choice, it affords at least commensurate protection to her family's right to privacy. (See Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972), argument in favor of Prop. 11, p. 27 ["The right of privacy is the right to be left alone. It is a fundamental and compelling [**877] [***271] interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose." (Italics added.)].)

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n4 An examination of the plurality's selective quotation from the case law is

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telling. The plurality quotes Urbaniak v. Newton (1991) 226 Cal. App. 3d 1128 [277 Cal. Rptr. 354] for the proposition that " 'the state right of privacy has been held to be broader than the federal right.' " (Plur. opn., ante, at p. 327.) The complete passage from the case states that "[a]lthough the state right of privacy has been held to be broader than the federal right [citation], California courts construing article I, section 1, have looked for guidance to federal precedents." (Urbaniak v. Newton, supra, 226 Cal. App. 3d at p. 1136, italics added.) Likewise, the plurality quotes American Academy of Pediatrics v. Van de Kamp (1989) 214 Cal. App. 3d 831 [263 Cal. Rptr. 46] for the proposition that " 'the California Constitution . . . expressly recognizes a right to privacy . . . which is broader than the federal right to privacy.' " (Plur. opn., ante, at pp. 327-328.) The very next paragraph of the case explains that the state right "is to be construed by our courts ' "informed but untrammeled by the United States Supreme Court's reading of parallel federal provisions. [Citations.]" ' " (American Academy of Pediatrics v. Van de Kamp, supra, 214 Cal. App. 3d at p. 839, italics added.)

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This explicit reference to "our homes" and "our families" demonstrates that the voters did not intend the Privacy Initiative to erect a barrier between an unemancipated minor and her own parents. To the contrary, the voters intended to incorporate well-established state and federal precedent affording a sphere of constitutional protection to our homes and families, a sphere that encompasses the right of parents to direct the moral and spiritual upbringing of their own children. (See, e.g., Moore v. East Cleveland (1977) 431 U.S. 494, 503-504 & fn. 12 [97 S. Ct. 1932, 1937-1938, 52 L. Ed. 2d 531] (plur. opn. of Powell, J.); Ginsberg v. New York (1968) 390 U.S. 629, 639 [88 S. Ct. 1274, 1280, 20 L. Ed. 2d 195]; see generally post, at pp. 429-432.) In other words, the same Constitution that protects an unemancipatedminor's privacy also protects "the private realm of family life which the state [*427] cannot enter." (Prince v. Massachusetts (1944) 321 U.S. 158, 166 [64 S. Ct. 438, 442, 88 L. Ed. 645].)

IV. ELEMENTS OF A STATE LAW PRIVACY CAUSE OF ACTION

Having dramatically expanded the scope of the plurality holding in Myers, supra, 29 Cal. 3d 252, [***273] the plurality here turns to our recent decision in Hill, supra, 7 Cal. 4th 1. In Hill, following an extended discussion of the state constitutional right to privacy, this court held that "a plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy." (Id. at pp. 39-40; see also Heller v. Norcal Mutual Ins. Co. (1994) 8 Cal. 4th 30, 42-43 [32 Cal. Rptr. 2d 200, 876 P.2d 999] [same].)

Today, in a sentence whose length is exceeded only by its circuity, the plurality offers the following gloss on our holding in Hill: " 'The three "elements" set forth in Hill--a legally protected privacy interest, reasonable expectation of privacy, and serious invasion of privacy--should not be interpreted as establishing significant new requirements or hurdles that a plaintiff must meet in order to demonstrate a violation of the right to privacy under the state Constitution--hurdles that would modify substantially [***274]

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the traditional application of the state constitutional privacy provision (and diminish the protection provided by that provision), by authorizing, in a wide variety of circumstances, the rejection of constitutional challenges to conduct or policies that intrude upon privacy interests protected by the state constitutional privacy clause, without any consideration of the legitimacy or importance of a defendant's reasons for engaging in the allegedly intrusive conduct and without balancing the interests supporting the challenged practice against the severity of the intrusion imposed by the practice.' " (Plur. opn., ante, at pp. 330-331, original italics, quoting Loder v. City of Glendale (1997) 14 Cal. 4th 846, 891 [59 Cal. Rptr. 2d 696, 927 P.2d 1200] (lead opn. of George, C.J.) (hereafter Loder).) Amazingly, according to the plurality, the 58-page opinion in Hill, supra, 7 Cal. 4th 1, did not establish any "significant new requirements."

Again quoting from Loder, supra, 14 Cal. 4th at page 893, the plurality tells us that the three elements established in Hill " 'do not eliminate the necessity for weighing and balancing the justification for the [***275] conduct in question against the intrusion on privacy resulting from the conduct in any case that raises a genuine, nontrivial invasion of a protected privacy interest.' " (Plur. opn., ante, at p. 331, italics added.) Instead, we are told, the [*428] elements were designed simply to " 'permit courts to weed out claims that involve so insignificant or de minimis an intrusion on a constitutionally protected privacy interest as not even to require an explanation or justification [**878] by the defendant.' " (Ibid., italics added, quoting Loder, supra, 14 Cal. 4th at p. 893 (lead opn. of George, C. J.).)

This strained interpretation of Hill has never been endorsed by a majority of this court. And with good reason. It is inconceivable that when the court in Hill required and in Heller reiterated that "[a]ctionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right" (Hill, supra, 7 Cal. 4th at p. 37; Heller v. Norcal Mutual Ins. Co., supra, 8 Cal. 4th at p. 44), it really meant the invasions need only [***276] be "nontrivial"--that is, not "insignificant" or "de minimis." (See Hill, supra, 7 Cal. 4th at pp. 67-68 & fn. 1 (conc. and dis. opn. of George, J.).) Only Lewis Carroll could countenance this sleight of hand. n5

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n5 " 'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean--neither more nor less.'

" 'The question is,' said Alice, 'whether you can make words mean so many different things.'

" 'The question is,' said Humpty Dumpty, 'which is to be master--that's all.' " (Carroll, The Annotated Alice: Alice's Adventures in Wonderland & Through the Looking Glass (Gardner edit. 1960) p. 269, original italics.)

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"There is enough confusion in the law. We should say what we mean and mean what we say." (Hill, supra, 7 Cal. 4th at p. 57.) Courts should guard against

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the appearance of "limitless manipulation" lest they "endanger the very legitimacy that has been the great accomplishment of American constitutionalism." (Casper, Constitutionalism, [***277] in 2 Encyclopedia of the American Const. (Levy et al. edits. 1986) p. 480.)

V. PRESENCE OF REQUISITE ELEMENTS IN THIS CASE

The plurality purports to find that plaintiffs meet the Hill criteria. It does so only by a determinedly superficial application of its elements.

A. Legally Protected Privacy Interest

"The first essential element of a state constitutional cause of action for invasion of privacy is the identification of a specific, legally protected privacy interest. Whatever their common denominator, privacy interests are best assessed separately and in context. Just as the right to privacy is not absolute, privacy interests do not encompass all conceivable assertions of individual rights." (Hill, supra, 7 Cal. 4th at p. 35.) "Whether established [*429] social norms safeguard a particular type of information or protect a specific personal decision from public or private intervention is to be determined from the usual sources of positive law governing the right to privacy --common law development, constitutional development, statutory enactment, and the ballot arguments accompanying the Privacy Initiative." (Id. at p. 36.)

1. The Unique Status [***278] of Unemancipated Minors

The plurality correctly concludes "there can be no question but that minors, as well as adults, possess a constitutional right of privacy under the California Constitution." (Plur. opn., ante, at p. 334.) This conclusion, however, marks only the beginning, not the end, of the analysis. The fact that minors enjoy a state constitutional right to privacy does not mean that their privacy interests are coextensive with those of adults. (Cf. In re Roger S. (1977) 19 Cal. 3d 921, 927-928 [141 Cal. Rptr. 298, 569 P.2d 1286] [" 'Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.' [Citation.] [P] It is equally well established, however, that the liberty interest of a minor is not coextensive with that of an adult."].)

The law has long recognized the unique status of minors. "AS MR. JUSTICE FRANKFURTER APTLY PUT IT: 'Children have a very special place in life which law should reflect. Legal [**879] theories and their phrasing in other cases readily lead to fallacious [***279] reasoning if uncritically transferred to determination of a State's duty towards children.' May v. Anderson, 345 U.S. 528, 536 [73 S. Ct. 840, 844-845, 97 L. Ed. 1221] (1953) (concurring opinion). The unique role in our society of the family, the institution by which 'we inculcate and pass down many of our most cherished values, moral and cultural,' Moore v. East Cleveland, 431 U.S. 494, 503-504 [97 S. Ct. 1932, 1937-1938, 52 L. Ed. 2d 531] (1977) (plurality opinion), requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. . . . [T]hree reasons justify[] the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child

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rearing." (Bellotti II, supra, 443 U.S. at pp. 633-634 [99 S. Ct. at p. 3043] (plur. opn. of Powell, J.).)

"[I]t has been of profound importance in all legal inquiries involving children that minors are presumed by all phases of the law (and by the culture reflected by our [***280] law) not to have the same basic capacities as adults. " (Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights" (1976) BYU L.Rev. 605, [*430] 646-647.) The courts have generally recognized the prevailing understanding in our society that the typical child is not possessed of full capacity for individual choice. " '[M]inors are treated differently from adults in our laws, which reflects the simple truth derived from communal experience, that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.' " (Hodgson v. Minnesota (1990) 497 U.S. 417, 459 [110 S. Ct. 2926, 2949, 111 L. Ed. 2d 344] (conc. opn. of O'Connor, J., quoting Stanford v. Kentucky, supra, 492 U.S. at p. 395 [109 S. Ct. at pp. 2988-2989] (dis. opn. of Brennan, J.).) The fact there may be exceptions only serves to validate this truism.

The privacy interests of an unemancipated minor are particularly limited vis-a-vis her own parents. "Parents, of course, have powers greater than that of the state to curtail [***281] a child's exercise of the constitutional rights he may otherwise enjoy, for a parent's own constitutionally protected 'liberty' includes the right to 'bring up children' [citation], and to 'direct the upbringing and education of children.' " (In re Roger S., supra, 19 Cal. 3d at p. 928.) Thus, in the closely related context of liberty, we have observed, "[t]he liberty interest of a minor is qualitatively different than that of an adult, being subject both to reasonable regulation by the state to an extent not permissible with adults [citations], and to an even greater extent to the control of the minor's parents unless 'it appears that the parental decisions will jeopardize the health or safety of the child or have a potential for significant social burdens.' " (Id. at p. 934.)

A parent's interest in directing his child's upbringing is firmly rooted in both the state and federal Constitutions. It is "a compelling one, ranked among the most basic of civil rights." (In re B.G. (1974) 11 Cal. 3d 679, 688 [114 Cal. Rptr. 444, 523 P.2d 244]; see also In re Roger S., supra, 19 Cal. 3d at p. 934.) As Justice Powell explained in Bellotti II, supra, [***282] 443 U.S. 622:

"[T]he guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. But an additional and more important justification for state deference to parental control over children is that '[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.' Pierce v. Society of Sisters, 268 U.S. 510, 535 [45 S. Ct. 571, 573-574, 69 L. Ed. 1070, 39 A.L.R. 468] (1925). 'The duty to prepare the child for "additional obligations" . . . must be read to include the [*431] inculcation of moral standards, [**880] religious beliefs, and elements of good citizenship.' Wisconsin v. Yoder, 406 U.S. 205, 233 [92 S. Ct. 1526, 1544, 32 L. Ed. 2d 15] (1972). This affirmative process of teaching, guiding, and inspiring by precept

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and example is essential to the growth of young people into mature, socially [***283] responsible citizens.

"We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is something we expect the State not to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice. Thus, '[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' Prince v. Massachusetts, supra, [321 U.S.] at [p.] 166 [64 S. Ct. at p. 442] (emphasis added).

"Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, [***284] 'constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.' Ginsberg v. New York, [390 U.S.] at [p.] 639 [88 S. Ct. at p. 1280].

"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. Under the Constitution, the State can 'properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility.' Ginsberg v. New York, 390 U.S., at 639 [88 S. Ct. at p. 1280]." (Bellotti II, supra, 443 U.S. at pp. 637-639 [99 S. Ct. at pp. 3045-3046], fns. omitted (plur. opn. of Powell, J.).)

Because it fails to consult "the usual [***285] sources of positive law governing the right to privacy" (Hill, supra, 7 Cal. 4th at p. 36), the plurality does not acknowledge, much less justify, its decision to infringe on a liberty interest [*432] historically more sacrosanct than a minor's right to privacy. There is no solace in the knowledge that the plurality's decision does not prohibit minors from confiding in their parents. It does prohibit this legislative attempt to encourage minors to confide, and this prohibition cannot be altered without a constitutional amendment. We ought to think long and hard before constructing a virtually impregnable citadel. "By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' [citation] lest the liberty protected . . . be subtly transformed into the policy preferences of the members of this Court." (Washington v. Glucksberg, supra, U.S. at p. [117 S. Ct. at pp. 2267-2268].) Scholar Raoul Berger asks the rhetorical [***286] question: "How long can public respect for the Court, on which its power ultimately depends,

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survive if the people become aware that the tribunal which condemns the acts of others as unconstitutional is itself acting unconstitutionally? Respect for the limits on power are the essence of a democratic society; without it the entire democratic structure is undermined." (Berger, Government by Judiciary (2d ed. 1997) pp. 459-460.)

2. The Unique Context of Abortion

The plurality does not seriously dispute any of these fundamental principles. Indeed, it acknowledges that "[a]s a general matter, parents during a child's minority have the legal right (and obligation) to act on behalf of their child to protect their child's rights and [**881] interests, and in most instances this general rule would apply to interests of the minor that are protected by the state constitutional right of privacy as well as to other rights and interests of the minor." (Plur. opn., ante, at pp. 335-336.) According to the plurality, however, "that is not the case with respect to the particular privacy right that is here at issue, namely the right to decide whether a pregnant minor will [***287] continue or terminate her pregnancy." (Id. at p. 336.)

The plurality's conclusion that in the abortion context--and possibly only in the abortion context--an unemancipated minor's privacy interests are coextensive with those of an adult (plur. opn., ante, at p. 337 & fn. 21) is indefensible. Ironically, in attempting to justify its decision to treat abortion differently, the plurality quotes extensively from Justice Powell's plurality opinion in Bellotti II, supra, 443 U.S. 622, observing, among other things, that " '[t]he abortion decision differs in important ways from other decisions that may be made during minority' " and that " 'there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.' " (Plur. opn., ante, at p. 336, italics [*433] added, quoting Bellotti II, supra, 443 U.S. at p. 642 [99 S. Ct. at p. 3047] (plur. opn. of Powell, J.).)

What the plurality fails to appreciate is that, unlike the Massachusetts statute at issue in Bellotti II, Assembly Bill 2274 does not deny a mature unemancipated minor the right to make her own abortion decision. Rather, [***288] our Legislature has established precisely the procedure approved in Bellotti II and in several subsequent decisions of the United States Supreme Court. Specifically, although Assembly Bill 2274 requires an unemancipated minor to obtain the written consent of one of her parents, it also "provide[s] an alternative procedure whereby authorization for the abortion can be obtained. [P] 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 . . . assure[s] that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure . . . ensure[s] that the provision requiring parental consent does not in fact amount to the 'absolute, and possibly arbitrary, veto' that was found impermissible in [Planned [***289] Parenthood of Missouri v.] Danforth [(1976) 428 U.S. 52 (96 S. Ct. 2831, 49 L. Ed. 2d 788)]." (Bellotti II, supra, 443 U.S. at pp. 643-644 [99 S. Ct. at p. 3048], fns. omitted (plur. opn. of Powell, J.); see also Akron v. Akron Center for Reproductive Health, supra, 462

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U.S. at pp. 439-440 [103 S. Ct. at pp. 2497-2498].)

The plurality's statement that Assembly Bill 2274 "restricts a pregnant individual's ability to decide on her own whether to continue or to terminate her pregnancy" (plur. opn., ante, at p. 334) fails to account for the differences between unemancipated minors who are capable of giving informed consent and those who are not. Under Assembly Bill 2274, only unemancipated minors who lack the capacity to give informed consent are restricted in their ability to decide on their own whether to continue or terminate their pregnancies. (See former Health & Saf. Code, @ 25958, subd. (c)(2), now @ 123450, subd. (c)(2) ["If the court finds that the minor is not sufficiently mature and sufficiently informed to make the decision on her own regarding an abortion, the court shall then consider whether performance of the abortion would [***290] be in the best interest of the minor. In the event that the court finds that the performance of the abortion would be in the minor's best interest, the court shall grant the petition ordering the performance of the abortion without consent of, or notice to, the parents or guardian. In the [*434] event that the court finds that the performance of the abortion is not in the best interest of the minor, the court shall deny the petition." (Italics added.)].) As to such immature unemancipated [**882] minors, Assembly Bill 2274 establishes the constitutionally mandated bypass procedure. (See ante, at pp. 421-423.) Unemancipated minors who are capable of giving informed consent, by contrast, are not restricted in their ability to decide on their own whether to continue or terminate their pregnancies. (See former Health & Saf. Code, @ 25958, subd. (c)(1), now @ 123450, subd. (c)(1) ["If the court finds that the minor is sufficiently mature and sufficiently informed to make the decision on her own regarding an abortion, and that the minor has, on that basis, consented thereto, the court shall grant the petition." (Italics added.)].)

The [***291] plurality significantly downplays the difficulties with its approach when it acknowledges, "[t]he question whether a statute or rule intrudes upon a minor's state constitutional right of privacy admittedly becomes more complex when the only effect of the statute or rule is to condition the minor's exercise of his or her constitutional privacy right upon parental consent." (Plur. opn., ante, at p. 335, italics added.) Since Assembly Bill 2274 contains a judicial bypass procedure, under which an unemancipated minor need never consult her parents at all, it is a gross mischaracterization of the statute to say that it "condition[s] the minor's exercise of his or her constitutional privacy right upon parental consent." (Ibid.) As noted above, our cases establish that an implicit limitation in any medical emancipation statute is that "[a] minor of any age" must "convince competent medical authorities that she has the requisite understanding and maturity to give an informed consent for any medical treatment, including a[n] . . . abortion." (Ballard v. Anderson, supra, 4 Cal. 3d at p. 883; see also plur. opn., ante, at p. 355.) In other words, someone [***292] must determine whether an individual unemancipated minor, regardless of her age, has the capacity to give informed consent.

Properly viewed, Assembly Bill 2274 simply shifts the determination of whether an individual unemancipated minor has the capacity to give informed consent from a physician to a disinterested judicial officer. In the alternative, the statute gives an unemancipated minor the option of seeking the consent of one of her parents. If requiring an unemancipated minor to convince a physician that she has the requisite understanding and maturity to give informed consent to an abortion does not offend the Constitution, I cannot fathom how it

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can be unconstitutional to require her to convince a disinterested judicial officer of the same fact or, alternatively, to seek parental consent.

The plurality mistakenly responds that there is no indication in the record that the Legislature was concerned with the potential for physician bias [*435] when it enacted Assembly Bill 2274. (Plur. opn., ante, at pp. 357-358.) But that is beside the point. There is also no proof the Legislature concluded these concerns were irrelevant. In fact, the potential for physician [***293] bias was brought to the attention of the Senate Committee on Health and Human Services by outside proponents of the bill, who were dissatisfied with the bill analysis prepared by committee staff. They submitted an alternative legislative analysis to the committee, which specifically observed that "[m]any of the opponents of AB 2274 are engaged in the business of offering abortion services and giving 'counsel' to pregnant women, including teenagers. Obviously, they have a direct conflict-of-interest (profit) when it comes to giving counsel to frightened teenagers who have unplanned pregnancies." (See Legis. Analysis Supporting Assem. Bill No. 2274, Sen. Com. on Health & Human Services, Aug. 19, 1987, p. 28.) Moreover, as the plurality recognizes, one of the primary reasons for requiring "parental or other legally authorized consent" as a precondition to medical treatment for unemancipated minors is to "safeguard[] them from the potential overreaching of third parties." (Plur. opn., ante, at p. 315; see also Bellotti II, supra, 443 U.S. at p. 641, fn. 21 [99 S. Ct. at p. 3047] (plur. opn. of Powell, J.) [Minors "are less likely than adults to know or be able to recognize [***294] ethical, qualified physicians."].) Finally, as the plurality freely admits, the Legislature drafted Assembly Bill 2274 with [**883] United States Supreme Court precedent in mind. (Plur. opn., ante, at pp. 324-325.) The high court's decisions question the advisability of relying on physicians to counsel minors on their abortion decisions. (See, e.g., H. L. v. Matheson (1981) 450 U.S. 398, 409-410 [101 S. Ct. 1164, 1171, 67 L. Ed. 2d 388] [" ' "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 from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." ' "]; Bellotti II, supra, 443 U.S. at pp. 640-641 [99 S. Ct. at pp. 3046-3047] (plur. opn. of Powell, J.) [same]; Planned Parenthood [***295] of Missouri v. Danforth (1976) 428 U.S. 52, 91 [96 S. Ct. 2831, 2851, 49 L. Ed. 2d 788] (conc. opn. of Stewart, J.) [same].)

Nor is it dispositive that "in numerous analogous contexts the Legislature has authorized minors to obtain medical care without parental consent or judicial authorization, thus recognizing the general competence of health care professionals to determine whether a minor is capable of giving informed consent. (See, e.g., Fam. Code, @ 6925 [prenatal care], 6926 [care for communicable disease], 6927 [care for rape], 6928 [care for sexual [*436] assault], 6929 [care for drug or alcohol related problem].)" (Plur. opn., ante, at p. 358.) Unlike prenatal care, unlike care for communicable disease, unlike care for rape, unlike care for sexual assault, and unlike care for drug or alcohol related problems, abortion " 'is a subject upon which reasonable people can, and do, adhere to vastly divergent convictions and principles.' " (Id. at p. 313, quoting Myers, supra, 29 Cal. 3d at p. 284 (plur. opn. of Tobriner, J.).) Since " '[t]he abortion decision differs in important ways from other

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decisions that may be made during minority' [***296] " (plur. opn., ante, at p. 336), it was certainly not unreasonable for the Legislature to conclude that, in the unique context of abortion, it wanted a disinterested judicial officer, rather than a physician in the business of performing abortions, to make the informed consent determination.

3. The Relevance of Social Norms

Finally, the plurality maintains that "the circumstances that the statute involves minors rather than adults, and is concerned with furthering the parent-child relationship" are relevant only when "we consider potential justifications for a challenged statute at a subsequent stage of the analysis, and not in determining the threshold question whether the statute implicates a protected privacy interest." (Plur. opn., ante, at p. 337; see also id. at pp. 334, 341-342.) My disagreement with this conclusion could not be more profound. The one factor common to each of the three threshold elements of a cause of action for violation of the state constitutional right to privacy is the incorporation of social norms. (See Hill, supra, 7 Cal. 4th at pp. 35-36 [existence of a "legally protected privacy interest" turns on "established social [***297] norms"]; id. at pp. 36-37 [existence of a "reasonable expectation of privacy" turns on "broadly based and widely accepted community norms"]; id. at p. 37, italics omitted [existence of a "[s]erious invasion of [a] privacy interest" turns on "an egregious breach of the social norms underlying the privacy right"].) To say that the social norms underlying the incapacity of unemancipated minors in general and the parent-child relationship in particular are not relevant until "a subsequent stage of the analysis" (plur. opn., ante, at p. 337) is revisionist legal history at its best and judicial activism at its worst. By deferring consideration [**884] of these factors, the plurality condemns to second-class status the protections expressly afforded to "our homes" and "our families" by the Privacy Initiative. (See ante, at p. 426.)

B. Reasonable Expectation of Privacy

"The second essential element of a state constitutional cause of action for invasion of privacy is a reasonable expectation of privacy on plaintiff's part." (Hill, supra, 7 Cal. 4th at p. 36.) [*437]

The plurality summarily addresses this element as follows: "Although [***298] it has been suggested that, in light of the general statutory rule requiring a minor to obtain parental consent for medical care, and the existence of numerous abortion/parental consent statutes in other states, a minor has no reasonable expectation of privacy in this context, it plainly would defeat the voters' fundamental purpose in establishing a constitutional right of privacy if a defendant could defeat a constitutional claim simply by maintaining that statutory provisions or past practices that are inconsistent with the constitutionally protected right eliminate any 'reasonable expectation of privacy' with regard to the constitutionally protected right." (Plur. opn., ante , at pp. 338-339, original italics.)

The plurality's analysis is circular, referencing a "reasonable expectation of privacy" without explaining what that term means legally. As we explained in Hill, supra, 7 Cal. 4th at page 37, "[a] 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community

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norms. (See, e.g., Rest.2d Torts, [] @ 652D, com. c ['The protection afforded to the plaintiff's interest in his privacy must be relative [***299] to the customs of the time and place, to the occupation of the plaintiff and to the habits of his neighbors and fellow citizens.'].)" (See also Heller v. Norcal Mutual Ins. Co., supra, 8 Cal. 4th at pp. 43-44 [same]; cf. Washington v. Glucksberg, supra, U.S. at p. [117 S. Ct. at p. 2268] ["Our Nation's history, legal traditions, and practices . . . provide the crucial 'guideposts for responsible decisionmaking.' "].) Under Hill and its progeny, the social norms reflected in both case law and statutory law--the nine decisions of the United States Supreme Court (plur. opn., ante, at pp. 324-325, fn. 11), the "numerous abortion/parental consent statutes in other states" (id. at p. 339), and "the general statutory rule requiring a minor to obtain parental consent for medical care" (id. at p. 338)--clearly demonstrate that Assembly Bill 2274 does not implicate any "reasonable expectation of privacy."

Indeed, it was a concept of privacy consonant with community norms that the drafters invoked when they authored the Privacy Initiative, and we must conclude this commonly understood meaning is what the electorate ratified. As Justice [***300] Story recognized, "[c]onstitutions are not designed for metaphysical or logical subtleties." (3 Story, Commentaries on the Constitution of the United States (Rotunda et al. edits. 1987) @ 210, p. 157.) Constitutions are "instruments of a practical nature, founded on the common business of human life, adapted to common wants, designed for common use, and fitted for common understandings. The people make them; the people adopt them; the people must be supposed to read them, with the help of common sense; and cannot be presumed to admit in them any recondite meaning, or any extraordinary gloss." (Id. at pp. 157-158.) [*438]

The plurality's assertion that plaintiffs have demonstrated a "reasonable expectation of privacy" because "the challenged statutory requirements apply to all pregnant minors and, unlike the drug testing program in Hill, are not confined to a specific setting or limited context" (plur. opn., ante, at p. 338, original italics) is disingenuous. The fact that Assembly Bill 2274 applies only to unemancipated minors and not to emancipated minors or adults is a specific setting and a limited context. Like the parental involvement statutes [***301] of most other states and in line with the requirements set out in nine high court decisions, Assembly Bill 2274 encourages but [**885] does not mandate that an unemancipated minor consult her parents prior to obtaining an abortion. (See, e.g., H. L. v. Matheson, supra, 450 U.S. at pp. 409-410 [101 S. Ct. at pp. 1171-1172]; Bellotti II, supra, 443 U.S. at pp. 640-641, 648 [99 S. Ct. at pp. 3046-3047, 3050-3051] (plur. opn. of Powell, J.).) The bypass procedure established by Assembly Bill 2274 reflects a delicate, time-honored balancing of the privacy interests of the unemancipated minor, the liberty interests of her parents, and the state's compelling interest in her health and welfare, both physical and emotional. For these reasons, it does not implicate any "reasonable expectation of privacy."

C. Serious Invasion of a Privacy Interest

The third essential element of a state constitutional cause of action for invasion of privacy is a "[s]erious invasion of [a] privacy interest[.]" (Hill, supra, 7 Cal. 4th at p. 37, italics omitted.) "Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual [***302] or potential impact to constitute an egregious breach of the social norms

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underlying the privacy right. Thus, the extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy." (Ibid .; see also Heller v. Norcal Mutual Ins. Co., supra, 8 Cal. 4th at p. 44 [same].)

The plurality begins its analysis of this element by reiterating " 'that this element is intended simply to screen out intrusions on privacy that are de minimis or insignificant.' " (Plur. opn., ante, at p. 339, quoting Loder, supra, 14 Cal. 4th at p. 895, fn. 22 (lead opn. of George, C. J.).) As noted earlier, this reincarnation of Hill eviscerates the requirement that an actionable invasion of privacy constitute an "egregious breach of . . . social norms." (See ante, at pp. 427-428.) The plurality's analysis of this element is faulty in a number of other respects as well.

For instance, the plurality asserts that Assembly Bill 2274 "significantly intrudes upon autonomy privacy" by "den[ying] a pregnant minor, who believes it is in her best interest to terminate her pregnancy rather than have a child at such a young age, control over [***303] her own destiny." (Plur. opn., ante, [*439] at p. 339.) As explained above, however, the statute merely shifts the determination of whether an individual unemancipated minor has the capacity to give informed consent from a physician to a disinterested judicial officer. Far from denying a mature unemancipated minor "control over her own destiny" (ibid .), the statute actually guarantees her the right to make her own abortion decision. (See ante, at pp. 433-434.) As such, Assembly Bill 2274 surely does not effect a serious invasion of a privacy interest. (See Washington v. Glucksberg, supra, U.S. at p. [117 S. Ct. at p. 2271] ["That many of the [constitutionally protected] rights and liberties . . . sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected."].)

The plurality also maintains that "the statutory requirement that the minor obtain parental consent or judicial authorization will delay the minor's access to a medically safe abortion in many instances, and thereby will increase, at least to some extent, the health risks posed by an [***304] abortion." (Plur. opn., ante, at p. 339.) Once again, the plurality fails to appreciate the nature of a facial challenge to a statute. The fact that "in many instances" the statute may increase "at least to some extent" the health risks associated with an abortion (ibid.) is insufficient to establish the facial unconstitutionality of the statute. (See ante, at pp. 421-424.) In fact, the United States Supreme Court has considered and rejected this very line of argument. In Ohio v. Akron Center for Reproductive Health (1990) 497 U.S. 502 [110 S. Ct. 2972, 111 L. Ed. 2d 405], the plaintiffs argued that a judicial bypass procedure was inadequate because, under certain circumstances, it could result in a three-week delay, which "could increase by a substantial measure both the [**886] costs and the medical risks of an abortion." (Id. at p. 513 [110 S. Ct. at p. 2980].) The high court rejected this argument, reasoning as follows: "[B]ecause [plaintiffs] are making a facial challenge to a statute, they must show that 'no set of circumstances exists under which the Act would be valid.' [Citation.] The Court of Appeals should not have invalidated [***305] the Ohio statute on a facial challenge based upon a worst-case analysis that may never occur. [Citation.] Moreover, under our precedents, the mere possibility that the procedure may require up to 22 days in a rare case is plainly insufficient to invalidate the statute on its face." (Id. at p. 514 [110 S. Ct. at pp. 2980-2981].)

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VI. APPROPRIATE LEVEL OF SCRUTINY

In my view, plaintiffs have failed to establish each of the three requisite elements of a state constitutional cause of action for invasion of privacy, and, for that reason alone, defendants should prevail. (See Hill, supra, 7 Cal. 4th at p. 40.) Because the plurality concludes otherwise, it is necessary [*440] to examine the state's affirmative defense. (Ibid.) Thus, I turn to the appropriate level of scrutiny to which Assembly Bill 2274 should be subjected.

The plurality concludes that the statute must be subjected to strict scrutiny. The significance of the plurality's decision to apply a "compelling interest" test cannot be overstated. Whether an interest is protected, what level of scrutiny is appropriately applied to any infringement, and who has the burden of proof depend on how the interest [***306] is characterized in the first instance. As we recognized in Hill, "strict scrutiny generally functions as a judicial 'trump card,' invalidating any attempt at state regulation." (Hill , supra, 7 Cal. 4th at p. 30; see also id. at p. 37.) It also shifts the burden of proof. Instead of deferring to legislative findings of fact, the analysis begins by assuming the interest in question is constitutionally protected and requires the state to prove normative presuppositions that are incapable of objective proof. (Hafen, The Constitutional Status of Marriage, Kinship, and Sexual Privacy--Balancing the Individual and Social Interests (1983) 81 Mich. L.Rev. 463, 548-550; see also Dunn v. Blumstein (1972) 405 U.S. 330, 363-364 [92 S. Ct. 995, 1013, 31 L. Ed. 2d 274] (dis. opn. of Burger, C. J.) ["Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection."].) The plurality's decision to apply a "compelling interest" test is thus tantamount to [***307] declaring Assembly Bill 2274 unconstitutional. (See Kurland, The Supreme Court, Compulsory Education, and the First Amendment's Religion Clauses (1973) 75 W.Va. L.Rev. 213, 232 [The "compelling interest" test imposes such a severe burden of justification on the state as to be "a statement of a conclusion rather than a measure of constitutionality."].)

The plurality justifies its decision to apply a "compelling interest" test, the highest level of constitutional scrutiny, by quoting the following passage from Hill: " '[[T]]he particular context, i.e., the specific kind of privacy interest involved and the nature and the seriousness of the invasion and any countervailing interests, remains the critical factor in the analysis. Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g., freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a "compelling interest" must be present to overcome the vital privacy interest. If, in contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are employed.' " (Plur. opn., ante, at p. 340, adding italics, [***308] quoting Hill, supra, 7 Cal. 4th at p. 34; see also plur. opn., ante, at pp. 329-330.)

Based on the italicized portion of the quotation, the plurality concludes that a "compelling interest" test is required whenever an interest fundamental to personal autonomy is at stake. The full passage from Hill does not [*441] support this proposition. Rather, it requires that "the nature and seriousness of [**887] the invasion and any countervailing interests" also be taken into

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account in determining the appropriate level of scrutiny. (Hill, supra, 7 Cal. 4th at p. 34.) Significantly for the present purposes, where the privacy interest at stake is "in bona fide dispute," a general balancing test is employed. (Ibid.)

As discussed above, Assembly Bill 2274 burdens an unemancipated minor's privacy interest only by requiring her to convince a disinterested judicial officer, rather than a physician, that she has the capacity to give informed consent. The statute guarantees a mature unemancipated minor the right to make her own abortion decision. (See ante, at pp. 433-434.) Under these circumstances, "the nature and seriousness of the invasion" [***309] do not warrant the application of a "compelling interest" test. (Hill, supra, 7 Cal. 4th at p. 34; see also id. at p. 79 (dis. opn. of Mosk, J.) ["[C]onduct adversely affecting, but not abridging, an established right of privacy may be allowed if reasonable."]; id. at pp. 85, 107.) Nor does the fact that Assembly Bill 2274 encourages an unemancipated minor to consult with her parents warrant the application of a "compelling interest" test. Rather, in this regard, the statute effects a reasonable accommodation of "countervailing interests." (Hill, supra, 7 Cal. 4th at p. 34.) To put it another way, at most the privacy interest at stake in this case is "in bona fide dispute," and, hence, a general balancing test ought to apply. (Ibid.)

The fundamental problem with the plurality's approach to constitutional jurisprudence is that it allows the courts to topple every cultural icon, to dismiss all societal values, and to become the final arbiters of traditional morality in a context in which their view of wisdom cannot be challenged. "[T]he judiciary can change the most fundamental patterns of our social character with no real proof that the change [***310] will be for the better--or, in the long run, even tolerable." (Hafen, The Constitutional Status of Marriage, Kinship, and Sexual Privacy--Balancing the Individual and Social Interests, supra, 81 Mich. L.Rev. at p. 550.) That is why legislatures must be accorded broad deference on issues as to which reasonable minds can differ and why courts must exercise reasoned judgment and self-restraint.

Balance is the Holy Grail for courts in a constitutional system: to strike a balance between the will of majorities, the rights of minorities, and the insatiable appetite of political institutions for power. To preserve a healthy equilibrium in a world hell-bent for absolutes, that is the judiciary's crucial and difficult role. Today, the plurality abandons this historic and irreplaceable legacy with a shrug and without a backward glance. [*442]

VII. REVIEW OF ASSEMBLY BILL 2274 UNDER THE APPROPRIATELEVEL OF SCRUTINY

A. Deference to the Legislative Process

If there were any doubt that a "compelling interest" test functions as a judicial trump card, the plurality promptly dispels it by expressly disavowing any requirement of deference to the legislative process. Thus, the [***311] plurality explains, " '[[t]]he ordinary deference a court owes to any legislative action vanishes when constitutionally protected rights are threatened.' " (Plur. opn., ante, at p. 349, italics added, quoting Spiritual Psychic Science Church v. City of Azusa (1985) 39 Cal. 3d 501, 514 [217 Cal. Rptr. 225, 703 P.2d 1119].) "Vanishing" acts may be appropriate to the lexicon of a magician whose task is to make things disappear. It cannot seriously be

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used to describe the work of a judiciary cognizant of the inherent limits of our constitutional scheme. Smoke and mirrors should be no part of our repertoire.

Even if this sweeping principle of "vanishing" deference were correct in the First Amendment context, no rationale justifies extending the principle beyond that limited realm. (See Professional Engineers v. Department of Transportation (1997) 15 Cal. 4th 543, 577-578 [63 Cal. Rptr. 2d 467, 936 P.2d 473] (dis. opn. of Baxter, J.); see also id. at p. 605 (dis. opn. of Ardaiz, J.).) As we recently observed [**888] in Amwest Surety Ins. Co. v. Wilson (1995) 11 Cal. 4th 1243, 1252 [48 Cal. Rptr. 2d 12, 906 P.2d 1112], " '[i]n considering [***312] the constitutionality of a legislative act we presume its validity, resolving all doubts in favor of the Act. Unless conflict with a provision of the state or federal Constitution is clear and unquestionable, we must uphold the Act. [Citations.]' " (Italics added; see also People v. Sanders (1990) 51 Cal. 3d 471, 495 [273 Cal. Rptr. 537, 797 P.2d 561]; County of Sonoma v. State Energy Resources Conservation etc. Com. (1985) 40 Cal. 3d 361, 368 [220 Cal. Rptr. 114, 708 P.2d 693]; California Housing Finance Agency v. Elliott (1976) 17 Cal. 3d 575, 594 [131 Cal. Rptr. 361, 551 P.2d 1193]; Eye Dog Foundation v. State Board of Guide Dogs for the Blind (1967) 67 Cal. 2d 536, 544-545 [63 Cal. Rptr. 21, 432 P.2d 717].) " ' "All presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively and unmistakeably appears. [Citations.]" ' " (In re Ricky H. (1970) 2 Cal. 3d 513, 519 [86 Cal. Rptr. 76, 468 P.2d 204], italics added.) Likewise, courts "presume that the legislature acted with [***313] integrity, and with an honest purpose to keep within the restrictions and limitations laid down by the constitution. The legislature is a coordinate department of the government, invested with high and responsible duties, and it must be presumed that it has considered and discussed the [*443] constitutionality of all measures passed by it." (Beach v. Von Detten (1903) 139 Cal. 462, 465 [73 P. 187].) n6

----------Footnotes----------

n6 The plurality mischaracterizes Gregg v. Georgia (1976) 428 U.S. 153 [96 S. Ct. 2909, 49 L. Ed. 2d 859] as an example of the deference courts owe legislatures in nonconstitutional cases (plur. opn., ante, at p. 349, fn. 25), suggesting such deference does not extend to constitutional cases. Gregg actually addressed an Eighth Amendment claim that capital punishment amounted to cruel and unusual punishment because it did not deter crime. The court acknowledged that "there is no convincing empirical evidence either supporting or refuting this view" (Gregg v. Georgia, supra, 428 U.S. at p. 185 [96 S. Ct. at p. 2930] (plur. opn. of Stewart, Powell, and Stevens, JJ.)), but nonetheless rejected the claim. "The value of capital punishment as a deterrent of crime is a complex factual issue the resolution of which properly rests with the legislatures, which can evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts. [Citation.] . . . . [P] In sum, we cannot say that the judgment of the Georgia Legislature that capital punishment may be necessary in some cases is clearly wrong." (Id. at p. 186 [96 S. Ct. at p. 2931], italics added.)

----------End Footnotes----------
[***314]

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Deference is especially warranted in this case. First, the Legislature drafted Assembly Bill 2274 to comply with the guidelines set out in several United States Supreme Court decisions and heeded that court's advice to act with "particular sensitivity" in this arena. (Bellotti II, supra, 443 U.S. at p. 642 [99 S. Ct. at pp. 3047-3048] (plur. opn. of Powell, J.).) "[O]ur past cases establish that the presumption of constitutionality accorded to legislative acts is particularly appropriate when the Legislature has enacted a statute with the relevant constitutional prescriptions clearly in mind. (See, e.g., San Francisco v. Industrial Acc. Com. (1920) 183 Cal. 273, 279 [191 P. 26].) In such a case, the statute represents a considered legislative judgment as to the appropriate reach of the constitutional provision. Although the ultimate constitutional interpretation must rest, of course, with the judiciary (see Marbury v. Madison (1803) 5 U.S. (1 Cranch) 137, 176-180 [2 L. Ed. 60, 73-74]), a focused legislative judgment on the question enjoys significant weight and deference by the courts." (Pacific Legal Foundation v. Brown, supra, 29 Cal. 3d at p. 180.) [***315]

Second, before enacting Assembly Bill 2274, the Legislature considered and evaluated much of the same conflicting empirical evidence the trial court later purported to resolve. The Senate Committee on Health and Human Services, for example, considered competing legislative analyses. One lambasted the failure of parental involvement statutes in states such as Massachusetts and Minnesota; the other praised their success. (Compare Legis. Analysis Supporting Assem. Bill No. 2274, Sen. Com. on Health & Human Services, Aug. 19, 1987, pp. 5-7, with Staff Analysis of Assem. Bill No. 2274, Sen. Com. on Health & Human Services, July 15, 1987, pp. 4-5.) Because much of the evidence [**889] related to normative presuppositions not subject to objective proof, resolution of any conflicts lay within the province of the Legislature, a collective and accountable body. [*444]

"It is not for us to resolve empirical uncertainties underlying state legislation, save in the exceptional case where that legislation plainly impinges upon rights protected by the Constitution itself." (Paris Adult Theatre I v. Slaton (1973) 413 U.S. 49, 60 [93 S. Ct. 2628, 2936-2937, 37 L. [***316] Ed. 2d 446], italics added & fn. omitted; see also Hill, supra, 7 Cal. 4th at p. 47 ["Plaintiffs cite no authority imposing a 'scientific' burden of proof on a defendant in an invasion of privacy case; we have located none."].) Unless such an impingement plainly appears, "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." (FCC v. Beach Communications, Inc. (1993) 508 U.S. 307, 315 [113 S. Ct. 2096, 2102, 124 L. Ed. 2d 211].) "[T]he proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and . . . Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." (Tyson & Brother v. Banton (1927) 273 U.S. 418, 446 [47 S. Ct. 426, 433-434, 71 L. Ed. 718, 58 A.L.R. 1236] (dis. opn. of Holmes, J.).)

Finally, in addition to the state's compelling interest in the health and welfare of an unemancipated minor, [***317] this case implicates other, competing constitutional interests--specifically, the minor's privacy interest and the liberty interests of her parents. "[H]ow are competing interests to be

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assessed? Since they are not subject to quantitative ascertainment, the issue necessarily resolves itself into asking, who is to make the adjustment?--who is to balance the relevant factors and ascertain which interest is in the circumstances to prevail? Full responsibility for the choice cannot be given to the courts. Courts are not representative bodies. . . . History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures. [P] Primary responsibility for adjusting the interests which compete in the situation before us of necessity belongs to the [legislature]." (Dennis v. United States (1951) 341 U.S. 494, 525 [71 S. Ct. 857, 875, 95 L. Ed. 1137] (conc. opn. of Frankfurter, J.).)

"Our right to pass on the validity of legislation is now too much part of our constitutional system to be brought into question. But the implications [***318] of that right and the conditions for its exercise must constantly be kept in mind and vigorously observed. Because the Court is without power to shape measures for dealing with the problems of society but has merely the power of negation over measures shaped by others, the indispensable judicial requisite is intellectual humility, and such humility presupposes complete [*445] disinterestedness." (A. F. of L. v. American Sash Co. (1949) 335 U.S. 538, 556-557 [69 S. Ct. 258, 267, 93 L. Ed. 222, 6 A.L.R.2d 481] (conc. opn. of Frankfurter, J.).) "Courts can fulfill their responsibility in a democratic society only to the extent that they succeed in shaping their judgments by rational standards, and rational standards are both impersonal and communicable. Matters of policy, however, are by definition matters which demand the resolution of conflicts of value, and the elements of conflicting values are largely imponderable. Assessment of their competing worth involves differences of feeling; it is also an exercise in prophecy. Obviously the proper forum for mediating a clash of feelings and rendering a prophetic judgment is the body chosen for those purposes by the people. Its [***319] functions can be assumed by this Court only in disregard of the historic limits of the Constitution." (Id. at p. 557.)

B. The Court as a Super-Legislature

The plurality presumes to disregard the limits of its constitutional role because numerous "analogous" statutes authorize a minor to obtain medical care or make other fundamental decisions for herself and her child without parental consent. Based on these statutes, the plurality concludes Assembly [**890] Bill 2274 is not necessary either to protect the health of a pregnant minor or to protect the minor's relationship with her parents. (See plur. opn., ante, at pp. 353-354.) I cannot agree with this mode of analysis.

The plurality itself acknowledges abortion is fundamentally different in that it includes a unique moral and philosophical dimension: "[T]he decision whether to continue or terminate [a] pregnancy has . . . a substantial effect on a pregnant minor's control over her personal bodily integrity, has . . . serious long-term consequences in determining her life choices, [and] is . . . central to the preservation of her ability to define and adhere to her ultimate values regarding the [***320] meaning of human existence and life." (Plur. opn., ante, at p. 337; see also id. at pp. 313-314, 332-334; ante, at pp. 433-436.) "Though [a mature unemancipated minor] has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the State is

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prohibited from taking steps to ensure that this choice is thoughtful and informed. . . . It follows that States are free to enact laws to provide a reasonable framework for [her] to make a decision that has such profound and lasting meaning." (Casey, supra, 505 U.S. at pp. 872-873 [112 S. Ct. at p. 2818] (plur. opn. of O'Connor, Kennedy, and Souter, JJ.).) "What is at stake is the [mature unemancipated minor's] right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express [their views] are permitted, if they are [*446] not a substantial obstacle to [her] exercise of the right to choose." (Id. at p. 877 [112 S. Ct. at p. 2821].)

Even the decisions to bear a child or to put a child up for adoption--[***321] decisions that implicate similar concerns--are not truly analogous, for a state has an independent and compelling interest in the health and welfare of the unemancipated minor's child. In order to further this interest, our Legislature could reasonably conclude that it was necessary to ensure an unemancipated minor unrestricted access to prenatal care and the ability to give her child up for adoption if, for whatever reason, she deems herself unable or unwilling to care for it. In fact, plaintiffs' own expert testified that "entry into early prenatal care is absolutely critical for a healthy outcome of [a] pregnancy."

This case is an excellent example of the folly of courts in the role of philosopher kings. Here, the trial court "found" there is no difference in the decisionmaking capacities of minors and adults. Under the usual rules, this conclusion would be insulated from appellate review if the record provides any support for the finding. There is only one problem. The "finding" is contrary to what every adult in the country knows from experience. The greatest distance between two points is time. Information is not the same thing as knowledge. Knowledge is not wisdom. And wisdom [***322] we gain only with time. We have a vastly richer perspective from which to judge our actions at 45 than at 15.

A trial judge may "find" that ages 15 and 45 are indistinguishable, but that will never make it true.

This is not to say that such truths are capable of proof. Does the death penalty deter? Does pornography deform? Does a terminally ill patient have a right to die? Our laws reflect, as they must, working assumptions on which there is a general consensus. These broadly conceived principles, captured under the rubric of culture and tradition, are not empirically determined. They represent value judgments growing out of the collective conscience of the people, taking authority from custom itself. The proponents of these traditional understandings--including the general incapacity of minors--cannot prove their truth. But neither can their opponents prove their falsity; they can only impose the tyranny of the anecdote.

Certainly, in matters of normative judgment, no court should be in the position to supplant a society's collective understanding, distilled through experience and expressed in legislative enactments, on the basis of the [**891] evidence presented [***323] in a single case. "Experience is the oracle of truth; and where its responses are unequivocal, they ought to be conclusive and [*447] sacred." (Madison et al., The Federalist No. 20 (Rossiter edit. 1961) p. 138.) But, as this case demonstrates, truth is not the same thing as proof.

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Apparently, the court believes profound questions about the way we live our lives together should be resolved not on the basis of collective experience but on the basis of expert testimony.

When fundamentally moral and philosophical issues are involved and the questions are fairly debatable, the judgment call belongs to the Legislature. The reasons are both pragmatic and political. Legislatures are in the business of accommodating interests and building consensus. They represent the will of the people. Courts are in the business of articulating inviolable rights that cannot be accommodated and are shielded from the will of the majority.

The government may not extinguish constitutional rights. But, when the Legislature accommodates competing constitutional claims in a way that is appropriate to the historical and cultural context, congruent with long-standing tradition and respectful of all interests, [***324] courts have nothing more to say.

VIII. CONCLUSION

"A free and enlightened society may decide that each of its members should attain a clearer, more tolerant understanding of the profound philosophic choices confronted by a woman who is considering whether to seek an abortion. Her decision will embrace her own destiny and personal dignity, and the origins of the other human life that lie within the embryo. The State is entitled to assume that, for most of its people, the beginnings of that understanding will be within the family, society's most intimate association. It is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both compassionate and mature. The statute in issue here is a rational way to further those ends. It would deny all dignity to the family to say that the State cannot take this reasonable step in regulating its health professions to ensure that, in most cases, a young woman will receive guidance and understanding from a parent." (Ohio v. Akron Center for Reproductive Health, supra, 497 U.S. at p. 520 [110 S. Ct. at pp. 2983-2984] (plur. opn. of Kennedy, [***325] J.).)

I dissent.

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 1301

THIRD READING

Bill No: SB 1301
Author: Kuehl (D), et al
Amended: 4/8/02
Vote: 21

SENATE JUDICIARY COMMITTEE: 4-2, 4/9/02
AYES: Escutia, Kuehl, O'Connell, Sher
NOES: Ackerman, Haynes

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Reproductive Privacy Act

SOURCE: Planned Parenthood Affiliates of California, Inc.

DIGEST: This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the act.

ANALYSIS: Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest.

Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee).

Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion.

Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade(1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.

This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

Existing statutory law provides that the committee of medical staff referred to in Health and Safety Code Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons.

Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy.

Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. People v. Barksdale, supra, 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261;

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.

This bill would repeal Health and Safety Code Section 123410, and instead would provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

1. The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code.

2. The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years.

This bill would delete this provision.

Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act.

Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion.

This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

This bill further would provide that a person is subject to criminal penalties (1) if he or she assists at a surgical abortion and does not have a valid license or certificate obtained under a law authorizing him or her to perform the functions necessary to assist at a surgical abortion; or (2) if he or she performs or assists at a nonsurgical abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a nonsurgical abortion.

This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 5/7/02)

Planned Parenthood Affiliates of California, Inc. (source)
Civil rights organizations: American Civil Liberties Union (ACLU); People for the American Way
Health care organizations: American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood

CONTINUED

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Legal organizations: California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program
Political organizations: Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club
Pro-choice organizations: California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice
Women's organizations: American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College
Other: JWCH Institute, Inc.

OPPOSITION: (Verified 5/7/02)

California Catholic Conference
California ProLife Council
California Right to Life Committee
Campaign for California Families
Committee on Moral Concerns
San Mateo Pro Life

ARGUMENTS IN SUPPORT: According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

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These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances in medical practice, such as early abortion methods like mifepristone (RU-486).

This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes, "we have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning Roe v. Wade. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns Roe.

ARGUMENTS IN OPPOSITION: Opponents concede that the bill would bring California abortion law into conformance with Roe v. Wade, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that 'Roe v. Wade was never ratified by Congress. Neither should our state legislators circumvent the will of the people."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

RJG:sl 5/7/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 8, 2002
POSITION: Neutral

BILL NUMBER: SB 1301
AUTHOR: S. Kuehl

BILL SUMMARY

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act, or when necessary to protect her life or health, as defined. This bill would also specify the circumstances under which the performance of an abortion is deemed unauthorized. This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

FISCAL SUMMARY

The bill would not have any fiscal impact to the DHS because it does not result in any additional workload or costs.

COMMENTS

The Department of Finance is neutral on this bill because it does not impose any costs or additional workload on the DHS. However, this bill presents important health policy issues and should therefore be carefully considered.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC	2001-2002	FC	2002-2003	FC	2003-2004	Fund Code
4260/Hlth Svcs	SO	No		---------- No/Minor Fiscal Impact ----------					0001

Analyst/Principal (0541) P. Kemp — Date 6-10-02 SWK 6-10-02

Program Budget Manager Terrie G. Tatosian — Date 6/10/02

Department Deputy Director — Date

Governor's Office: By: Date: Position Noted ____ Position Approved ____ Position Disapproved ____

BILL ANALYSIS — Form DF-43 (Rev 03/95 Buff)

HLTH :SB1301-4285 6/10/2002 10:08 AM

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SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
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SB 1301

THIRD READING

Bill No: SB 1301
Author: Kuehl (D), et al
Amended: 4/8/02
Vote: 21

SENATE JUDICIARY COMMITTEE: 4-2, 4/9/02
AYES: Escutia, Kuehl, O'Connell, Sher
NOES: Ackerman, Haynes

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless

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This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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SUPPORT: (Verified 5/7/02)

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Health care organizations: American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood

CONTINUED

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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OPPOSITION: (Verified 5/7/02)

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California ProLife Council
California Right to Life Committee
Campaign for California Families
Committee on Moral Concerns
San Mateo Pro Life

ARGUMENTS IN SUPPORT: According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances in medical practice, such as early abortion methods like mifepristone (RU-486).

This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes, "we have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning Roe v. Wade. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns Roe.

ARGUMENTS IN OPPOSITION: Opponents concede that the bill would bring California abortion law into conformance with Roe v. Wade, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that 'Roe v. Wade was never ratified by Congress. Neither should our state legislators circumvent the will of the people."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

RJG:sl 5/7/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

This SFA has NOT been filed.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478 Version:

SB 1301

THIRD READING

Bill No: SB 1301
Author: Kuehl (D), et al
Amended: 4/8/02
Vote: 21

28.8

SENATE JUDICIARY COMMITTEE: 4-2, 4/9/02
AYES: Escutia, Kuehl, O'Connell, Sher
NOES: Ackerman, Haynes

SUBJECT: Reproductive Privacy Act

SOURCE: Planned Parenthood Affiliates of California, Inc.

DIGEST: This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the act.

ANALYSIS: Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest.

Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the

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pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee).

Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion.

Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade(1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.

This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

Existing statutory law provides that the committee of medical staff referred to in Health and Safety Code Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons.

Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy.

Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. People v. Barksdale, supra, 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261; Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.

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CONTINUED

This bill would repeal Health and Safety Code Section 123410, and instead would provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

1. The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code.

2. The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years.

This bill would delete this provision.

Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act.

Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's

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license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion.

This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

This bill further would provide that a person is subject to criminal penalties (1) if he or she assists at a surgical abortion and does not have a valid license or certificate obtained under a law authorizing him or her to perform the functions necessary to assist at a surgical abortion; or (2) if he or she performs or assists at a nonsurgical abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a nonsurgical abortion.

This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified >) 5/7

Planned Parenthood Affiliates of California, Inc. (source)
Civil rights organizations: American Civil Liberties Union (ACLU); People for the American Way
Health care organizations: American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood
Legal organizations: California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program

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CONTINUED

Political organizations: Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club

Pro-choice organizations: California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice

Women's organizations: American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College

Other: JWCH Institute, Inc.

OPPOSITION: (Verified >) 5/7

California Catholic Conference
California ProLife Council
California Right to Life Committee
Campaign for California Families
Committee on Moral Concerns
San Mateo Pro Life

ARGUMENTS IN SUPPORT: According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and

CONTINUED

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accommodate advances in medical practice, such as early abortion methods like mifepristone (RU-486).

This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes, "we have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning Roe v. Wade. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns Roe.

ARGUMENTS IN OPPOSITION: Opponents concede that the bill would bring California abortion law into conformance with Roe v. Wade, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that 'Roe v. Wade was never ratified by Congress. Neither should our state legislators circumvent the will of the people."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

RJG:sl 5/6/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

SUPPORT/OPPOSITION: NONE RECEIVED

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**** END ****

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STATE OF CALIFORNIA GRAY DAVIS, GOVERNOR
COMMISSION ON THE STATUS OF WOMEN
1303 J Street, Suite 400
Sacramento, CA 95814-2900

May 6, 2002

Member of the State Senate
State Capitol
Sacramento, CA 95814

Dear Senator:

SENATE FLOOR ALERT — SB 1301 (Kuehl)

The California Commission on the Status of Women requests your "aye" vote on SB 1301. This measure would enact a constitutionally-sound reproductive rights law ensuring that a Californian's right to privacy and the decision to choose a safe and legal abortion are protected, now and in the future.

SB 1301 would increase access to early, non-surgical methods of abortion such as mifepristone (RU-486) by allowing healthcare providers, within their particular scope of practice, to perform or assist in the performance of surgical and non-surgical abortions. Further, SB 1301 would delete the unconstitutional and unenforceable provisions of existing state law that create confusion and inconsistency with regard to abortion.

Women's access to health care, including reproductive health care, has been a long-standing priority for the Commission. The Reproductive Privacy Act is critical to the preservation of a California woman's constitutional right to make decisions regarding her reproductive health. SB1301 would protect her fundamental right to privacy and ensure access to a safe and legal abortion.

For these reasons, we ask that you **vote "aye" on SB 1301.** If we can be of assistance to you, please contact our Executive Director, Mary Wiberg, or our Legislative Coordinator, Vicki Atwood, at 916-445-3173.

Sincerely,

Elmy Bermejo
Chairperson

cc: The Honorable Sheila Kuehl

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American Family Defense Coalition

CALIFORNIA
Central Coast Chapter
P.O. Box 2611
Santa Maria, CA 93456
Pat Riehle, Coordinator
(805) 937-2097

4/28/02

Attn: Sen Haynes

Senator Sheila Kuehl
State Capitol
Sacramento, CA 95814

RE: SB-1301--Reproductive Privacy Act
Withdraw--OPPOSE

Dear Senator Kuehl:

Senator, those folks urging your proposal of this bill apparently haven't informed you of the deaths even this month of 2 women who had a medical abortion with RU-486. Why lower the standards such that non-physicians can prescribe a killer of women and babies?

How can we ignore those women whose bodies have been mutilated and are living a life of misery from surgical abortions, and, now, these 40 yr old women who are dying of breast cancer from having an abortion in teen years before having a baby--and without parents knowledge. I have recently buried two of these young ladies. It's going to get worse, so why in God's name do we want to perpetuate the constant insult of women in California.

Those advising you are not telling you of those women maimed from botched abortions, having hysterectomies at young ages (yes, I know two -- the abortionist missed a twin of one). How could you face these women and their families--some leaving young children. Further insult being that our taxes pay for the damage and utter destruction of lives of young women, poor women, and their children. With this bill they'll come across U.S. for a CA tax paid abortion.

Is bad medicine going to be perpetuated because "some lives aren't worth living"? Is California going to be the haven to take the unborn's life and possibly the mother's health damaged? At least there was some protection of women under the CA Therapeutic Abortion Act (Bielenson).

Perhaps you haven't met some of the women as we have who are living with the post-abortion syndrome because abortion providers like Planned Parenthood and Edward Allred's Family Planning Associates refuse to advise women "customers" of possible consequences while they rake in their filthy lukre (our taxes). Many of our associates are those who had an abortion and are living to regret it...meaning they are active pro-family/life citizens who live with an emptiness in their hearts and lives.

There is nothing positive to recommend this bill. Lowering medical standards will not improve women's health and will not save lives. Receiving dozens of postcards from the Planned Parenthood contingency is no recommendation for this legislation. Only the mis-informed would sign those postcards. The vast number of Californians reject Roe/Wade when they know the truth.

Sincerely,
Pat Riehle
Pat Riehle, Chairman
AMERICAN FAMILY DEFENSE COALITION
Central Coast Chapter.

cc/ Senate Ofc of Floor Analysis ✓
Sen. Ray Haynes

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Dear Senator Kuehl,

We are opposed to The Reproductive Privacy Act (AB 1301). Not only will it continue support for abortion-on-demand, but also it will remove all restraints on the abortion industry.

At least SB 370 required the abortionist to be a licensed physician. How can you even consider relieving a multibillion-dollar industry from any form of regulation and oversight?

Mr. and Mrs. Donald A. Durran
227 North Dianthus Street
Manhattan Beach, CA 90266
(310) 376-5250

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SENATE FLOOR ANALYSES WORKSHEET CONSULTANT: RJK

THIRD READING / CONSENT / (DO AHEAD)

Bill No.: SB 1301
Author: Ruehl (D) ET AL
Amended: 4/8
Vote Required:: 2/1

SEN. Jud COM.: Vote 4-2, Date 4/9
SEN. APPROP. COM.: Vote _____, Date _____ / 28.8 / NONFISCAL
SEN. FLOOR: Vote _____, Date _____ / ASSY FLOOR: Vote _____, Date _____

SUBJECT: X
SOURCE: Y (PIO)

DIGEST: A

ANALYSIS: B1, B2, B3
FISCAL EFFECT: Appropriation: NO Fiscal Committee: YES Local: YES
SUPPORT: Verification Date _____
Y
#1

OPPOSITION: Verification Date _____
#2

ARGUMENTS IN SUPPORT: C1, C2

ARGUMENTS IN OPPOSITION: D1, D2

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SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

SB 1301	S
Senator Kuehl	B
As Amended April 8, 2002	
Hearing Date: April 9, 2002	1
Health and Safety Code	3
CJW:sr	0
	1

SUBJECT

X Reproductive Privacy Act

DESCRIPTION

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act.

BACKGROUND

Existing law, the Therapeutic Abortion Act, was signed into law by former Governor Ronald Reagan and took effect in 1967. The Act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. [See Health and Safety Code Secs. 123400-123450. All further code references are to the Health and Safety Code unless otherwise stated.]

In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and treatment of fetal remains. In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

Since 1967, a number of state and federal court decisions have rendered various provisions of the Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to question. These provisions remain unchanged in the Health and Safety Code, however, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions.

(more)

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This bill would delete the invalid provisions of the Therapeutic Abortion Act and certain other provisions as well, including the name of the act, and would enact in their place the Reproductive Privacy Act, as specified below.

This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

CHANGES TO EXISTING LAW

Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest. ~~[Secs. 123400, 123405, 123415.]~~

Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee). ~~[Sec. 123407.]~~

Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion. ~~[Id.]~~

Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. *Planned Parenthood v. Ashcroft* (1983) 462 U.S. 476; *Akron v. Akron Center for Reproductive Health* (1983) 462 U.S. 416; *Roe v. Wade* (1973) 410 U.S. 179; *People v. Barksdale* (1972) 8 Cal. 3d 320.

This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

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2. Existing statutory law provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. ~~[Sec. 123410.]~~

Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. ~~[Id.]~~

Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. *People v. Barksdale, supra,* 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261; *Feminist Women's Health Center v. Philobosian* (1984) 157 Cal. App. 3d 1076, 1084 n.3.

This bill would repeal Section 123410, and instead would provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

(a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; or

(b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

4. Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years. ~~[Sec. 123430.]~~

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This bill would delete this provision.

4. Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act. ~~[Bus. & Profs. Code Sec. 2253.]~~

Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion. ~~[Id.]~~

This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

This bill further would provide that a person is subject to criminal penalties (1) if he or she **assists at a surgical abortion** and does not have a valid **license** or certificate obtained under a law authorizing him or her to perform **the functions necessary to** assist at a surgical abortion; or (2) if he or she performs or assists at a **nonsurgical** abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a **nonsurgical** abortion.

This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

COMMENT

1. Stated need for legislation

According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances in medical practice, such as early abortion methods like mifepristone ~~(RU-486).~~

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This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes,

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning *Roe v. Wade*. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns *Roe*.

2. Supporters express concerns about erosion of rights

The California Commission on the Status of Women supports SB 1301 as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided *Roe v. Wade*," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through *Roe* and other decisions.

The Grey Panthers of California express similar views in support of the bill:

> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . . . We strongly support the *Roe v. Wade* decision and stand firm against any threat to the rights that decision permitted.

3. Medical groups support SB 1301 as protecting access to legal health care

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

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The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

4. Opponents object to codification of *Roe v. Wade*

Opponents concede that the bill would bring California abortion law into conformance with *Roe v. Wade*, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that "*Roe v. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

5. Several current abortion statutes are invalid and appropriate for repeal

In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act – those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother -- impermissibly vague and therefore unconstitutional. *People v. Barksdale, supra,* 8 Cal. 3d at 333. Other provisions facilitating these statutes – those requiring the input of the district attorney, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act – were declared invalid as well. *Id.* at 334.

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Roe v. Wade, supra,* 410 U.S. at 153. An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in *Roe v. Wade. Committee to Defend Reproductive Rights v. Myers* (1981), 29 Cal. 3d 252, at 280.

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. *American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 314.

Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

6. The bill would not repeal or otherwise affect most other provisions of the Act

In addition to the provisions found unconstitutional, as described above, this bill would repeal two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires the DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and would remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal [Section 123420];

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(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

7. This bill's provisions are consistent with judicially established parameters for the regulation of abortion

Under the parameters established in *Roe v. Wade*, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. 410 U.S. at 164. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. *Id.* at 164-65.

Respecting right to privacy in first trimester. This bill would allow appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which would permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights is consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations related to maternal health. This bill would continue to require abortions to be performed by appropriately licensed health care professionals; would subject those who do not comply with the Reproductive Privacy Act to professional discipline; and would subject unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations relating to preserving life of viable fetus. In conformity with *Roe v. Wade*, this bill would prohibit state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

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#1

Support: *Civil rights organizations:* American Civil Liberties Union (ACLU); People for the American Way. *Health care organizations:* American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood. *Legal organizations:* California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program. *Political organizations:* Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club. *Pro-choice organizations:* California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice. *Women's organizations:* American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College. *Other:* JWCH Institute, Inc.

#2

Opposition: California Catholic Conference; California ProLife Council; California Right to Life Committee; Campaign for California Families; Committee on Moral Concerns; San Mateo Pro Life

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HISTORY

Source: Planned Parenthood Affiliates of California, Inc. (PPAC)

Related Pending Legislation: None Known

Prior Legislation: SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code)

****

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LEAGUE OF WOMEN VOTERS OF CALIFORNIA

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Development
Robert Saunders

Program Director/Advocate
Trudy Schafer

April 30, 2002

The Honorable Dede Alpert, Chair
Committee on Appropriations
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0001

Re: SB 1301 (Kuehl) – Support

Dear Senator Alpert:

The League of Women Voters of California is pleased to support SB 1301 (Kuehl), the Reproductive Privacy Act.

This bill rids California of the provisions of the Therapeutic Abortion Act of 1967 which are antiquated and unconstitutional. It firmly establishes California's commitment to the fundamental right of freedom of reproductive choice by affirming the privacy rights established by *Roe v. Wade*. In addition, it assures women increased access to safe and early methods of abortion by clarifying the ability of health care providers, acting within their existing scopes of practice, to perform or assist in performance of surgical and nonsurgical abortions.

The League of Women Voters supports reproductive freedom and believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual. SB 1301 is right for the citizens of California. It will safeguard the privacy of women and ensure that reproductive health care policy guards the safety and health of women in California.

We expect that SB 1301 may be sent from your committee to the Senate floor in accord with Senate Rule 28.8. However, if it does come up for a vote in your committee, we strongly urge your support for this important bill.

Sincerely,

Barbara Inatsugu

Barbara Inatsugu
President

bcc: Inatsugu, Henderson, Taylor, Hoff, SOFA, S.O.

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COMMITTEE ON MORAL CONCERNS

Art Croney, *Executive Director/Lobbyist*
Office: (916) 446-5131
FAX: (916) 446-5744

P.O. Box 2768
Sacramento, CA 95812

May 1, 2002

Senate Appropriations Committee

Please vote **NO** on **SB 1301** (Kuehl); abortion.

This bill would recast California's Therapeutic Abortion Act, calling it the Reproductive Privacy Act and bringing it in line with U.S. Supreme Court decisions starting with Roe v. Wade. The bill anticipates, prematurely we believe, the overturning of the Supreme Court's 1973 judgment. The Committee On Moral Concerns opposes this bill for the following reasons:

1. The bill finds and declares that "every individual possesses a fundamental right of privacy with respect to personal reproductive decisions" (page 6, lines 34 & 35). We agree. However, the bill later conflicts with its own declaration. Biologically, the life of the individual human being begins at the moment of conception. The bill gives certain individuals (women) the right to abort and fatally interfere with the reproductive right of other individuals (their sons and daughters who are living and growing, but not yet born).

2. The bill defines pregnancy as "beginning with the implantation of an embryo." This is politically convenient, but ungrounded in scientific reality. We know where babies come from. Pregnancy begins at conception. That is the principle on which in vitro fertilization works. Also, conception is the *only* time in our lives when our fathers had any contribution to our genetic characteristics. When an embryo fails to exit the fallopian tube this becomes a life-threatening ectopic *pregnancy*. Doctors and scientists who are unmotivated by politics know that pregnancy occurs before implantation in the uterus.

3. The bill defines "viability" as the point when the human fetus may survive outside the uterus. This is another political term lacking real meaning. As individuals, some of us could survive outside the womb earlier than others, just as some of us could survive in the wilderness longer. Again, the bill's findings recognize individuals, but subsequent language clouds that recognition.

4. The bill allows abortion any time before birth. Under Section 123468 (b) (2), aborting a viable human fetus is legal, if continuing the pregnancy until birth poses "no risk to the life or *health* of the pregnant woman." Since there is no such thing as an absolutely risk-free childbirth, under the bill, there is no such thing as an illegal abortion, as long as the abortionist is licensed.

Art Croney

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18 WEEKS

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SAN MATEO PRO LIFE
P. O. Box 6273
San Mateo, CA 94403-0991

Senate Office of Floor Analyses
1020 N Street
Sacramento, CA 95814

Dear Legislators

Please Oppose SB 1301

This bill takes all safeguards away from the mother as well as, of course, the baby.

It is bad medicine.

Government is for the purpose of protecting the people as well as protecting their rights.

The mothers need protection just to have a safe abortion.

Human life is what government is all about. We have to protect the baby before it is born as well as after. This is a bad bill for mothers as well as babies.

Sincerely,

G. Gloria Gillogley

G. Gloria Gillogley
Chairman.

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

Case No. B355195

MAX DAVID BORENSTEIN,

Respondent,

v.

SOFIYA ALEXANDRA GOLDSHTEYN,

Appellant.

Appeal from the Superior Court of California,
County of Los Angeles - Case No. 22STFL08826

Hon. Scott J. Nord, Judge

APPELLANT'S APPENDIX
VOLUME 6 OF 11

Pages 1135-1383

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SB 1301

Petersen, Mike

From: Maw, Gregory
Sent: Monday, April 08, 2002 10:40 AM
To: Petersen, Mike
Subject: FW: SB 1301

Mike,

I'm not sure of the history behind this e-mail, other than SB 1301 is up in Judiciary tomorrow. Brian O'Neel works for Sen. Leslie. At any rate, it seems like good info.

-Greg

-----Original Message-----
From: O'Neel, Brian [mailto:Brian.O'Neel@asm.ca.gov]
Sent: Monday, April 08, 2002 10:29 AM
To: Haynes, Senator (SENMX1); 'gregory.maw@sen.ca.gov'
Cc: 'Thomas.Collins@sen.ca.gov'
Subject: SB 1301

Here is the letter I sent regarding SB 1301. It might help frame your arguments.

SB 1301 is problematic for two reasons:

1. First and foremost, it would enshrine abortion as a right in California law. By definition, rights are "goods" (as opposed to evils) that the state holds up as worthy of respect by every citizen. Hence the framers enshrined as our nation's primary rights those of life, liberty, and the pursuit of happiness. Rights are also inalienable and endowed by the Creator. It is hard to imagine how enshrining abortion as a right - and thus a good - in California law is either good in and of itself or would meet with the approval from Whom all legitimate rights flow.

Compounding the matter are several recent studies which show a clear link between abortion and the later development of cancer:

* These studies show a 50% increase in the risk of breast cancer before age 45 among women who had one or more induced abortions;
* An 80% increase in the risk of breast cancer among women who had any abortions and who also had any family history of breast cancer;
* A more than 100% risk among women who had abortions before age 18 and after age 30;
* An incalculably high-risk increase among women who had an abortion before age 18 and who also had any family history of the disease.

Again, this begs the question: Why would we enshrine something with so much chance for physical damage - both to the mother and the baby and to say nothing of the potential for psychological damage - as a good in our law? It makes no sense.

1. A second grave concern with SB 1301 is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect. Current law requires in Section 123405 of the Health & Safety Code, that abortions be done by "a holder of the physician's and surgeon's certificate." The operative language left in California law with SB 1301 would allow non-physicians to perform "nonsurgical" abortions-such as RU 486, methotrexate, or other drug abortions.

If we are going to keep abortion legal in California, shouldn't we also keep

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it safe or at least as safe as possible? There are numerous stories of women coming away from abortions with a perforated uterus or suffering from infection or some other malady. Wouldn't leaving such a risky procedure in the hands of unqualified personnel increase this risk? We believe it would.

Brian K. O'Neel
Press Secretary
Office of California State Assemblyman Tim Leslie (R-04)

I am asked for very little compared to how much I am being given. ~ Bl. Josemaria Escriva

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California Medical Association
1201 J Street, Sacramento, CA 95814-2906 • (916) 444-5532
Physicians dedicated to the health of Californians

April 9, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: **SB 1301 (Kuehl)**
CMA Position: **Support**

Dear Senator Escutia:

The California Medical Association, representing over 34,000 California physicians supports Senate Bill 1301 (as amended on April 8), by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act codifies existing case law that provides access to safe and legal reproductive health services, including abortion services.

In addition, SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice. The April 8 amendments define non-surgical abortion as the use of pharmacologic agents, which are crucial to this bill as it needs to be clear we are not permitting anyone other than physicians to perform invasive procedures due to concerns regarding safety.

The Reproductive Privacy Act eliminates the unconstitutional, unenforceable and antiquated provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Shannon Smith-Crowley, J.D., M.H.A.
Associate Director

Cc: The Honorable Sheila Kuehl
The Members of the Senate Judiciary Committee
Claudia Wrazel, Consultant, Senate Judiciary Committee
Mike Peterson, Consultant, Senate Republican Caucus

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CALIFORNIA RIGHT TO LIFE COMMITTEE, Inc.

1610 OAK PARK BLVD., STE. 1
PLEASANT HILL, CA 94523
(925) 944-5351 FAX (925) 944-5449
Established 1981
E-Mail: callife@calright2life.org **Web Site: calright2life.org**

To: Honorable Ray Haynes, Vice-Chairman
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

From: Liz Froelich
Legislative Analyst

Date: March 27, 2002

RE: SB 1230 (Alpert) Human Cloning
Position: OPPOSITION

California Right to Life supports the indefinite ban on human cloning and on the sale of any preborn humans for the purpose of cloning.

California Right to Life must continue to oppose SB1230 as it does not ban, in explicit terms, all forms of human cloning. The language defines a "clone" in terms of the ultimate goal: the birth of a human being. See Sec.4, Section 24185 (c) (1).

This skirts the issue of "therapeutic" cloning and related embryonic stem cell research. It must be pointed out that ALL successful cloning is reproductive. Therapeutic cloning is not therapeutic for humans in the embryonic stage of life, when they are killed to provide therapies for others.

The advisory committee established by SB 1230 would advise the Governor and the legislature on human cloning and "other issues relating to human biotechnology." Sec. 4 Section 24186 (a). This expands the discussion beyond "reproductive" cloning to the actual state-approved utilization of cloned embryos for research.

We urge a NO vote on SB 1230.

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SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

SB 1301	S
Senator Kuehl	B
As Amended April 8, 2002	
Hearing Date: April 9, 2002	1
Health and Safety Code	3
CJW:sr	0
	1

SUBJECT

Reproductive Privacy Act

DESCRIPTION

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act.

BACKGROUND

Existing law, the Therapeutic Abortion Act, was signed into law by former Governor Ronald Reagan and took effect in 1967. The Act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. [See Health and Safety Code Secs. 123400-123450. All further code references are to the Health and Safety Code unless otherwise stated.]

In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and treatment of fetal remains. In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

Since 1967, a number of state and federal court decisions have rendered various provisions of the Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to question. These provisions remain unchanged in the Health and Safety Code, however, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions.

(more)

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This bill would delete the invalid provisions of the Therapeutic Abortion Act and certain other provisions as well, including the name of the act, and would enact in their place the Reproductive Privacy Act, as specified below.

This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

CHANGES TO EXISTING LAW

1. Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest. [Secs. 123400, 123405, 123415.]

   Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee). [Sec. 123407.]

   Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion. [Id.]

   Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. *Planned Parenthood v. Ashcroft* (1983) 462 U.S. 476; *Akron v. Akron Center for Reproductive Health* (1983) 462 U.S. 416; *Roe v. Wade* (1973) 410 U.S. 179; *People v. Barksdale* (1972) 8 Cal. 3d 320.

   This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

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2. Existing statutory law provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. [Sec. 123410.]

   Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. [Id.]

   Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. *People v. Barksdale, supra,* 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261; *Feminist Women's Health Center v. Philobosian* (1984) 157 Cal. App. 3d 1076, 1084 n.3.

   This bill would repeal Section 123410, and instead would provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

   This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

   (a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; **or**

   (b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

   This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

3. Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years. [Sec. 123430.]

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This bill would delete this provision.

4. Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act. [Bus. & Profs. Code Sec. 2253.]

   Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion. [Id.]

   This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

   This bill further would provide that a person is subject to criminal penalties (1) if he or she **assists at a surgical abortion** and does not have a valid **license** or certificate obtained under a law authorizing him or her to perform **the functions necessary to** assist at a surgical abortion; or (2) if he or she performs or assists at a **nonsurgical** abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a **nonsurgical** abortion.

   This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

COMMENT

1. Stated need for legislation

   According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

   These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances in medical practice, such as early abortion methods like mifepristone (RU-486).

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This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes,

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning *Roe v. Wade*. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns *Roe*.

2. Supporters express concerns about erosion of rights

The California Commission on the Status of Women supports SB 1301 as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided *Roe v. Wade*," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through *Roe* and other decisions.

The Grey Panthers of California express similar views in support of the bill:

> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . . . We strongly support the *Roe v. Wade* decision and stand firm against any threat to the rights that decision permitted.

3. Medical groups support SB 1301 as protecting access to legal health care

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

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The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

4. Opponents object to codification of *Roe v. Wade*

Opponents concede that the bill would bring California abortion law into conformance with *Roe v. Wade*, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that "*Roe v. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such

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thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

5. Several current abortion statutes are invalid and appropriate for repeal

In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act – those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother -- impermissibly vague and therefore unconstitutional. *People v. Barksdale, supra,* 8 Cal. 3d at 333. Other provisions facilitating these statutes – those requiring the input of the district attorney, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act – were declared invalid as well. *Id.* at 334.

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Roe v. Wade, supra,* 410 U.S. at 153. An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in *Roe v. Wade. Committee to Defend Reproductive Rights v. Myers* (1981), 29 Cal. 3d 252, at 280.

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. *American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 314.

Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

6. The bill would not repeal or otherwise affect most other provisions of the Act

In addition to the provisions found unconstitutional, as described above, this bill would repeal two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires the DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and would remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal [Section 123420];

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(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

7. This bill's provisions are consistent with judicially established parameters for the regulation of abortion

Under the parameters established in *Roe v. Wade*, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. 410 U.S. at 164. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. *Id.* at 164-65.

Respecting right to privacy in first trimester. This bill would allow appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which would permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights is consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations related to maternal health. This bill would continue to require abortions to be performed by appropriately licensed health care professionals; would subject those who do not comply with the Reproductive Privacy Act to professional discipline; and would subject unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations relating to preserving life of viable fetus. In conformity with *Roe v. Wade*, this bill would prohibit state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

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Support: *Civil rights organizations:* American Civil Liberties Union (ACLU); People for the American Way. *Health care organizations:* American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood. *Legal organizations:* California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program. *Political organizations:* Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club. *Pro-choice organizations:* California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice. *Women's organizations:* American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College. *Other:* JWCH Institute, Inc.

Opposition: California Catholic Conference; California ProLife Council; California Right to Life Committee; Campaign for California Families; Committee on Moral Concerns

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HISTORY

Source: Planned Parenthood Affiliates of California, Inc. (PPAC)

Related Pending Legislation: None Known

Prior Legislation: SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code)

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SB 1301 Codes Amended

B&P Sec.

2253. (a) The procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion constitutes unprofessional conduct, unless the act is done in compliance with the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

(b) A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a surgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or does not have a certificate obtained in accordance with some other provision of law that authorizes him or her to perform or assist in performing a surgical abortion.

Health & Safety

Secs.

123400. This article shall be known and may be cited as the Therapeutic Abortion Act.

123405. A holder of the physician's and surgeon's certificate, as defined in the Business and Professions Code, is authorized to perform an abortion or aid or assist or attempt an abortion, only if each of the following requirements is met:

(a) The abortion takes place in a hospital that is accredited by the Joint Commission on Accreditation of Hospitals.

(b) The abortion is approved in advance by a committee of the medical staff of the hospital, which committee is established and maintained in accordance with standards promulgated by the Joint

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Commission on Accreditation of Hospitals. In any case in which the committee of the medical staff consists of no more than three licensed physicians and surgeons, the unanimous consent of all committee members shall be required in order to approve the abortion.

(c) The Committee of the Medical Staff finds that one or more of the following conditions exist:

(1) There is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother.

(2) The pregnancy resulted from rape or incest.

123407. The Committee of the Medical Staff shall not approve the performance of an abortion on the ground that the pregnancy resulted from rape or incest except in accordance with the following procedure:

(a) Upon receipt of an application for an abortion on the grounds that the pregnancy resulted from rape or incest, the committee shall immediately notify the district attorney of the county in which the alleged rape or incest occurred of the application, and transmit to the district attorney the affidavit of the applicant attesting to the facts establishing the alleged rape or incest. If the district attorney informs the committee that there is probable cause to believe that the pregnancy resulted from a violation of Section 261 or Section 285 of the Penal Code, the committee may approve the abortion. If, within five days after the committee has notified the district attorney of the application, the committee does not receive a reply from the district attorney, it may approve the abortion. If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the committee

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shall not approve the abortion, except as provided in subdivision (b) of this section.

(b) If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the person who applied for the abortion may petition the superior court of the county in that the alleged rape or incest occurred, to determine whether the pregnancy resulted from a violation of Section 261 or Section 285 of the Penal Code. Hearing on the petition shall be set for a date no later than one week after the date of filing of the petition.

The district attorney shall file an affidavit with the court stating the reasons for his or her conclusion that the alleged violation did not occur, and this affidavit shall be received in evidence. The district attorney may appear at the hearing to offer further evidence or to examine witnesses.

If the court finds that it has been proved, by a preponderance of the evidence, that the pregnancy did result from a violation of Section 261 or Section 285 of the Penal Code, it shall issue an order so declaring, and the committee may approve the abortion. Any hearing granted under this section may, at the court's discretion, be held in camera. The testimony, findings, conclusions or determinations of the court in a proceeding under this section shall be inadmissible as evidence in any other action or proceeding, although nothing herein shall be construed to prevent the appearance of any witness who testified at a proceeding under this section, or to prevent the introduction of any evidence that may have been introduced at a proceeding under this section, in any other action or proceeding.

(c) Notwithstanding any other provision of this section, an abortion shall be approved on the ground of a violation of subdivision (1) of Section 261 of the Penal Code only when the woman

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at the time of the alleged violation, was below the age of 15 years.

(d) Notwithstanding any other provision of this section, the testimony of any witness in a proceeding under this section shall be admissible as evidence in any prosecution of that witness for perjury.

123410. The committee of the medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. In no event shall the termination be approved after the 20th week of pregnancy.

123415. The term "mental health" as used in Section 123405 means mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint.

123430. The department shall by regulation establish and maintain a system for the reporting of therapeutic abortions so as to determine the demographic effects of abortion and assess the experience in relation to legal and medical standards pertaining to abortion practices. The reporting system shall not require, permit, or include the identification by name or other means of any person undergoing an abortion. The department shall make a report to the Legislature not later than the 30th calendar day each even-numbered year on its findings related to therapeutic abortions and their

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effects.

The department shall seek, in addition to any other funds made available to it, federal funds in order to carry out the purposes of this article.

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COMMITTEE ON MORAL CONCERNS

Art Croney, *Executive Director/Lobbyist*
Office: (916) 446-5131
FAX: (916) 446-5744

P.O. Box 2768
Sacramento, CA 95812

April 1, 2002

Senate Judiciary Committee

Please vote **NO** on **SB 1301** (Kuehl); abortion.

This bill would recast California's Therapeutic Abortion Act, calling it the Reproductive Privacy Act and bringing it in line with U.S. Supreme Court decisions starting with Roe v. Wade. The bill anticipates, prematurely we believe, the overturning of the Supreme Court's 1973 judgment. The Committee On Moral Concerns opposes this bill for the following reasons:

1. The bill finds and declares that "every individual possesses a fundamental right of privacy with respect to personal reproductive decisions" (page 6, lines 34 & 35). We agree. However, the bill later conflicts with its own declaration. Biologically, the life of the individual human being begins at the moment of conception. The bill gives certain individuals (women) the right to abort and fatally interfere with the reproductive right of other individuals (their sons and daughters who are living and growing, but not yet born).

2. The bill defines pregnancy as "beginning with the implantation of an embryo." This is politically convenient, but ungrounded in scientific reality. We know where babies come from. Pregnancy begins at conception. That is the principle on which in vitro fertilization works. Also, conception is the *only* time in our lives when our fathers had any contribution to our genetic characteristics. When an embryo fails to exit the fallopian tube this becomes a life-threatening ectopic *pregnancy*. Doctors and scientists who are unmotivated by politics know that pregnancy occurs before implantation in the uterus.

3. The bill defines "viability" as the point when the human fetus may survive outside the uterus. This is another political term lacking real meaning. As individuals, some of us could sustain survival outside the womb earlier than others, just as some of us could survive in the wilderness longer. Again, the bill's findings recognize individuals, but later language clouds that recognition.

4. The bill allows abortion any time before birth. Under Section 123468 (b) (2), aborting a viable human fetus is legal, if continuing the pregnancy until birth poses "no risk to the life or *health* of the pregnant woman." Since there is no such thing as an absolutely risk-free childbirth, under the bill, there is no such thing as an illegal abortion, as long as the abortionist is licensed.

Art Croney

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18 WEEKS

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SB 1301 (Kuehl) – Reproductive Privacy Act
Background Information

1. Origin of the bill:

a. Source: Planned Parenthood
Sue Dunlap
(916) 446-5247 ext. 104

b. Similar Bill: No.

c. Interim report: No.

2. What is the problem or deficiency in the present law that this bill seeks to remedy?

In 1967, Governor Ronald Reagan signed the Therapeutic Abortion Act, which expanded legal abortion in California under restrictive criteria. Most of those restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale*. Then the United States Supreme Court issued its landmark *Roe v. Wade* decision in 1973, bolstering California's recognition of abortion as a privacy right guaranteed by the Constitution of the United States. Though *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems.

3. Background Materials:

Attached please find the fact sheet on the bill.

4. Support/Opposition

Support:

Women's Organizations:
American Association of University Women, California
American Association of University Women, San Jose Chapter
American Association of University Women, Santa Cruz Chapter
California Commission on the Status of Women
California National Organization for Women
California Women's Law Center
California Women Lawyers
Democratic Women's Club, Pebble Beach
Hadassah
League of Women Voters of California

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National Council of Jewish Women
National Latina Alliance
National Organization for Women, Monterey Peninsula Chapter
National Women's Political Caucus of California
Older Women's League
Valley Women's Club
Women's Programs, Monterey Peninsula College

Health Care Organizations:
American College of Obstetricians and Gynecologists, District IX
California Family Health Council
California Medical Association
California Nurses Association
California Women's and Children's Health Coalition
National Health Law Program
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and San Louis Obispo Counties
Planned Parenthood: Shasta-Diablo
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood

Civil Rights Organizations:
American Civil Liberties Union
People for the American Way

Pro-Choice Organizations:
California Abortion & Reproductive Rights Action League
Medical Students for Choice, University of Southern California Chapter
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
Voters for Choice

Opposition:
None received.

Our office will provide additional letters of support for the bill as they arrive.

5. Amendments

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There will be minor clarifying amendments relative to surgical and non-surgical abortion and co-authors will be added to the bill.

6. Witnesses:

Maggie Crosby, ACLU
Additional witness still to be determined

Staff Contact: Jennifer Richard
445-1353

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national RIGHT TO LIFE committee, inc.

Western Regional Office
2306 J Street, Suite 200
Sacramento, CA 95816
(916) 442-8315

Fax Cover Sheet

Date: 4/4/02

To:

Name: Mike Petersen

Firm:

Fax: 324-1022 # of pages 2

From: Jan

Comments:

Phone (916) 442-8315 Fax (916) 441-7508 http://www/nrlc.rg

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CALIFORNIA PROLIFE

April 4, 2002

Senator Martha Escutia, Chairwoman
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

RE: SB 1301—Reproductive Privacy Act—Removes "physician-only" requirement for abortions—OPPOSE (by Senator Sheila Kuehl)

Dear Senator Escutia:

California ProLife Council, on behalf of its members, respectfully asks that you oppose **SB 1301**, by Senator Sheila Kuehl. **SB 1301** would replace the 1967 Therapeutic Abortion Act with the "Reproductive Privacy Act." From our perspective both of these acts have serious flaws, however our most grave concern with **SB 1301** is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect.

Current law requires in Section 123405 of the Health & Safety Code, that abortions be done by "a holder of the physician's and surgeon's certificate." This would be replaced with language in the Business and Professions Code, which apparently would allow non-physicians to perform "nonsurgical" abortions—such as RU 486, methotrexate, or other drug abortions.

This would be replaced with Section 123468 of the Reproductive Privacy Act, which drops the reference to physician and surgeons and states: "The performance of an abortion is unauthorized if . . . the following is true: (a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code."

In Sections (b)(1) and (b)(2) of 2253, a distinction is made between surgical and non-surgical abortions. Section (b)(1) allows NON-PHYSICIAN medical professionals with the appropriate certificate (whatever that means) TO ASSIST in the performance of SURGICAL abortions. Section (b)(2) allows NON-PHYSICIAN medical professionals, again with the appropriate certificate, TO PERFORM or assist in performing NON-SURGICAL abortions.

Please oppose SB 1301. It is not in the interest of the women of California to lower the standard of qualifications necessary for the performance of abortions. At a minimum, a clear provision requiring that all abortions be done by physicians and surgeons should be restored.

Sincerely,

Janet B. Carroll

Mrs. Janet B. Carroll
Legislative Analyst

California ProLife Council, Inc.
The California Affiliate of the National Right to Life Committee
2306 J Street Suite 200 • Sacramento, CA 95816
916.442-8315 • (fax) 916.441.7508 - www.californiaprolife.org

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CALIFORNIA RIGHT TO LIFE COMMITTEE, Inc.

1610 OAK PARK BLVD., STE. 1
PLEASANT HILL, CA 94523
(925) 944-5351 FAX (925) 944-5449
Established 1981
E-Mail: callife@calright2life.org **Web Site: calright2life.org**

To: Honorable Ray Haynes, Vice Chair
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

From: Liz Froelich
Legislative Analyst

Date: March 27, 2002

RE: SB SB 1301 (Kuehl) Reproductive Privacy Act
Position: OPPOSITION

California Right to Life opposes SB 1301. It is a deceptive maneuver initiated without sufficient discussion to install a state version of the federal *Roe vs. Wade* Supreme Court decision of 1973. *Roe vs. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People.

SB 1301 appears to create a new category for medical and medically related personnel to perform abortions or assist in abortions. Not even *Roe vs. Wade* allow non-physicians to perform abortions.

This is a special interest bill designed to further ease the regulations on abortion providers and to protect them from legal and/or civil action.

California Right to Life urges a NO vote.

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PPAC
Planned Parenthood
Affiliates of California, Inc.
Providing responsible choices through advocacy and political action.

March 27, 2002

The Honorable Ray Haynes – Vice Chair
Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Haynes:

Planned Parenthood Affiliates of California (PPAC) is proud to sponsor Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Sue Dunlap
Vice President of Public Policy

555 Capitol Mall, Suite 510 • Sacramento, California 95814-4581 • Phone: 916-446-5247 • Fax: 916-441-0642 • www.

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By Facsimile and Mail
March 27, 2002

Hon. Ray Haynes
Vice Chair
Senate Judiciary Committee
Capitol Building No. 2187
Sacramento, California 95814

Re: California Reproductive Privacy Act - Senate Bill 1301

Dear Senator Haynes:

We are writing on behalf of People For the American Way and our more than 50,000 California members in strong support of Senate Bill 1301, the California Reproductive Privacy Act. For over twenty years, People For the American Way has worked to defend our nation's commitment to fundamental civil rights and constitutional liberties, including women's reproductive rights. SB 1301 will help secure and promote the privacy and reproductive rights of California women and we urge the Senate Judiciary Committee to support this important legislation.

The California Reproductive Privacy Act ("the Act") would repeal outdated state law provisions restricting a woman's right to choose that have been found unconstitutional in court and would replace them with an explicit recognition and protection of privacy rights established by the U.S. Supreme Court in its 1973 Roe v. Wade decision. The Act explicitly protects the right to choose or refuse birth control and the right to bear a child or to terminate an unwanted pregnancy prior to viability and in cases where necessary to protect the life and health of the woman. While People For the American Way is working hard along with others to ensure that a future Supreme Court will not reverse Roe v. Wade and undermine the right to privacy, the threat is real and it makes sense for California to add its significant voice to this fight and to secure these rights for its residents for generations to come.

In addition, the California Reproductive Privacy Act would increase women's access to early and safe methods of terminating an unwanted pregnancy, including the use of mifepristone also known as RU-486 and other "emergency contraceptives." The Act would remove unwarranted restrictions that had been placed at an earlier time on the ability of nurses and other health practitioners to dispense medicine and to assist in the

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performing of abortions within the scope of their practice, licenses and certificates as authorized by law. These outdated restrictions had singled out procedures related to abortion and applied unnecessary regulations that are not applicable to much more complex medical functions and procedures. SB 1301 would ensure that qualified health care professionals, acting within the existing scope of their practice, would be able to treat patients in the area of reproductive health as they do in other medical areas.

In sum, SB 1301 is a sound and important piece of legislation that will help protect the privacy rights and reproductive health of California women. We urge you to pass SB 1301 out of committee and to support the enactment of this legislation as soon as possible.

Sincerely,

Ralph G. Neas
President

Sincerely,

Julie Burton
California Director

Cc: Members of the Senate Judiciary Committee

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ACOG District IX
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e-mail: district9@acog.org

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

DISTRICT IX — WOMEN'S HEALTH CARE PHYSICIANS

March 25, 2001

The Honorable Ray Haynes
Vice Chair, Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: Senate Bill 1301 (Kuehl)
ACOG-IX Position: SUPPORT

Dear Senator Haynes:

The American College of Obstetricians and Gynecologists, District IX, representing more than 4300 practicing California physicians, strongly supports Senate Bill 1301 (Kuehl) which is scheduled to be heard in the Senate Judiciary Committee on April 9th.

SB 1301 will repeal provisions of California's Therapeutic Abortion Act which have been found unconstitutional by the courts and replace them with a clear statement regarding a woman's right to choose. This measure also clarifies the role of healthcare professionals in the provision of abortion services. It is our understanding that an amendment will be taken to the bill on April 9th in the Senate Judiciary Committee which clarifies what is meant by nonsurgical abortion. We strongly support the inclusion of this amendment.

ACOG, District IX believes that termination of a pregnancy before viability is a medical matter between a woman and her physician. We support access to care for all individuals, irrespective of financial status, and the availability of all reproductive options. We also oppose any unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act which are being repealed by this measure.

For these reasons, we have taken a **SUPPORT** position on SB 1301 and urge your **AYE** vote when this measure comes before you in the Senate Judiciary Committee on April 9th. If I may provide you with additional information regarding our position on this measure, please do not hesitate to contact me at 415.258.9926.

Sincerely,

Joan Hall, JD

Joan M. Hall, JD
Legislative Advocate

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DISTRICT IX OFFICERS 1999-2002

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Granite Ba

PEOPLE FOR THE AMERICAN WAY

By Facsimile and Mail
March 27, 2002

Hon. Ray Haynes
Vice Chair
Senate Judiciary Committee
Capitol Building No. 2187
Sacramento, California 95814

Re: California Reproductive Privacy Act - Senate Bill 1301

Dear Senator Haynes:

We are writing on behalf of People For the American Way and our more than 50,000 California members in strong support of Senate Bill 1301, the California Reproductive Privacy Act. For over twenty years, People For the American Way has worked to defend our nation's commitment to fundamental civil rights and constitutional liberties, including women's reproductive rights. SB 1301 will help secure and promote the privacy and reproductive rights of California women and we urge the Senate Judiciary Committee to support this important legislation.

The California Reproductive Privacy Act ("the Act") would repeal outdated state law provisions restricting a woman's right to choose that have been found unconstitutional in court and would replace them with an explicit recognition and protection of privacy rights established by the U.S. Supreme Court in its 1973 Roe v. Wade decision. The Act explicitly protects the right to choose or refuse birth control and the right to bear a child or to terminate an unwanted pregnancy prior to viability and in cases where necessary to protect the life and health of the woman. While People For the American Way is working hard along with others to ensure that a future Supreme Court will not reverse Roe v. Wade and undermine the right to privacy, the threat is real and it makes sense for California to add its significant voice to this fight and to secure these rights for its residents for generations to come.

In addition, the California Reproductive Privacy Act would increase women's access to early and safe methods of terminating an unwanted pregnancy, including the use of mifepristone also known as RU-486 and other "emergency contraceptives." The Act would remove unwarranted restrictions that had been placed at an earlier time on the ability of nurses and other health practitioners to dispense medicine and to assist in the

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performing of abortions within the scope of their practice, licenses and certificates as authorized by law. These outdated restrictions had singled out procedures related to abortion and applied unnecessary regulations that are not applicable to much more complex medical functions and procedures. SB 1301 would ensure that qualified health care professionals, acting within the existing scope of their practice, would be able to treat patients in the area of reproductive health as they do in other medical areas.

In sum, SB 1301 is a sound and important piece of legislation that will help protect the privacy rights and reproductive health of California women. We urge you to pass SB 1301 out of committee and to support the enactment of this legislation as soon as possible.

Sincerely,

Ralph G. Neas
President

Sincerely,

Julie Burton
California Director

Cc: Members of the Senate Judiciary Committee

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CALIFORNIA
NURSES
ASSOCIATION

Shaping Tomorrow's Health Care
www.calnurse.org

March 28, 2002

The Honorable Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, California 95814

RE: SB 1301 (Kuehl) – SUPPORT
Senate Judiciary Committee - April 9, 2002

Dear Senator Escutia:

The California Nurses Association supports **Senate Bill 1301**, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

We urge your "**Aye**" vote **on SB 1301.**

Sincerely,

Vicki Bermudez

Vicki Bermudez, RN
Regulatory Policy Specialist

Cc: Members, Senate Judiciary Committee
Consultant
Senator Sheila Kuehl

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SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

SB 1301	S
Senator Kuehl	B
As Amended April 8, 2002	
Hearing Date: April 9, 2002	1
Health and Safety Code	3
CJW:sr	0
	1

SUBJECT

Reproductive Privacy Act

DESCRIPTION

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act.

BACKGROUND

Existing law, the Therapeutic Abortion Act, was signed into law by former Governor Ronald Reagan and took effect in 1967. The Act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. [See Health and Safety Code Secs. 123400-123450. All further code references are to the Health and Safety Code unless otherwise stated.]

In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and treatment of fetal remains. In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

Since 1967, a number of state and federal court decisions have rendered various provisions of the Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to question. These provisions remain unchanged in the Health and Safety Code, however, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions.

(more)

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This bill would delete the invalid provisions of the Therapeutic Abortion Act and certain other provisions as well, including the name of the act, and would enact in their place the Reproductive Privacy Act, as specified below.

This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

CHANGES TO EXISTING LAW

1. Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest. [Secs. 123400, 123405, 123415.]

   Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee). [Sec. 123407.]

   Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion. [Id.]

   Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. *Planned Parenthood v. Ashcroft* (1983) 462 U.S. 476; *Akron v. Akron Center for Reproductive Health* (1983) 462 U.S. 416; *Roe v. Wade* (1973) 410 U.S. 179; *People v. Barksdale* (1972) 8 Cal. 3d 320.

   This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

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2. Existing statutory law provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. [Sec. 123410.]

   Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. [Id.]

   Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. *People v. Barksdale, supra,* 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261; *Feminist Women's Health Center v. Philobosian* (1984) 157 Cal. App. 3d 1076, 1084 n.3.

   This bill would repeal Section 123410, and instead would provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

   This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

   (a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; **or**

   (b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

   This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

3. Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years. [Sec. 123430.]

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This bill would delete this provision.

4. Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act. [Bus. & Profs. Code Sec. 2253.]

   Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion. [Id.]

   This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

   This bill further would provide that a person is subject to criminal penalties (1) if he or she **assists at a surgical abortion** and does not have a valid **license** or certificate obtained under a law authorizing him or her to perform **the functions necessary to** assist at a surgical abortion; or (2) if he or she performs or assists at a **nonsurgical** abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a **nonsurgical** abortion.

   This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

COMMENT

1. Stated need for legislation

   According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

   These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances in medical practice, such as early abortion methods like mifepristone (RU-486).

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This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes,

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning *Roe v. Wade*. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns *Roe*.

2. Supporters express concerns about erosion of rights

The California Commission on the Status of Women supports SB 1301 as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided *Roe v. Wade*," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through *Roe* and other decisions.

The Grey Panthers of California express similar views in support of the bill:

> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . . . We strongly support the *Roe v. Wade* decision and stand firm against any threat to the rights that decision permitted.

3. Medical groups support SB 1301 as protecting access to legal health care

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

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The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

4. Opponents object to codification of *Roe v. Wade*

Opponents concede that the bill would bring California abortion law into conformance with *Roe v. Wade*, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that "*Roe v. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such

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thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

5. Several current abortion statutes are invalid and appropriate for repeal

In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act – those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother -- impermissibly vague and therefore unconstitutional. *People v. Barksdale, supra,* 8 Cal. 3d at 333. Other provisions facilitating these statutes – those requiring the input of the district attorney, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act – were declared invalid as well. *Id.* at 334.

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Roe v. Wade, supra,* 410 U.S. at 153. An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in *Roe v. Wade. Committee to Defend Reproductive Rights v. Myers* (1981), 29 Cal. 3d 252, at 280.

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. *American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 314.

Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

6. The bill would not repeal or otherwise affect most other provisions of the Act

In addition to the provisions found unconstitutional, as described above, this bill would repeal two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires the DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and would remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal [Section 123420];

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(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

7. This bill's provisions are consistent with judicially established parameters for the regulation of abortion

Under the parameters established in *Roe v. Wade*, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. 410 U.S. at 164. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. *Id.* at 164-65.

Respecting right to privacy in first trimester. This bill would allow appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which would permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights is consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations related to maternal health. This bill would continue to require abortions to be performed by appropriately licensed health care professionals; would subject those who do not comply with the Reproductive Privacy Act to professional discipline; and would subject unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations relating to preserving life of viable fetus. In conformity with *Roe v. Wade*, this bill would prohibit state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

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Support: *Civil rights organizations:* American Civil Liberties Union (ACLU); People for the American Way. *Health care organizations:* American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood. *Legal organizations:* California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program. *Political organizations:* Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club. *Pro-choice organizations:* California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice. *Women's organizations:* American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College. *Other:* JWCH Institute, Inc.

Opposition: California Catholic Conference; California ProLife Council; California Right to Life Committee; Campaign for California Families; Committee on Moral Concerns

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HISTORY

Source: Planned Parenthood Affiliates of California, Inc. (PPAC)

Related Pending Legislation: None Known

Prior Legislation: SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code)

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March 28, 2002

Senator Ray Haynes, Vice Chair
Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Haynes:

California Women Lawyers (CWL) supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Belynda Reck
President

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Affiliates: *Asian Pacific American Women Lawyers Alliance; Black Women Lawyers Association of Los Angeles; Contra Costa County Bar Association -Women Section; Fresno County Women Lawyers; Kern County Women Lawyers; Lawyers Club of San Diego; Monterey County Women Lawyers; Napa County Women Lawyers; Orange County Women Lawyers; Queen's Bench Lawyers Alliance; Santa Barbara Women Lawyers; Santa Clara County Bar Association Women Lawyers Committee; Solano County Women in the Law; Women Lawyers Association of San Luis Obispo County; Women Lawyers of Alameda County; Women Lawyers Section of San Mateo County Bar Association; Women Lawyers of Sacramento; Women Lawyers of Santa Cruz County; Women Lawyers of Ventura County*

LEAGUE OF WOMEN VOTERS OF CALIFORNIA

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FLOOR ALERT

SUPPORT SB 1301 (KUEHL)
REPRODUCTIVE PRIVACY ACT

May 15, 2002

The League of Women Voters of California urges your **AYE** vote for SB 1301 (Kuehl), the Reproductive Privacy Act. This important bill firmly establishes California's commitment to the fundamental right of freedom of reproductive choice by affirming the privacy rights established by *Roe v. Wade*

The League of Women Voters supports reproductive freedom and believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual. SB 1301 is right for the citizens of California. It will safeguard the privacy of women and ensure that reproductive health care policy guards the safety and health of women in California. SB 1301:

- Rids California of the provisions of the Therapeutic Abortion Act of 1967 which are antiquated and unconstitutional
- Assures women increased access to safe and early methods of abortion by clarifying the ability of health care providers, acting within their existing scopes of practice, to perform or assist in the performance of surgical and nonsurgical abortions
- Protects Californians' right to reproductive choice even if the Supreme Court undercuts *Roe v. Wade*.

The League of Women Voters of California thanks Senator Kuehl for carrying this important legislation replacing an archaic, restrictive, confusing and unconstitutional law with one that protects the reproductive freedom of women from the uncertainty of future Supreme Court decisions.

We urge you to vote "AYE" on this important measure, without amendment, when it comes up for a vote on the Senate floor.

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SB 1301 (Kuehl) **Oppose**
File Item #
Senate Judiciary: 4-2
(NO: Haynes, Ackerman)
Senate Appropriations: X-X
(AYE: NO: ABS:)
Vote requirement: 21
Version Date: 4/8/02

Quick Summary

Recasts and renames the California Therapeutic Abortion Act as the Reproductive Privacy Act. Declares the intention of the legislature to protect the reproductive privacy of all Californians and, among other thing rights, that every individual has the fundamental right to choose birth control and that every woman has the right to choose to bear a child or to obtain an abortion except in extremely limited circumstances.

Fiscal Effect 4-8-02

NO STATE COSTS.

Fiscal Comments
None.

Fiscal Consultant: Sharon Bishop

Digest

Finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the state of California that: (a) Every individual has the fundamental right to choose or refuse birth control. (b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article. (c) The state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted herein.

Changes the Therapeutic Abortion Act to the Reproductive Privacy Act.

Defines (a) "Abortion" as any medical treatment intended to induce the

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termination of a pregnancy except for the purpose of producing a live birth. (b) "Pregnancy" as the human reproductive process, beginning with the implantation of an embryo. (c) "State" as the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state. (d) "Viability" as the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

States that "nonsurgical abortion" includes termination of pregnancy through the use of pharmacological agents.

Prohibits the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman.

Declares the performance of an abortion is unauthorized if either of the following is true: (a) the person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code or (b) the abortion is performed on a viable fetus, and both of the following are established: (1) In the good faith medical judgment of the physician, the fetus was viable. and (2) in the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.

Prohibits performing or abetting, in any way, an illegal abortion.

Makes it a violation of health care profession licenses to violate the provisions of the Act.

Background

The Therapeutic Abortion Act was passed and signed into law in 1967. Some of its provisions were ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale*. The United States Supreme Court issued its *Roe v. Wade* decision in 1973, recognizing abortion as a "privacy right" guaranteed by the Constitution of the United States.

Current law requires that "a holder of the physician's and surgeon's certificate" perform abortions. Health & Safety Sec. 123405.

Analysis

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According to materials supplied by the author's office, although *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature.

The California ProLife Council, on behalf of its members, opposes this bill stating, "From our perspective both of these acts have serious flaws, however our most grave concern with SB 1301 is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect."

Additionally they observe "Current law requires in Section 123405 of the Health & Safety Code, that abortions be done by "**a holder of the physician's and surgeon's certificate**." This would be replaced with language in the Business and Professions Code, which apparently would allow non-physicians to perform so-called "nonsurgical" abortions—such as RU 486, methotrexate, or other drug abortions.

The current requirement for a certificate and standing of a medical professional would be replaced with the following provision of the Reproductive Privacy Act: "The performance of an abortion is unauthorized if . . . the following is true: (a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code." SB 1301 (Kuehl) January 18, 2002 version page 3, lines 12-21.

The ProLife Council also observes that "in Sections (b)(1) and (b)(2) of 2253, a distinction is made between surgical and non-surgical abortions." Their observation is accurate.

The bill's Section (b)(1) allows **non-physician** medical professionals with the appropriate certificate to **assist** in the performance of **surgical** abortions.

Its Section (b)(2) allows **non-physician** medical professionals, again with the appropriate certificate, to **perform or assist** in performing **non-surgical** abortions.'

No reason has been proffered for the reduction of the level of care that the bill would permit. Of course, no reason can be presented for the other provisions of this bill. The proponents contend it is necessary because the U.S. Supreme Court could reverse the Roe decisions because of the current administration.

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Support & Opposition Received

Support: American Association of University Women, California, American Association of University Women, San Jose Chapter, American Association of University Women, Santa Cruz Chapter, California Commission on the Status of Women, California National Organization for Women, California Women's Law Center, California Women Lawyers, Democratic Women's Club, Pebble Beach Hadassah, League of Women Voters of California, National Council of Jewish Women, National Latina Alliance, National Organization for Women, Monterey Peninsula Chapter, National Women's Political Caucus of California, Older Women's League, Valley Women's Club, Women's Programs, Monterey Peninsula College, American College of Obstetricians and Gynecologists, District IX, California Family Health Council, California Medical Association, California Nurses Association, California Women's and Children's Health Coalition, National Health Law Program, Planned Parenthood Affiliates of California, Santa Cruz Women's Health Center, Six Rivers Planned Parenthood, American Civil Liberties Union, People for the American Way, California Abortion & Reproductive Rights Action League, Medical Students for Choice, University of Southern California Chapter, Reproductive Rights Coalition of Monterey County, Reproductive Rights Network of Santa Cruz County, Voters for Choice.

Opposition: California ProLife Council, California Right to Life Committee, Committee on Moral Concerns.

Senate Republican Office of Policy Consultant: *Mike Petersen*

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SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

SB 1301	S
Senator Kuehl	B
As Amended April 8, 2002	
Hearing Date: April 9, 2002	1
Health and Safety Code	3
CJW:sr	0
	1

SUBJECT

Reproductive Privacy Act

DESCRIPTION

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act.

BACKGROUND

Existing law, the Therapeutic Abortion Act, was signed into law by former Governor Ronald Reagan and took effect in 1967. The Act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. [See Health and Safety Code Secs. 123400-123450. All further code references are to the Health and Safety Code unless otherwise stated.]

In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and treatment of fetal remains.

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In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

(more)

Since 1967, a number of state and federal court decisions have rendered various provisions of the Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to question. These provisions remain unchanged in the Health and Safety Code, however, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions.
This bill would delete the invalid provisions of the Therapeutic Abortion Act and certain other provisions as well, including the name of the act, and would enact in their place the Reproductive Privacy Act, as specified below.

This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

CHANGES TO EXISTING LAW

1. Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest. [Secs. 123400, 123405, 123415.]

Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape

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or incest (or if the district attorney fails to respond to the committee). [Sec. 123407.]

Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted

from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion. [Id.]

Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade (1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.

This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

2. Existing statutory law provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. [Sec. 123410.]

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Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. [Id.]

Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. People v. Barksdale, supra, 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261; Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.

This bill would repeal Section 123410, and instead would

provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

(a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; or

(b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in

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the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

3. Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years. [Sec. 123430.]

This bill would delete this provision.

4. Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act. [Bus. & Profs. Code Sec. 2253.]

Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion. [Id.]

This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

This bill further would provide that a person is subject to criminal penalties (1) if he or she **assists at a surgical abortion** and does not have a valid **license** or certificate obtained under a law authorizing him or her

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to perform **the functions necessary** to assist at a surgical abortion; or (2) if he or she performs or assists at a **nonsurgical** abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a **nonsurgical** abortion.

This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

COMMENT

1. Stated need for legislation

According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances

in medical practice, such as early abortion methods like mifepristone (RU-486).

This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes,

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning Roe v. Wade. Now is the time to

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protect our right to choose - right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns Roe.

2. Supporters express concerns about erosion of rights

The California Commission on the Status of Women supports SB 1301 as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided Roe v. Wade," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through Roe and other decisions.

The Grey Panthers of California express similar views in support of the bill:

> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . .

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> . We strongly support the Roe v. Wade decision and stand firm against any threat to the rights that decision permitted.

3. Medical groups support SB 1301 as protecting access to legal health care

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as

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an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

4. Opponents object to codification of Roe v. Wade

Opponents concede that the bill would bring California abortion law into conformance with Roe v. Wade, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that "Roe v. Wade was never ratified by Congress. Neither should our state legislators circumvent the will of the People."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

5. Several current abortion statutes are invalid and appropriate for repeal

In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act - those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother -- impermissibly vague and therefore unconstitutional. People v. Barksdale, supra, 8 Cal. 3d at 333. Other provisions facilitating these

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statutes - those requiring the input of the district attorney, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act - were declared invalid as well. Id. at 334.

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Roe v. Wade, supra, 410 U.S. at 153. An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in Roe v. Wade. Committee to Defend Reproductive Rights v. Myers (1981), 29 Cal. 3d 252, at 280.

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. American Academy of Pediatrics v. Lungren (1997) 16 Cal. 4th 307, 314.

Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

6. The bill would not repeal or otherwise affect most other provisions of the Act

In addition to the provisions found unconstitutional, as described above, this bill would repeal two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires the DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and would remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty,

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lawsuit, or employment opportunity as a result of their refusal [Section 123420];

(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

7. This bill's provisions are consistent with judicially established parameters for the regulation of abortion

Under the parameters established in Roe v. Wade, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. 410 U.S. at 164. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. Id. at 164-65.

Respecting right to privacy in first trimester. This bill would allow appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which would permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights is consistent with Roe's mandate that states may not

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interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations related to maternal health. This bill would continue to require abortions to be performed by appropriately licensed health care professionals; would subject those who do not comply with the Reproductive Privacy Act to professional discipline; and would subject

unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations relating to preserving life of viable fetus. In conformity with Roe v. Wade, this bill would prohibit state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

Support: Civil rights organizations: American Civil Liberties Union (ACLU); People for the American Way. Health care organizations: American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San

Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood. Legal organizations: California Women

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Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program. Political organizations: Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club. Pro-choice organizations: California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice. Women's organizations: American

Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College. Other: JWCH Institute, Inc.

Opposition: California Catholic Conference; California ProLife Council; California Right to Life Committee; Campaign for California Families; Committee on Moral Concerns

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HISTORY

Source: Planned Parenthood Affiliates of California, Inc. (PPAC)

Related Pending Legislation: None Known

Prior Legislation: SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code)

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FILE COPY

Date of Hearing: June 11, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 1301 (Kuehl) – As Amended: April 8, 2002

SENATE VOTE: 22-12

SUBJECT: REPRODUCTIVE PRIVACY ACT

KEY ISSUE: SHOULD CALIFORNIA'S LAW RELATING TO ABORTION BE CENTRALLY LOCATED IN A NEW STATE REPRODUCTIVE PRIVACY ACT WHICH WILL PROVIDE, AMONG OTHER THINGS, THAT EVERY INDIVIDUAL POSSESSES A FUNDAMENTAL RIGHT OF PRIVACY WITH RESPECT TO REPRODUCTIVE DECISIONS?

SYNOPSIS

This bill deletes various statutory provisions regarding abortion and enacts in their place a new centralized state Reproductive Privacy Act. This Act will provide, among other things, that every individual possesses a fundamental right of privacy with respect to reproductive decisions, and the state shall not deny or interfere with a woman's right to choose. In support of the bill, women's rights and medical organizations contend that this is a good and long needed clarification of the current state of the abortion law in California. Opponents argue that codification of Roe vs. Wade is a huge mistake. They also contend that an abortion should not be seen as a celebration of privacy.

SUMMARY: Deletes various statutory provisions regarding abortion and enacts in their place a new state Reproductive Privacy Act. Specifically, this bill:

1) Deletes scattered sections pertaining to reproductive privacy issues and enacts a new California Reproductive Privacy Act, which provides that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

2) Repeals Section 123410 of the Health and Safety Code and in its place provides that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

3) Provides that the performance of an abortion is unauthorized if either of the following is true:

   a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; or

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b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

4) Defines various terms, including 1) pregnancy (defined as "the human reproductive process, beginning with the implantation of an embryo,") and 2) viability (defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.")

5) Deletes the provision in existing law that provides that the Department of Health Services (DHS) shall have a system established for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and report its findings to the Legislature every two years.

6) Deletes the reference to the "Therapeutic Abortion Act" and instead provides that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

7) Provides that a person is subject to criminal penalties 1) if he or she assists at a surgical abortion and does not have a valid license or certificate obtained under a law authorizing him or her to perform the functions necessary to assist at a surgical abortion; or 2) if he or she performs or assists at a nonsurgical abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a nonsurgical abortion.

8) Provides that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

EXISTING LAW:

1) Authorizes, in the Therapeutic Abortion Act, that a holder of a physician's and surgeon's certificate may perform an abortion only if it takes place in an accredited hospital and is approved by a committee that finds that 1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or 2) the pregnancy resulted from rape or incest. (Health and Safety Code sections 123400, 123405, 123415. All further code references are to this code unless otherwise stated.)

2) Provides that the committee noted above shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless either the district attorney (DA) upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest, or the DA fails to respond to the committee. (Section 123407.)

3) Provides that if the DA informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect and the committee

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shall approve the abortion. (Id.)

4) Has declared, through case law, that these sections' medical criteria and approval processes for obtaining an abortion are unconstitutional. (Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade (1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.)

5) Provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. (Section 123410.)

6) Provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. (Id.)

7) Has invalidated this section's requirement that an abortion must be approved by a medical committee. (People v. Barksdale, supra, 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. (See, e.g., 65 Ops. Atty. Gen. 261; and Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.))

8) Provides that DHS shall establish a system for the reporting of abortions to determine their demographic effects and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years. (Section 123430.)

9) Provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act. (Business & Professions Code section 2253.)

10) Provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion. (Id.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: If one were to rely solely on a review of California's statutes regarding our laws regulating abortion, he or she would end up with a substantial misconception about the current state of this law. For, as the author notes in support of this legislation, many of our statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions. The problem is, they still remain on the books, and have yet to be repealed or modified in accordance with controlling case law. The result, she notes, "is a cryptic, often inconsistent abortion code that is laden with constitutional problems." The author also states that these outdated statutes also single out abortions for unnecessary regulation that has not been imposed on more complex procedures, and the existing statutes fail to address and accommodate major advances in medical practice, such as early abortion methods like mifepristone (otherwise known as and hereafter referred to as RU-486).

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- protecting Californians' fundamental right to choose a safe and legal abortion (even if the Supreme Court further reduces the federal protections contained in Roe v. Wade.)

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- deleting language in current state law that has been found unconstitutional in state and federal courts.

- treating abortion like other comparable medical procedures, and allowing healthcare providers, acting within their particular scopes of practice, to perform or assist in the performance of surgical and non-surgical abortions.

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In support of these changes, the author concludes with this comment:

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning Roe v. Wade. Now is the time to protect our right to choose - right here in California. SB 1301 will keep abortion safe and legal in California even if the Supreme Court overturns Roe.

Background: The state's existing abortion law, called the Therapeutic Abortion Act, was signed by former Governor Ronald Reagan and took effect in 1967. This act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. (See, e.g., Sections 123400-123450 of the Health and Safety Act, noted above.) In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and the treatment of fetal remains.

Several Current Abortion Statutes Are Invalid And Appropriate For Repeal: In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act - those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother -- impermissibly vague and therefore unconstitutional. (People v. Barksdale, supra, 8 Cal. 3d at 333.) Other provisions facilitating these statutes - those requiring the input of the DA, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act - were declared invalid as well. (Id. at 334.)

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." (Roe v. Wade, supra, 410 U.S. at 153.) An explicit right to

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privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in Roe v. Wade. (Committee to Defend Reproductive Rights v. Myers (1981), 29 Cal. 3d 252, at 280.)

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. (American Academy of Pediatrics v. Lungren (1997) 16 Cal. 4th 307, 314.) Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

Thus, since its inception in 1967, a number of state and federal court decisions have rendered various provisions of the state's Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to serious question. Despite their unconstitutionality, however, these provisions have remained largely unchanged in the state's Health and Safety Code, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions. This bill finally addresses this confusing statutory situation by deleting the provisions of the Therapeutic Abortion Act that have been ruled unconstitutional. The bill also revises certain other provisions as well, including the name of the state's reproductive rights act. In its place, the bill enacts a new Reproductive Privacy Act, as further detailed below.

The Bill Does Not Repeal Or Otherwise Affect Most Other Provisions Of The Act. In addition to the provisions noted above found unconstitutional, this bill repeals two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and will remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal [Section 123420];

(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

This Bill's Provisions Appear Consistent With Judicially Established Parameters For The Regulation Of Abortion. Under the parameters established in Roe v. Wade, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. (410 U.S. at 164.) After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the

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Respect for the Right To Privacy In the First Trimester. This bill allows appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which will permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights appears wholly consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations Related To Maternal Health: This bill also continues to require abortions to be performed by appropriately licensed health care professionals; subjects those who do not comply with the Reproductive Privacy Act to professional discipline; and subjects unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations Relating To Preserving Life Of Viable Fetus: In conformity with Roe v. Wade, this bill also prohibits state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

ARGUMENTS IN SUPPORT: A plethora of women's rights and medical organizations are in strong support of this legislation, uniformly expressing concerns about the erosion of abortion rights in California and the urgent need to ensure continuing and reasonable access to abortion services.

The California Commission on the Status of Women supports SB 1301 as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law."

The American Association of University Women-CA also supports the bill, stating it "ensures that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future." The group states that "[w]ith the advent and approval of RU 486 ... women have other options besides surgery to end an unwanted pregnancy. SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice."

The League of Women Voters writes in support, stating that the bill "assures women increased access to safe and early methods of abortion by clarifying the ability of health care providers, acting within their existing scopes of practice, to perform or assist in performance of surgical and nonsurgical abortions."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided Roe v. Wade," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through Roe and other decisions.

The Grey Panthers of California express similar views in support of the bill:

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> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . . . We strongly support the Roe v. Wade decision and stand firm against any threat to the rights that decision permitted.

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

ARGUMENTS IN OPPOSITION: Several groups wrote the Committee in strong opposition to the bill, principally objecting to the bill's codification of Roe v. Wade. Although opponents concede that the bill will bring California abortion law into conformance with Roe v. Wade, they assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents express concern that Roe v. Wade has never been ratified by Congress.

Capitol Resource Institute writes in opposition, stating that "while men and women certainly have not only a right but a responsibility to exercise prudent birth control measures, babies have the 'fundamental right' to expect that once conceived they have the right to expect that their mothers will give them a chance to protect them and allow them to live... SB 1301 also says that the state shall not deny or interfere with a women's right to choose an abortion. This raises a question: What about a doctor who refuses to perform an abortion based on his or her personal beliefs? Could that doctor be considered to be interfering with a woman's "fundamental right" and therefore be penalized?"

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Campaign for California Families opposes SB 1301 because it "celebrates the killing of pre-born children as a 'fundamental right.' Abortion ends a pregnancy by destroying and removing the developing child... Approximately 93% of all induced abortions are done for elective, non-medical reasons such as these. Destroying innocent human life for convenience is wrong and should not be seen as a celebration of 'privacy' or anything else."

California Right to Life also opposes the bill, stating it "would result in effectively installing a state version of the federal Roe vs. Wade Supreme Court decision with major expansion provisions."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

California ProLife Council also opposes the bill, stating "our most grave concern ... is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect."

Prior Related Legislation. SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code).

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, CA District
American Association of University Women, California
American Association of University Women, San Jose Branch
American Association of University Women, Santa Cruz Branch
American Civil Liberties Union
American College of Obstetricians and Gynecologists, District IX
American Medical Women's Association
Board of Supervisors, County of Santa Cruz
California Abortion & Reproductive Rights Action League
California Church Impact
California Commission on the Status of Women
California Family Health Council
California Medical Association
California National Organization for Women

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California Nurses Association
California Pro-Choice Republicans
California Women Lawyers
California Women's Law Center
California Women's and Children's Health Coalition
Democratic Women of Santa Barbara County
Democratic Women's Club, Pebble Beach
Hadassah
Lambda Letters Project
League of Women Voters of California
Medical Students for Choice, University of Southern California Chapter
National Council of Jewish Women
National Health Law Program
National Latina Alliance
National Organization for Women, Monterey Peninsula Chapter
National Women's Political Caucus of California
Older Women's League
People for the American Way
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood: Shasta-Diablo
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
San Louis Obispo Counties
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood
Valley Women's Club
Voters for Choice
Women Lawyers Association of Los Angeles
Women's Programs, Monterey Peninsula College
Workmen's Circle/Arbeter Ring (Southern California District)

Opposition

California ProLife Council
Committee on Moral Concerns
Capitol Resource Institute
Campaign for California Families
California Right to Life Committee

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334

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FILE COPY

Date of Hearing: June 11, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 1301 (Kuehl) – As Amended: April 8, 2002

SENATE VOTE: 22-12

SUBJECT: REPRODUCTIVE PRIVACY ACT

KEY ISSUE: SHOULD CALIFORNIA'S LAW RELATING TO ABORTION BE CENTRALLY LOCATED IN A NEW STATE REPRODUCTIVE PRIVACY ACT WHICH WILL PROVIDE, AMONG OTHER THINGS, THAT EVERY INDIVIDUAL POSSESSES A FUNDAMENTAL RIGHT OF PRIVACY WITH RESPECT TO REPRODUCTIVE DECISIONS?

SYNOPSIS

This bill deletes various statutory provisions regarding abortion and enacts in their place a new centralized state Reproductive Privacy Act. This Act will provide, among other things, that every individual possesses a fundamental right of privacy with respect to reproductive decisions, and the state shall not deny or interfere with a woman's right to choose. In support of the bill, women's rights and medical organizations contend that this is a good and long needed clarification of the current state of the abortion law in California. Opponents argue that codification of Roe vs. Wade is a huge mistake. They also contend that an abortion should not be seen as a celebration of privacy.

SUMMARY: Deletes various statutory provisions regarding abortion and enacts in their place a new state Reproductive Privacy Act. Specifically, this bill:

1) Deletes scattered sections pertaining to reproductive privacy issues and enacts a new California Reproductive Privacy Act, which provides that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

2) Repeals Section 123410 of the Health and Safety Code and in its place provides that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

3) Provides that the performance of an abortion is unauthorized if either of the following is true:

   a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; or

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b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

4) Defines various terms, including 1) pregnancy (defined as "the human reproductive process, beginning with the implantation of an embryo,") and 2) viability (defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.")

5) Deletes the provision in existing law that provides that the Department of Health Services (DHS) shall have a system established for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and report its findings to the Legislature every two years.

6) Deletes the reference to the "Therapeutic Abortion Act" and instead provides that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

7) Provides that a person is subject to criminal penalties 1) if he or she assists at a surgical abortion and does not have a valid license or certificate obtained under a law authorizing him or her to perform the functions necessary to assist at a surgical abortion; or 2) if he or she performs or assists at a nonsurgical abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a nonsurgical abortion.

8) Provides that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

EXISTING LAW:

1) Authorizes, in the Therapeutic Abortion Act, that a holder of a physician's and surgeon's certificate may perform an abortion only if it takes place in an accredited hospital and is approved by a committee that finds that 1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or 2) the pregnancy resulted from rape or incest. (Health and Safety Code sections 123400, 123405, 123415. All further code references are to this code unless otherwise stated.)

2) Provides that the committee noted above shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless either the district attorney (DA) upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest, or the DA fails to respond to the committee. (Section 123407.)

3) Provides that if the DA informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect and the committee

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shall approve the abortion. (Id.)

4) Has declared, through case law, that these sections' medical criteria and approval processes for obtaining an abortion are unconstitutional. (Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade (1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.)

5) Provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. (Section 123410.)

6) Provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. (Id.)

7) Has invalidated this section's requirement that an abortion must be approved by a medical committee. (People v. Barksdale, supra, 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. (See, e.g., 65 Ops. Atty. Gen. 261; and Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.))

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FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: If one were to rely solely on a review of California's statutes regarding our laws regulating abortion, he or she would end up with a substantial misconception about the current state of this law. For, as the author notes in support of this legislation, many of our statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions. The problem is, they still remain on the books, and have yet to be repealed or modified in accordance with controlling case law. The result, she notes, "is a cryptic, often inconsistent abortion code that is laden with constitutional problems." The author also states that these outdated statutes also single out abortions for unnecessary regulation that has not been imposed on more complex procedures, and the existing statutes fail to address and accommodate major advances in medical practice, such as early abortion methods like mifepristone (otherwise known as and hereafter referred to as RU-486).

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The American Association of University Women-CA also supports the bill, stating it "ensures that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future." The group states that "[w]ith the advent and approval of RU 486 ... women have other options besides surgery to end an unwanted pregnancy. SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice."

The League of Women Voters writes in support, stating that the bill "assures women increased access to safe and early methods of abortion by clarifying the ability of health care providers, acting within their existing scopes of practice, to perform or assist in performance of surgical and nonsurgical abortions."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided Roe v. Wade," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through Roe and other decisions.

The Grey Panthers of California express similar views in support of the bill:

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> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . . . We strongly support the Roe v. Wade decision and stand firm against any threat to the rights that decision permitted.

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

ARGUMENTS IN OPPOSITION: Several groups wrote the Committee in strong opposition to the bill, principally objecting to the bill's codification of Roe v. Wade. Although opponents concede that the bill will bring California abortion law into conformance with Roe v. Wade, they assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents express concern that Roe v. Wade has never been ratified by Congress.

Capitol Resource Institute writes in opposition, stating that "while men and women certainly have not only a right but a responsibility to exercise prudent birth control measures, babies have the 'fundamental right' to expect that once conceived they have the right to expect that their mothers will give them a chance to protect them and allow them to live... SB 1301 also says that the state shall not deny or interfere with a women's right to choose an abortion. This raises a question: What about a doctor who refuses to perform an abortion based on his or her personal beliefs? Could that doctor be considered to be interfering with a woman's "fundamental right" and therefore be penalized?"

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Campaign for California Families opposes SB 1301 because it "celebrates the killing of pre-born children as a 'fundamental right.' Abortion ends a pregnancy by destroying and removing the developing child... Approximately 93% of all induced abortions are done for elective, non-medical reasons such as these. Destroying innocent human life for convenience is wrong and should not be seen as a celebration of 'privacy' or anything else."

California Right to Life also opposes the bill, stating it "would result in effectively installing a state version of the federal Roe vs. Wade Supreme Court decision with major expansion provisions."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

California ProLife Council also opposes the bill, stating "our most grave concern ... is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect."

Prior Related Legislation. SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code).

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, CA District
American Association of University Women, California
American Association of University Women, San Jose Branch
American Association of University Women, Santa Cruz Branch
American Civil Liberties Union
American College of Obstetricians and Gynecologists, District IX
American Medical Women's Association
Board of Supervisors, County of Santa Cruz
California Abortion & Reproductive Rights Action League
California Church Impact
California Commission on the Status of Women
California Family Health Council
California Medical Association
California National Organization for Women

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California Nurses Association
California Pro-Choice Republicans
California Women Lawyers
California Women's Law Center
California Women's and Children's Health Coalition
Democratic Women of Santa Barbara County
Democratic Women's Club, Pebble Beach
Hadassah
Lambda Letters Project
League of Women Voters of California
Medical Students for Choice, University of Southern California Chapter
National Council of Jewish Women
National Health Law Program
National Latina Alliance
National Organization for Women, Monterey Peninsula Chapter
National Women's Political Caucus of California
Older Women's League
People for the American Way
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood: Shasta-Diablo
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
San Louis Obispo Counties
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood
Valley Women's Club
Voters for Choice
Women Lawyers Association of Los Angeles
Women's Programs, Monterey Peninsula College
Workmen's Circle/Arbeter Ring (Southern California District)

Opposition

California ProLife Council
Committee on Moral Concerns
Capitol Resource Institute
Campaign for California Families
California Right to Life Committee

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334

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JUN 19 2002

Shelley Volz
Full-time Student at San Francisco State University
1339 48th Avenue, San Francisco, California 94122
415-681-3316
zippyhatz@usa.net

June 17, 2002

Kevin F. Shelley
State Capitol Rm. 3160
Sacramento, CA 95814

Dear Assemblymember Shelley,

As a pro-choice voter and supporter of CARAL, I am writing to show my support for SB 1301, authored by Senator Sheila Kuehl. SB 1301, the Reproductive Privacy Act, is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

SB 1301 would delete unconstitutional provisions in current state law; expand access to early, non-surgical abortions; and clarify the roles of health care professionals performing or assisting with the abortion procedure. In addition, SB 1301 clearly states that every woman in California has the right to choose or refuse birth control and to choose whether or not to carry a pregnancy to term. With the composition of the U.S. Supreme Court likely to change soon, this affirmation is especially crucial in order to protect California women's reproductive rights.

Please vote AYE on SB 1301, when heard in the California Assembly.

Sincerely,

Shelley Volz
Shelley Volz

cc: Senator Sheila Kuehl
Assemblymember Ellen M. Corbett

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

June 14, 2002

Ellen M. Corbett, Assemblymember
Chair, California Assembly Judiciary Committee
State Capitol Rm 4126
Sacramento, CA 95814

Dear Ellen M. Corbett,

As a pro-choice voter and supporter of CARAL, I am writing to show my support for SB 1301, authored by Senator Sheila Kuehl. SB 1301, the Reproductive Privacy Act, is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

SB 1301 would delete unconstitutional provisions in current state law; expand access to early, non-surgical abortions; and clarify the roles of health care professionals performing or assisting with the abortion procedure. In addition, SB 1301 clearly states that every woman in California has the right to choose or refuse birth control and to choose whether or not to carry a pregnancy to term. With the composition of the U.S. Supreme Court likely to change soon, this affirmation is especially crucial in order to protect California women's reproductive rights.

Please vote AYE on SB 1301, when heard in the California Assembly.

Sincerely,



Gregory D. Gallup

23B Mirabel Ave.

San Francisco, CA 94110

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

June 13, 2002

Hon. Ellen M. Corbett
State Capitol
Room 4126
Sacramento, CA 95814

Dear Hon. Ellen M. Corbett:

As an organization that has been working for more than 25 years to ensure that American women are able to access high quality abortion care, the National Abortion Federation (NAF) strongly urges legislators to support S.B. 1301, the Reproductive Privacy Act.

NAF is the professional association of abortion providers in the United States and Canada. Our primary mission is to keep abortion safe, legal, and accessible. NAF represents 47 member clinics in California, and approximately 350 California members of the "Clinicians for Choice" organization, an umbrella organization for advanced practice clinicians including midwives, nurse practitioners, and physician assistants. NAF member facilities provide over half the abortions performed in the United States each year. We are the only organization accredited to provide ongoing medical education specific to abortion care, and our quality improvement program reaches the broadest scope of abortion providers in North America.

Senate Bill 1301, the Reproductive Privacy Act, is very important to women in California seeking meaningful access to their full range of reproductive options. The bill recognizes a fundamental right of privacy with respect to reproductive decisions, and in the context of abortion, provides that licensed health professionals who are authorized to write prescriptions under existing California law may similarly assist women in obtaining medical abortions, a safe, non-surgical option for early pregnancy termination.

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1755 Massachusetts Ave., NW Suite 600 Washington, DC 20036 Telephone: 202.667.5881

Early medical abortion has a proven track record of safety. Mifepristone has been used safely[1] for early abortion in hundreds of thousands of cases worldwide, including areas where ultrasound has not been routinely available. Various U.S. clinical trials of the mifepristone/misoprostol regimens found a success rate of up to 98%. Complications in medical abortion are rare: less than one half of one percent of women in clinical trials required any serious medical intervention. Managing childbirth is far more risky.

Advanced practice clinicians are qualified to provide medical abortions. Numerous professional organizations including the National Abortion Federation, the American College of Obstetricians and Gynecologists, Physicians for Reproductive Choice and Health, the American Academy of Physician Assistants, the National Association of Nurse Practitioners in Women's Health, the American College of Nurse Midwives, and the American Public Health Association have issued statements supporting the role of advanced practice clinicians as abortion providers (see attachments). California law already authorizes advanced practice clinicians to prescribe medications such as oral contraceptives, antibiotics and controlled substances. In addition, many already perform comprehensive health assessments, provide post-abortion care, pre-natal care, and assist in minor surgery such as endometrial biopsies. S.B. 1301 recognizes that advanced practice clinicians are very qualified to provide medical abortions, and removes the one barrier to safe and legal abortions remaining in California's pre-*Roe* abortion law.

Women in California should not be denied a full range of medical options when making their reproductive health care decisions. S.B. 1301 will help ensure better access for Californian women who have chosen to seek a safe, non-surgical abortion.

I have enclosed materials on the history and safety of medical abortion for your reference. In addition, I would encourage you to review the extensive information on medical abortion found on our website, www.earlyoptions.org. I appreciate your time and care in reviewing this information and thank you for your support of S.B. 1301.

Sincerely,

Vicki A. Saporta
President & CEO

[1] Some antiabortion activists have raised concerns about a routine letter from the manufacturer of mifepristone advising health care providers of adverse events associated with a small number of women who had medical abortions. The letter included information about two women who had died after having medical abortions, but the FDA has emphasized that it found no causal link whatsoever between the two deaths and the use of mifepristone. See Susan Okie, "Physicians Sent Abortion Pill Alert," *Washington Post* at A01 (April 18, 2002). See also FDA Q&A at www.fda.gov/cder/drug/infopage/mifepristone/.

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PPAC
Planned Parenthood®
Affiliates of California, Inc.
Providing responsible choices through advocacy and political action.

June 12, 2002

The Honorable Ellen Corbett, Chair
Assembly Judiciary Committee
State Capitol, Room 4126
Sacramento, CA 95814

RE: SB 1301 (Kuehl)

Dear Assembly Member Corbett:

Planned Parenthood Affiliates of California (PPAC) would like to extend our gratitude for your AYE vote on SB 1301.

Your support of reproductive rights in California is crucial in ensuring that all women have the freedom to make important decisions for their health.

Thank you for your continued support of reproductive rights.

Sincerely,

Sue Dunlap
Vice President of Public Policy

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

555 Capitol Mall, Suite 510 • Sacramento, California 95814-4581 • Phone (916) 446-5247 • Fax (916) 441-0632 • www.ppacca.org

June 10, 2002

Hon. Richard Dickerson
State Capitol Rm 5160
Sacramento, CA 95814

Dear Assembly member Richard Dickerson:

JUN 19 2002

As a pro-choice voter and supporter of CARAL, I am writing to show my support for SB 1301, authored by Senator Sheila Kuehl. SB 1301, the Reproductive Privacy Act, is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

SB 1301 would delete unconstitutional provisions in current state law; expand access to early, non-surgical abortions; and clarify the roles of health care professionals performing or assisting with the abortion procedure. In addition, SB 1301 clearly states that every woman in California has the right to choose or refuse birth control and to choose whether or not to carry a pregnancy to term. With the composition of the U.S. Supreme Court likely to change soon, this affirmation is especially crucial in order to protect California women's reproductive rights.

Please vote YES on SB 1301, when heard in the California Assembly.

Sincerely,

Melissa A. Puckett

Melissa A. Puckett

2925 East Way Unit A

Redding, CA 96002

Cc:Senator Sheila Kuehl, Ellen M/ Corbett, Assemblymember

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COPY

BACKGROUND:

Most Californians would be shocked to learn that the prevailing abortion law in California is the Therapeutic Abortion Act. Gov. Ronald Reagan signed the Act in 1967. It expanded legal abortion in California under very restrictive criteria. Among other things, it requires the procedure to take place in a hospital within the first 20 weeks of pregnancy, and only in cases of rape, incest, or if the life or mental health of the mother is at risk.

However, most of the restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case People v. Barksdale. The United Sates Supreme Court issued its landmark *Roe v. Wade* decision in 1973, bolstering Californiais recognition of abortion as a privacy right guaranteed by the Constitution of the United States. Though Roe and Barksdale have rendered much of the Therapeutic Abortion Act obsolete, the Act itself is still on the books of California law. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems. SB 1301 would remove the Therapeutic Abortion Act from the books altogether.

If passed, SB 1301, The Reproductive Privacy Act will:

- Provide women greater access to early non-surgical abortion methods. Mifepristone (formerly known as RU486) has been used safely for years. It is federally approved, but not widely available.
- Streamline conflicting laws and delete unconstitutional ones. SB 1301 deletes language in current state law that has been found unconstitutional and streamlines the statute to create an easily understandable and consistent law.
- Treat abortion like other comparable medical procedures. Today, abortions are singled out for unnecessary regulations based on political rather than medical reasons.
- Protect the right to choose in California. The Reproductive Privacy Act will safeguard Californiansi fundamental right to choose a safe and legal abortionoeven if the U.S. Supreme Court removes the federal protection of *Roe v. Wade.*

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JUN 11 2002

JUN 13 2002

2210 Derby St.
Berkeley, CA. 94705
June 6, 2002

Dear Assemblymember Corbett,

I urge you to support the Reproductive Privacy Act, SB 1301, authored by Senator Sheila Kuehl. The act would replace California's antiquated and largely unconstitutional Therapeutic Abortion Act of 1967. The Reproductive Privacy Act would ensure that California women continue to have access to abortion services even if the U. S. Supreme Court were to overturn Roe v. Wade. SB 1301 is critical because President Bush has made clear his intent to appoint a Justice who opposes Roe v. Wade, and it would only take one appointment to tip the balance of the U.S. Supreme Court. In addition, because this year's gubernatorial race involves pro-choice Governor Gray Davis running against anti-choice Bill Simon, California women's reproductive freedom must be protected. A candidate like Simon could have a devastating impact on abortion and reproductive rights throughout California.

Sincerely,

Nancy Ward

Nancy Ward
National Organization for Women

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 5 2002

AMERICAN
ASSOCIATION OF
UNIVERSITY
WOMEN

CALIFORNIA

SUPPORT
SB 1301

June 6, 2002

Tina Hester
Legislative Advocate

TO: Chairperson Ellen Corbett
Members of the Assembly Judiciary Committee

RE: SB 1301 (Kuehl)

The American Association of University Women – CA strongly support Senate Bill 1301 (Kuehl), as amended on April 8th This legislation ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future.

For years, abortion services have been singled out for unnecessary regulations when compared to similar surgical procedures. SB 1301, the Reproductive Privacy Act, will help to eliminate that stigma and ensure reproductive health care services are performed in the safest manner possible.

With the advent and approval of RU 486, the earlier name for mifepristone, women have other options besides surgery to end an unwanted pregnancy. SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

AAUW-CA has long supported reproductive rights and the organization urges you to vote **AYE on SB 1301.**

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1414 K STREET, STE 220, SACRAMENTO, CA 95814 916.443.2121 (FAX) 916.448.1729 E-MAIL: ADVOCACY@CA-AAUW.ORG

SB 1301 (Kuehl) – The Reproductive Privacy Act

What does SB 1301 do?

- **Protects the Right to Choice in California**
  The Reproductive Privacy Act will protect Californians' fundamental right to choose a safe and legal abortion – even if the Supreme Court further reduces the federal protections contained in *Roe v. Wade.*

- **Provides Women Greater Access to Early Non-Surgical Abortion Methods**
  SB 1301 will provide greater access to early abortion methods like mifepristone (RU-486) by eliminating arbitrary barriers that currently impede the ability of licensed health care professionals to treat patients in the area of reproductive health.

- **Deletes unconstitutional laws**
  SB 1301 deletes language in current state law that has been found unconstitutional in state and federal courts.

- **Treats abortion like other comparable medical procedures**
  Today, abortions are singled out for regulation that doesn't apply even to more complex procedures. SB 1301 allows healthcare providers, acting within their particular scopes of practice, to perform or assist in the performance of surgical and non-surgical abortions.

Why is the bill necessary?

In 1967, Governor Ronald Reagan signed the Therapeutic Abortion Act, which expanded legal abortion in California under very restrictive criteria. Most of those restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale.* The United States Supreme Court issued its landmark *Roe v. Wade* decision in 1973, bolstering California's recognition of abortion as a privacy right guaranteed by the Constitution of the United States. Though *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems.

Who supports the bill?

The bill is supported by Governor Davis and the top leadership of both the Assembly and Senate. The bill is also supported by a large number of women's groups, healthcare providers, civil rights groups, and pro-choice organizations. A complete list of sponsors and supporters is attached.

Why now?

We have an anti-choice President, an anti-choice Congress, and a Supreme Court that could be one vote away from overturning *Roe v. Wade.* Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court undercuts *Roe.*

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Who Supports the Reproductive Privacy Act?

Women's Organizations:

American Association of University Women, California
American Association of University Women, San Jose Chapter
American Association of University Women, Santa Cruz Chapter
California Commission on the Status of Women
California National Organization for Women
California Women's Law Center
California Women Lawyers
Contra Costa Commission for Women
Democratic Activists for Women Now
Democratic Women of Santa Barbara County
Democratic Women's Club of Santa Cruz County
Democratic Women's Club of Monterey County
Hadassah
League of Women Voters of California
League of Women Voters of the Monterey Peninsula
League of Women Voters, Santa Cruz County
Marin County Women's Commission
National Council of Jewish Women
National Latina Alliance
National Organization for Women, Monterey Peninsula Chapter
National Organization for Women, San Jose/South Bay Chapter
National Women's Political Caucus of California
Older Women's League
Santa Cruz County Women's Commission
Valley Women's Club
Women's International League for Peace and Freedom, Monterey County
Women Lawyers Association of Los Angeles
Women Lawyers of Santa Cruz County
Women's International League for Peace and Freedom, Fresno Branch
Women's Programs, Monterey Peninsula College

Civil Rights Organizations:

American Civil Liberties Union
American Civil Liberties Union, Santa Cruz County
Democratic Central Committee of Santa Cruz County
Green Party, Monterey County
Lawyers Club of San Diego
Los Angeles County Young Democrats
Orcutt Republican Club
People for the American Way
Peoples Democratic Club of Santa Cruz
Santa Clara County Democratic Central Committee
United Nations Association of Santa Cruz County
West Hollywood Democratic Club
27th AD Democratic Committee

Health Care Organizations:

American Academy of Pediatrics, CA District IX
American College of Obstetricians and Gynecologists, District IX
California Family Health Council
California Medical Association
American Medical Women's Association
California Nurses Association
California Women's and Children's Health Coalition
Central Coast Alliance for Health
CommuniCare Health Centers
National Health Law Program
Physicians for Reproductive Choice and Health
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and San Luis Obispo Counties
Planned Parenthood: Shasta-Diablo
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood
T.H.E. Clinic, Inc.
Women's Health Collaborative
Women's Health Specialists
Women's Lifecycle Medical Group

Pro-Choice Organizations:

California Abortion & Reproductive Rights Action League
California Pro-Choice Republicans
Choice USA, UC Santa Cruz Chapter
Medical Students for Choice, University of Southern California Chapter
Pro Choice Coalition of Santa Clara County
Religious Coalition for Reproductive Choice
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
Reproductive Rights Network of Ventura County
San Luis Obispo County Pro-Choice Coalition
Voters for Choice
Zero Population Growth of Monterey Bay

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Ithaca, New York
David J. Strachman
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Elroy Strickland
Murrysville, Pennsylvania
Roscoe Stovall, Jr.
Indianapolis, Indiana
John P. Tayor
Cupertino, California
John H. Tovey
Allendale, New Jersey
Neil T. Wallace
Ithaca, New York
(Partial Listing)

United States Justice Foundation

June 7, 2002

Ellen M. Corbett, Chair
ASSEMBLY COMMITTEE ON JUDICIARY
Capitol Building, Room 4126
Sacramento, CA 95814
Fax 916-319-2118

Helen Thomson, Chair
ASSEMBLY COMMITTEE ON HEALTH
Capitol Building, Room 6005
Sacramento, CA 95814
Fax 916-319-2108

RE : Comments on SB1301: Reproductive Privacy Legislation

Dear Gentlepersons:

This serves as a brief analysis of SB1301. This particular bill is not pragmatically sound and would be detrimental to the health and safety of California's women. Planned Parenthood, as an example, is already allowing unlicensed personnel to practice medicine without a medical license. Indeed, some of their personnel have no licenses, whatsoever, and only a few months of training, before they are allowed to "assist" in abortion procedures. This is simply unconscionable and presents a danger to the health and safety of thousands of women in San Diego alone.

While it might be easy for someone to say that this is mere rhetoric, the facts speak for themselves. I have enclosed the sworn deposition testimony of two Planned Parenthood employees who, under oath, admit that they do not have licenses, but have assisted in the performance of "hundreds" of abortions in the last three years. One can see from their sworn testimony that neither employee had *any* specific training in abortion procedures. In fact, one of the employees is not even familiar with the basic terminology used in a 'therapeutic abortion' setting. SB1301 would greatly relax restrictions on who can participate/assist in the performance of "therapeutic abortions." Existing law already states that licensed physicians are the only personnel who may "assist" in an abortion. *California Health & Safety Code* § 123405.

SB1301 places a stamp of approval on the type of conduct that is testified to in the attached exhibits. The testimony is undeniable and under sworn oath. It would be incredibly irresponsible for the State of California to relax restriction on the provision of qualified and licensed personnel to California's women. It is trusted that you will responsibly vote on SB 1301 after reading the attached testimony.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

2091 East Valley Parkway • Suite 1-C • Escondido, California 92027 • (760) 741-8086 • Fax (760)

Most respectfully Submitted:

UNITED STATES JUSTICE FOUNDATION

RICHARD D. ACKERMAN,
Attorney at Law.

CC : Assembly Member Vargas
Fax (619) 409-9270

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

EXHIBIT 1

CONDENSED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DISTRICT

MARIE WILKERSON, AVECITA MUCINO, VANESSA AYALA, PLANNED PARENTHOOD OF SAN DIEGO AND RIVERSIDE COUNTIES,	)	
Plaintiffs,	)	
vs.	)	Case No. 728883
KENNETH TYLER SCOTT, RONALD D. BROCK, CHERYL SULLENGER, SYLVIA SULLIVAN, TROY NEWMAN, JO ANN KRIEPEL, and DOES 1-100, Inclusive,	)	
Defendants.	)	

DEPOSITION OF MARIE WILKERSON

TAKEN ON

WEDNESDAY, NOVEMBER 14, 2001

Reporter: Cheryl M. Boley
CSR No. 9512

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understand to make sure that your testimony accurately reflects the question I presented. Do you understand that?
A **Yes.**
Q It's important that only one person speak at a time. I don't think we'll have any problems here, but if we do, I'll just point it out, say we need to stop doing that. Because as I mentioned, when it reads like a play, if we're interrupting each other, when it's typed out the typeset is all interrupted and you can't read the question from the answer and it's difficult, so I'm going to ask you to try and wait until I'm done with my question. And it's also important to do that because sometimes the whole meaning of the question can change on the last word phrased. Okay?
A **Yes.**
Q Is there any reason you can think of today that would prevent you from giving your full and complete testimony such as medication, illness, anything like that?
A **No.**
Q What's your date of birth, ma'am?
A **5/12/67.**
Q Have you seen medical providers of any sort for the damages you're claiming in this case?

A **No.**
Q Have you seen any counselors of any sort for the damages you're seeking in this case?
A **No.**
Q Have you ever had your deposition taken before?
A **No.**
Q Did you bring any documents here today with you to the deposition?
A **No.**
Q Off the record.
(Off the record)
BY MR. WATKINS:
Q Do you maintain a diary?
A **No, I do not.**
Q Do you maintain a journal of any sort like that where you make regular entries?
A **On occasion.**
Q Did you make any entries with respect to the incidents that are at issue here?
A **I just made a statement on what occurred that day.**
Q Was that at the request of your attorney?
A **No.**
Q Who did you make a statement for?
A **For my manager.**

Q Who's that?
A **Mindy Moore.**
Q And when was that statement made?
MR. McELROY: That question is perfectly appropriate, but I think the response to the previous question, it was in response to an attorney's request which was made through her manager. It was made from my office to her manager, so she may not be aware of that. But you can certainly ask when it was made.
THE WITNESS: The morning of Saturday, February 27th.
BY MR. WATKINS:
Q Did you review any documents in preparation for your deposition such as a declaration or this statement?
A **Yes.**
Q Did you review this statement in preparation for your deposition?
A **The declaration I reviewed today.**
Q So you reviewed a declaration that you signed earlier in preparation for your deposition?
A **Yes.**
Q Did you review these notes that you made for Mindy Moore in preparation for your deposition?
A **No.**
Q When was the last time you saw those notes?

A **The morning of February 27th.**
Q I presume they were handwritten notes?
A **Yes.**
Q And Ms. Moore requested that you make that statement?
A **Yes.**
Q Other than that written statement to Ms. Moore, did you maintain any notes in a computer on a Palm Pilot or any other type of notation regarding this incident?
A **No.**
MR. WATKINS: Is there a loss of earnings claim at all related to this?
MR. McELROY: No.
BY MR. WATKINS:
Q And do you agree with that? You didn't lose any money from work as a result of this, did you?
A **No, I didn't.**
Q And are you currently employed at Planned Parenthood?
A **Yes, I am.**
Q How long have you been there?
A **Since October of 1997.**
Q What are your job responsibilities there today?
A **I'm a medical receptionist.**
Q Have you held that same position since October

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'97?
A **No. I had a previous job title. I was previously a surgical assistant.**
Q When did you start as a medical receptionist?
A **Just July of this year, late July.**
Q July of 2001?
A **Yes.**
Q So from October '97 through July of 2001, you were a surgical assistant?
A **Yes.**
Q Do you have medical training related to being a surgical assistant?
A **I have a certificate in medical assisting.**
Q Where is that certificate from?
A **Concord Courier Institute.**
Q How long is that course?
A **Eight months.**
Q What are the things that you studied there at Concord Courier Institute?
A **How to draw blood, take vital signs, counsel patients.**
Q What type of patients?
A **Like pregnancy counseling.**
Q What else did you study there?
A **X-rays.**

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Q What did you do with x-rays? Taking x-rays? Reviewing x-rays?
A **Taking x-rays.**
Q Anything else?
A **And assist in minor surgeries.**
Q What kind of surgeries? Was there a specific group or specific type?
A **Lacerations. Nothing in particular, it was like a family planning.**
Q Did Concord Courier Institute have a curriculum set around family planning?
A **Mostly family planning, yes.**
Q Do you have a high school diploma?
A **Yes.**
Q When did you receive that?
A **19 June of 1984.**
Q And when did you go to Concord Courier?
A **October of 1990.**
Q Through what, June of '91?
A **June of '91.**
Q Between 1984 and 1990, did you obtain any other education?
A **I went to college for one year.**
Q College of Whittier?
A **Late '84, for one year.**

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Q What did you study at College of Whittier?
A **Medical assisting.**
Q Was it the same types of things you studied at Concord Courier?
A **It was mostly medical terminology.**
Q Did you study anatomy?
A **Yes.**
Q Did you study anatomy at Concord Courier?
A **No.**
Q And after College of Whittier, approximately 1985, what did you do with respect to either work or education?
A **Can you repeat that question?**
Q Sure. After leaving College of Whittier, what did you do as far as working or going to school?
A **I was a homemaker.**
Q And how long did you do that before you went back to work?
A **From late '85 until June, until I started school, I was a homemaker.**
Q Before you started at Concord Courier?
A **Yeah.**
Q Did you have any employment during that time?
A **I started my first job after graduating Concord with Point Loma Medical Group.**

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Q During the time that you were a homemaker, did you have any other employment?
A **No.**
Q And upon graduating from Concord Courier, you went to work for Point Loma Medical Group?
A **Yes.**
Q What was your job there?
A **Medical assistant.**
Q What were your responsibilities as a medical assistant there?
A **Assisting doctors with patients doing first trimester abortions.**
Q So you actually assisted in the procedure itself?
A **Yes.**
Q How long were you a medical assistant at Point Loma Medical Group?
A **About three and a half years.**
Q And during that entire time were you a medical assistant with first trimester abortions?
A **Yes.**
Q Were you involved in assisting any other types of abortions while you were at Point Loma Medical Group?
A **No.**
Q And as far as your memory then, while you were at Point Loma Medical Group, did you ever assist in a

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medically necessary late term abortion?
A **No.**
Q And where did you go to work after Point Loma?
A **I stayed home with my children.**
Q When did you start doing that as far as month and year? We're probably looking at what, 1990 or so? No, I missed that. Hold on. '95?
A **I stayed home until about late -- no, early '96, and then I started volunteering at Planned Parenthood before I got hired as an employee.**
Q When did you start volunteering?
A **June of '97.**
Q And what were you doing when you volunteered at Planned Parenthood?
A **I volunteered in the human resource department.**
Q And which Planned Parenthood facility was that?
A **Mission Valley.**
Q Have you been at Mission Valley Planned Parenthood since June of 1997?
A **Yes.**
Q How long were you an HR volunteer?
A **Until October of '97 when I got hired as a full-time employee.**
Q That's when you went to work as the surgical assistant?

A **Yes.**
Q Why did you change from a surgical assistant to medical receptionist?
A **They had to downsize the department, so I was transferred to a different location.**
Q At the time of February 27, '99, were you a medical assistant -- or excuse me -- a surgical assistant?
A **Yes.**
Q Were you involved in counseling at all as a medical receptionist?
A **No.**
Q Have you done any counseling at Planned Parenthood?
A **Yes.**
Q Was that counseling part of the surgical assistant responsibilities?
A **Yes.**
Q And what else were the responsibilities of the surgical assistants at the time you were doing that?
A **Assisting with the doctors during procedures.**
Q What type of procedures?
A **Abortion.**
Q First term?
A **First term and second term.**

Q Any late term, third term medically necessary abortions that you assisted in?
A **On occasions.**
Q And can you give me an approximate number?
A **Since I've been there or --**
Q Yes.
A **10 plus.**
Q I'm sorry?
A **More than 10.**
Q More than 20?
A **Maybe 15.**
Q I understand that you don't have a perfect memory or perfect database to go to for this information, so we do deal with approximates a lot. And if you're uncomfortable giving me an approximate, let me know, but otherwise it's okay to do that. Do you understand that?
A **Yes.**
Q What we don't want you to do is guess and give me some answer that you have no basis for. Do you understand that?
A **Yes.**
Q Have you ever assisted in a procedure known as partial birth abortion?
A **No.**
Q Have you ever witnessed one?

A **No.**
Q So you assisted in counseling the patients and assisted in procedures of the surgical assistant. What other responsibilities did you have?
A **Basically making the patients comfortable during their visit.**
Q So patient care?
A **Yes.**
Q Post-procedure?
A **Yes.**
Q And would you typically be involved with the patient in counseling -- strike that.
Does it work like where a patient comes in and you're assigned to the patient to provide counseling and then to assist in the procedure and be involved all the way from start to finish? Do you handle different segments just depending on patient flow?
A **Different segments.**
Q And in the counseling that you referenced, is that something that's done pre-procedure?
A **Yes.**
Q Have you ever been -- strike that.
You worked on February 27th 1999, correct?
A **Yes.**
Q And you were working as a surgical assistant

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Q Okay. And what did you tell her in response, if anything?
A I just told her to turn her head and look the other way.
Q You had indicated before that you had participated as an assistant in first, second, and third term abortions; is that correct?
A Yes.
Q In your capacity as a surgical assistant during first term abortions, would you have anything to do with holding -- what is it -- the cannula?
A No.
Q Would that be primarily the doctor's responsibility to control the cannula?
A Yes.
Q Did you have anything to do with turning on or off the vacuum aspirator?
A On occasions.
Q And is the tubing on the vacuum aspirator translucent? Can you see through the tubing?
A No.
Q Do you know that uterine contents are flowing up once the vacuum aspirator is turned on and the abortion begins?
A Yes.

Q And you know that includes some human byproducts and products of conception, right?
A Yes.
Q And has that always been your understanding since you attended Concord?
A Yes.
Q You also indicated that -- and can you give me an estimate as to the number of first term abortions you've assisted in?
A Since working at Planned Parenthood or --
Q Well, since you graduated from Concord.
A Just a lot.
Q And you had also indicated that you participated in second term abortions; is that correct?
A Yes.
Q And often, aside from the vacuum aspirator, there's other methods in performing abortion including dilation and evacuation?
A Yes.
Q Have you ever participated in dilation and evacuation?
A Yes.
Q And does that involve the removal of products of conception from the woman's body?
A Yes.

Q And typically is there some bleeding involved in that?
A Yes.
Q Okay. And how many of those procedures have you participated in?
A A lot.
Q Hundreds?
A Since being a medical --
Q Uh-huh.
A Yes.
Q And based on your counseling experience with Planned Parenthood and having trained with Planned Parenthood, is that typically a distressful time for the woman involved?
A Yes.
Q And part of your job -- to deal with high emotions is part and parcel of your job duties; is that true?
A Yes.
Q And do you consider yourself to be pretty good at dealing with these high emotions?
A Yes.
Q And did it take a while to get used to or is it something you think you were sort of called to do?
A It took a while.

Q Would you say that in some sense you're desensitized to the high emotions of the women involved in the abortion decision?
A Yes.
Q Now have you ever participated in the saline abortion?
A No.
Q But you do know that that's something that's been performed in the past as an option to dilation and evacuation; is that correct?
A Yes.
Q Were you given any training at Concord in saline abortion procedures?
A No.
Q Do you have any understanding as to how those are performed?
MR. McELROY: Objection; not reasonably calculated.
MR. ACKERMAN: It goes to the injury.
MR. McELROY: She's never been trained in them.
BY MR. ACKERMAN:
* Q Have you ever seen pictures of saline abortions?
MR. McELROY: This is not reasonably calculated.
MR. ACKERMAN: Yes, it is.
MR. McELROY: It's not reasonably calculated to

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lead to the discovery of admissible evidence, and I'm going to instruct her not to answer the question.

MR. ACKERMAN: Okay.

BY MR. ACKERMAN:

Q Have you ever participated in any other type of second term abortion aside from dilation and evacuation, maybe a vacuum aspiration at the beginning of the second term?

Obviously you said you hadn't participated in the saline abortion. Have you operated in other types of procedures that take place during the second term?

A No.

Q Now you had indicated that you had, in fact, participated in a third term medically necessary abortion; is that correct?

A Yes.

Q And were you in the operating room right next to the patient?

A Yes.

Q Is it not true that that procedure cannot be performed by vacuum aspiration?

A Yes.

Q And is it not always true that the ordinary method for performing a third term abortion would be dilation and evacuation?

A Yes.

*** Q And also, I would assume that you understand, from a medical perspective, that in a third term abortion the fetus can be viable if the umbilical cord is cut, correct?**

MR. McELROY: Objection; this is not reasonably calculated. I'm going to instruct her not to answer the question.

BY MR. ACKERMAN:

Q You had indicated that one of the things that upset you was the pictures that my client had showed you.

Is it your testimony that those are inaccurate depictions of fetuses?

A Yes.

Q Those are inaccurate?

A Yes.

Q Okay. What's inaccurate about them?

A The fetuses don't always look like the ones that are shown on the picture.

Q Do they sometimes?

A Yes, on occasions.

Q So you've seen fetuses from actual procedures that looked like that?

A Yes.

Q Was that distressing to you the first time you

saw that in an operating room?

A No.

Q Was it the fact that my client was holding the picture that made it more upsetting to you?

A Yes.

Q So if a doctor were holding the fetus, that wouldn't upset you?

A No.

Q Have you ever been asked to arrange for the disposal of human remains following a third term abortion?

A No.

*** Q Is it your opinion that my clients don't have a right to complain about these procedures?**

MR. McELROY: Objection; it's not reasonably calculated, and I'm instructing her not to answer the question.

MR. ACKERMAN: You don't think it goes toward attitude toward the action of my clients?

MR. McELROY: I don't know what attitude toward the action --

MR. ACKERMAN: You want me to pull out the Evidence Code?

MR. McELROY: You need to let me finish my sentence because we're on the record.

MR. ACKERMAN: Finish your sentence.

MR. McELROY: I don't know what attitude toward the action has got to do with anything.

MR. ACKERMAN: Would you mind, do you have a copy of the Evidence Code? Do you want to entertain me?

MR. WATKINS: Just mark it and move on. He's not going to change his opinion.

MR. McELROY: I'm not going to debate it with you.

MR. ACKERMAN: We'll debate it in court. That's fine.

BY MR. ACKERMAN:

Q Are you a licensed phlebotomist?

A I have a certificate.

Q Do you have any licenses issued by the Board of Consumer Affairs of the State of California?

A No.

Q Okay.

Have you ever drawn blood in your capacity as a medical assistant at the Planned Parenthood facility?

A Yes.

Q Do you know how many other employees were present at Planned Parenthood on February 27th of '99?

A Between 10 and 12.

Q Do you know of any other lawsuits brought by

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EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DISTRICT

MARIE WILKERSON, AVECITA MUCINO, VANESSA AYALA, PLANNED PARENTHOOD OF SAN DIEGO AND RIVERSIDE COUNTIES, Plaintiffs,	)	
vs.	)	Case No. 728883
KENNETH TYLER SCOTT, RONALD D. BROCK, CHERYL SULLENGER, SYLVIA SULLIVAN, TROY NEWMAN, JO ANN KRIEPEL, and DOES 1-100, Inclusive, Defendants.	)	

DEPOSITION OF AVECITA MUCINO, taken by the Defendants, at 625 Broadway, Suite 1400, San Diego, California, commencing at 4:41 p.m., Wednesday, November 14, 2001, before CHERYL M. BOLEY, CSR No. 9512, pursuant to Notice.

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APPEARANCES:
For the Plaintiffs:
LAW OFFICES OF JAMES E. McELROY
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WITNESS:
AVECITA MUCINO

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EXHIBITS

DEFENDANTS'	DESCRIPTION	MARKED
(None)		

SAN DIEGO, CALIFORNIA, WEDNESDAY, NOVEMBER 14, 2001
AT 4:41 P.M.
---o0o---

AVECITA MUCINO,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. WATKINS:

Q Can you please state your name and spell your full name for the record.
A My name?
Q Please.
A Avecita Mucino.
Q Will you spell that, please.
A A-V-E-C-I-T-A, M-U-C-I-N-O.
Q Do you have a middle name?
A No, I don't.
Q Ms. Mucino, as I mentioned earlier, my name is Dan Watkins, and I represent Ken Scott and we're going to ask you questions very much like we did with Ms. Wilkerson. And I won't go over all the admonitions, but I want to remind you that you are under oath, just like you would be under oath in a court of law. Do you

understand that?
A Yes.
Q And please make sure you understand my question so that there's no confusion between the two of us and what we're talking about.
If there's any ambiguity in your mind, point it out and I'll restate the question in a different way. Do you understand that?
A Yes.
Q What's your date of birth, ma'am?
A 12/5/62.
Q I'm sorry?
A 12/5/62.
Q Have you ever had your deposition taken before?
A No.
Q Are you employed?
A Yes.
Q How so? Who are you employed by?
A Planned Parenthood.
Q How long have you been with Planned Parenthood?
A Three years.
Q So when did you start? I should have asked that.
A October '98.
Q Before we go into your work at Planned

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Parenthood, do you have a high school diploma?
A No. I have a GED.
Q When did you accomplish that?
A 1985.
Q Other than the GED, do you have any other education?
A Medical assistant.
Q So you went to a medical assistant's course?
A Yes.
Q Where was that?
A Los Angeles, California.
Q The name of the school?
A Bryman School.
Q Can you spell that?
A B-R-Y-M-A-N.
Q Thank you.
And what was the -- what did you study there as a medical assistant?
A Patient care and vital signs and lab.
Q I'm sorry?
A Lab. Laboratory.
Q Oh, lab work?
A Uh-huh, lab work. And phlebotomist.
Q Is Bryman a school that's designed to provide medical assistant education for family planning?

A No.
Q It's general medical assisting?
A General.
Q Did you learn any surgical procedures there, how to assist in surgical procedures at Bryman?
A No surgical. Well, yes, surgical procedure like assisting a doctor in any surgical procedure, not a certain procedure.
Q Just general surgical procedures?
A Right.
Q Did you study anatomy?
A Only what is involved in the course, no more.
Q Well, did you have a course on anatomy?
A No, not that specific, just anatomy.
Q What?
A But -- well, of course, because the course involves anatomy.
Q So in relationship to the different subjects that you studied, you studied anatomy as it applied to, for example, your surgical procedures?
A Right.
Q So it was kind of part and parcel to the other courses that you were studying?
A Yes.
Q And when did you complete your coursework at

Bryman?
A '87, '88.
Q Do you have any other educational experiences other than Bryman?
A No.
Q And how have you been employed since completing Bryman? What was your first job after that?
A Family Planning Associates Medical Group.
Q Oh, Associates Medical Group?
A Uh-huh.
Q Is that a "yes"?
A Yes.
Q And were you a medical assistant there?
A Yes.
Q What were your job responsibilities?
A Taking vital signs and lab work.
Q Did you do counseling?
A No.
Q Did you assist in any procedures?
A Yes.
Q Did you assist in first term abortions?
A Yes.
Q Did you assist in second term abortions?
A No.
Q How about did you ever assist in a medically

necessary third term abortion?
A No.
Q Have you ever assisted in a partial birth abortion?
A Can you explain that?
Q If you don't understand the term, then you don't have to answer the question. Do you know what a partial birth abortion is?
A No.
Q Have you ever heard that term?
A No.
Q Approximately how many times did you assist in first term abortions at Family Planning Associates Medical Group?
A A lot of times.
Q I'm sorry?
A A lot of times, I can't --
Q More than 100?
A Yes.
Q More than 500?
A I don't know.
Q Hundreds?
A Yes.
Q I'll let Mr. Ackerman question you on the different types of procedures. I'm not familiar with

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those.
How long were you with Family Planning Associates Medical Group?
A From '89 to -- 1989 to '97.
Q Excuse me. 1989 through 1997?
A No, 1989 --
Q Right.
A -- to 1997.
Q So about eight years?
A Yes.
Q Were you a medical assistant the entire time?
A Yes.
Q And during that eight-year period you did not do any counseling?
A No.
Q And after leaving Family Planning Associates, is that when you went to Planned Parenthood?
A Yes.
Q Did you work anywhere else in between the two?
A No.
Q And what were your job responsibilities when you started at Planned Parenthood?
A Surgical services assistant.
Q And what were your responsibilities as a surgical services assistant?

A Counseling patients, assisting the doctor in the procedures.
Q Post-procedure care as well?
A No.
Q And have you counseled hundreds of different patients?
A Yes.
Q Have you -- again, the counseling that you're providing, is that before the procedure?
A Yes.
Q The procedures that you've assisted with Planned Parenthood, do these include first term abortions?
A Yes.
Q Second term abortions?
A Yes.
Q And third term abortions? Have you assisted in any of those?
A What do you mean by third?
Q An abortion that occurs in the third trimester for medical reasons or otherwise.
A No.
MR. ACKERMAN: Can we go off the record?
(Off the record)
BY MR. WATKINS:
Q Approximately how many first term abortions have you assisted with at Planned Parenthood?
A I don't know.
Q Hundreds?
A Yes.
Q Would it be more than 100?
A Maybe, yes.
Q Well, don't guess, and don't give me an answer just because you think I want it. I'm just trying to get an estimate from you. If it's not 100, it's not --
A More than 100.
Q How about second term abortions? How many of those?
A About the same.
Q And are you still a surgical services assistant?
A Yes.
Q I'm looking at at least one declaration that you've signed in this case dated March 11, 1999, and it makes reference to an incident on February 27, 1999.
Do you have memory of something occurring on February 27, '99, an incident?
A Yes.
Q Are there any other incidents that you're complaining of as part of this lawsuit aside of what happened on February 27, 1999?
A No.

Q And are you -- prior to February 27, 1999, did you ever work on a Saturday at Mission Valley Planned Parenthood?
A Yes.
Q And did you work on Saturdays as part of that rotation that we discussed with Ms. Wilkerson, just it would come up maybe two times a month you'd work on Saturdays?
A No. Two shifts, either you work Monday through Friday or Tuesday through Saturday. So I was on the Tuesday through Saturday schedule.
Q And did you work every Saturday then?
A Yes.
Q Do you continue to work every Saturday?
A No.
Q So initially when you were employed at Planned Parenthood, you were working every Saturday, Tuesday through Saturday?
A Yes.
Q When did that change?
A About a year and a half ago.
Q Why did that change?
A Because of my needs of my family. I needed to have Saturday off to spend more time with my family.
Q I don't want to get into your private life.

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Who Supports the Reproductive Privacy Act?

Elected Officials:

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Lieutenant Governor Cruz Bustamante
Assembly Speaker Herb Wesson
(principal co-author)
Senate President Pro Tempore John Burton
(principal co-author)
Senator Alpert
Assemblymember Alquist
Assemblymember Aroner
Assemblymember Canciamilla
Assemblymember Cedillo
Assemblymember Chan
Senator Chesbro
Assemblymember Chu
Assemblymember Cohn
Assemblymember Corbett
Assemblymember Diaz
Senator Escutia
Assemblymember Firebaugh
Assemblymember Frommer
Assemblymember Goldberg
Assemblymember Jackson
(principal co-author)
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JUN 12 2002

California Primary Care Association—
CPCA
—Health Care Access for All

June 6, 2002

JUN 12 2002

The Honorable Ellen Corbett, Chair
Assembly Judiciary Committee
State Capitol, Room 4126
Sacramento, CA 95814

RE: SB 1301 (Kuehl) - Support

Dear Assembly Member Corbett:

The California Primary Care Association (CPCA) is a health policy and advocacy organization representing a network of over 500 non-profit, community-based clinics that provide care to all Californians without regard to their ability to pay. CPCA supports SB 1301 (Kuehl), which will be heard in Assembly Judiciary Committee on Tuesday, June 11th.

SB 1301 will provide greater access to early abortion methods like mifepristone (RU-486) by eliminating barriers that currently impede the ability of licensed health care professionals in our clinics to treat patients in the area of reproductive health. This bill treats abortion like other comparable medical procedures and allows healthcare providers, acting within their particular scopes of practice, to perform or assist in the performance of surgical and non-surgical abortions.

In clinic settings, midlevel practioners play an increasingly important role in providing reproductive health care services. The clinic model integrates a team approach - which relies more heavily on midlevels (such as nurse practioners) to assist physicians in providing services. This bill is complimentary to the clinic model in that it acknowledges the need for midlevel practitioners to be included in the delivery of this procedure.

We urge your support of SB 1301.

Sincerely,

Melanie Moreno

Melanie Moreno
Policy Analyst

Cc: The Honorable Sheila Kuehl
Members of Assembly Judiciary Committee

Carmela Castellano, Esq., Chief Executive Officer
1215 K Street Suite 700 • Sacramento, CA 95814 • 916/440-8170 • 916/440-8172 (fax) • www.cpca.org

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California National Organization for Women
926 J Street, Suite 424 Sacramento, CA 95814
916-442-3414 Fax: 916-442-4765 www.canow.org

June 6, 2002

The Honorable Ellen Corbett, Chair
Assembly Judiciary Committee
State Capitol, Room 4126
Sacramento, CA 95814

RE: SB 1301 (Kuehl) – SUPPORT

Dear Assemblymember Corbett:

The California National Organization for Women (NOW) is proud to co-sponsor SB 1301 (Kuehl), The Reproductive Privacy Act. SB 1301 would ensure California women's access to safe and legal abortion.

SB 1301 would increase access to safe and early non-surgical abortion methods by allowing qualified health practitioners, such as physician's assistants and nurse practitioners, to provide mifepristone (RU 486) under physician supervision. SB 1301 would also delete obsolete provisions in current law that have been found to be unconstitutional and unenforceable by the courts and would establish a contemporary reproductive rights law that protects a woman's legal right to choose an abortion.

The Reproductive Privacy Act would ensure that women in California have the freedom to exercise their constitutional right to make decisions regarding their own reproductive health. Please vote AYE on this very important measure when it is heard in the Senate Judiciary Committee.

Sincerely,

Elizabeth McGovern
Legislative Director

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JUN 11 2002

JUN 13 2002

Wednesday, June 5, 2002
Ellen M. Corbett, Assemblymember
Chair, California Assembly Judiciary Committee
State Capoitol, Rm.4126
Sacramento, CA 95814

Dear Assemblymember Ellen M. Corbett,

As a pro-choice voter and supporter of CARAL, I am writing to show my support for SB 1301, authored by Senator Sheila Kuehl. SB 1301, the Reproductive Privacy Act, is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

SB 1301 would delete unconstitutional provisions in current state law; expand access to early, non-surgical abortions; and clarify the roles of health care professionals performing or assisting with the abortion procedure. In addition, SB 1301 clearly states that every woman in California has the right to choose or refuse birth control and to choose whether or not to carry a pregnancy to term. With the composition of the U.S. Supreme Court likely to change soon, this affirmation is especially crucial in order to protect California women's reproductive rights.

Please vote a YE on SB 1301, when heard in the California Assembly.

Sincerely,

Karen Nguyen

Karen Nguyen
9531 Ingram Ave
Garden Grove, CA 92844

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

LEAGUE OF WOMEN VOTERS OF CALIFORNIA

926 J Street, Suite 515, Sacramento, California 95814
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Peggi Beggs

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Robert Saunders

Program Director/Advocate
Trudy Schafer

June 5, 2002

JUN 5 2002

The Honorable Ellen Corbett, Chair
Committee on Judiciary
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0001

Re: SB 1301 (Kuehl) – Support

Dear Assembly Member Corbett:

The League of Women Voters of California is pleased to support SB 1301 (Kuehl), the Reproductive Privacy Act.

This bill rids California of the provisions of the Therapeutic Abortion Act of 1967 which are antiquated and unconstitutional. It firmly establishes California's commitment to the fundamental right of freedom of reproductive choice by affirming the privacy rights established by *Roe v. Wade*. In addition, it assures women increased access to safe and early methods of abortion by clarifying the ability of health care providers, acting within their existing scopes of practice, to perform or assist in performance of surgical and nonsurgical abortions.

The League of Women Voters supports reproductive freedom and believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual. SB 1301 is right for the citizens of California. It will safeguard the privacy of women and ensure that reproductive health care policy guards the safety and health of women in California. We urge your AYE vote on this important measure.

Sincerely,

Barbara Inatsugu

Barbara Inatsugu
President

cc: Members, Assembly Judiciary Committee

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

June 5, 2002

Hon. Robert Hertzberg
State Assembly
Room 219 State Capitol
Sacramento, CA 95814

JUN 12 2002

VIA FAX AND MAIL: (916) 319-2140

Re: SB 1301

Dear Assemblymember Hertzberg,

As a pro-choice voter and supporter of CARAL, I am writing to show my support for SB 1301, authored by Senator Sheila Kuehl. SB 1301, the Reproductive Privacy Act, is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

SB 1301 would delete unconstitutional provisions in current state law; expand access to early, non-surgical abortions; and clarify the roles of health care professionals performing or assisting with the abortion procedure. In addition, SB 1301 clearly states that every woman in California has the right to choose or refuse birth control and to choose whether or not to carry a pregnancy to term. With the composition of the U.S. Supreme Court likely to change soon, this affirmation is especially crucial in order to protect California women's reproductive rights.

Please vote AYE on SB 1301, when heard in the California Assembly.

Sincerely,

TKiehl

Tina Kiehl
4859 Coldwater Canyon Ave., #13
Sherman Oaks, CA 91423

cc: Senator Sheila Kuehl
Ellen M. Corbett

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

ACOG District IX
1401 21st Street, Suite 370
Sacramento, CA 95814
(916) 442-8865
FAX: (916) 442-8857
email: district9@acog.org

THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS
DISTRICT IX
WOMEN'S HEALTH CARE PHYSICIANS

June 4, 2002

The Honorable Ellen M. Corbett, Chair
Assembly Judiciary Committee
State Capitol, Room 4126
Sacramento, CA 95814

JUN 5 2002

RE: Senate Bill 1301 (Kuehl)

Dear Assemblymember Corbett:

The American College of Obstetricians and Gynecologists, District IX representing more than 4300 practicing California physicians, is pleased to support Senate Bill 1301 (Kuehl) to be heard before the Assembly Judiciary Committee June 11, 2002.

SB 1301 will repeal provisions of California's Therapeutic Abortion Act, which have been found unconstitutional by the courts and replace them with a clear statement regarding a woman's right to choose. This measure also clarifies the role of healthcare professionals in the provision of abortion services.

ACOG, District IX believes that termination of a pregnancy before viability is a medical matter between a woman and her physician. We support access to care for all individuals, irrespective of financial status, and the availability of all reproductive care options. We also oppose any unnecessary regulations or laws that serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act which are being repealed by this measure.

For these reasons, we have taken a SUPPORT position on SB 1301 and applaud Senator Kuehl's leadership in ensuring that women have access to abortion services. If I may provide you with additional information regarding our position on this measure, please do not hesitate to contact me at 916-965-3850.

Sincerely,

Joan M. Hall, JD
Legislative Advocate

cc: Consultant, Assembly Judiciary Comm., Drew R. Liebert, 1020 N St, Room 104, Sacramento, CA
Minority Consultant, Assembly Judiciary Committee, 1020 N St, Room 104, Sacramento, CA
Senator Shiela James Kuehl, State Capitol, Room 4032, Sacramento, CA 95814

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June 4, 2002

Chair Ellen Corbett and Members
Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

JUN 10 2002

JUN 12 2002

Re: SB 1301 – Support

Dear Chair Corbett and Members:

The ACLU supports SB 1301, the Reproductive Privacy Act, which replaces the antiquated, archaic and unconstitutional provisions of the Therapeutic Abortion Act of 1967. In addition, SB 1301 provides women with greater access to early non-surgical abortions by allowing mid level practitioners, pursuant to their current scope of practice to provide mifepristone (RU-486) under physician supervision. Finally, SB 1301 makes California's abortion law consistent with the principles established by the United Supreme Court's 1973 *Roe v. Wade* decision, in which the United States Supreme Court recognized that the right to privacy protected a woman's right to choose an abortion.

Unconstitutional Provisions of the Therapeutic Abortion Act Should be Repealed

In 1967, Governor Reagan signed the Therapeutic Abortion Act.[1] Health & Safety Code Sections 25950-25954, now codified at Health & Safety Code Sections 123400-123450. As written, the Act established restrictive eligibility criteria for abortions, [2] stringent procedures for authorizing abortion, [3] requirements that abortions occur in accredited hospitals, requirements that only doctors perform abortions, and an absolute ban on abortion past the 20th week of pregnancy. Abortions unauthorized by the Act were felonies. People who performed abortions, women who obtained them, and people who assisted women in terminating pregnancies, were subject to incarceration. Penal Code Sections 274-276.

In November 1972, the California Supreme Court struck down the 1967 Act's eligibility criteria and authorization procedures. *People v. Barksdale*, 8 Cal. 3d 320 (1972). Essentially, Barksdale created abortion on request, but retained the Act's limits on who could perform abortions, where they took place, and limits on late abortions.

Three months later, the United States Supreme Court issued its landmark 1973 decisions recognizing abortion as a constitutional right. Those opinions made it clear that two of California's remaining restrictions on abortion-the 20-week limitation (*Roe v. Wade*, 410 U.S. 113 (1973)) and the hospitalization requirement (*Doe v. Bolton*, 410 U.S. 179 (1973))—were unconstitutional.

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Despite all these constitutional decisions, the California Legislature has never repealed any portion of the 1967 Act. The entire Act remains on the books. The Legislature has, over the years, passed new laws relating to abortion, which are codified with the Act. Some of those are inconsistent with provisions of the 1967 Act. [4]

Last year, the Legislature repealed the Penal Code provisions that make abortion a felony. [5] At the same time, the Legislature amended the Business & Professions Code to define as unprofessional conduct abortions performed or assisted by people acting outside the scope of valid licenses. This provision is also inconsistent with the Act's doctor-only restriction. Business & Professions Code Section 2253(b).

SB 1301 repeals those sections of the Therapeutic Abortion Act, that have been found unconstitutional, and replaces it with a law that reflects constitutional principles.

Current California Law Addressed by the Reproductive Privacy Act

California law now has two major restrictions on abortion: the doctor-only limit and the ban on post-20 week abortions. It is not clear whether either restriction is valid, because of conflicts between the 1967 Act and subsequent laws, constitutional problems, and arguably incorrect enforcement opinions from anti-choice Attorneys General.

1. Midlevel Practitioners Should be Able to Perform Non-Surgical Abortions When They Are Within Their Scopes of Practice

California statute says that only doctors may "perform, aid or assist or attempt" abortion. (Health & Safety Code Section 123405.) The law is not enforced as strictly and expansively as written; clinicians such as nurses assist with abortions. Moreover, the law cannot be reconciled, either with other sections of the abortion statute [6] or with California's laws governing other advanced practice clinicians. However, an Attorney General opinion by Dan Lungren says that the doctor-only law trumps all other inconsistent laws, and applies both to surgical and to medical abortions. 74 Ops. Cal. Atty. Gen. 101 (1991). This restriction made sense in 1967, when doctors were the only licensed professionals skilled in surgery, then the only procedure for terminating a pregnancy. However, changes in medicine and technology have rendered this restriction obsolete, inconsistent with laws governing all other health care, and unnecessary to ensure patient safety. With the licensing of advanced practice clinicians, such as physicians' assistants, certified nurse-midwives and nurse practitioners, California women should have expanded access to early, nonsurgical abortions delivered by qualified clinicians.

SB 1301 clarifies that midlevel practitioners - nurse practitioners, nurse midwives, and physician assistants -- acting within their scopes of practice may perform or assist in performing nonsurgical abortions, including providing mifepristone (RU-486), an early method of abortion. Abortion should not be treated differently from any other medical procedure. If a midlevel practitioner has the authority to administer medication under his or her scope of practice, then he or she should be able to do so in the abortion context.

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2. California's Standard on the Right to Choose an Abortion Should Conform with *Roe v. Wade*

The California statute says that no abortion past the 20th week of pregnancy is legal. (Health & Safety Code Section 123410.) However, this provision is unconstitutional as written. United States Supreme Court decisions establish that the California law is unconstitutional, for three reasons.

First, the state may not ban abortions before fetal viability. *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973). Second, the state may not define fetal viability according to gestational age, but must allow for an individualized determination by the attending physician. *PlannedParenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976); *Colautti vFranklin*, 439 U.S. 379 (1979). Third, even after viability, the state may not force a woman to carry a pregnancy to term that jeopardizes her life or health. *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973).

However, an Attorney General opinion by George Deukmejian says that the law may be enforced if interpreted to ban only abortions of viable fetuses with no life or health factors justifying the termination. 65 Ops. Cal. Atty. Gen. 261 (1982). We believe that the law is entirely void and unenforceable, and that, no time limit therefore currently exists on abortion in California. Two trial courts have agreed. [7]

The Reproductive Privacy Act imports the standards established by *Roe v. Wade* providing that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman." SB 1301 confirms California's commitment to the rights set forth in the Supreme Court's history ruling.

With the composition of the Supreme Court likely to change soon, Californians, now more than ever, need to protect their right to reproductive privacy.

If you or your staff would like to discuss our comments, please call us.

Sincerely,

FRANCISCO LOBACO
Legislative Director

VALERIE SMALL NAVARRO
Legislative Advocate

cc: Hon. Shiela Kuehl and Consultant, Assembly Judiciary Committee

[1] The Therapeutic Abortion Act replaced California's old 1850 criminal abortion law, which permitted abortion only to save the life of the pregnant woman. Two years later, in a criminal

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prosecution of a doctor arising out of the old criminal law, the California Supreme Court ruled the old law unconstitutional. *People v. Belous*, 71 Cal. 2d 954 (1969).

[2] Abortions were permitted only where the pregnancy seriously jeopardized a woman's physical or mental health or where the pregnancy resulted from rape or incest, which had been promptly reported to law enforcement authorities.

[3] The Act required hospital committees to approve each abortion.

[4] For example, the laws on who can perform or assist in performing abortions cannot be reconciled. See discussion below.

[5] SB 370 (2000)-Burton.

[6] The limitation is inconsistent with Health & Safety Code Section 123420, granting the right to refuse to "directly participate" in abortion to "a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility or clinic." In addition, Business and Professions Code Section 2253(b) authorizes discipline against unlicensed practitioners who "perform or assist" in performing abortions; authorized practitioners are defined to include any person with "a valid, unrevoked, and unsuspended license to practice as a physician and surgeon...or...a certificate obtained in accordance with some other provision of law that authorizes him or her to perform or assist in performing a surgical abortion."

[7] The ACLU filed two lawsuits arguing that the Attorney General could not redraft the 1967 law, that the absolute 20-week ban was plainly unconstitutional and that it was up to the Legislature to write a new law if it wanted to do so. California's statutory 20-week limit is neither valid nor enforceable. The Superior Courts, in Sacramento and Los Angeles, both agreed with us. Because the Attorney General failed to appeal either decision, no binding statewide precedent exists. However, the trial court opinion from Los Angeles is cited in *Feminist Women's Health Center v. Philobosian*, 157 Cal. App. 3d 1076, 1084 n. 3 (1982).

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PPAC

Planned Parenthood®
Affiliates of California, Inc.
Providing responsible choices through advocacy and political action.

June 4, 2002

The Honorable Ellen Corbett
Assembly Judiciary Committee
State Capitol, Room 4126
Sacramento, CA 95814

JUN 19 2002

RE: Support for SB 1301 (Kuehl)

Dear Assembly Member Corbett:

Planned Parenthood Affiliates of California (PPAC) is proud to sponsor Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in the Assembly Judiciary Committee on June 11, 2002.

Sincerely,

Sue Dunlap

Sue Dunlap
Vice President of Public Policy

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

555 Capitol Mall, Suite 510 • Sacramento, California 95814-4581 • Phone (916) 446-5247 • Fax (916) 441-0632 • www.ppacca.org

SB 1301 (Kuehl) – The Reproductive Privacy Act

What does SB 1301 do?

- **Protects the Right to Choice in California**
  The Reproductive Privacy Act will protect Californians' fundamental right to choose a safe and legal abortion – even if the Supreme Court further reduces the federal protections contained in *Roe v. Wade.*

- **Provides Women Greater Access to Early Non-Surgical Abortion Methods**
  SB 1301 will provide greater access to early abortion methods like mifepristone (RU-486) by eliminating arbitrary barriers that currently impede the ability of licensed health care professionals to treat patients in the area of reproductive health.

- **Deletes unconstitutional laws**
  SB 1301 deletes language in current state law that has been found unconstitutional in state and federal courts.

- **Treats abortion like other comparable medical procedures**
  Today, abortions are singled out for regulation that doesn't apply even to more complex procedures. SB 1301 allows healthcare providers, acting within their particular scopes of practice, to perform or assist in the performance of surgical and non-surgical abortions.

Why is the bill necessary?

In 1967, Governor Ronald Reagan signed the Therapeutic Abortion Act, which expanded legal abortion in California under very restrictive criteria. Most of those restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale.* The United States Supreme Court issued its landmark *Roe v. Wade* decision in 1973, bolstering California's recognition of abortion as a privacy right guaranteed by the Constitution of the United States. Though *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems.

Who supports the bill?

The bill is supported by Governor Davis and the top leadership of both the Assembly and Senate. The bill is also supported by a large number of women's groups, healthcare providers, civil rights groups, and pro-choice organizations. A complete list of sponsors and supporters is attached.

Why now?

We have an anti-choice President, an anti-choice Congress, and a Supreme Court that could be one vote away from overturning *Roe v. Wade.* Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court undercuts *Roe.*

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Who Supports the Reproductive Privacy Act?

Women's Organizations:

American Association of University Women, California
American Association of University Women, San Jose Chapter
American Association of University Women, Santa Cruz Chapter
California Commission on the Status of Women
California National Organization for Women
California Women's Law Center
California Women Lawyers
Contra Costa Commission for Women
Democratic Activists for Women Now
Democratic Women of Santa Barbara County
Democratic Women's Club of Santa Cruz County
Democratic Women's Club of Monterey County
Hadassah
League of Women Voters of California
League of Women Voters of the Monterey Peninsula
League of Women Voters, Santa Cruz County
Marin County Women's Commission
National Council of Jewish Women
National Latina Alliance
National Organization for Women, Monterey Peninsula Chapter
National Organization for Women, San Jose/South Bay Chapter
National Women's Political Caucus of California
Older Women's League
Santa Cruz County Women's Commission
Valley Women's Club
Women's International League for Peace and Freedom, Monterey County
Women Lawyers Association of Los Angeles
Women Lawyers of Santa Cruz County
Women's International League for Peace and Freedom, Fresno Branch
Women's Programs, Monterey Peninsula College

Civil Rights Organizations:

American Civil Liberties Union
American Civil Liberties Union, Santa Cruz County
Democratic Central Committee of Santa Cruz County
Green Party, Monterey County
Lawyers Club of San Diego
Los Angeles County Young Democrats
Orcutt Republican Club
People for the American Way
Peoples Democratic Club of Santa Cruz
Santa Clara County Democratic Central Committee
United Nations Association of Santa Cruz County
West Hollywood Democratic Club
27th AD Democratic Committee

Health Care Organizations:

American Academy of Pediatrics, CA District IX
American College of Obstetricians and Gynecologists, District IX
California Family Health Council
California Medical Association
American Medical Women's Association
California Nurses Association
California Women's and Children's Health Coalition
Central Coast Alliance for Health
CommuniCare Health Centers
National Health Law Program
Physicians for Reproductive Choice and Health
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and San Luis Obispo Counties
Planned Parenthood: Shasta-Diablo
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood
T.H.E. Clinic, Inc.
Women's Health Collaborative
Women's Health Specialists
Women's Lifecycle Medical Group

Pro-Choice Organizations:

California Abortion & Reproductive Rights Action League
California Pro-Choice Republicans
Choice USA, UC Santa Cruz Chapter
Medical Students for Choice, University of Southern California Chapter
Pro Choice Coalition of Santa Clara County
Religious Coalition for Reproductive Choice
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
Reproductive Rights Network of Ventura County
San Luis Obispo County Pro-Choice Coalition
Voters for Choice
Zero Population Growth of Monterey Bay

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Who Supports the Reproductive Privacy Act?

Elected Officials:

Governor Gray Davis
Lieutenant Governor Cruz Bustamante
Assembly Speaker Herb Wesson
(principal co-author)
Senate President Pro Tempore John Burton
(principal co-author)
Senator Alpert
Assemblymember Alquist
Assemblymember Aroner
Assemblymember Canciamilla
Assemblymember Cedillo
Assemblymember Chan
Senator Chesbro
Assemblymember Chu
Assemblymember Cohn
Assemblymember Corbett
Assemblymember Diaz
Senator Escutia
Assemblymember Firebaugh
Assemblymember Frommer
Assemblymember Goldberg
Assemblymember Jackson
(principal co-author)
Senator Karnette
Assemblymember Keeley
Assemblymember Kehoe
Assemblymember Koretz
Assemblymember Liu
Assemblymember Longville
Assemblymember Lowenthal
Assemblymember Matthews
Assemblymember McLeod
Assemblymember Nakano
Assemblymember Nation
Assemblymember Oropeza
Senator Ortiz
Assemblymember Pavley
Senator Perata
Assemblymember Richman
Senator Romero
Assemblymember Salinas
Assemblymember Shelley
Assemblymember Simitian
Senator Speier
Assemblymember Steinberg
Assemblymember Strom-Martin
Senator Torlakson
Assemblymember Vargas
Assemblymember Wayne
Assemblymember Wiggins
Board of Supervisors, County of Santa Cruz

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: California Women Lawyers

Contact Name: Andrea Carlise - President-Elect

Address: 650 Howe Ave., Suite 555
Sacramento, CA 95825

Phone/Fax: (510) 205-1255 h (916) 646-3114 fax (916) 646-6469

E-Mail: AndreaCarlise@msn.com ; cwlsac@cwo.com

LEGISLATIVE INTENT SERVICE, INC. (800) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

Dear Friends and Partners:

With the United States Supreme Court poised to change its composition and the *Roe v. Wade* decision in peril, it's more important than ever we protect our constitutionally guaranteed right of reproductive choice. That's why we ask that your organization join us in supporting the Reproductive Privacy Act, a contemporary abortion law for California that replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

The bill accomplishes four primary objectives for Californians: to provide women greater access to early non-surgical abortions, to remove unnecessary restrictions on abortion procedures, to delete unconstitutional provisions of the Therapeutic Abortion Act and to reaffirm privacy rights established by *Roe v. Wade*.

It is imperative that California clarifies in the law precisely what reproductive privacy rights the women and men of this great state enjoy. The Reproductive Privacy Act will ensure that California has a constitutionally firm abortion law that would protect privacy rights, now and in the future. By treating abortion consistently with other medical procedures, SB 1301 will ensure the safety of reproductive health care while eliminating the stigma the law has historically placed on the option of abortion services, replacing it with a declaration in support of the constitutional right to privacy and individual choice.

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Older Women's League

Contact Name: Betty Perry

Address: 926 - J Street, Ste 1117
Sacramento, CA 95814

Phone/Fax: P- (916) 444-2526 F- (916) 441-18

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Yes, please add our name to the list of supporters. SB 1301 is needed this year!
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Organization: Planned Parenthood Mar Monte

Contact Name: Eileen TREMAIN

Address: 1900 Garden Road, Ste 230
Monterey, CA 93940

Phone/Fax: 831- 373-1709 x 17

E-Mail: eileen-tremain@ppmarmonte.org

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Organization: SANTA CRUZ WOMEN'S HEALTH CENTER

Contact Name: DORIAN SEAMSTER

Address: 250 LOCUST ST.

SANTA CRUZ CA 95060

Phone/Fax: 831 427-3500 831 457-2486

E-Mail: dorianseamster@hotmail.com

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To: Katie Ipsworthy

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

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Organization: Voters For Choice

Contact Name: DORKA KEEHN

Address: 2821 Bush
SF CA 94115

Phone/Fax: 415 885-3240

E-Mail: dkeehn@voters4choice.org

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Organization: NATIONAL COUNCIL OF JEWISH WOMEN

Contact Name: RUTH WILLIAMS

Address: 543 No. FAIRFAX AVE
LA CA 90036

Phone/Fax: 323-651-2930 323-651-5348 FAX

E-Mail: RUTH_W@NCJWLA.ORG.

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Organization: National Women's Political Caucus of CA

Contact Name: Sharon A. Ball

Address: 2033 Manzanita Dr.
Oakland, CA 94611

Phone/Fax: 510-339-2546 (707-929-1545 Fax)

E-Mail: kball@earthlink.net

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Organization: PEOPLE FOR THE AMERICAN WAY

Contact Name: DERRICK SANDERS

Address: 2852 SOUTH BARRINGTON AVENUE
LOS ANGELES, CA 90064-3613

Phone/Fax: 310-478-6657 ; 310-478-5857 Fax

E-Mail: dsanders@pfaw.org

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Organization: AAUW (San Jose)
Contact Name: Denelle Fedor
Address: 101 Glen Eyrie Ave., #307
San Jose, CA 95125
Phone/Fax:
E-Mail:

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Reproductive Rights Coalition of Monterey County
Contact Name: Jean Richards, Chair
Address: PO Box 813
Monterey Ca. 93942
Phone/Fax: (831) 674-0688
E-Mail: webactivist@yahoo.com

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: National Org. for Women-Monterey Peninsula Chap.
Contact Name: Jean Richards
Address: 225 Larson Lane
Greenfield, Ca 93927
Phone/Fax:
E-Mail: Webactivist@yahoo.com

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Organization: National Latina Alliance

Contact Name: Mireya Gutierrez

Address: P. O. Box 712066

Los Angeles, CA. 90071

Phone/Fax: (213) 626 0571 x 286 213 623-7755

E-Mail: mireyagutierrezrkm@yahoo.com

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Organization: National Council of Jewish Women, Los Angeles

Contact Name: Barbara Dobkin

Address: NCJW/LA
543 N. Fairfax, L.A., Ca. 90036

Phone/Fax: Ruth Williams - (323) 651-2930

E-Mail: babsdobkin@hotmail.com
and Advocacy@ncjwla.org

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Organization: San Luis Obispo County Pro-Choice Coalition

Contact Name: Amanda B. Root

Address: PO Box 12244

San Luis Obispo, CA 93406

Phone/Fax: _____

E-Mail: _____

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Organization: RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE

Contact Name: REV ANN HAYMAN

Address: PO BOX 3916

VAN NUYS CA 91409

Phone/Fax: 310 396-7622

E-Mail: ahayman@sbcglobal.com

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Organization: Women's Lifecycle Medical Group

Contact Name: Sheree Beverly, MD, FACOG

Address: 501 E. Hardy St., Suite 400

Inglewood, CA 90301

Phone/Fax: 310-673-4504 (O) 310-673-4499 (F)

E-Mail: Shebe3588@aol.com

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Organization: T.H.E. Clinic Inc

Contact Name: Donzella Lee

Address: 14051 Lemoli Avenue
Hawthorne CA 90251

Phone/Fax: (323) 295-6571 x 3007 / (323) 295-6577

E-Mail: dpiez@thechnic.org

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Organization: Ventura County Reproductive Rights Network

Contact Name: Mare Wilde

Address: P. O. Box 6601
Ventura, CA 93006-6601

Phone/Fax: (805) 677-5560

E-Mail: mare.wilde@ppfa.org

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Organization: 27th AD Democratic Committee

Contact Name: Debra Whitmore - Vice Chairperson

Address: 106 Lana Place

Aptos CA 95003

Phone/Fax: 831-688-4393

E-Mail: debbie@debrawhitmore.com

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Organization: ACLU - Santa Cruz County Chapter

Contact Name: Carol Fuller

Address: 513 Olive St

Santa Cruz, Ca 95060

Phone/Fax: 831-423-2354 (phone)

E-Mail: fulkins@aol.com

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Democratic Central Committee of Santa Cruz County

Contact Name: Carol Fuller

Address: 513 Olive St
Santa Cruz, Ca 95060

Phone/Fax: 831-423 2356 (phone)

E-Mail: fulkins@aol.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Organization: CENTRAL COAST ALLIANCE FOR HEALTH

Contact Name: LINDA A BERGTHOLD

Address: 375 ENCINAL ST, SUITE A

SANTA CRUZ CA 95060

Phone/Fax: TEL (831) 457-3850 EXT 4302 / FAX 8314664310

E-Mail: LBERGTHOLD@CCAH-ALLIANCE.ORG

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Organization: Zero Population Growth of Monterey Bay

Contact Name: Royce Fincher

Address: 113 Van Ness Ave., Santa Cruz CA 95060-4207

Phone/Fax: 831.426.9300/ 831.426.9309

E-Mail: RoyceFincher@pacbell.net

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Organization: Peoples Democratic Club of Santa Cruz

Contact Name: Bill Malone

Address: 519 Walnut Ave
Santa Cruz CA 95060

Phone/Fax: 831-420-1133

E-Mail: Bill Malone @ pacbell.net

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Organization: Santa Cruz County Women's Commission

Contact Name: Andrea Smith

Address: 701 Ocean St. Rm 30
Santa Cruz, CA 95060

Phone/Fax: (831) 454-2772

E-Mail: Commissions@co.santa-cruz.ca.us

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Organization: League of Women Voters of the Monterey Peninsula

Contact Name: LORITA FISHER

Address: 586 COLTON ST.

MONTEREY, CA 93940

Phone/~~Fax~~: 831/375-8301

E-Mail: glenlorfisher@webtv.net

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Organization: Womens Health Specialists

Contact Name: Shauna Heckert

Address: 1469 Humboldt Rd. Ste 200
Chico, Ca. 95928

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Organization: San Jose/South Bay National Organization for Women

Contact Name: Connie Springer

Address: PO Box 611957
San Jose CA 95161-1957

Phone/Fax: General-(408) 297-4NOW, Connie Springer (408) 269-4943

E-Mail: cfspringer@earthlink.net

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Organization: California Pro-Choice Republicans

Contact Name: Karla Henderlong

Address: 1285 Boulevard Way

Walnut Creek, CA 94595

Phone/Fax: (925)946-9455 fax (925)946-9715

E-Mail: karlah@pacbell.net

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Organization: WOMEN LAWYERS of SANTA CRUZ COUNTY

Contact Name: ADRIENNE STEIN

Address: P.O. BOX 737

SANTA CRUZ, CA 95061-0737

Phone/Fax: (831) 475-3079

E-Mail: asjd@cruzio.com

Adrienne Stein
Attorney At Law
4026 Winkle Avenue
Santa Cruz, CA 95065

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Organization: Choice USA, UC Santa Cruz Chapter

Contact Name: Adrienne Rubeas / Amber Parker

Address: UCSC - Cowell #609
301 McLaughlin Drive
Santa Cruz, Calif. 95064

Phone/Fax: 415-531-1819

E-Mail: SupaSky182@aol.com

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Organization: League of Women Voters, Santa Cruz County

Contact Name: Laura Grossman

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Soquel, CA. 95073

Phone/Fax: (831) 475-9442

E-Mail: drmarc@cruzio.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

May-07-2002 01:54am From-
05-03-02 08:07pm From-
5/03/2002 01:17 FAX 408 435 0348
T-948 P.002/002 F-201
T-927 P.002/002 F-669

ATTENTION GAYLE TILLER FROM CLAUDIA SIN 0/25

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Organization: Santa Clara County Democratic Central Committee

Contact Name: Steve Preminger, Chair

Address: 2102 Almaden Road #107
San Jose, Ca 95125

Phone/Fax: 408 445-4567

E-Mail: steve@atwork.org

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Organization: UNITED Nations Assoc. Santa Cruz Co

Contact Name: Henny Van Duy

Address: 3450 Hare Dr.
Aptos CA 95003

Phone/Fax: 831- 688-5105

E-Mail: United Nations Assoc of Santa Cruz Co.

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Womens International League for Peace and Freedom, Monterey County Branch

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Organization: Womens International League for PEACE & Freedom WILPF Monterey County Branch

Contact Name: Darby Mase Worth

Address: 8258 el Camino Estrada
Carmel, Ca. 93923

Phone/Fax: 831- 624-7494

E-Mail: _____

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Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Green Party, Monterey County

Contact Name: Darby Moss North

Address: 8250 el Camino Estrada
Carmel, Ca. 93923

Phone/Fax: 831- 624-7494

E-Mail: ———

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Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl

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Organization: Lawyers Club of San Diego

Contact Name: Kate Yavenditti

Address: 964 Fifth Ave., Ste. 210

San Diego, CA 92101

Phone/Fax: 619 544-1478

E-Mail: _____

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MPC Ro Program

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Organization: Women's Programs, Monterey Peninsula College

Contact Name: Phyllis Peet, Director

Address: 980 Fremont St

Monterey Ca 93940

Phone/Fax: 646 4276

E-Mail: -

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Organization: AAUW

Contact Name: Greta Neelsen

Address: 330 Loyola Drive

Aptos CA 95003

Phone/Fax: _____

E-Mail: _____

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Organization: Valley Women's Club

Contact Name: Sheila De Lang

Address: PO Box 574
Ben Lomond Calif. 95005

Phone/Fax: (831) 338-4436

E-Mail:

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Organization: AAUW

Contact Name: STEPHANIE WELLS

Address: 3905 WINKLE AVE.

SANTA CRUZ, CA -95065

Phone/Fax: 831-476-4488

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Organization: MARIN COUNTY WOMEN'S COMMISSION

Contact Name: Staff, Pat Warren

Address: Room 295 Civic Center
San Rafael CA 94903

Phone/Fax: 415 499 6557

E-Mail: pwarren@co.marin.ca.us

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Organization: Women's International League for Peace and Freedom Fresno Branch
Contact Name: Carol Bequette
Address: P.O. Box 5114
Fresno, CA 93755
Phone/Fax: 559-229-9661 (Phone)
E-Mail: CBEQUETTE@AOL.COM

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Organization: Pro Choice Coalition of Santa Clara County

Contact Name: Judy Purrington, Chair

Address: 1691 The Alameda
San Jose, Ca 95126

Phone/Fax: 408-972-8042

E-Mail: judyPurrington@aol.com

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ATTENTION GAYLE TILLER FROM CLAUDIA SIT D/E

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Organization: D.A.W.N. DEMOCRATIC ACTIVISTS FOR WOMEN NOW

Contact Name: CAROL GARVEY – PRESIDENT

Address: P.O. Box 6614
San Jose, CA 95150

Phone/Fax: (408) 275-6981

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Organization: WOMEN'S HEALTH COLLABORATIVE

Contact Name: Reneta MARTIN

Address: 663 13th STREET, 2nd FLOOR
OAKLAND CA 94612

Phone/Fax: (510) 452-0322 (510) 452-0075

E-Mail: Rmartin@whc online.org

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Organization: Communi Care Health Centers

Contact Name: Robin Affrime

Address: PO Box 1260

Davis CA 95617

Phone/Fax: (530) 758-3498 / 530-758-2109 (fax)

E-Mail: RFAffrime@communicareclinics.com

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Organization: National Health Law Program

Contact Name: Lourdes Rivera

Address: 2639 S. LA Cienega Blvd
Los Angeles, CA 90034

Phone/Fax: 310/204-6010 , 310/204-0891:F

E-Mail: rivera@healthlaw.org

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Support SB 1301 (Kuehl)

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Organization: Physicians for Reproductive Choice and Health

Contact Name: Carrie Steed and Nomi Sichtermann

Address: 55 West 39th St., 10th Floor

New York, NY 10018

Phone/Fax: (646) 366-1890 / (646) 366-1897

E-Mail: carrie@prch.org and nomi@prch.org

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Organization: Older Women's League

Contact Name: Betty Perry

Address: 926 - J Street, Ste 1117
Sacramento, CA 95814

Phone/Fax: P- (916) 444-2526 F- (916) 441-18[illegible]

LEGISLATIVE INTENT SERVICE (800) 666-1917

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Organization: Los angeles County Young Democrats

Contact Name: Samantha Mariner

Address: 900 Wilshire Blvd #1030

Los Angeles CA 90017

Phone/Fax: 213.624.1030 / 213.624.0123

E-Mail: President@lacyd.org

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Organization: WEST HOLLYWOOD DEMOCRATIC CLUB

Contact Name: RUTH WILLIAMS - LEGISLATIVE VICE PRES.

Address: 7548 LEXINGTON AVE.
WEST HOLLYWOOD 90046

Phone/Fax: 323-874-0728 FAX: 323-874-7322

E-Mail: RUTHWH@AOL.COM

Attn: Katie
From: PPLA
Antionette

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

Dear Friends and Partners:

With the United States Supreme Court poised to change its composition and the *Roe v. Wade* decision in peril, it's more important than ever we protect our constitutionally guaranteed right of reproductive choice. That's why we ask that your organization join us in supporting the Reproductive Privacy Act, a contemporary abortion law for California that replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

The bill accomplishes four primary objectives for Californians: to provide women greater access to early non-surgical abortions, to remove unnecessary restrictions on abortion procedures, to delete unconstitutional provisions of the Therapeutic Abortion Act and to reaffirm privacy rights established by *Roe v. Wade*.

It is imperative that California clarifies in the law precisely what reproductive privacy rights the women and men of this great state enjoy. The Reproductive Privacy Act will ensure that California has a constitutionally firm abortion law that would protect privacy rights, now and in the future. By treating abortion consistently with other medical procedures, SB 1301 will ensure the safety of reproductive health care while eliminating the stigma the law has historically placed on the option of abortion services, replacing it with a declaration in support of the constitutional right to privacy and individual choice.

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Santa Cruz County Womens Commission

Contact Name: Andrea Smith

Address: 701 Ocean St., Rm 30
Santa Cruz, CA 95060

Phone/Fax: (831) 454-2772

E-Mail: Commissions@co.santa-cruz.ca.us

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

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Organization: Planned Parenthood Mar Monte

Contact Name: Justine Sarver

Address: 1691 The Alameda
San Jose CA 95126

Phone/Fax: 916 446-5037 x133
916 446-3274

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

I thought I had submitted this, but apparently not —

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Reproductive Right Network of Santa Cruz County

Contact Name: Cynthia Mathews

Address: 1119 Pacific Ave, Suite 210
Santa Cruz, Ca 95060

Phone/Fax: 831/ 425-1551 x 29

E-Mail: 831/ 425-0217

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Medical Students For Choice, University of Southern California Chapter

Contact Name: Kristina Rios

Address: 107 S. Hdliston #205

Pasadena, CA 91106

Phone/Fax: 626-796-3098

E-Mail: krios@usc.edu

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of Callfornia ~ California Commission on the Status of Women ~

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Democratic Women of Santa Barbara County

Contact Name: barbie deutsch, president

Address: po box 90655
santa barbara, ca 93190

Phone/Fax: (805) 967-6665 (both)

E-Mail: lady-go-blue@cox.net / DemWomenSB@cox.net

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

ORCUTT REPUBLICAN CLUB

P.O.BOX 2007 ORCUTT, CALIFORNIA 93455

April 2, 2002

To our State Legislator

The vast majority of the 97 members of this organization feel strongly that the Reproductive Privacy Act (S.B. 1301 by Sen. Kuehl) is our chance to protect the right to choose in California even if the Supreme Court overturns Roe v. Wade. Therefore, we strongly urge you to support this legislation to protect safe and legal abortions in California.

Legal abortions are preferred to illegal back alley abortions as were common prior to Roe v. Wade.

The recent vote on this matter, and resolution to forward this letter ran 81 for and 16 opposed. Those who were not present at our recent monthly meeting were sent ballots on this and other matters to be mailed in and tabulated. All members thus were included.

Sincerely,

Carlos Cardona

Carlos Cardona, Pres.
O. R. C.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

08/12/2002 MON 12:28 [TX/RX NO 8988] 001

AUG 12 2002

United States Justice Foundation

2091 E. Valley Parkway, Suite 1-C
Escondido, CA 92027
Telephone: (760) 741-8086; FAX: (760) 741-9548
www.usjf.net

FAX TRANSMISSION COVER SHEET

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Date: August 12, 2002

To: FLOOR ANALYSIS JUDICIARY COMMITTEE
Attention: DREW LIEBERT

Fax: (916) 319-2188

Re: SB 1301

Sender: RICHARD D. ACKERMAN

YOU SHOULD RECEIVE 8 PAGES, INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (760) 741-8086.

Attached: Letter

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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United States Justice Foundation

July 25, 2002

Honorable Carole Migden, Chairwoman
Assembly Appropriations Committee
State Capitol
Sacramento, CA 95814

RE: Further Commentary in Opposition to SB 1301

Dear Assemblywoman Migden:

This letter serves as an addendum to the United States Justice Foundation's ("USJF") earlier analysis of Senate Bill 1301 ("SB 1301") (see Attachment 1 without Exhibits). As you may recall, our initial analysis expressed grave concerns regarding the ability of SB 1301 to adequately protect the health and safety of California's women. Currently, *California Health and Safety Code* § 123405 mandates that only qualified physicians and surgeons perform abortions in the state of California. SB 1301 would eliminate this language from the *Health and Safety Code,* replacing it with relaxed and imprecise standards that would facilitate the ability of unqualified personnel to conduct and assist in the performance of surgical and non-surgical abortion procedures. Worse yet is the fact that SB 1301 would directly conflict with other existing laws concerning basic medical standard of care issues, the unlicensed practice of medicine, and informed consent laws.

For example, enactment of SB1301 into law would effectively open further loopholes for abortion providers that ostensibly fail to comply with present statutory licensing restrictions. USJF's prior analysis included sworn testimony from Planned Parenthood employees which revealed that the organization allows unlicensed personnel to assist in surgical abortion procedures. Indeed, no more than a high school diploma is relied upon by certain abortion providers before allowing personnel to assist in abortions. The testimony provided by USJF to the Legislature showed that Planned Parenthood's unlicensed employees admittedly assisted in "hundreds" of abortions.

The enclosed document further illustrates the intentional failure to abide by existing abortion guidelines (see Attachment 2). This abortion industry document provides a job description for a position entitled "SURGICAL SERVICES ASSISTANT CENTER MANAGER." While only requiring a high school diploma or equivalent, the job description lists a number of high-level medical responsibilities such as "assist with medical abortions", "perform & record lab tests", and "assist physician with procedure." Each of these medical tasks demand an appropriate medical license.

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RU486 abortions, as referenced through the language of SB 1301, directly implicate each of these medical tasks. SB 1301 promotes the unlicensed practice of medicine by persons with no more than a high school diploma. A high school diploma does not qualify a person to perform any type of abortion, including RU486 chemical abortions.

The practices promoted by SB 1301, and outlined in existing abortion industry policies, appear to violate *Health and Safety Code* § 123405. Specifically, SB 1301 defies the prohibition against medical practice without proper certification or authorization pursuant to *California Business and Professions Code* § 2053, *Health and Safety Code* § 1209, and other related provisions of California law.

Furthermore, the language of SB 1301 effectively allows unlicensed personnel to administer and dispense drugs in violation of Title 22, §§ 70029, 72045, and 75008 of the California Administrative Code, *California Health & Safety Code* § 11002, and *Business & Professions Code* §§ 4213, 4227. SB 1301 conflicts with these long-standing statutes by allowing unlicensed personnel to administer drugs to patients without proper control, presence, or supervision of a practitioner (within the meaning of *Health & Safety Code* § 11026) licensed to administer drugs within the State of California.

To the extent that SB 1301 allows violations of the above statutory provisions, it further conflicts with *California Business & Professions Code* §§ 119(e), 125 [unlawful use of a medical license and aiding and abetting in unlicensed practice of medicine]. Bluntly stated, the language of SB 1301 promotes the commission of a host of felonies and misdemeanors by licensed and unlicensed medical practitioners.

In the landmark *Roe v. Wade* decision, the United States Supreme Court declared that states could regulate abortion procedures in a manner that strikes a balance between the preservation of the health of both the mother and similar interests of the unborn child. Enactment of SB 1301 would be detrimental to both of these opposing goals. By weakening existing abortion restrictions and indoctrinating a more malleable set of standards, SB 1301 threatens to perpetuate a pattern of illegal conduct instead of promoting safety and the integrity of the licenses of physicians, pharmacists, and other licensed personnel. The goal of greater access to abortions cannot justify a concomitant decrease in the safety of surgical and chemical abortion procedures. It is an outrage that the California State Legislature would consider codifying medical and pharmacological malpractice. SB 1301 does just this.

It is trusted that you will analyze and vote responsibly on SB 1301.

/////

/////

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Most respectfully Submitted:

UNITED STATES JUSTICE FOUNDATION

RICHARD D. ACKERMAN,
Attorney at Law.

CC: SB 1301 Co-Authors
Appropriation Committee Members
Office of Legislative Analysis

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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United States Justice Foundation

Critique of California State Senate Bill 1301

This serves as a brief analysis of SB1301. This particular bill is not pragmatically sound and would be detrimental to the health and safety of California's women. Planned Parenthood, as an example, is already allowing unlicensed personnel to practice medicine without a medical license. Women are not told that unlicensed personnel will be assisting in surgical procedures. Indeed, some of their personnel have no licenses, whatsoever, and only a few months of training, before they are allowed to "assist" in abortion procedures. These employees are apparently responsible for actually handling surgical equipment during the performance of procedures, including mid and late-term abortions. This is simply unconscionable and presents a danger to the health and safety of thousands of women in San Diego alone.

While it might be easy for someone to say that this is mere rhetoric from those who oppose abortion, the facts speak for themselves. I have enclosed the sworn deposition testimony of two Planned Parenthood employees who, under oath, admit that they do not have licenses, but have assisted in the performance of "hundreds" of abortions in the last three years. One can see from their sworn testimony that neither employee had any specific training in abortion procedures. In fact, one of the employees is not even familiar with the basic terminology used in a ââ€˜therapeutic abortion' setting. SB1301 would greatly relax restrictions on who can participate/assist in the performance of "therapeutic abortions." Existing law already states that licensed physicians are the only personnel who may "assist" in an abortion. California Health & Safety Code ÂÂ§§ 123405. The facts suggest that this law is simply overlooked by abortion providers and that women are not told about this oversight.

SB1301 would absolutely gut the protection now afforded to women per Section 123405. Moreover, it would readily allow unqualified personnel to assist in operating on women. And, there is no requirement that women be alerted to the fact that unlicensed personnel will be operating on them. Informed consent should require such disclosures and SB1301 completely overlooks this important medico-legal fact.

SB1301 places a stamp of approval on the type of conduct that is testified to in the attached exhibits. The testimony is undeniable and under sworn oath. It would be incredibly irresponsible for the State of California to relax restrictions regarding the provision of qualified and licensed personnel to California's women. It is trusted that you will analyze and vote responsibly on SB 1301 after reading the attached testimony.

Most respectfully Submitted:

UNITED STATES JUSTICE FOUNDATION

RICHARD D. ACKERMAN,
Attorney at Law.

2091 East Valley Parkway • Suite 1-C • Escondido, California 92027 • (760) 741-8086 • Fax (760)

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

POSITION DESCRIPTION

TITLE: SURGICAL SERVICES ASSISTANT CENTER MANAGER

REPORTS TO: Surgical Services Center Manager

GRADE: 12, Non-Exempt

MINIMUM QUALIFICATION REQUIREMENTS

Education: High School diploma or equivalent experience.

Experience: Two years of experience in a health, medical or social services setting with a minimum of one year experience in an abortion clinic or Planned Parenthood center.

Other:
Willing to work in all areas of the center.
Ability to communicate effectively with patients of all backgrounds in sensitive subject areas.
Ability to work in environment where patients are under extreme stress.
Ability to work as a team member.
Willing to work flexible hours, including Saturdays and evenings.
Ability to work under stressful environment.
Commitment to the goals and philosophy of Planned Parenthood.
Some positions require bilingual (Spanish/English) certification.
Must be willing to work at other centers when Surgical Center is closed.
Must have excellent customer service skills and be committed to providing the highest level of customer satisfaction.

CONTACT RESPONSIBILITY

Internal: Surgical services staff and physicians to facilitate patient care, pregnancy counselors in other centers to make appointments, staff in other clinics to transmit patient information, administrative staff, and community visitors.

External: In person and/or telephone contacts with patients who seek information, appointments, or related services.
Resolve patient complaints regarding services or procedures.

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PURPOSE OF POSITION

Purpose: Assist patients seeking abortion, family planning, colpo, LEEP and other GYN services by screening, educating and preparing them for a surgical procedure. Provide non-judgmental, empathetic, and professional informed consent counseling. Act as a team leader for all clinic staff and assist manager with their responsibilities. Make decisions (in absence of Center Manager) concerning payment and scheduling problems.

DETAILED DUTIES AND RESPONSIBILITIES

Administrative/Management Duties:

- Act as manager in the absence of Center Manager.
- Act as team leader for staff.
- Order and process supplies and equipment.
- Assist in design and evaluation of clinic procedures, systems and forms.
- Assist with follow-up of abnormal results.
- Prepare bank deposits.
- Assist Manager in hiring, training and evaluating all new staff and volunteers.
- Evaluate, screen and refer to physician (when appropriate) post-abortion complications.
- Participate in chart review with physician and Surgical Services Center Manager.
- Maintain complication log.

Other Services/Front Office:

- Schedule appointments, assess medical candidacy for procedure, and determine fees.
- Assess pregnancy on the phone by dates.
- Assess patient's payment source and give patient appropriate payment information based on procedure, pregnancy size, anesthesia and insurance.
- Schedule appointments for patients taking all variables into consideration such as anesthesia, laminaria, gestational size, payment source and medical abortion.
- Answer routine medical questions, assess complaints and make appropriate referrals.
- Check patients in and out, prepare charts, collect, record and process fees.
- Maintain patient records.
- Perform routine clerical duties (filing, copying, etc.).

Back Office:

- Perform & record appropriate lab tests & vital signs and triage abnormal results.
- Interview, educate and counsel patients and their partners (when necessary) regarding decision, abortion procedure, informed consent, follow-up, contraception and related issues.
- Prepare charts and patient for exam and procedures.
- Assist physician with procedure.
- Communicate with NP/physician on patient's gestational size and proposed treatment (including laminaria, gestational size, anesthesia, and payment source); communicate this information to front desk for scheduling and payment.
- Support patient during procedure.
- Prepare products of conception for examination..
- Assist with recovery room duties as needed.
- Counsel patient and assist with colposcopy and LEEP procedures.
- Counsel patient and assist with medical abortions.

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- Perform basic operation room aseptic techniques and surgical scrubbing for tubal ligation.
- Maintain knowledge of equipment operation and maintenance for EKG machine, automatic blood pressure cuff, pulse oximeter, LEEP equipment, and laparoscopy equipment.
- Assist with preparation, cleaning, sterilization and stocking of equipment and rooms.
- Package specimens for outside lab transport.

General:

- Attend trainings, staff meetings and in-services to maintain and increase knowledge of abortion protocols and procedures (first trimester abortion, second trimester abortion, medical abortion, and anesthesia), maintain knowledge of anatomy and physiology, family planning, and abnormal Pap smears, colposcopy, LEEP, and other GYN procedures.
- Make appropriate referrals to other Planned Parenthood programs, physicians, clinics and community resources.
- Perform other duties as assigned.
- Must be in agreement with Planned Parenthood philosophy.

This job description is subject to review and change. This is not a contract. Signature of employee solely indicates that this position description has been received, read and understood.

EMPLOYEE: [redacted] DATE HIRED: [redacted]

SIGNATURE: [redacted] DATE SIGNED [redacted]

SALARY: [redacted]

BILINGUAL [redacted]

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Barbara Mc Carthy
1610 Clear Lake Ave.
Milpitas CA 95035-7046

Aug 8/02

AUG 15 2002

Ellen Corbett, Chairman
Assembly Judiciary Comm.
State Capitol
Sacramento, CA.

Dear Assemblywoman Corbett:

I am writing to oppose SB 1301, the Reproductive Privacy Act.

By allowing non-physicians to perform non-surgical abortions (such as RU-486), SB 1301 will endanger the lives of women.

(The FDA has already reported two deaths, and a heart attack of a 20-year-old woman, where the abortifacient RU-486 was used.)

Thank you.

Sincerely,
Barbara McCarthy

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

July 21, 2002

Ellen Corbett, Chairman
Assembly Judiciary Comm
Sacramento, CA

Dear Chairman Corbett,

I am writing to urge you to defeat SB-1301, that would allow non-physicians to perform non surgical abbortions such as RU-486.

This is dangerous to the lives of girls & women. Already the FDA has reported two deaths and a heart attack of a 20-year old woman where RU-486 was used.

Sincerely,

Joan J. Martel

500 Riverside Dr.
N. Grosvenordale
CT. 06255

-OVER-

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Alice Bieniadecki
Wendy Julien

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

MRS. CATHERINE KARR
390 Wyckoff Ave.
Ramsey, NJ 07446-2228

JUL 26 2002

Ellen Corbett, Chairman
Assembly Judiciary Comm.
State Capital Bldg.
Sacramento, Ca 95814

Dear Ms Corbett,

I have just learned that legislation is soon to be voted on that would endanger even more the lives of girls and women.

It is bad enough that many women die after an abortion by licensed doctors, although not reported as such.

Please do all you can to stop the passage of SB-1301 Reproductive Privacy Act.

Why would you relegate women and girls as second-class citizens?

Sincerely,

Catherine Karr

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

'Show the Truth Baby

Father gives photo to rescuers

It has been two years since Operation Rescue West first picked up a six-foot-tall picture of an aborted baby and children continue to be saved. One recent example is the inspiring story of little Angie.

Angie is alive today because her mother saw a Show the Truth sign at an abortion mill. Her mother was on her way to kill pre-born Angie when she saw the horrible pictures. She never stopped to talk to a sidewalk counselor, she never told anyone of her decision to keep little Angie.

Almost a year and a half later Angie's father stopped to relay this story to a group of rescuers who stood holding the large pictures of aborted babies on a busy street corner. The father handed the rescuers a picture of his precious baby and told them how much he loved her. As the father left he thanked them for their faithful persistence.

Yet, moments later the rescuers were angrily confronted by a man who claimed to be a Christian. While the man yelled, the rescuers showed him the picture of Angie and told him her story. The angry man stopped in his tracks and simply said, "OK"; and with his eyes watering he turned and left.



Little Angie is alive today

SP1 - 118

A-668



JUL 24 2002



THEY WANT TO LEGALIZE ABORTIONS BEING PERFORMED BY NON-PHYSICIANS!!!?

SB –1301, REPRODUCTIVE PRIVACY ACT (by lesbian Senator Sheila Kuehl – D-Santa Monica) would reduce medical standards for personnel assisting in surgical abortions and WOULD ALLOW NON-PHYSICIANS TO PERFORM NON-SURGICAL ABORTIONS SUCH AS RU-486. (Already the FDA HAS REPORTED TWO DEATHS AND A HEART ATTACK OF A 20–YEAR-OLD WOMAN WHERE THE ABORTIFACIENT RU-486 WAS USED!)

Dear Ms. Corbett,

Hello!

California already leads America in the number of abortions. Why increase that?

Only BIG babies are for abortion.

The price of every abortion is one human life; two... if it's twins.

Blessings,

Olga L[illegible]

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUL 22 2002

Donald L. McCants
5524 St. James Street
Birmingham, AL 35235
1-205-856-5140
July 15, 2002 A.D.

HON ELLEN CORBETT
CHAIRMAN
ASSEMBLY JUDICIARY COMMITTEE
STATE CAPITOL BUILDING
SACRAMENTO, CA 95814

Dear Chairman Corbett:

I am writing to you concerning the Reproductive Privacy Act (SB 1301) which is currently being considered by your committee. This bill is a matter of great concern to me, even though I am not a resident of California, and I intend to express to you my views concerning this bill.

The Reproductive Privacy Act (SB 1301) is a piece of legislation that is a matter of great personal concern to me. This legislation is a matter of great concern to me because this bill, if passed into law in California, will reduce the medical standards under which medical personnel who are licensed in the state of California will be performing abortions in California. Another thing that greatly concerns me is that this bill would also permit non-physicians to be able to perform non-surgical abortions such as the administering of abortion-inducing drugs as RU-486.

Chairman Corbett, I regard this bill as a seriously flawed law that is a most irresponsible bill in allowing non-physicians to be able to induce non-surgical abortions, thereby placing the women and girls who are subject to these non-surgical abortions at serious medical risk of being subject to the risk of serious medical malpractice at the hands of people who are not medically qualified to administer these procedures. The U.S. Food and Drug Administration has already reported that two deaths and a heart attack of a 20 year-old woman have occured as the result of the use of the abortifacient RU-486 drug.

I respectfully ask that you please work against the passage of the Reproductive Privacy Act in the California State Assembly Judiciary Committee in order to protect the health of the women and girls who undergo abortions in California. This is the only right and moral course for you to follow regarding this matter, and you know that this is true.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Thank you very much for your time and consideration. I am

Sincerely yours,

Donald L. McCants

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUL 17 2002

7-10-02

Assemblywoman Ellen Corbett
Judiciary Comm. Chmn.
State Capitol Bldg.,
Sacto, Ca. 95814

Dear Ms. Corbett, Chairman -

Please, please vote against Sacto bill SB 1301, "Privacy Act."

My mother had twins ahead of me — and, I was a serious medical & inconvenience birth in 1925. My parents didn't give it a thought to rid me.

Please do not favor abortion -

Thank you,

Ben Leal

Retired Tecumseh Int'l officer.

Ben Leal
21062 Gary Dr. #123
Castro Valley CA 94546-6103

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 26 2002

PAT COVER
31474 KNOLL DRIVE
REDLANDS, CA. 92373

June 22, 2002

Chairman of the Assembly Judiciary
Committee
State Capitol Building
Sacramento, Ca. 95814
Attn.: Ms. Ellen Corbett

RE: SB1301

Dear Ms. Corbett:

I am writing this letter to request that you please vote 'NO' on the above captioned bill.

Thank you in advance for your consideration.

Yours truly,

Pat Cover

Pat Cover

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

"Verily, verily, I say unto you, he that heareth My word, and believeth on Him that sent Me, hath everlasting life, and shall not come into condemnation; but is passed from death unto life."[11]

Commit your life to Christ today! For further information on the Christian life, write to the address below for free literature.

Name _____

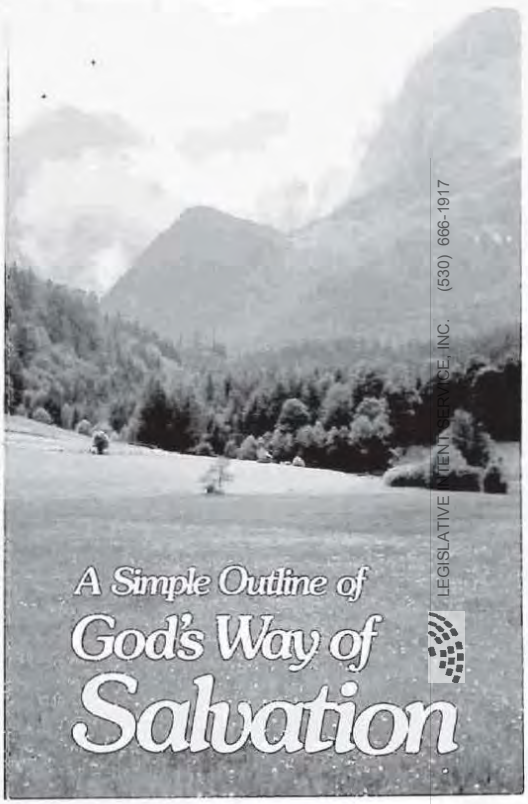
Address _____

_____

Bible references: [1]Psalm 97:2; [2]Romans 3:23; [3]Isaiah 59:2; [4]Romans 3:20; [5]1 John 4:10; [6]Matthew 11:28; [7]1 Peter 3:18; [8]Romans 5:8; [9]John 1:12; [10]Romans 10:9; [11]John 5:24.

6G14 For helpful Christian literature, please write to the address below
Good News Publishers / a nonprofit corporation
1300 Crescent Street / Wheaton, Illinois 60187

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

SP1 - 124

A-674

Do I need to be saved?

1. God is holy. No sin will ever enter His presence, for "righteousness and judgment are the habitation of His throne."[1]
2. Man is sinful. "For all have sinned, and come short of the glory of God."[2]
3. Sin separates man from God. "But your iniquities have separated between you and your God, and your sins have hid His face from you."[3]
4. It is impossible for man to save himself. "By the deeds of the law there shall no flesh be justified in His sight."[4]

Can I be saved?

1. God sent His Son to be your Savior. "Herein is love, not that we loved God, but that He loved us, and sent His Son to be the propitiation for our sins."[5]
2. The living Savior invites sinners to receive Him. "Come unto Me, all ye that labour and are heavy laden, and I will give you rest."[6]
3. Forgiveness of sins and salvation can be yours *today*. "For Christ also hath once suffered for sins, the just for the unjust, that He might bring us to God."[7]

How can I be saved?

1. Agree with God that you are a lost sinner unable to save yourself. "God commendeth His love toward us, in that, while we were yet sinners, Christ died for us."[8]
2. Believe that Jesus Christ died for your sins and ask Him to be your Savior. "As many as received Him, to them gave He power to become the sons of God, even to them that believe on His name."[9]
3. Confess the Lord Jesus Christ before men. "If thou shalt confess with thy mouth the Lord Jesus, and shalt believe in thine heart that God hath raised Him from the dead, thou shalt be saved."[10]

REGISTRY OF PUBLICATIONS SERVICE (530) 666-1917

SP1 - 125

A-675

JUN 26 2002

JENNI LA ROE
PO BOX 375
HIGHLAND, CA. 92346-0375
EMAIL: DOUGNJENNI@AOL.COM

June 22, 2002

Chairman of the Assembly Judiciary
Committee
State Capitol Building
Sacramento, Ca. 95814
Attn.: Ms. Ellen Corbett

RE: SB1301

Dear Ms. Corbett:

I am writing this letter to request that you please vote 'NO' on the above captioned bill.

Thank you in advance for your consideration.

Yours truly,

Jenni La Roe

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 26 2002

June 24, 2002
P. O. Box 154
Somis, California 93066

Dear Honorable Ellen Corbett,

It is with great concern that I am urging you to vote against SB 1301, which is up for review by the Health Committee. Any proposal to administer abortifacients to destroy life, is totally adverse to our U. S. Constitution, which guarantees the inalienable right to life of every human person. A woman's liberty rights cannot precede and overwhelm a baby's right to life, the most fundamental right of all! And this addendum to allow even non-medical personnel to administer such procedures is abhorrent.

Please consider carefully and vote NO on this piece of legislation.

Thank you.

Sincerely yours,

Frances A. Connelly

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Allison Purtell, M.D.
29737 Niguel Road, Apt. H
Laguna Niguel, CA 92677-2059
June 19, 2002

Assemblywoman Ellen Corbett
Chairman of the Assembly
Judiciary Committee
State Capitol Bldg.
Sacramento, CA 95814
Fax: (916) 319-2118

JUN 24 2002

JUN 19 2002

Dear Assemblywoman Corbett,

I want to register with you my opposition to State Senate Bill 1301. That so-called Reproductive Privacy Act would allow partial-birth abortion in California. It is an extremist bill that would secure abortion-on-demand, including partial-birth abortion, into California law, even if Roe Vs. Wade were overturned. It redefines "abortion" to assure that the baby is killed.

As a member of Assembly District 73, I have also registered my opposition with Pat Bates.

Women in crisis pregnancies have many community organizations open to them, for food, shelter, financial help, and spiritual support.

Even women who are the victims of rape or incest--they should not be victimized a second time by allowing the murder of their very own offspring. They need education and counselling. Healing needs to begin. Murder violates God's basic laws.

God does not take away our challenges. He helps us carry them.

Looking forward to seeing you give this bill the sound defeat that it deserves, I am

Sincerely,

Allison Purtell, M.D.

Allison Purtell, M.D.
Phone: (949) 249-6683
Fax: (949) 249-3058

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 10 2002 6/3/02

Dear Assembly Member Ellen Corbett,
Chairman of the Assembly Judiciary
Comm.,

Please Oppose bill SB1301
when it comes before you,
Thank-you for your time.

Sincerely,
Mrs. Gail Jones

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

6/3/02

Dear Assembly member Corbett,

I am writing as a concerned citizen regarding SB1301.

I am opposed to this and request that you vote in opposition to it.

Sincerely,
Doris Johnson

Doris Johnson
27711 Clifton St.
Highland, CA 92346-3340

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 13 2002

JUN 11 2002

June 8, 2002

Assembly Member Ellen Corbett
Chairman of the Assembly Judiciary Committee
State Capitol Building
Sacramento, CA 95814

Assembly Member Corbett:

I urge you to oppose SB 1301 and instead help and protect mothers and their babies.

Thank you.

Respectfully,
Julia Marie DeCarli
Julia Marie DeCarli
16431 Jody Circle
Westminster, CA 92683

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Linda Brady Davidson
2000 Walnut Ave Apt M304
Fremont, CA 94538

JUN 12 2002

JUN 13 2002

Friday, June 07, 2002

Ellen M. Corbett, Assemblymember
Chair, California Assembly Judiciary Committee
State Capitol Rm 4126
Sacramento, CA 95814

Subject: Opposition to SB 1301

Dear Assemblymember Corbett,

As a pro-life voter, I am writing to show my strong opposition to SB 1301, authored by Senator Sheila Kuehl. SB 1301, the "Reproductive Privacy" Act, is a law governing abortion in California, which replaces the time-honored and moral provisions of the Therapeutic Abortion Act of 1967.

SB 1301 would delete life-affirming provisions in current state law; encourage early, non-surgical abortions; and enhance and celebrate the roles of those performing or assisting with the murders. In addition, SB 1301 clearly states that every woman in California has the right to allow (or not) her unborn child to live. With the composition of the U.S. Supreme Court likely to change soon, this opposition is especially crucial in order to protect the rights of unborn children.

Please vote NAY on SB 1301, when heard in the California Assembly.

Sincerely,

Linda Brady Davidson
2000 Walnut Ave Apt M304
Fremont, CA 94538

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

His Nesting Place

Not just a shelter ... but a real home.
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Judy Howard
Director, His Nesting Place

William Davies, M.D.
Surgeon

Nadine Davies
Registered Nurse

Jim Rainboldt
Attorney at Law

Pastor Luthor Nelson
Trinity Lutheran Church

Pastor Tom Cizmar
St. Matthew Lutheran Church

Jeff White
Child Protection Services
State Director

Rodney Guarneri
Civil Service

Advisory Board

Ron Stoddart
Attorney at Law

Pastor Paul Jessen
Pastor Jay Riley

JUN 19 2002

Assembly Member Ellen Corbett,

We the undersigned would urge you to vote NO on SB 1301. This bill takes an extreme stand to promote abortion. Abortion takes a baby's life, and is also harmful to the women and men involved. SB 1301, furthermore, would reduce medical standards and allow non-physicians to administer chemical abortifacients. Already the FDA has reported two deaths and a heart attack of a 20-year old woman where the abortifacient RU-486 was used. We need to protect the lives of women and the tiny preborn babies. God has said, "Thou shall not kill" Will you oppose SB 1301?

Signature	Printed Name
Dr. Alvin L. Howard	DR. ALVIN L. Howard
Rodney D. Guarneri	Rodney D.J. Guarneri
Charlotte Diane Guarneri	Charlotte Diane Guarneri
Anne Franczek	Anne Franczek
Patricia Perry	Patricia Perry
Doug King	Doug King
	Alysia St. Clair
John Williams	John Williams
Myra Castro	Myra Castro
Monique Chavez	Monique Chavez
Shelley L. Jasper	Shelley L. Jasper
Debbie Jasper	Debbie Jasper
William F Sheehan	William F Sheehan
Mary Sheehan	Mary Sheehan
Alex Deleon	Alex Deleon

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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St. Matthew Lutheran Church

Jeff White
Child Protection Services
State Director

Rodney Guarneri
Civil Service

Advisory Board

Ron Stoddart
Attorney at Law

Pastor Paul Jessen
Pastor Jay Riley

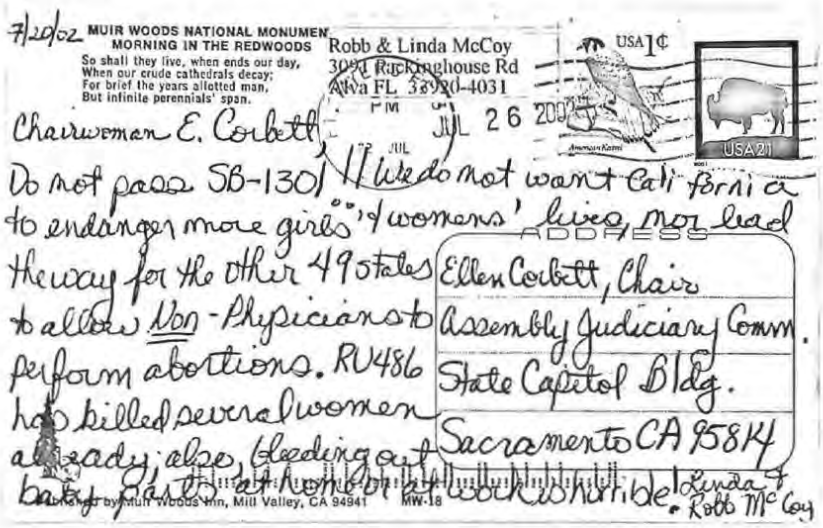
Not just a shelter ... but a real home.
Ministering to homeless, pregnant women and their children.

Assembly Member Ellen Corbett,

We the undersigned would urge you to vote NO on SB 1301. This bill takes an extreme stand to promote abortion. Abortion takes a baby's life, and is also harmful to the women and men involved. SB 1301, furthermore, would reduce medical standards and allow non-physicians to administer chemical abortifacients. Already the FDA has reported two deaths and a heart attack of a 20-year old woman where the abortifacient RU-486 was used. We need to protect the lives of women and the tiny preborn babies. God has said, "Thou shall not kill." Will you oppose SB 1301?

Signature	Printed Name
Anita Levario	Anita Levario
Monica Sheehan	Monica Sheehan
Dr. Donald S. Smith	DR. DONALD S. SMITH
Drena Stone	DRENA STONE
Maria Rivera	Maria Rivera
Tiana Armstrong	TIANA ARMSTRONG
E. Caprice Bailey	E. Caprice Bailey
Geneviève Jonas	Geneviève Jonas

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917



7/20/02 MUIR WOODS NATIONAL MONUMENT
MORNING IN THE REDWOODS
So shall they live, when ends our day,
When our crude cathedrals decay;
For brief the years allotted man,
But infinite perennials' span.

Robb & Linda McCoy
3091 Rockinghouse Rd
Alva FL 33920-4031

USA 1¢ USA 21

JUL 26 2002

Chairwoman E. Corbett,
Do not pass SB-1301 I like do not want California
to endanger more girls' & womens' lives, nor lead
the way for the other 49 states
to allow Non-Physicians to
perform abortions. RU486
has killed several women
already, also, bleeding out
baby parts at home or at work horrible.

ADDRESS
Ellen Corbett, Chair
Assembly Judiciary Comm.
State Capitol Bldg.
Sacramento CA 95814

Linda & Robb McCoy

Published by Muir Woods Inn, Mill Valley, CA 94941 MW-18

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

TERRY ENGINEERING

180 East Main Street, Suite 150 • Tustin, CA 92780 • Phone (714) 838-1124 • Fax (714) 838-1406

June 9, 2002

Assembly Member Ellen Corbett
Assembly Judiciary Committee
State Capitol Building
Sacramento, CA 95814

Re: SB1301
:

JUN 19 2002

Dear Assembly Member Corbett,

We are writing to state our opposition to SB1301, the Reproductive Privacy Act.

The State should not be involved in legislation that results in the termination of any life, whether in public or private.

This bill does would reduce the level of safety in our abortion clinics by reducing the standards for personnel assisting in surgical abortions and by allowing non-physicians to administer chemical abortifacients.

Please abort this bill.

Sincerely,

James H. Terry

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917



CAPITOL
RESOURCE
institute

June 6, 2002

The Honorable Ellen Corbett
Chairwoman, Assembly Judiciary
State Capitol
Sacramento, CA 95814

JUN 12 2002

Re: **SB 1301 – OPPOSE**

JUN 10 2002

Dear Chairwoman Corbett:

Capitol Resource Institute opposes SB 1301.

SB 1301 states that every individual possesses a fundamental right to choose or refuse birth control, and the fundamental right to choose to bear a child or obtain an abortion.

Capitol Resource Institute believes that, while men and women certainly have not only a right but a responsibility to exercise prudent birth control measures, babies have the "fundamental right" to expect that once conceived they have the right to expect that their mothers will give them a chance to protect them and allow them to live.

SB 1301 also says that the state shall not deny or interfere with a women's right to choose an abortion. This raises a question: What about a doctor who refuses to perform an abortion based on his or her personal beliefs? Could that doctor be considered to be interfering with a woman's "fundamental right" and therefore be penalized?

Capitol Resource Institute believes SB 1301 is fundamentally flawed in that it does not consider the life of unborn children and could possibly infringe on the rights of physicians who refuse to perform abortions. We strongly urge your no vote on SB 1301.

Sincerely,

Karen Holgate
Director of Policy

cc: Members Assembly Judiciary
Senator Sheila Kuehl

1414 K Street,
Suite 200
Sacramento, CA
95814
www.capitolresource.org

(916) 498-1940
Phone
(916) 448-2888
Fax

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 10 2002

CALIFORNIA CATHOLIC CONFERENCE

JUN 10 2002

ARCHDIOCESES OF LOS ANGELES AND SAN FRANCISCO
DIOCESES OF FRESNO, MONTEREY, OAKLAND, ORANGE, SACRAMENTO, SAN BERNARDINO, SAN DIEGO, SAN JOSE, SANTA ROSA AND STOCKTON
BYZANTINE CATHOLIC EPARCHY OF VAN NUYS, MARONITE CATHOLIC EPARCHY OF OUR LADY OF LEBANON OF LOS ANGELES

June 7, 2002

Honorable Ellen Corbett
Chair, Assembly Judiciary Committee
California State Capitol, Room 4126
Sacramento, CA 95814

RE: SB 1301 (Kuehl) Reproductive Privacy Act

Dear Assembly Member Corbett,

The California Catholic Conference opposes SB 1301.

The "Therapeutic Abortion Act" is still in the statute books for California and most citizens in this state think that it is a reasonable law that reflects current abortion practice. However, except for the requirement that a licensed physician perform an abortion and the "conscience clause" exemption for practitioners, the Courts have judged much of the entire 1971 Act unconstitutional.

SB 1301 would explicitly make "abortion-on-demand" legal in California, signaling a dramatic change in the status of abortion law—from not banned to affirmed. SB 1301 would delineate that California not only permits abortion to be practiced without restrictions, but that California legally enshrines it as good public practice and policy. SB 1301 would rename the law the "Reproductive Privacy Act," thereby equating surgical abortion with other issues classified as "reproductive," such as contraception, sterilization, infertility, and even cloning.

Most abortions in California do not take place in hospitals but are performed in abortion clinics. However these clinics, unlike all other freestanding medical clinics, have been exempted from the Department of Health Services regulations, a puzzling and dangerous situation for women undergoing an abortion. If abortion is legal, why do women receive this shoddy treatment? Are these women not entitled to a safe, clean and regulated surgical environment?

Compounding this regulations oversight, no abortion statistics are kept. Californians do not know the number of abortions performed in their state, the number and type of identifiable complications resulting from the procedure, or the frequency of emergency admissions following the procedure. In other words, abortion clinics are exempted from keeping the same statistics that are expected and kept by other medical clinics regarding their medical procedures. Many identifiable fertility problems can be traced directly to abortion, yet in California we neither gather the pertinent data nor make women aware of the possible correlation.

1119 K Street, 2nd Floor ♦ Sacramento, California 95814-3904
(916) 443-4851 ♦ FAX: (916) 443-5629

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Is this new law going to hamper or hinder a reform of this industry, to practice consonant with what most reasonable people would expect?

With this new statutory designation, you, and all members of the Legislature, could possibly preclude any local control reflective of community mores. For example, with this law a local hospital district would have no choice but to offer abortions at their community facilities, and local school districts could not refrain from offering abortion and contraceptive services at their schools, with or without a parent's permission. This law may even possibly repeal, by implication, the only two remaining pieces of the current law.

The Catholic Church consistently opposes abortion. Although we understand that abortion-on-demand is legal and practiced in California, we are directing our efforts toward advocating common sense restrictions on abortion practices that would mitigate its ill effects on women, children and society as a whole. Unfortunately, even a level of oversight and restriction that most people view as reasonable and necessary would be precluded by the provisions of this act. Under this law, there would be the possibility that someone other than a physician could perform a "non-surgical" abortion. There would be no ability to limit abortion when a fetus is definitely viable, even in the ninth month! With this new law, what is moral when it comes to destroying life is to be decided solely by each individual.

Even though we view abortion as immoral and will not support any version of legal abortion, we ask that you revise SB 1301 to require that California's abortion practice be subject to the same common sense restrictions and oversight already imposed on other medical facilities.

Thank you for your diligent work in these interesting times. Should you have any questions regarding our position, please contact Carol Hogan or myself at (916) 443-4851.

Yours Sincerely,

Ned Dolejsi

Edward E. "Ned" Dolejsi
Executive Director

cc: Members of the Assembly Judiciary Committee
Senator Sheila Kuehl, author
Drew Liebert, consultant

/bjc

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JUN 10 2002

June 3, 2002

JUN 10 2002

Assembly Member Ellen Corbett
Chairman of the Assembly Judiciary Committee
State Capitol Building
Sacramento, CA 95814

Dear Assembly Member Corbett:

I am concerned about SB 1301 which I understand is being considered by your Committee. It appears that it would eliminate the safeguards contained in the California Therapeutic Act.

I urge your Committee and the Assembly to vote against SB 1301.

Thank you for your consideration.

Sincerely yours,

Francis J. Briscoe
Colonel, USAF (Ret)

cc: Assembly Member Tom Harman

20142 McKinley Lane
Huntington Beach, CA 92646-4839

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917



CAPITOL
RESOURCE
institute

June 6, 2002 JUN 6 2002

The Honorable Ellen Corbett
Chairwoman, Assembly Judiciary
State Capitol
Sacramento, CA 95814

Re: **SB 1301 – OPPOSE**

Dear Chairwoman Corbett:

Capitol Resource Institute opposes SB 1301.

SB 1301 states that every individual possesses a fundamental right to choose or refuse birth control, and the fundamental right to choose to bear a child or obtain an abortion.

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Capitol Resource Institute believes SB 1301 is fundamentally flawed in that it does not consider the life of unborn children and could possibly infringe on the rights of physicians who refuse to perform abortions. We strongly urge your no vote on SB 1301.

Sincerely,

Karen Holgate
Director of Policy

cc: Members Assembly Judiciary
Senator Sheila Kuehl

1414 K Street,
Suite 200
Sacramento, CA
95814
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(916) 498-1940
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(916) 448-2888
Fax

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

CAMPAIGN FOR CALIFORNIA FAMILIES
Fighting To Restore Family-Friendly Values

www.savecalifornia.com

June 6, 2002

The Honorable Ellen Corbett
Chair, Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: SB 1301 (Kuehl) -- Oppose

Dear Assemblywoman Corbett:

Campaign for California Families opposes SB 1301 because it celebrates the killing of pre-born children as a "fundamental right." Abortion ends a pregnancy by destroying and removing the developing child. That baby's heart has already begun to beat by the time the mother misses her period and begins to wonder if she might be pregnant (about 31 days after the mother's last menstrual period or LMP). Surgical abortions are usually not performed before seven weeks, or 49 days LMP. By that time, the baby has identifiable arms and legs (day 45) and displays measurable brain waves (about 40 days). During the seventh through the tenth weeks, when the majority of abortions are performed, fingers and genitals appear and the child's face is recognizably human.

True fundamental rights include the right to life. SB 1301 celebrates abortion, a horrible act that kills 100% of the unborn children who suffer through it. The vast majority of all abortions performed today are done for social, not medical reasons -- because a woman doesn't feel ready for a baby at the time, because her partner wants her to have an abortion, etc. Approximately 93% of all induced abortions are done for elective, non-medical reasons such as these. Destroying innocent human life for convenience is wrong and should not be seen as a celebration of "privacy" or anything else.

Sincerely,

Erik Hartstrom

Erik Hartstrom
Legislative Analyst
Campaign for California Families

cc: The Honorable Sheila Kuehl, bill author
The Honorable Tom Harman, Vice Chair
Committee Members
Republican Caucus Consultant

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

CALIFORNIA RIGHT TO LIFE COMMITTEE, Inc.

1610 OAK PARK BLVD., STE. 1
PLEASANT HILL, CA 94523
(925) 944-5351 FAX (925) 944-5449
Established 1981
E-Mail: callife@calright2life.org Web Site: www.calright2life.org

JUN 6 2002

TO: Chairman Ellen Corbett, Assembly Judiciary Committee
FROM: Liz Froelich, *Legislative Analyst*
DATE: June 6, 2002

RE: SB 1301 (Kuehl) Reproductive Privacy Act

POSITION: **OPPOSE.**

California Right to Life opposes SB 1301. It is an attempt to deal with the remaining provisions of the 1967 California Therapeutic Abortion Act which have not previously been declared unconstitutional.

SB 1301 would result in effectively installing a state version of the federal Roe vs. Wade Supreme Court decision with major expansion provisions.

Beyond the abortion on demand concept in the Supreme Court decision, SB 1301 legalizes non-physicians performing or providing non-surgical abortions, such as RU 486. Partial-birth abortions would be legal. Abortion reporting would not be required. Statistics indicating the demographics of abortion would not be required.

California Right to Life opposes SB 1301 not only for its basic acceptance of abortion as a constitutional right but for its acceptance of seriously reduced medical standards. With little oversight of abortion facilities presently, SB 1301 would create an atmosphere where **no** oversight will be required. There will be no public accountability for the use of public tax dollars to provide abortion services.

The lack of reporting will also allow abortionists to target minorities more openly. Injuries and medical complications to aborted women may not be recorded or reported. Note: recent deaths to women after RU 486 abortions should be of grave concern to all, as well as the 17 serious studies linking breast cancer to abortion.

California Right to Life urges a NO vote. Women in California need not be victimized by permitting such unrestricted medical standards.

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CALIFORNIA PROLIFE

June 5, 2002

Assemblywoman Ellen Corbett, Chairwoman
Assembly Judiciary Committee
State Capitol
Sacramento, CA 95814

RE: SB 1301—Reproductive Privacy Act—Removes "physician-only" requirement for abortions (by Senator Sheila Kuehl)—OPPOSE Location: Assembly Judiciary

Dear Assemblywoman Corbett:

California ProLife Council, on behalf of its members, respectfully asks that you oppose **SB 1301**, by Senator Sheila Kuehl. **SB 1301** would replace the 1967 Therapeutic Abortion Act with the "Reproductive Privacy Act." From our perspective both of these acts have serious flaws, however our most grave concern with **SB 1301** is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect.

Current law requires in Section 123405 of the Health & Safety Code, that abortions be done by "a holder of the physician's and surgeon's certificate." The operative language left in California law with the revisions of **SB 1301** would allow non-physicians to perform "nonsurgical" abortions—such as RU 486, methotrexate, or other drug abortions.

Section 123405 would be replaced with Section 123468 of the Reproductive Privacy Act, which drops the reference to physicians and surgeons and states: "The performance of an abortion is unauthorized if . . . the following is true: (a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code."

In Sections (b)(1) and (b)(2) of 2253, a distinction is made between surgical and non-surgical abortions. Section (b)(1) allows NON-PHYSICIAN medical professionals with the appropriate certificate (whatever that means) TO ASSIST in the performance of SURGICAL abortions. ***Most significantly, Section (b)(2) allows NON-PHYSICIAN medical professionals, again with the appropriate certificate, TO PERFORM or assist in performing NON-SURGICAL abortions.***

Please oppose **SB 1301.** It is not in the interest of the women of California to lower the standard of qualifications necessary for the performance of abortions. At a minimum, **SB 1301** should be amended to require that all abortions be done by physicians and surgeons.

Sincerely,

Janet B. Carroll

Mrs. Janet B. Carroll
Legislative Analyst

California ProLife Council, Inc.
The California Affiliate of the National Right to Life Committee
2306 J Street Suite 200 • Sacramento, CA 95816
916.442-8315 • (fax) 916.441.7508 - www.californiaprolife.org

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RU486
The Abortion Pill

Risks and Dangers

Despite heavy publicity by the pill's promoters claiming that the RU486/prostaglandin method is a safe and effective alternative to surgical abortion [1-5] controlled testing has offered a very different picture.

Is it Dangerous?

In France, a woman suffered heart failure and died after taking RU486 in combination with its accompanying prostaglandin.[2] In America, one of the women participating in the U.S. trial of RU486 nearly bled to death after taking the abortion drugs (see reverse).

Every RU486 abortion involves at least two drugs, RU486 (also call mifepristone) and a prostaglandin (PG), usually misoprostol. These drugs are dangerous for a number of reasons.

RU486 is a complex chemical molecule affecting mulitple systems of the body.[3] This is why it has effects not only on a woman's reproductive system, but her cardiovascular, digestive, and central nervous sytems as well.[3] Misoprostol, the prostaglandin ordinarily used in conjunction with RU486, has its own side effects, triggering the painful, often nauseating, contractions that expel the dead baby.[4]

Because of the pain, bleeding, nausea, fevers, and other side effects, these drugs are often further supplemented by additional drugs such as antispasmodics,[5] antibiotics, narcotic analgesics, etc.,[3] each of which comes with it own attendant risks and side effects and potential interaction problems.

In England, one of the first countries where the drug is allowed, all pills are numbered to ensure that they are not released to untrained personnel.[3] In France, the country with the most experience with the drug, the government requires that any facility dispensing the drug have an electrocardiograph and emergency resuscitative equipment nearby.[6]

Does it sound safe and simple to you?

SAFETY WARNING

Women with any of the following conditions have been kept out of tests of RU486 for fear that the drug might prove dangerous or deadly for them.

- ❍ **Presence of cardiovascular risks, including high blood pressure, obesity, cigarette smoking, and diabetes** ❖, [17]
- ❍ **Asthma and bronchitis** ◢
- ❍ **Age over 35 or under 18** ❖, [17]
- ❍ **Menstrual irregularity, fibroids or endometriosis** ❖
- ❍ **Use of IUD or oral contraceptive less than 3 months prior to conception** ❖, [17]
- ❍ **History of problem pregnancy, current ectopic pregnancy, or pelvic inflammatory disease** *, [17]
- ❍ **Allergies, epilepsy, or adrenal insufficiency** ◢
- ❍ **Recent intake of steroid or anti-inflammatory medications** ◢
- ❍ **Long term administration of cortisone or similar drugs** ◢ *
- ❍ **History of liver, stomach, intestinal, or kidney disease** *, [17]

If only women in perfect physical condition can endure the drug...

How safe can it be?

❖Raymond, RU486: Misconceptions(1991); ◢Silvestre, NEJM, 3/8/90; *Courzinet, NEJM, 12/18/86

COMPLICATIONS ?

There are over 1.3 million abortions performed in the U.S. each year.[7] We are told that 20-33% of abortions performed in France are chemical abortions.[8, 18] If U.S. use mirrored French use, and U.S. abortion rates remained stable, one could expect the following numbers of complications based on current clinical data:

Complication [5,17]		Expected U.S. Range		Resulting #'s of Complications
8%	failure to complete abortion	X 273,146 - 450,691	=	21,852 - 36,055 "failures" per year
2%	hemorrhaging	X 273,146 - 450,691	=	5,463 - 9,014 hemorrhaging per year
2%	surgical intervention to stop bleeding	X 273,146 - 450,691	=	5,463 - 9,014 surgical interventions/yr
1%	require hospitalization	X 273,146 - 450,691	=	2,731 - 4,507 hospitalizations per year
(4)	transfusions	X 273,146 - 450,691	=	515 - 850 transfusions per year

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An Iowa Doctor gives a first hand account

The woman who took RU486... and nearly died

Between October of 1994 and Labor Day of 1995, a nationwide trial of RU486 was conducted. A Planned Parenthood clinic in Des Moines was one of the testing sites. News accounts said the trial went well without any problems. One Iowa doctor who saw the story said he knew better.

I could hardly believe my eyes when I read the first paragraph of an article in the Sept.2, Des Moines Register, "The clinical test of the 'abortion pill' has ended in Iowa, with no complications among 238 women who ended unwanted pregnancies without surgery."

This is untrue, and I can only surmise that the reason must have to do with the political volatility of the abortion issue. Regardless, it is imperative from a scientific standpoint that if Planned Parenthood is to be part of a nationwide clinical trial, it must report the facts whether they agree with them or not... **(A)**

In November of 1994, I was called to the Alan Hospital Emergency Room in Waterloo, Iowa, for a woman who was bleeding due to a miscarriage and was in obvious shock. A blood test showed that she had lost between one-half and two-thirds of her blood volume. For those of you who understand this, her hemoglobin was 5.8 and her hematocrit was 17.3. Her blood pressure was 90 over 60, her pulse was 120, she was in obvious shock.

I had thought she was having an incomplete miscarriage, but her husband took me into the hall and told me that she had taken RU486 approximately 2 weeks before. It was my clinical opinion that she would die soon if she did not have an immediate D&C.

Without even doing the routine preparation we normally do for surgery, I realized that I had to take her immediately to surgery to save her life. I took her to the operating room and removed the contents of her uterus surgically. I gave her two units of packed red blood cells intraoperatively. Even later that evening, 2 hours post-transfusion of those two units, her hemoglobin was still 6.8 and her hematocrit was 20 something. She required two more units of blood because she was still orthostatic and symptomatic...**(B)**

To report to the people of Iowa, the Population Council, and to the FDA that there were "no complications" in Iowa is simply not true...**(A)**

If near death due to the loss of half of one's blood volume, surgery, and a transfusion of four units of blood do not qualify as a complication, I don't know what does. **(A)**

How did the clinic and the trial sponsor respond?

[President of Planned Parenthood of Central Iowa Jill] June said "no complications" refers to the trial – that the trial was conducted successfully – and not to the condition of the participants.

However, Sandra Waldman, a spokeswoman for the New York based Population Council, which sponsored the trial, said the trial resulted in "no deaths or serious complications." When asked whether Louviere's patient's experience qualifies as a serious complication, Waldman said it would be "within the context of what happened before [in France]." **(C)**

Sources:

A. Dr. Mark Louviere, *Waterloo Courier*, 9/24/95.
B. Statement of Mark Louviere, MD, FDA Mifepristone (RU486) Hearings, 7/19/96.
C. Tom Carney, *Des Moines Register*, 9/21/95.

"If near death due to the loss of half of one's blood volume, surgery, and a transfusion of four units of blood do not qualify as a complication, I don't know what does." – Mark Louviere, M.D.

Nasty Side Effects

Part of the Package

Pain

79%-96% of women taking the RU486/PG combination reported pain, [4, 17] so bad that as many as half required some form of analgesia, whether an opiate or some other injectable painkiller. [3,4,5,17]

Three researchers who reviewed much of the data on RU486 say "many of the women in these studies experienced pain for several days/weeks until the abortion was complete. Thus we are talking about prolonged, not transient pain, although this is rarely noted." [3]

Nausea, Diarrhea, and Vomiting

Between 24% and 61% of RU486/PG patients experience nausea as part of the procedure. About one in five of all women struggle with diarrhea, while 15.3%-26%, or up to a quarter, vomit. [3, 5, 17]

Infection

In one trial, as many as 5%, or 1 in 20, showed signs and symptoms of infection. [9] Fevers and chills, often indications of infection, are not unexpected side effects of the process. [5] Antibiotics often must be prescribed for suspected infections. [10]

If and when an RU486/PG abortion is unsuccessful (anywhere from 8%-23% of the time [17]), and there is an incomplete abortion, the risk of infection is much greater. [13, 14] Whatever supposed benefit chemical abortion has over surgical abortion is lost when a woman undergoes the surgical procedure with its attendant risks.

Other Side Effects

Fatigue, [13] fainting, skin conditions, anemia, asthenia, hot flashes, heart palpitations, breast conditions, [5] mood changes, thirst. [14]

Long Term Consequences

Unknown. Few independent studies. RU486 does cross the blood follicle barrier and get into a woman's ripening eggs.[3] Could this affect the reproductive systems of a woman's later children, as DES did?

Researchers regard heavy, prolonged bleeding as the chief problem and most serious side effect of chemical abortions. [3] The *average* blood loss from an RU486 abortion is reported to be 70ml, nearly four times the average blood loss from a normal suction curettage abortion [15] and very close to the 80ml menstrual blood loss doctors consider "abnormal." [16] This is hardly the "heavy period" spoken of by some of the pill's promoters. [18]



In a 1990 British study, five out of 579, or nearly 1%, bled so much that they required both transfusions and curettage to stop the bleeding. [3] In U.S. trials with a new prostaglandin (misoprostol) that was supposed to resolve such problems, "excessive bleeding" was noted in 4 out of 230 women who participated in the Des Moines part of the study. [12] What "excessive bleeding" means is unclear, but we do know that one of those women almost bled to death (see above). Several women in the U.S. trial had to be given uterotonic agents to stop the bleeding. [17]

It is not merely the amount of blood lost but how long a woman bleeds that is a medical concern. Normally, the bleeding may last one or two weeks, but there are records of women bleeding as much as two months or more. [3, 5, 17]

There is additional concern because only about half of women who take RU486 actually abort at the doctor's office, meaning 50% of more face their bleeding and abortion without medical supervision. [17]

NOTES: 1. Baulieu, *The "Abortion Pill"* (1991); Baulieu, in *Clinical Applications of Mifepristone ...* (1993); Lang, *Vogue*, August 1988. 2. Riding, *NY Times* 4/10/91. 3. Raymond, *et al, RU486: Misconceptions* (1991). 4. McKinney, *Human Reproduction* (1993), pp. 1302-5. 5. FDA, Mifepristone Hearings, 7/19/96. 6. French Government Letter, April 12, 1990. 7. Henshaw, "Abortion Services in the United States, 1995-1996," *Family Planning Perspectives* (Nov/Dec 1998). 8. Gianelli, *Americal Medical News* 4/12/93. 9 Birth Control Trust, Conference, 4/22/93. 10. WHO Study, *Fertility & Sterility* (1991). 11. Aubeny and Baulieu, *C.R. Acad. Sci. Paris (III)* (1991), pp 539-545. 12. Jouzaitis, *Chicago Tribune*, 8/20/93. 13. Sitruk-Ware, *Contraception* (1990), pp. 221-243. 14. Li, *Fertility & Sterility* (1988), pp. 732-742. 15. *Ob.Gyn. News* (1989), No. 24, p. 1. 16. Speroff, *Clinical Gynecological Endochrinology & Infertility*, 3rd ed. (1983). 17. Spitz, *NEJM*, 4/30/98. 18. Population Council Website, www.popcouncil.org, 1/98.

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DANCO LABORATORIES

PO Box 4816
New York, NY 10185

infoline
1.877.4.EARLY OPTION

www.earlyoptionpill.com

April 19, 2002

Dear Health Care Provider:

This letter is to inform you of new safety information with regard to prescribing Mifeprex® and to remind you of your responsibility to report certain events and provide patient counseling, as stated in your Prescriber's Agreement.

New Safety Information

We have received a small number of reports of ruptured ectopic pregnancies (including one death from hemorrhage due to a ruptured ectopic pregnancy). As you will recall, Mifeprex* and misoprostol are not an effective treatment of ectopic pregnancy. Confirmed or suspected ectopic pregnancy is a contraindication for the use of Mifeprex and should be ruled out prior to initiating Mifeprex treatment. Because ectopic pregnancy may be present despite your best efforts to rule it out before starting Mifeprex treatment, you should be mindful of the possibility of an ectopic pregnancy throughout the treatment period and have a plan for its management.

Two cases of serious systemic bacterial infection (one fatal) following treatment with Mifeprex and misoprostol have been reported. While it is known that menstruation, childbirth and abortion (whether spontaneous, surgical or medical) create conditions that can result in infection, we do not believe that Mifeprex and misoprostol present a special risk of infection. Although serious infection in medical abortion is rare, we ask that you be alert to this possibility if your patients report symptoms or have signs of infection.

We have also received a report of myocardial infarction occurring in a 21 year old woman three days following use of Mifeprex and misoprostol.

No causal relationship between any of these events and use of Mifeprex and misoprostol has been established.

Approved Regimen

As a reminder, the Food and Drug Administration (FDA) approved regimen for administration of Mifeprex is:

- 600 mg Mifeprex taken orally in the office or clinic
- 400 mcg of misoprostol taken orally in the office or clinic 48 hours after the Mifeprex.

The FDA has not reviewed or approved other dosing regimens for early termination of pregnancy.

* Mifeprex is a registered trademark of Danco Laboratories, LLC.

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Reporting Adverse Events and On-going Pregnancy

We would like to remind you to report any Serious Adverse Events (SAEs) associated with Mifeprex use to the address below. Serious adverse events include death, hospitalization, blood transfusion, and other major events. In the case of on-going pregnancy following treatment with the Mifeprex regimen (approximately 1%), you should also notify us if the patient chooses to proceed with her pregnancy.

Please provide a brief clinical synopsis by writing, calling, or emailing:

Medical Director
Danco Laboratories, LLC
P.O. Box 4816
New York, NY 10185
Medicaldirector@earlyoptionpill.com
Toll free at 1-877-4 Early Option (1-877-432-7596)

We may need to contact you to obtain additional information, so please include your contact information. The following information is helpful when you report adverse events: age of patient; gestational age; dosages and means of administration of all medications, including concomitant medications; clinical information on the patient, including relevant past medical history, laboratory results, and health care course; and final outcome of the patient.

Patient Counseling

We would like to remind you of the importance of helping your patients understand the benefits and risks of the Mifeprex regimen. During the first of three office visits, please give the patient a Medication Guide to read, as well as a Patient Agreement to read and sign. (These materials are included with each Mifeprex order. If you need additional copies, please contact our authorized distributor.)

As you are aware, bleeding and cramping are a normal part of the process; women can expect bleeding or spotting for an average of 9 to 16 days. Women may experience bleeding that is similar to, or greater than, a heavy period. In the U.S. clinical trials, about 1 out of 100 women required a surgical procedure, identical to the procedure for miscarriage, to stop heavy bleeding. If you do not plan to provide this procedure yourself, you must have made arrangements with someone who will and provide this contact information to your patient. Other side effects that may occur include nausea, headache, vomiting, diarrhea, dizziness, fatigue and back pain.

For more information about Mifeprex, visit www.earlyoptionpill.com or call the 24-hour hotline, toll-free at 1-877-4 Early Option (1-877-432-7596). If you have an emergent question, a physician will usually return your call within the hour. For general questions, our Medical Director typically returns calls within 24 hours.

Sincerely,
Danco Laboratories, LLC

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

: PLEASE OPPOSE SB 1301, WHICH WOULD ALLOW NON-PHYSICIANS TO DO DRUG ABORTIONS. (California ProLife Council, Sacramento, CA)

Los Angeles Times
latimes.com

Abortion Pill Under Scrutiny After Deaths

By JANE E. ALLEN
TIMES STAFF WRITER

April 22 2002

Six women who took the abortion pill mifepristone have become ill and two of them have died, although no direct link has been established between the medication and their illnesses, according to the manufacturer and the Food and Drug Administration.

Danco Laboratories of New York last week sent a letter about the cases to all doctors, clinics and hospitals that prescribe the pill, Mifeprex (formerly known as RU-486), which is given with the drug misoprostol. The letter, which the FDA posted on the Internet, reminded them to report any serious adverse effects such as death, hospitalization or blood transfusion.

Three of the women suffered ruptures of their ectopic pregnancies, which typically occur in the Fallopian tubes instead of the uterus. Such pregnancies, which make up about 2% of all pregnancies, should be carefully ruled out before prescribing the two-drug regimen, Danco reminded doctors. One of the three women died from excessive bleeding. Two other women developed serious bacterial infections, one with a rare bacterium called Clostridium sordellii. That woman died, although neither the company nor the FDA believes that the drug regimen played a role in either case. Such body-wide infections have in the past been associated with menstruation, childbirth, miscarriage and abortion, but "we do not believe that Mifeprex and misoprostol present a special risk of infection," the company wrote.

The sixth woman, a 21-year-old, suffered a heart attack but later recovered. FDA officials continue to review her case. Women who take the two-drug regimen first take mifepristone, which interferes with a fetus' attachment to a woman's body, followed by misoprostol to cause contractions. The contractions help expel the fetus.

The abortion pill was first used in France. Doctors there initially paired it with a different drug to cause contractions, but after that drug was associated with heart attacks, it was replaced with misoprostol. The latter drug hasn't been linked to heart trouble.

Mifepristone hit the U.S. market 17 months ago, when the FDA approved its use within the first seven weeks of pregnancy; Danco began shipping it in November 2000.

Danco spokeswoman Heather O'Neill declined to say how many U.S. women have used it, adding that the information is proprietary. She characterized the six cases as "an extremely small incidence relative to the overall use."

She warned women taking the drug that the biggest clue that something could be wrong "is the absence of response to the regimen." Most users will begin to bleed and complete the pregnancy termination four

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to 24 hours after taking misoprostol; bleeding typically is heavier than a normal period.

According to an FDA official who spoke on condition of anonymity, the agency worked with the company to draft the letter advising doctors about the cases, but "there was no urgency on the part of the agency to think the Mifeprex was dangerous, or that any action needed to be urgently taken."

According to "Mifepristone Questions and Answers" that the FDA posted on its Web site, the women who became ill received the misoprostol vaginally, instead of in pill form, and "the FDA has not reviewed data on the safety and effectiveness of vaginal administration of misoprostol." The agency also said that it didn't know "what role, if any, Mifeprex and 'off-label' use of vaginal misoprostol may have in developing serious infections."

Abortion opponents said the safety alert highlights the dangers of nonsurgical abortions. "The FDA approved RU-486 under intense political pressure, and now women are suffering the consequences," said Wendy Wright, senior political director of Concerned Women for America. "We warned the public that this would happen when the drug was approved. RU-486 is harmful to women."

Supporters maintain that nonsurgical abortion with the pill is still a safer alternative to surgical abortion. "This remains a very safe and effective way to terminate an early pregnancy," said Vicki Saporta, president and chief executive of the National Abortion Federation.

If you want other stories on this topic, search the Archives at latimes.com/archives. For information about reprinting this article, go to www.lats.com/rights.

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COMMITTEE ON MORAL CONCERNS

Art Croney, *Executive Director/Lobbyist*
Office: (916) 446-5131
FAX: (916) 446-5744

P.O. Box 2768
Sacramento, CA 95812

JUN 5 2002

June 6, 2002

Assembly Judiciary Committee

Please vote **NO** on **SB 1301** (Kuehl); abortion.

This bill would recast California's Therapeutic Abortion Act, calling it the Reproductive Privacy Act and bringing it in line with U.S. Supreme Court decisions starting with Roe v. Wade. The bill anticipates, prematurely we believe, the overturning of the Supreme Court's 1973 judgment. The Committee On Moral Concerns opposes this bill for the following reasons:

1. The bill finds and declares that "every individual possesses a fundamental right of privacy with respect to personal reproductive decisions" (page 4, lines 26-28). We agree. However, the bill later conflicts with its own declaration. Biologically, the life of the individual human being begins at the moment of conception. The bill gives certain individuals (women) the right to abort and fatally interfere with the reproductive right of other individuals (their sons and daughters who are living and growing, but not yet born).

2. The bill defines pregnancy as "beginning with the implantation of an embryo." This is politically convenient, but ungrounded in scientific reality. We know where babies come from. Pregnancy begins at conception. That is the principle on which in vitro fertilization works. Also, conception is the *only* time in our lives when our fathers had any contribution to our genetic characteristics. When an embryo fails to exit the fallopian tube this becomes a life-threatening ectopic *pregnancy*. Doctors and scientists who are unmotivated by politics know that pregnancy occurs before implantation in the uterus.

3. The bill defines "viability" as the point when the human fetus may survive outside the uterus. This is another political term lacking real meaning. As individuals, some of us could survive outside the womb earlier than others, just as some of us could survive in the wilderness longer. Again, the bill's findings recognize individuals, but subsequent language clouds that recognition.

4. The bill allows abortion any time before birth. Under Section 123468 (b) (2), aborting a viable human fetus is legal, if continuing the pregnancy until birth poses "no risk to the life *or health* of the pregnant woman." Since there is no such thing as an absolutely risk-free childbirth, under the bill, there is no such thing as an illegal abortion, as long as the abortionist is licensed.

Art Croney

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CRUSADE FOR LIFE, INC

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e-mail: crusadeforlife@cs.com • www.crusadeforlife.org

May 27, 2002

MAY 30 2002

MAY 28 2002

Assembly Member Ellen Corbett
Chairman of the Assembly Judiciary Committee
State Capitol Building
Sacramento, CA 95814

Dear Assembly Member Corbett:

Crusade for Life, a statewide pro-life educational organization, would like to go on record in

OPPOSITION TO SB 1301.

This bill would place abortion-on-demand, including partial birth abortion, into California law and seeks to reduce medical standards for abortionists and their assistants. Neither of these positions are beneficial to the women or the unborn children of California.

ALL LEGISLATORS: PLEASE VOTE NO ON SB 1272

Sincerely,

Bev Cielnicky

Beverly Cielnicky
National President
Crusade for Life, Inc.

PROTECTING LIFE FROM CONCEPTION TO NATURAL DEATH
SINCE 1971

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

MAY 30 2002

FAX

To: Assembly Member Ellen Corbett, Chairman of the Assembly Judiciary Committee, State Capitol Building, Sacramento, CA 95814,

fax: 916-319-2118

MESSAGE:

Statement of Opposition to SB 1301:

Senator Keuhl has stated "SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns Roe."

Thus, SB 1301 is essentially a referendum on Roe v Wade, which legalized the excesses of abortion-on-demand, including partial birth abortions.

But, SB 1301 goes beyond Roe v Wade. It reduces medical standards for personnel assisting in surgical abortions and allows non-physicians to administer chemical abortifacients. Already the FDA has reported two deaths and a heart attack of a 20-year old woman where the abortifacient RU-486 was used.

Senator Kuehl perhaps does not concern herself with such details, as long as the ultimate 'right' of mothers to kill their unborn children is retained. And this is clearly the intent of SB 1301, which defines "abortion" as "any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth."

Even Roe v Wade didn't require the child's death.

PLEASE, PLEASE I URGE YOU TO VOTE "NO" ON SB 1301!!

Thank you!!

cc: **State Assembly Member Rod Pacheco**

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

REQUEST FOR BILL ANALYSIS

Time/Date Analysis is Due NOW Floor Session _____

Committee Jud Room _____

Types of analyses needed: (in this order)
(1) ___ As currently introduced/amended
(2) X Proposed Amendments
(3) X Revised as amended*

* When revising the Third Reading analysis, please use the version in your committee shared cabinet (i.e., [ ]REVISED ANALYSES).

When the analyses are completed, please send to ABA via the **SA** function on the Word Processing Menu. Thank you.

JWD

PROPOSED AMENDMENTS TO SB 1301

Legislative Counsel No. 0216649

RUSH RUSH

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Substantive

AMENDMENTS TO SENATE BILL NO. 1301
AS AMENDED IN SENATE APRIL 8, 2002

Amendment 1
On page 3, line 9 strike out "(1)"

Amendment 2
On page 3, line 10, strike out "a surgical" and insert:

an

Amendment 3
On page 3, lines 13 and 14, strike out "a surgical" and insert:

an

Amendment 4
On page 3, line 17, strike out "a surgical" and insert:

an

Amendment 5
On page 3, strike out lines 18 to 24, inclusive, and on page 4, strike out lines 1 to 5, inclusive, and insert:

(c) For purposes of this section, "assists in performing an abortion" includes the presumption that the licensed physician and surgeon is present when the abortion is performed or administered.

Amendment 6
On page 5, strike out lines 21 to 23, inclusive, and insert:

abortion does not hold a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, as provided in Chapter 5 (commencing with Section 2000) of Division 2 of the Business and

Professions Code.

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to Desk
6/11

(2)REPORTS OF STANDING COMMITTEES<c2>

(2)Committee on Judiciary

[t8] Date of Hearing: June 11, 2002 [_]<r>

¶ Mr. Speaker: Your Committee on Judiciary reports:

¶Senate Bill No. 1301 (8-2)

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(1)With the recommendation: Do pass, and be re-referred to the Committee on Health. <l>

_____, Chair ___
CORBETT

(5)Above bill(s) re-referred to the Committee on Health.

Judiciary

Date of Hearing: 06/11/2002

BILL NO.	SB 1265	SB 1301	SB 1316	SB 1396
ACTION VOTED ON	Do pass; re-refer to Cmte on Appr, Rec. Consent	Do pass; re-refer to Cmte on Health	Do pass as amended and re-refer to the Cmte on Appr, Rec. Consent	Do pass; re-refer to Cmte on Appr, Rec. Consent
	Aye : No	Aye : No	Aye : No	Aye : No
Corbett (Chair)	X :	X :	X :	X :
Harman (V. Chair)	X :	Not Voting	X :	X :
Bates	X :	: X	X :	X :
Dutra	X :	X :	X :	X :
Jackson	X :	X :	X :	X :
Longville	X :	X :	X :	X :
Pacheco, Robert	X :	: X	X :	X :
Pacheco, Rod	X :	Not Voting	X :	X :
Shelley	X :	X :	X :	X :
Steinberg	X :	X :	X :	X :
Vargas	X :	X :	X :	X :
Wayne	X :	X :	X :	X :
Vacancy				
	Ayes: 12 Noes: 0	Ayes: 8 Noes: 2	Ayes: 12 Noes: 0	Ayes: 12 Noes: 0

RECEIVED:_____

_____, Chair

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SENATE THIRD READING
SB 1301 (Kuehl)
As Amended April 8, 2002
Majority vote

SENATE VOTE: 22-12

JUDICIARY	8-2	HEALTH	13-6
Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne	Ayes:	Thomson, Chan, Chavez, Cohn, Frommer, Goldberg, Koretz, Negrete McLeod, Richman, Salinas, Strom-Martin, Washington, Wayne
Nays:	Bates, Robert Pacheco	Nays:	Robert Pacheco, Aanestad, Bates, Dickerson, Runner, Zettel

APPROPRIATIONS	17-4
Ayes:	Steinberg, Alquist, Aroner, Cohn, Corbett, Daucher, Diaz, Firebaugh, Goldberg, Negrete McLeod, Papan, Pavley, Simitian, Washington, Wiggins, Wright, Zettel
Nays:	Bates, Ashburn, Robert Pacheco, Dickerson

SUMMARY: Deletes various statutory provisions regarding abortion and enacts in their place a new state Reproductive Privacy Act. Specifically, among other things, this bill:

1) Deletes scattered sections pertaining to reproductive privacy issues and enacts a new California Reproductive Privacy Act, which provides that "it is the public policy of the state of California that: a) every individual has the fundamental right to choose or refuse birth control; b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

2) Repeals Health and Safety Code Section 123410 and in its place provides that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

3) Provides that the performance of an abortion is unauthorized if either of the following is true:

   a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Business and Professions Code Section 2253; or,

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b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

4) Deletes the reference to the "Therapeutic Abortion Act" and instead provides that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

5) Provides that a person is subject to criminal penalties: a) if he or she assists at a surgical abortion and does not have a valid license or certificate obtained under a law authorizing him or her to perform the functions necessary to assist at a surgical abortion; or, b) if he or she performs or assists at a nonsurgical abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a nonsurgical abortion.

6) Provides that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

EXISTING LAW:

1) Authorizes, in the Therapeutic Abortion Act, that a holder of a physician's and surgeon's certificate may perform an abortion only if it takes place in an accredited hospital and is approved by a committee that finds that: a) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother; and/or, b) the pregnancy resulted from rape or incest.

2) Has declared, through case law, that the medical criteria and approval processes for obtaining an abortion contained in state codes are unconstitutional. (Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade (1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.)

3) Provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy.

4) Has invalidated this section's requirement that an abortion must be approved by a medical committee. (People v. Barksdale, supra, 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. (See, e.g., 65 Ops. Atty. Gen. 261; and Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.))

FISCAL EFFECT: According to the Assembly Appropriations analysis, negligible fiscal impact.

COMMENTS: If one were to rely solely on a review of California's statutes regarding our laws regulating abortion, he or she would end up with a substantial misconception about the current state of this law. For, as the author notes in support of this legislation, many of our statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions. The problem is, they still remain on the books, and have yet to be repealed or modified in accordance with controlling case law. The result, she notes, "is a cryptic, often inconsistent abortion code that is laden with constitutional problems." The author also states that these

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outdated statutes also single out abortions for unnecessary regulation that has not been imposed on more complex procedures, and the existing statutes fail to address and accommodate major advances in medical practice, such as early abortion methods like mifepristone (otherwise known as and hereafter referred to as RU-486).

According to the author, this bill, sponsored by Planned Parenthood, addresses these problems comprehensively by:

1) Protecting Californians' fundamental right to choose a safe and legal abortion (even if the Supreme Court further reduces the federal protections contained in Roe v. Wade).

2) Providing greater access to early abortion methods like RU-486 by eliminating arbitrary barriers that currently impede the ability of licensed health care professionals to treat patients in the area of reproductive health.

3) Deleting language in current state law that has been found unconstitutional in state and federal courts.

4) Treating abortion like other comparable medical procedures, and allowing healthcare providers, acting within their particular scopes of practice, to perform or assist in the performance of surgical and non-surgical abortions.

5) Allowing for future advancements in medical science relative to non-surgical abortion techniques by not limiting them, while simultaneously clarifying that medication-induced abortions is an appropriate method to be included among other non-surgical abortion techniques.

In support of these changes, the author concludes with this comment:

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning Roe v. Wade. Now is the time to protect our right to choose - right here in California. SB 1301 will keep abortion safe and legal in California even if the Supreme Court overturns Roe.

The state's existing abortion law, called the Therapeutic Abortion Act, was signed by former Governor Ronald Reagan and took effect in 1967. This act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and the treatment of fetal remains.

Several current abortion statutes are invalid and appropriate for repeal. In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act, those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother, impermissibly vague and therefore unconstitutional. (People v. Barksdale.) Other provisions facilitating these statutes, those requiring the input of the DA, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act, were declared invalid as well. (Id. at 334.)

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The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." (Roe v. Wade.) An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in Roe v. Wade. (Committee to Defend Reproductive Rights v. Myers (1981).)

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. (American Academy of Pediatrics v. Lungren (1997).) Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

Thus, since its inception in 1967, a number of state and federal court decisions have rendered various provisions of the state's Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to serious question. Despite their unconstitutionality, however, these provisions have remained largely unchanged in the state's Health and Safety Code, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions. This bill finally addresses this confusing statutory situation by deleting the provisions of the Therapeutic Abortion Act that have been ruled unconstitutional. The bill also revises certain other provisions as well, including the name of the state's reproductive rights act. In its place, the bill enacts a new Reproductive Privacy Act, as further detailed below.

This bill's provisions appear consistent with judicially established parameters for the regulation of abortion. Under the parameters established in Roe v. Wade, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother.

This bill allows appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which will permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights appears wholly consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

This bill also continues to require abortions to be performed by appropriately licensed health care professionals; subjects those who do not comply with the Reproductive Privacy Act to professional discipline; and subjects unlicensed abortion providers to criminal sanctions, in conformity with current law.

In conformity with Roe v. Wade, this bill also prohibits state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

Analysis Prepared by: Drew Liebert / JUD. / (916) 319-2334 FN: 0006135

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SB 1301 (KUEHL)
REPRODUCTIVE PRIVACY ACT.

Version: 4/8/02 Last Amended
Vote: Majority
Oppose

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Recast statutory law, in keeping with federal and state supreme court decisions, to provide that the state shall not interfere with a woman's right to abortion, which includes diluting the parental role in child upbringing.

Policy Question

Should the statutory law be recast, in keeping with federal and state supreme court decisions, to provide that the state shall not deny or interfere with a woman's right to choose whether to bear a child or to abort, which includes diluting the role of parents in the upbringing of their minor children?

Summary

This bill: (1) Deletes and revises provisions of the California Therapeutic Abortion Act and renames it to be the Reproductive Privacy Act; (2) Declares legislative intent to protect the reproductivity privacy of all Californians; and (3) Provides that every individual possesses a fundamental right of privacy with respect to reproductive decisions, and the state shall not deny or interfere with a woman's right to choose to bear a child or to choose an abortion, except in extremely limited circumstances. More specifically this bill:

1. Deletes scattered sections pertaining to reproductive privacy issues and enacts a new California Reproductive Privacy Act, which provides that it is the public policy of the state of California that: **(1)** "every individual has the fundamental right to choose or refuse birth control;" **(2)** "every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and" **(3)** "the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."
2. Repeals Section 123410 of the Health and Safety Code and provides, in its place, that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."
3. Provides that the performance of an abortion is unauthorized if either of the following is true: **(1)** The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; or **(2)** The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.
4. Defines various terms, including **1)** pregnancy (defined as "the human reproductive process, beginning with the implantation of an embryo,") and **2)** viability (defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.")
5. Deletes the provision in existing law that provides that the Department of Health Services (DHS) shall have a system established for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and report its findings to the Legislature every two years.
6. Deletes the reference to the "Therapeutic Abortion Act" and instead provides that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

Senate Republican Floor Votes (22-12) 5/16/02
Ayes: Mc Pherson
Noes: All Other Republicans Except
Abs. / NV: Johannessen

Assembly Republican Judiciary Votes (0-0) 6/11/02
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/01
Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes** (0-0) 1/1/01
Ayes: None
Noes: None
Abs. / NV: None

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7. Provides that a person is subject to criminal penalties **1)** if he or she assists at a surgical abortion and does not have a valid license or certificate obtained under a law authorizing him or her to perform the functions necessary to assist at a surgical abortion; or **2)** if he or she performs or assists at a nonsurgical abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a nonsurgical abortion.
8. Provides that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

Support

American Academy of Pediatrics, CA District; American Association of University Women, California; American Association of University Women, San Jose Branch; American Association of University Women, Santa Cruz Branch; American Civil Liberties Union; American College of Obstetricians and Gynecologists, District IX; American Medical Women's Association; Board of Supervisors, County of Santa Cruz; California Abortion & Reproductive Rights Action League; California Church Impact; California Commission on the Status of Women; California Family Health Council; California Medical Association; California National Organization for Women; California Nurses Association; California Pro-Choice Republicans; California Women Lawyers; California Women's Law Center; California Women's and Children's Health Coalition; Democratic Women of Santa Barbara County; Democratic Women's Club, Pebble Beach; Hadassah; Lambda Letters Project; League of Women Voters of California; Medical Students for Choice, University of Southern California Chapter; National Council of Jewish Women; National Health Law Program; National Latina Alliance; National Organization for Women, Monterey Peninsula Chapter; National Women's Political Caucus of California; Older Women's League; People for the American Way; Planned Parenthood Affiliates of California; Planned Parenthood Golden Gate; Planned Parenthood Los Angeles; Planned Parenthood Mar Monte; Planned Parenthood of Pasadena; Planned Parenthood of San Diego and Riverside Counties; Planned Parenthood of Santa Barbara, Ventura and Planned Parenthood Orange and San Bernardino Counties; Planned Parenthood: Shasta-Diablo; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of Santa Cruz County; San Louis Obispo Counties; Santa Cruz Women's Health Center; Six Rivers Planned Parenthood; Valley Women's Club; Voters for Choice; Women Lawyers Association of Los Angeles; Women's Programs, Monterey Peninsula College; and Workmen's Circle/Arbeter Ring (Southern California District).

Opposition

California Catholic Conference; California ProLife Council; Committee on Moral Concerns; Capitol Resource Institute; Campaign for California Families; and California Right to Life Committee.

Arguments In Support of the Bill

The author and proponents, concerned that *Roe v. Wade* (1973) could be modified or overturned, view this bill as: **(1)** Protecting Californians' fundamental right to choose a safe and legal abortion; **(2)** Providing greater access to early abortion methods, such as use of mifepristone or also referred to as RU-486, by eliminating barriers that currently impede the ability of licensed health care professionals to treat patients in the area of reproductive health; **(3)** Deleting language in current state law that has generally been found to be unconstitutional in state and federal courts; and **(4)** Treating abortion like other comparable medical procedures, and allowing healthcare providers , acting within their particular scopes of practice, to perform or assist in the performance of surgical and non-surgical abortions.

Arguments In Opposition to the Bill

1. By stating that as public policy that "every individual" has a fundamental right "to choose to bear a child or to choose and to obtain an abortion," this bill would further diminish the role of parents in the upbringing of their minor children.
2. Two key points asserted by the California Catholic Conference in opposition to this bill include: (1) "With this new statutory designation, you, and all members of the Legislature, could possibly preclude any local control reflective of community mores. For example, with this law a local hospital district would have no choice but to offer abortions at their community facilities, and local school districts could not refrain from offering abortion and contraceptive services at their schools, with or without a parent's permission. This law may even possibly repeal, by implication, the only two remaining pieces of the current law." (2) The Catholic Church consistently opposes abortion. Although we understand that abortion-on-demand is legal and practiced in California, we are directing our efforts toward advocating common sense restrictions on abortion practices that would mitigate its ill effects on women, children and society as a whole. Unfortunately, even a level of oversight and restriction that most people view as reasonable and necessary would be precluded by the provisions of this act. Under the law, there would be the possibility that someone other than a physician could perform a 'no'-surgical' abortion. There would be no ability to limit abortion when a fetus is definitely viable, even in the ninth month! With this new law, what is moral when it comes to destroying life is to be decided solely by each individual."

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3. The Campaign for California Families (CCF) strongly opposes the bill asserting that it "celebrates the killing of pre-born children as a 'fundamental right.' Abortion ends a pregnancy by destroying and removing the developing child." CCF further reports that "Approximately 93% of all induced abortions are done for elective, non-medical reasons such as these. Destroying innocent human life for convenience is wrong and should not be seen as a celebration of 'privacy' or anything else."
4. Capitol Resource Institute contends that "while men and women certainly have not only a right but a responsibility to exercise prudent birth control measures, babies have the 'fundamental right' to expect that once conceived they have the right to expect that their mothers will give them a chance to protect them and allow them to live."
5. The California Right to Life views this bill as resulting "in effectively installing a state version of the federal Roe vs. Wade Supreme Court decision with major expansion provisions."
6. The California Pro-Life Council expresses grave concern with "the repeal of the requirement that only physicians may do abortions. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect."
7. The Committee on Moral Concerns (Committee) holds that the apparent restrictions in the bill pertaining to abortion of a viable fetus are meaningless as they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant women." The Committee concludes that "since there is no such thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

Fiscal Effect

Unknown.

Comments

EXISTING LAW.

1. The Therapeutic Abortion Act provides in part that a requirement that an abortion may only be performed by the holder of a physician's and surgeon's certificate under specified conditions [Health and Safety Code Section 123400 et seq.].
2. The Therapeutic Abortion Act (Act) further provides in part that that prior approval be obtained for each abortion by a committee of medical staff, with specified membership, who must determine either that continuation of the pregnancy would impair the physical or mental health of the mother, or that the pregnancy resulted from rape or incest [Health and Safety Code Section 123400 et seq.]. The California Supreme Court invalidated part of the Act that required that an abortion must be approved by a medical committee in *People v. Barksdale* (1972) 8 Cal.3d 320.
3. The Therapeutic Abortion Act provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy [Health and Safety Code Section 123410].
4. The procuring or aiding, abetting, attempting, agreeing, or offering to procure an unauthorized abortion constitutes unprofessional conduct of a licensee under the Medical Practices Act absent compliance with the Therapeutic Abortion Act [Business and Professions Code Section 2253].
5. A person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice a s a physician and surgeon, or other certificate that authorizes him or her to perform or assist in performing a surgical abortion {Business and Professions Code Section 2253(b)].
6. The United States Supreme Court in *Roe v. Wade* (1973) 410 U.S. at 153 held that a right of personal privacy exists under the federal Constitution, and that such right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."
7. The California Supreme Court declared that an explicit right to privacy added to the California Constitution [in Article I] in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in *Roe v. Wade*.
8. The California Supreme Court, headed in 1997 by Chief Justice Ron George, invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion in *American Academy of Pediatric v. Lungren* (1997) 16 Cal. 4th 307, 314.

Policy Consultant: Mark Redmond 6/8/02
Fiscal Consultant:

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Date of Hearing: June 25, 2002

ASSEMBLY COMMITTEE ON HEALTH
Helen Thomson, Chair
SB 1301 (Kuehl) – As Amended: April 8, 2002

POLICY QUESTIONS:

1) Should the Reproductive Privacy Act, which codifies judicial decisions handed down by the California State Supreme Court and the U.S. Supreme Court over the past 30 years related to abortion, be enacted?

2) Should references to the "Therapeutic Abortion Act" and specified provisions of that Act be repealed?

SENATE VOTE: 22-12

SUBJECT: Reproductive Privacy Act.

SUMMARY: Enacts the Reproductive Privacy Act which codifies the judicial decisions handed down by the California State Supreme Court and the U.S. Supreme Court over the past 30 years related to abortion. Repeals reference to the "Therapeutic Abortion Act" and various specified provisions of that Act. Specifically, this bill:

1) Enacts the Reproductive Privacy Act which does all of the following:

   a) Makes legislative findings that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions.

   b) States the public policy of the State of California to be that:

      i) Every individual has the fundamental right to choose or refuse birth control;

      ii) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specified; and

      iii) The state is prohibited from denying or interfering with a woman's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specified.

   c) Prohibits the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman.

   d) States that the performance of an abortion is unauthorized if either of the following is true:

      i) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to

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provisions of #3), 4), and 5) below; or

ii) The abortion is performed on a viable fetus, and both of the following are established:

(1) In the good faith medical judgment of the physician, the fetus was viable; and

(2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.

e) Defines "abortion" to mean any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

f) Defines "pregnancy" to mean the human reproductive process, beginning with the implantation of an embryo.

g) Defines "State" to mean the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.

h) Defines "viability" to mean the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

2) Makes failure to comply with the Reproductive Privacy Act, in performing, assisting, procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion, unprofessional conduct.

3) Subjects a person to penalties for the unlawful practice of medicine if he or she assists in performing a surgical abortion and does not have a valid, unrevoked, and unsuspended license or certificate that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion.

4) Subjects a person to penalties for the unlawful practice of medicine if he or she performs or assists in performing a nonsurgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or does not have another valid, unrevoked, and unsuspended license or certificate that authorizes him or her to perform or assist in performing the functions necessary for a nonsurgical abortion.

5) Defines "nonsurgical abortion" as including termination of pregnancy through the use of pharmacological agents.

6) Repeals the existing title "Therapeutic Abortion Act" and various specified provisions of that Act.

EXISTING LAW:

1) Authorizes, in statute, that a holder of a physician's and surgeon's certificate may perform an abortion only if it takes place in an accredited hospital and is approved by a committee with a

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specified number of physician members that finds that:

a) There is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother; or

b) The pregnancy resulted from rape or incest.

2) Provides, in statute, that the committee noted in 1) above shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless either the district attorney (DA) upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest, or the DA fails to respond to the committee.

3) Permits, in statute, the applicant for the abortion to petition the superior court for a hearing if the DA informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest. Requires the court to issue an order that the pregnancy resulted from rape or incest and the committee to approve the abortion if the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest.

4) Has declared, in case law, that the provisions referenced in 1), 2) and 3) above regarding medical criteria and approval processes for obtaining an abortion are unconstitutional. (Planned Parenthood v. Ashcroft (1983) 462 U.S. 476; Akron v. Akron Center for Reproductive Health (1983) 462 U.S. 416; Roe v. Wade (1973) 410 U.S. 179; People v. Barksdale (1972) 8 Cal. 3d 320.)

5) Provides, in statute, that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy.

6) Although published case law has not explicitly overruled #5) above, case law has explicitly held that the state may prohibit abortions only after viability of the fetus and must include exceptions related to the life and health of the mother. (See, e.g., 65 Ops. Atty. Gen. 261; and Feminist Women's Health Center v. Philobosian (1984) 157 Cal. App. 3d 1076, 1084 n.3.))

7) Prohibits, in statute, performing an abortion, except in a medical emergency requiring immediate medical action, upon an unemancipated minor unless she first has given her written consent to the abortion and also has obtained the written consent of one of her parents or legal guardian or upon judgement of a court as specified. Makes it a misdemeanor for any person to knowingly perform an abortion on an unmarried or unemancipated minor without complying with the requirements of this provision.

8) Has declared, in case law, that requiring pregnant minors to secure parental consent or judicial authorization before obtaining abortions violates right the of privacy guaranteed by the California Constitution. (American Academy of Pediatrics v. Lungren (1997) 16 Cal 4th 307)

9) Requires DHS to establish a system for the reporting of abortions to determine their demographic effects and to assess legal and medical standards pertaining to abortion

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practices, and requires DHS to report its findings to the Legislature every two years.

10) Makes failure to comply with the Therapeutic Abortion Act, in performing, assisting, procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion, unprofessional conduct.

11) Subjects a person to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or does not have another valid certificate authorizing him or her to perform or assist at a surgical abortion.

FISCAL EFFECT: Unknown.

COMMENTS:

1) PURPOSE OF THIS BILL. According to the author, this bill, entitled the Reproductive Privacy Act, cleans up the cryptic and often unconstitutional abortion code and ensures that California has a constitutionally sound abortion law that will protect privacy rights, now and in the future. The author states that this bill is important because it does the following: deletes language in current state law that has been found unconstitutional in state and federal courts; allows health care providers, acting within their particular scopes of practice to perform or assist in the performance of surgical and non-surgical abortions so that abortion is treated like other comparable medical procedures; provides women greater access to early non-surgical abortion methods; and protects Californians' fundamental right to choose a safe and legal abortion, even if the Supreme Court further reduces the federal protections contained in Roe v. Wade. Although case law has rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems. The author believes the citizens of California deserve a reproductive privacy law that mirrors their respect for the Constitution and their desire for reproductive freedom. In that spirit, the Reproductive Privacy Act offers California a unique opportunity to once again take the lead in the national forum on the issues of reproductive choice.

2) BACKGROUND. The state's existing abortion law, called the Therapeutic Abortion Act, was signed by former Governor Ronald Reagan and took effect in 1967. This act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and the treatment of fetal remains.

Judicial Decisions: In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act, including those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother, impermissibly vague and therefore unconstitutional. (People v. Barksdale , supra, 8 Cal. 3d at 333.) Other provisions facilitating these statutes, including those requiring the input of the DA, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act, were declared invalid as well.

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The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." (Roe v. Wade , supra, 410 U.S. at 153.) An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in Roe v. Wade. (Committee to Defend Reproductive Rights v. Myers (1981), 29 Cal. 3d 252, at 280.)

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. (American Academy of Pediatrics v. Lungren (1997) 16 Cal. 4th 307, 314.)

Thus, since its inception in 1967, a number of state and federal court decisions have rendered various provisions of the state's Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to serious question. Despite their unconstitutionality, however, these provisions have remained largely unchanged in the state's Health and Safety Code, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions. This bill addresses this confusing statutory situation by deleting the provisions of the Therapeutic Abortion Act that have been ruled unconstitutional, adding language consistent with court decisions, and renaming the act as the Reproductive Privacy Act.

Other Provisions Repealed by this Bill: In addition to the provisions found unconstitutional by the courts, this bill repeals two other provisions of the Therapeutic Abortion Act: that which gives the Act its name and that which requires DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

Provisions of the Therapeutic Abortion Act Not Repealed by this Bill: A number of provisions of the Therapeutic Abortion Act are not addressed or affected by this bill, and will remain in force, as provisions of the Reproductive Privacy Act, if this bill is enacted. Those provisions include:

a) The "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal;

b) A provision prohibiting an individual's refusal to consent to an abortion or sterilization from being grounds for loss of any privileges or denial of public benefits;

c) A provision requiring a minor to obtain parental consent before obtaining an abortion;

d) A provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants; and

e) Provisions governing research and study of fetal remains.

Consistency with Judicial Opinions
First Trimester: Under the parameters established in Roe v. Wade, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the

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first trimester of that pregnancy. Thus, during the first trimester, except to protect the health of the mother, the state may not interfere with a woman's right to chose an abortion. This bill explicitly extends that protection to non-surgical abortions by allowing appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which will permit the administration of approved early-abortion facilitating drugs such as RU-486.

After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. This bill explicitly prohibits the state from denying or interfering with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman.

Regulations Related To Maternal Health: This bill also continues to require abortions to be performed by appropriately licensed health care professionals; subjects those who do not comply with the Reproductive Privacy Act to professional discipline; and subjects unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations Relating To Preserving Life Of Viable Fetus: In conformity with Roe v. Wade, this bill also prohibits state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

3) SUPPORT. Supporters of this bill express concerns about the potential erosion of abortion rights in California and the urgent need to ensure continuing and reasonable access to abortion services. The California Commission on the Status of Women supports this bill as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law." Other supporters state that this bill ensures that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. Supporters note that with the advent and approval of RU 486, women have other options besides surgery to end an unwanted pregnancy. This bill increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortions pursuant to their current scope of practice.

4) OPPOSITION. Opponents to this bill state that destroying innocent human life for convenience is wrong and should not be seen as a celebration of 'privacy' or anything else. Although some opponents concede that the bill will bring California abortion law into conformance with Roe v. Wade , they assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. California Right to Life, in opposition, states that this bill would result in effectively installing an expanded state version of the federal Roe vs. Wade Supreme Court decision. Opponents also write that babies have the fundamental right to expect that once conceived, they have the right to expect that their mothers will protect them and allow them to live.

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5) PREVIOUS LEGISLATION. SB 1360 (Sen. Health & Human Services Committee), Chapter 415, Statutes of 1995 reorganized and renumbered sections of the Health and Safety Code, including the Therapeutic Abortion Act, formerly located in Sections 25950-25954 of the Health and Safety Code.

   a) QUESTIONS AND COMMENTS. California's existing laws regarding abortion reflect the state of the law in 1967 before the California State Supreme Court and the US Supreme Court handed down a number of key decisions, including the seminal Roe v. Wade case, that protect a pregnant woman's right to choose an abortion under specified circumstances. This bill amends California's statutory law primarily to reflect governing federal and state case law. As the analysis details, all but two of the existing provisions under the Therapeutic Abortion Act that have not been overruled by judicial decisions remain in place.

6) SECOND COMMITTEE OF REFERENCE. This bill was previously heard in Assembly Judiciary Committee, and was approved on an 8-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Planned Parenthood Affiliates of California (Sponsor)
Honorable Cruz Bustamante, California Lt. Governor (Co-sponsor)
American Academy of Pediatrics, CA District
American Association of University Women, California
American Association of University Women, San Jose Branch
American Association of University Women, Santa Cruz Branch
American Civil Liberties Union
American Civil Liberties Union, Santa Cruz Chapter
American College of Obstetricians and Gynecologists, District IX
American Medical Women's Association
California Abortion & Reproductive Rights Action League
California Church Impact
California Commission on the Status of Women
California Family Health Council
California Medical Association
California National Organization for Women
California Nurses Association
California Primary Care Association
California Pro-Choice Republicans
California Women Lawyers
California Women's Law Center
California Women's and Children's Health Coalition
Central Coast Alliance for Health
Choice USA, UC Santa Cruz Chapter
City & County of San Francisco Commission on the Status of Women
CommuniCare Health Centers
County of Santa Cruz Board of Supervisors
Democratic Activists for Women Now

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Democratic Central Committee of Santa Cruz County
Democratic Women of Santa Barbara County
Democratic Women's Club, Pebble Beach
Gray Panthers of California
Green Party, Monterey County
Hadassah
Kaiser Permanente Medical Care Program
Lambda Letters Project
Lawyer's Club of San Diego
League of Women Voters of California
League of Women Voters, Monterey Peninsula
League of Women Voters, Santa Cruz County
Los Angeles County Young Democrats
Marin County Women's Commission
Medical Students for Choice, University of Southern California Chapter
Monterey Peninsula College, Women's Programs
National Council of Jewish Women
National Health Law Program
National Latina Alliance
National Organization for Women, California Chapter
National Organization for Women, Monterey Peninsula Chapter
National Organization for Women, San Jose/South Bay Chapter
National Women's Political Caucus of California
Older Women's League of California
People for the American Way
Peoples Democratic Club of Santa Cruz
Physicians for Reproductive Choice and Health
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood: Shasta-Diablo
Pro Choice Coalition of Santa Clara County
Religious Coalition for Reproductive Choice
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
San Luis Obispo County Pro-Choice Coalition
Santa Clara County Democratic Central Committee
Santa Cruz County Women's Commission
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood
To Help Everyone Clinic, Inc. (T.H.E. Clinic)
United Nations Association of Santa Cruz County
Valley Women's Club
Ventura County Reproductive Rights Network
Voters for Choice

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West Hollywood Democratic Club
Women Lawyers Association of Los Angeles
Women Lawyers of Santa Cruz County
Women's Programs, Monterey Peninsula College
Women's Foundation
Women's Health Collaborative
Women's Health Specialists
Women's International League for Peach and Freedom, Fresno Branch
Women's International League for Peach and Freedom, Monterey County
Women's Lifecycle Medical Group
Workmen's Circle/Arbeter Ring, Southern California District
Zero Population Growth of Monterey Bay
27th Assembly District Democratic Committee
Numerous individuals

Opposition

California Catholic Conference
California ProLife Council
Campaign for California Families
Capitol Resource Institute
Committee on Moral Concerns
Hispanics for Life and Human Rights
San Mateo Pro Life

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