

## Washington and Lee University School of Law

## Washington and Lee University School of Law Scholarly Commons

Supreme Court Case Files

Lewis F. Powell Jr. Papers

10-1980

### H.L. v. Matheson

Lewis F. Powell Jr.

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/casefiles



Part of the Constitutional Law Commons, and the Health Law and Policy Commons

#### Recommended Citation

H.L. v. Matheson. Supreme Court Case Files Collection. Box 77. Powell Papers. Lewis F. Powell Jr. Archives, Washington & Lee University School of Law, Virginia.

This Manuscript Collection is brought to you for free and open access by the Lewis F. Powell Jr. Papers at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Supreme Court Case Files by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Probably Note Generally Note 4 coold int Reverse or affirm w/o more shirty

What statute requires a minor to notify parents before she has an abortion, & What 5/Ct unanimaly uplated this - reading Bellatti as supportion.

had sptem to go to court w/o notifu way percente:

What statute does not provide this

PRELIMINARY MEMORANDUM ofitine. Now

February 22, 1980 Conference List 2, Sheet 1

No. 79-5903

H. L. (a minor)

V.

MATHESON (Gov. of Utah)

don it require parent-

Appeal from Utah Supreme Ct. (Crockett, <u>Maughan</u>, Wilkins, Hall & Stewart)

State/Civil

Timely

- SUMMARY: Appt, a minor seeking an abortion, contends that the Utah statute requiring her physician to notify her parents of her decision to have an abortion is unconstitutional.
- 2. <u>FACTS</u>: Appt, a 15-year-old pregnant woman who wished to have an abortion, brought the present action on her own behalf and on behalf of all women similarly situated. She alleged that she did not want to notify her parents of her intentions, and that her physician would have performed the operation but for a criminal statute requiring a physician conducting an abortion on a minor to "notify, if possible, the parents or

Bellotti rather clearly indicates that notice to parents is may

guardian of the woman upon whom the abortion is to be performed. . . . "
The trial court interpreted the statute as requiring a physician to
notify the minor's parents whenever physicially possible. In doing so,
it rejected appe's suggestion that it interpret the words "if possible"
as meaning "medically, socially, psychologically, and physically"
appropriate. Nevertheless, the trial court went on to uphold the
constitutionality of the statute as a reasonable effort by the state to
protect parental rights.

On appeal, the Utah S. Ct. affirmed in a unanimous opinion. traced the history of this Court's decisions on abortion from Roe v. Wade, 410 U.S. 113 (1973), through Bellotti v. Baird, Nos. 78-329, 78-330 (filed July 2, 1979). It focused in particular upon Bellotti, where this Court considered the constitutionality of Massachusetts' regulatory scheme. Under that statute, known as § 12S, Massachusetts required a minor to secure either the consent of both parents or the permission of a judge of the Superior Ct. before having an abortion. As interpreted by the Mass. S. Ct., § 12S required the minor to seek parental consent before resorting to the courts and also required the judge whose permission was sought to notify the minor's parents of the judicial proceedings brought under § 12S. Voustice Powell, joined by the Chief Justice, and Justices Stewart and Rehnquist concluded that § 12S was unconstitutional insofar as it required parental involvement in the minor's decision to seek an abortion. Justice Stevens, joined by Justices Brennan, Marshall, and Blackmun, found § 12S offensive because it subordinated the minor's decision to have an abortion to an absolute veto by either her parents or a judge of the Superior Ct. Justice White filed a dissenting opinion.

Faced with this fragmentation, the Utah S. Ct. felt it could not "discern a clear constitutional doctrine inhibiting the state from enacting a statute [such as that at issue here], which merely provides for notification, if possible, of the parents of a minor contemplating an abortion." The court concluded that the challenged statute served a significant state interest by placing the minor's parents "in a position to provide valuable information concerning the factors which the physician may consider in exercising his best clinical judgment" as to whether the minor should have an abortion. Finally, the Utah S. Ct. agreed with the trial court that the words "if possible" in the statute meant if physically possible, and not if medically, socially, psychologically, and physically appropriate.

3. CONTENTION: Appt contends that the Utah statute is an impermissible intrusion into her relationship with her physician and improperly burdens her constitutional right to have an abortion. She relies, in particular, upon Justice Powell's opinion in <u>Bellotti</u> as mandating a finding of unconstitutionality.

Appes' counter-arguments substantially track the opinion of the Utah S. Ct. In addition, they suggest that the statute at issue here is fundamentally different from § 12S, which was struck down in <u>Bellotti</u>. They point out that the Utah statute does not require any parental participation in the decisionmaking process at all, but only requires the physician to notify the parents of the impending abortion. Such notification, according to appes, is essential to ensure that the physician has an opportunity to obtain all the information necessary to make an informed decision as to the medical advisability of the abortion.

4. <u>DISCUSSION</u>: The issue of parents' rights to notificatin obviously posed some difficulty for this Court in <u>Bellotti</u>. Justice

Powell's opinion did not specifically preclude the possibility of a statutory requirement that parents be notified of an impending abortion. Instead, it condemned a requirement of "parental involvement" in the decision-making process:

"If, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement. On the other hand, the court may deny the abortion request of an immature minor in the absence of parental consultation if it concludes that her best interest would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate. But this is the full extent to which parental involvement may be required."

The opinion thus leaves open the possibility that mere notification of the parents, as opposed to mandatory "involvement" or "consultation," might be a permissible prerequisite to an abortion.

Justice Stevens' opinion did not reach the notification issue at all and, in fact, stressed that "neither <u>Danforth</u> nor this case determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto." Justice White, in dissent, characterized the Court's holding as follows:

"The Court now holds it unconstitutional for a State to require that in all cases parents receive notice that their daughter seeks an abortion and, if they object to the abortion, an opportunity to participate in a hearing that will determine whether it is in the 'best interest' of the child to undergo the surgery."

Given the Court's fragmentation in <u>Bellotti</u> and the ambiguities left after that decision, I do not believe that the federal question raised by appt can be labeled insubstantial. I therefore recommend that the Court note probable jurisdiction.

- 5 **-**

There is a motion to dismiss.

2/13/80 CMS McGough

OP in J.S.

	February	22,	1980
Court	Voted on, 19		
Argued, 19	Assigned, 19	No.	79-5903
Submitted, 19	Announced 19		

H. L., ETC.

VS.

#### MATHESON

Also motion to dismiss. The formal way of the control of the contr

note

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT			MERITS		MOTION		ABRENT		NOT VOTING			
		G	D	-	POST		-6				D			L		
Burger, Ch. J				,	į	V									. , ,	
Brennan, J	1			4	, , , , ,											
Stewart, J				W.					,							
White, J																
Marshall, J																
Blackmun, J	I	i	I	1 - 0		1	I	I		1	1	1		i		
Powell, J	:	1				•		1								
Rehnquist, J																
Stevens, J						11										
				1		1		1	İ							
		1	1				+ - + .	1 + +			4			1		

not be required before a minor is given access to court: "We conclude that anomy state regulation such as that undertaken by Massachusetts every minor must have the opportunity—if she so desires—to go directly to court without first consulting or notifying her parents." The opinion also discusses why notice alone would burden the minor's right even if she has access to court.

Here, there was apparently no alternative court procedure, but also no requirement of parental consent. Where there is no veto—either paren parental or judicial—the notice requirement may have a different effect. Therefore, I doubt that summany reversal is appropriate even if 4 other Justices thought so. Nor are the questions insubstantial. Although the it seems a shame for the Court to embroil itself in these Issues yet again, I see no real alternative to a note.

Ellen

Reviewed \$/24-30 Excellent menel. Utak statule, 5 304(2), require no tifuation of parents (where posselle) in all cares GM 8/20/80 before a suinot may doctor lawfully may I'm inclined to agree with greg that of Utah 5/Ct because its requirement for no time en all cares will effectively damy the right to about in BENCH MEMORANDUM some cases. Judex to grea's therough descurring: Mr. Justice Powell August 20, 1980 From: Greg Morgan appellees interests - 12 greg's discussion of compete hug interests - 17 No. 79-5903: H---L-- v. Matheson, et al. Pores carer -22 gregs views - 24-25. Greg favor notice

Question Presented as the "norm" but there

This case, like Bellotti v. Baird, 442 U.S. 622 should be an alternative (1979), presents a challenge to the constitutionality of a state procedure The for a statute regulating the access of minors to abortion. question is whether Utah may require the physician of a pregnant lecusion minor, before performing an abortion, to "[n]otify, if possible," the parents or quardian of the woman upon whom the abortion is when to be performed." Lessoble. See my Reclette op.

#### Facts

In 1974, the Utah Legislature passed a new statute regulating abortions. Utah Laws 1974, ch. 33; Utah Code Ann.

s 76-7-300, et seq.1/ Section 303 of the new statute provides "without that no abortion may be performed in Utab. concurrence of the attending physician, based on his best medical indoment: " and § 304 provides that:

> To enable the physician so exercise his bost medical judgment, he shall: IIT Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed, including, but not himited to, Her obysical. (a) emotional

psychological health and safety

(b) Ber age.

Ich Her familial situation. (2) Notify, if possible, the parents or | Wah's quardian of the woman upon whom the abortion is to be performed, if she is a minor, or the husband of the woman is she is married. I dequetement

interest.

By operation of e 314, failure to comply with e 304(2) is a Class A misdemeaner.2/

Appellant, H---L--, brought this action declaratory and injunctive relief from the notification requirement of \$ 304(2). She is an unmarried minor who lives in Utah with her purents and is dependent upon them. She was to the first trimester of a pregnancy when she filed her complaint. After consulting with a physician and a social worker, U-t-Lttdecided that an abortion was in her hest interest. Both the social worker and her physician concurred in her decision, but agreed her physician informed her that he could not perform the abortion without first notifiying her parents, as required by a described 304(2), even though he shared her belief that it was also in her memor's

3,

best interest that her parents not be notified of her programmy or abortion.

Appellers Matheson and Hansen are, respectively, the Governor and Attorney General of Utah, and they are charged by the Utah Constitution to enforce the laws of the State. He--Le-brought this action equinst them on behalf of herself and others similarly situated. She contends that the notification requirement of 6 30442) imposes an overbroad and unduly burdensome interference on her right to secure an abortion and on her right to her physician's medical care.

#### <u>Decisions</u> Relow

The District Court for the Third Judicial District of Utah decied H--L--'s motion for a preliminary infunction on the grounds that no decision of this Court or the Utah Supremo Court precludes a potental notification requirement in the case of a minor, and that, but for H--L---'s allegation that parental notification was not in her best interest, "there !hadl been no special showing of detriment that might result if the parents were notified." (Appendix, at 14). In a subsequent hearing, H--L-- argued that no special showing of detriment is necessary before she may effectuate her decision to terminate her premanny without parental positication. Rather, she argued, her reasons for believing that notification was not in her best interest were irrelevant so long as she and her physician shared that belief. In a memorandum of findings and

conclusions without an opinion, the District Court held that N---L--- is a proper representative of the class that she purports to represent,3/ that the abortion of her pregnancy did not note her claim, and that 9 304/2) does not unconstitutionally restrict a minor's right to secure an abortion or to enter into a physician-puttent relationship (Appendix, at 39).

lie

The Otah Supreme Court affirmed unanimously. In that Court's view, © 304(2) does not unduly burden a minor's right to an abortion because notification does not confer on parents an Planned absolute weto over their daughter's decision. Parenthood of Missouri v. Danforth, 428 U.S. 52 (1976). The Court noted that your opinion in Brillotti v. Baird, 442 U.S. 122 (1979), "would appear to hold unconstitutional a statutory provision requiring parental consultation or notification in lack every inchance, without affording the pregnant minor opportunity to receive an independent judicial determination Bellette that she is mature enough to consent or that an abortion would he in her best interest." (Appendix, at 54). But the Court did not feel itself bound by your opinion and choose not to follow it. Instead, the Court held that 6 304/2) serves two pidnificant state interests which are not present in the case of abortions by adults, and that § 304(2) is therefore constitutional.

The first of the two interests which the Chab Subreme Fresh Court considered sufficient to support @ 304(2) is the state's State

Consultation of pavents my and pleysum in exercising "best medical

interest in enabling the physician to exercise his best medical judgment. The considerations listed in § 304(2) are precisely those that Doe v. Bolton, 410 U.S. 179, (1973), lists as factors which a physician will necessarily consider in exercising his medical judgment: his patient's physical, emotional, and psychological health, her familial situation, and her age. Id., at 192. The Utah Supreme Court held that the notification requirement of § 304(2) "is substantially and logically related" to those factors because the parents of a minor will "frequently possess additional information which might prove invaluable to the physician in exercising his 'best medical judgment.'" (Appendix, at 51).

sufficient to support § 304(2) is the state's interest in State encouraging unmarried minors to seek their parents' advice in making the decision whether to abortion their pregnancies. In this regard, the Court choose to follow the statement of general principles in your Bellotti opinion, and particularly your principles reaffirmation of the principle that "the State can 'properly conclude that parents and others, teachers for example, who have the primary responsibility for children's well-being are mentitled to the support of laws designed to aid discharge of the presponsibility." 443 U.S. at 639.4/

The Utah Supreme Court filed its opinion on December 6, 1979. H---L-- appealed, and this Court noted probable

jurisdiction on February 25, 1980.

#### Contentions

(A) Acquirents of Appellant and Amici in Support of Appellant against 6 304(2)

In brief, appellant and amici supporting her orduce that 6 30412) is an overbroad and undue burden upon minors' right to abortion and their right to enter into a physician-putient relationship and receive their physician's medical core. Section 304(2) is overbroad because if applies uniformly despite the varying circumstances in which the abortion decision is made. It is an undue burden because it interferes with the decisional process between programt minor and physician, because it may lead to obstruction of the decision, and because it will not promote family values or physicians' medical judgment. In somewhat fuller exposition, the arguments against 6 304121 are the following:

oircumstances in which minors must make the abortion decision.

The direconstances in which a prequent minor most decide whether to short her prequancy vary greatly. In some cases, the minor needs and receives her parents' counsel and support; in others, the minor has good reason to believe that

learning that their daughter has decided to abort a pregnancy, will prevent her from effectuating her decision. parental-notification requirement which allows no exceptions allows will in some cases have the same harmful consequence as a exceptes parental-consent requirement: it will allow someone other than the pregnant woman and her physician to decide whether the pregnancy will be aborted. This veto, although not granted on the face of § 304(2), will be granted in effect in those inevitable cases where a parent exploits notification as a license to obstruct. The danger of veto by obstruction is particularly acute for young pregnant minors, like H---L--, who live with their parents and are dependent upon them. Under the rationale of Danforth, then, § 304(2) is an undue burden on the minor's right to an abortion, 428 U.S. at 74.

Section 304(2) does not promote family values.

Section 304(2) does not serve a state interest in Many decomposition and the family unit or encouraging parental guidance, point in for Utah "cannot hope, by statute, to enforce an environment of love and trust." (Brief for Planned Parenthood Federation, et but not al., at 31). Minors will seek parental guidance without state compulsion in those families where notification would be likely to result in such guidance. A minor who does not want parental involvement is as likely to reject guidance as accept it, if it is offerred after compelled notification, and may suffer the unsupportive or abusive reaction which initially led her to fear

parents who learn that their minor daughter is aborting a pregnancy against their beliefs, and that they are legally powerless to prevent her, will more often spur the already existing discord than it will somehow create unity where none has existed before. To be sure, § 304(2) would in some cases serve the state interest in promoting parental guidance by compelling the hesitant minor to notify parents who will lovingly support her. Nonetheless, § 304(2) cannot be justified | for all cases by the state's interest in promoting family values, for notification promotes those values only in some cases, and it probably promotes antithetical evils in other to all cases. This is the conclusion reached by lower courts that have cases. considered parental-notification requirements applying to all abortions. Wynn v. Carey, 582 F.2d 1375, 1388 (7th Cir. 1978); Akron Center for Reproductive Health Inc. v. City of Akron, 479 F.Supp. 1172, 1202 (N.D. Ohio 1979); Women's Community Health Willew etner, Inc. v. Cohen, 477 F.Supp. 542, 548 (D.Maine 1979); Margaret S. v. Edwards, F. Supp. (E.D.La. 1980), (appeal Value

her parents' involvement. Furthermore, the frustration felt by

(4) Section 304(2) does not improve the physician's care?

Section 304 requires parental notification for the express purpose of enabling the physician to exercise his best medical judgment, and the Utah Supreme Court upheld § 304(2) in

pending in 5th Cir.).

part because, in that Court's view, a minor's parents will frequently possess information about the minor which the physician will need. In many instances, however, the minor secking whortion will herself possess att the information her physician needs and would conceal relevant information only because, in light of \$ 304(2), she would not trust her physician to keep her confidences. Furthermore, a physician properly abortion exercising his judgment is unlikely to be misled by a minor who classes does not know or attempts to conceal relevant information physician. Without all necessary information, the physician will not make the abortion. Thus, in those cases where parental notification is needed to enable the physician to exercise his in these medical judgment, the physician will notify the parents or refuse to perform the abortion without the compulsion of \$ 400.

(5) Section 304(2) interferes with the pregnant minor's right to her physician's medical core.

Possibly fool

A physician is essental to a safe and legal abortion, and the abortion decision, especially for a minor, should be made only after thorough consultation. But a premant minor who wants to avoid parental involvement will not consult a physician who is legally bound to notify her parents. Thus, 6 304(2) in some cases precludes a proper physician-patient relationship and interferes with the "woman's right to receive medical core in accord with her ligensed physician's best indomest." Doe v.

Bolton, 410 C.S. at 197.

(6) Section 304(2) increases the tisks which abortion poses to health.

Abortion of a minor's pregnancy during the first trimester posed little risk to health. A pregnant minor who fears or is unsure of her parents' reaction to notification is like to prograstinate, however, and rather than allow notification, she will allow her pregnancy to continue. If she then relents, allows notification, and proceeds with an abortion in her second trimester, the risk to her health will have dromatically increased. Even more dangerous are the risks which abortion poses to the health of those minors who, rather than allow notification, seek out illegal abortion by nonphysicians or resert to attempts at self-abortion. Furthermore, undesired notification or notification which produces an anary or abusing reaction may increase the psychological risks of an abortion even in the first trimester.

(7) Section 304(2) interferes with the physician's exercise of his medical judgment.

Section 304:2) requires parental notification whether or not the physician believes that notification is in his patient's best interest. H---L---'s physician, for example, shared H---L---'s belief that notification was not in her best interest, but he could not perform an abortion despite that sudoment. Thus, beyond merely failing to improve the

physician's medical judgment, 6 304(2) interfeces with the physician's ethical duty and "the physician's tright to administer" medical care in accordance with his best judgment. Bolton, 410 U.S. at 197.

/B) Arguments of Appellee and Amici in Support of Appellee for 5 304(2).

In brief, appeller and amici in support of it acque that \$ 304(2) violates neither minors' right to an abortion nor their right to their physicians' medical care. It does not violate the right to an abortion because it is a minimum intrusion which is necessary to preserve parents' sight to know about the significant decisions of their minor children. It does not interfere with the physician-putient selationship because it promotes the physician's exercise of his medical judament. In fuller exposition, the arguments for \$ 304(2) are the following:

(1) Section 304(2) is a minimally burdensome interference with the minor's right to abortion.

Section 304/2) requires parental notification, and consent nothing more. It does not require the prequant minor to obtain the consent of her parents of anyone else. It encourages, but does not require, the minor to consult with her parents after

notification. It does not even require the minor to wait for any period of time after notification before having the abortion. Cf. Women's Companity Health Center, Inc. v. Coben, 477 F.Supp. 542, 546 [D. Mylon, 1979] (Major statute required porental notification at least 24 hours before abortion of pregnancy of unemanicpated minor). Nov does € 304(2) attempt to compel the minor to reach a particular decision with respect to the abortion. For these reasons, § 304(2) is distinctly less 🚛 burdensome than a requirement of parental consent, which four Rellette Justices considered constitutionally permissible in some cases. force Bellotti, 443 U.S. at 648. In short, the notification further requirement of § 304(2) in no way affects the minor's abortion decision; it is merely the least burdensome means of course safequarding the parents' right to know about the significant necessary decisions of their minor daughter.

(2) Section 304(2) serves the significant state interest in encouraging parental involvement in the abortion decision.

Otah may encourage 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." <u>Danforth</u>, 428 U.S. at 91 (Stewart, J., concurring); <u>Belloiti</u>, 442 U.S. at 640. Section 304(2) encourages parental involvement by assuring that parents know when their daughter is facing the abortion decision. This state interest is significant for "mature" as

well as "immature" minors, for the parental interest is not dependent on the minor's maturity or immaturity, and the State may act to promote that interest. Furthermore, the State may decide that minors are generally not mature enough to make the abortion decision without parental involvement. Finally, and put bluntly, a holding that the Constitution allows prequent minors to obtain abortions without parental matification will sunction deception by minors of those whom tradition and law charge with their case and custody.

(3) Section 304/2) establishes a rational means of protecting the parents' right.

Physicians are precisely the proper people to charge with the duty of notifying the minor's parents. They are essential to an abortion, and therefore they will know of each minor's decision. Also, they are licensed professionals who are likely to need their professional duty. Requiring the physician to notify the parents incres to the minor's benefit as well, for notification may allow the physician to assess the parents' reaction and to advise his patient in light of that reaction. Thus, 6 304(2) is a rational means of effectuation the state interest.

(4) Section 304(2) does not grant to parents a "d facto" veto.

Section 304(2) "does no more than require notice to the parents, without affording them or any other third party an

Parents also have rights (3 agree) Accordingly, the constitutionality of 6 304[2] is not predetermined by the decisions in <u>Denforth</u> and <u>Bellotti</u> that state statutes which on their face grant a vero over the decision of the pregnant woman and her physician are unconstitutional. Section 304(2) does not grant a veto on its face and the State does not intend it to grant a veto in effect: "What the parents may do beyond more awareness is strictly within their own province and they act without the aid or blessing of the state." (Brief for Appellee, at 131. If in some cases parents react to notification by abusing their daughter or obstructing the effectuation of her decision, the minor can be protected under Utah's child-abuse and neglect lews. <u>E.o.</u>, Utah Code Ann. \*§ 78-3a-29, 78-3a-48; 78-3a-50; 78-3b-6.

(5) Section 304(2) aids the physician in exercising This medical judoment.

Section 304(2) adheres to the notion that the because in all its aspects is inherently, and because of interestly, and because the primarity, a medical decision, and basic responsibility for at most rest with the physician." Roe v. Wade, 410 U.S. at 166.

Pregnant minors seeking abortion do not always know their medical histories and therefore cannot provide their physician with all the information a physician needs to exercise his medical judgment responsibly. In some cases, a pregnant minor

may attempt to conceet incidents in her medical history or other relevant information. In most cases, the minor's parents will possess the the additional medical information which the physician needs in order to advise his patient. Thus & 304/2) serves the purpose for which it is expressly designed: to "enable the physician to exercise his best medical fudoment."

(6) Section 304(2) does not unduly interfere with the physician's exercise of his medical audgment.

The question whether parental notification serves the minor's best interest is not essentially a medical one. Thus, the State's decision that parents must be notified before an abortion is performed interferes with the physician's medical indoment no more than a State requirement, for example, that a physician take his patient's blood pressure before operating, whether or not the physician believes that to be necessary in the particular case. Thus, § 304(2) does not unduly interfere with the physician's right to administer medical care in accordance with his best judgment.

(7) Section 304(2) especially aids the physician's hest medical audoment where the physician has no prior relationship with the minor.

Minors are "loss Likely than adules to know or be oble to recognize ethical, qualified physicians, or to have the means to choose such professionals." <u>Bellotti</u>, 443 U.S. at 641 n.Zl.

Parental notification is especially important in cases where the

yer

physician has no prior relationship with the precnant minor, as where, for example, the minor turns to an abortion clinic rather than to a family doctor. Such a clinic is as likely to advocate abortion than to help the minor decide whether or not to terminate her premanely. If the minor decides to have an abortion, the clinic physician is unlikely to spend more than the minimum amount of time acquainting himself with the minor and her medical history. <u>Dunforth</u>, 428 U.S. at 91-92 m.2 (Stewart, J., concurring). In these cases, parental notification is especially important both to encourage parental support and quidance in the minor's decision and to improve the physician's medical judgment.

(8) Section 304(2)'s alleged overbreath is not a question before the Court.

Appelline suggests that the application of \$ 304(2) to a minor who, unlike E--1---, lives outside her parents! home and supports herself is not a question before the Court. Rather, this Court needs only decide whether \$ 304(2) is constitutional as applied to H---L-- and others similarly situated.

#### Discussion

I find this case extremely difficult for three 50 do 9?

interests of minors, parents, and the State. Second, this Court's previous attempts at reconciling the interests of those three in matters of sex provide little guidance for reconciling the interests here. Third, the arguments both for and addicat  $^{\circ}$ 304(2) depend beautily on speculation as to how parents, minors, and physicians wil! behave with and without the actification requirement.

# (1) The interests at stake .- Memor's Julescote

Porents, minors, and the State each have substantial interest at stake in this case. For the pregnant minor, the requirement of parental motification touches upon her interests in officeruating her abortion decision, in effectuating is without the emotional or psychological difficulty of parental involvement, and in making the decision as wisely as possible. Appollant H---L-- and amid: supporting her emphasize the minor's interest in effectualing her decision to terminate her pregnancy. This seems to me a very strong interest, and one which has behind it the weight of the conclusions in Danforth and Bellotti (Stevens, J.) that no third party can override the decision of the pregnant women and her physician. This interest is implicated in this case because of the plain fact, which the State does not dispute, that some parents will prevent their Some daughter by force, or other "persuasion" which is not addressed to her best interests, from effectuating her decision.

This prevent

interest is not as clearly at stake in this case as it was in <u>Danforth</u> or <u>Bellott</u>, however, because § 304(2) does not grant a veto on its face, and the number of cases in which parents will obstruct a decision to abort can only be guessed at. Nonetheless, for those minors whose decision to abort is obstructed after notification, the interest in effectuating the decision has been abridged as effectively as if § 304(2) did grant a parental veto on its face.

Tom

Minors have another interest at stake which I find Second very strong: the interest in making the abortion decision as wisely as possible. Until effectuated, the decision to abort is not irreversible. Upon learning that their minor daughter has decided to abort her pregnancy, some parents will coerce their daughter through the decisional process once again, pressuring her at each step to decide as they see fit and without regard for her best interest. To be sure, § 304(2) allows a minor to have an abortion immediately after notification; but for minors who do not foresee this parental reaction, or in cases where the physician refuses to perform the abortion before parental consultation because of a strongly negative reaction notification, the minor will be subjected to pressures to decide in ways that do not serve her best interests. minor's parental notification requirement implicates the interest in making the decision wisely, as well as the interest in effectuating her decision.

H---L-- asserts a third interest that is at stake: an interest in effectuating the abortion decision without the emotional or psychological difficulties of parental disapproval. This interest strikes me as weak, for trouble-free exercise has never been considered a component of constitutional rights. Accordingly, parental reaction to notification that does not amount to obstruction of as wise a decision as possible, or to obstructionof the decision's effectuation, does not impringe upon a substantial interest of the minor. For example a mature who wishes merely to avoid an emotional, nonobstructing parental reaction does not present a substantial The Pasental Enterest interest.

For parents, the notification requirement serves their interest in knowing of the significant decisions of their minor daughter. I find this interest a very important one because parents cannot guide and support their child--a role which, aside from the fact that society places it on parents, most and children with their child faces. Parental knowledge, then, is a prerequisite of the parental role recognized, among other places, in your Bellotti opinion and in Parham v. J.R., 442 U.S. 584, 601-04 (1979).

I have reservations, however, about how significantly the invalidation of § 304(2) would impair this parental interest in knowing. The parental role in guiding the child does not

you

begin and end, resume and relapse, only at those moments when the child faces particularly difficult or significant questions. It is, rather, a "process of teaching, guiding, and inspiring by precept and example." Bellotti, 443 U.S. at 638 (Powell, J.). minor who makes her decision without involvement is not necessarily without parental guidance. Her decision may rest firmly upon the guidance that her parents have given her in the past. Similarly, a parent who is not consulted and in the abortion decision is not precluded from his or her always parental role in the future. Cf. Doe v. Irwin, \_\_\_ F.2d (6th Cir. 1980)(parents have no constitutional right notification when their minor child attends a voluntary birthcontrol clinic; "The plaintiffs remain free to exercise their traditional care, custody and control over their unemancipated children...[W]e can find no deprivation of the liberty interest / CA of parents in the practice of not notifying them of their children's voluntary decisions to participate in the acitivities, of the Center."). State Enterest

For the State, the notification requirement serves its interest in encouraging parental involvement in the minor's decision whether or not to terminate her pregnancy. This, too, is a strong interest, for it comprehends both the parents' interest in knowing and the minor's interest in making as wise a decision as possible. Also, this state interest carries with it the weight of your recognition in Bellotti and Mr. Justice

Stewart's in <u>Danforth</u>. The State contends that \$ 304(2) also serves an interest in enabling the physician to exercise his best medical judgment, but I find this dubious. This Court has decided that physicians can be trusted as a general matter to exercise their best medical judgment. <u>Ron v. Wado</u>, 410 U.S. at 153, 165-66; <u>Doe v. Bolion</u>, 410 U.s. at 196-97; <u>Danforih</u>, 428 U.S. ut 64. Accordingly, the question whether parental notification will enhance his medical judgment can be left to the attending obysician.

#### (2) The prior cases.

This Court's recent cases involving state regulation of minors in Sexual matters--Danforth, Carey, Beliotti--provide considerable directive dicta, but little authority, for reconciling the competing interests at stake in this case.

The majority opinion in <u>Danforth</u> does not address the issue of parental notification, but Mr. Justice Stewart's concurrence, in which you joined, states, "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." 428 U.S. at 91. The plurality opinion in <u>Carey</u> held that the State may not absolutely prohibit the distribution of contraceptives to minors, but it did not consider whether parents have a right to know about their

Potter's language Dauforth that 4

child's purchase of contraceptions, 428 U.S. at 694. Your concurring opinion in Carey was primarily concerned with the State's interference with parental authority, not with State attempts to aid that authority, hus you suggested that a "statute assuring in most instances consultation between the payers and child" would present a materially different constitutional issue. 431 U.S. at 710 (emphasis added).

opinion in Brllotti contains landwage

addyesses the issue of parental notification of a minor's abortion, but I disagree with appellant's contention that that opinion, applied to this case, requires that Utah reconcile the competing interests here by completely exempting from regulation those minors who are muture or whose best interest is served by an abortion. Your opinion does not require complete exemption of those two kinds of minors because, it seems to me, your conclusion that these minurs can bypass parental consent was premised on the fact that someone other than the minor and her physician makes the determination as to the minor's maturity or It makes little sense in this case, however, to propose reconciling the interests by providing an alternative procedure by which those two kinds of minors can give notice of abbortions other than ქი ვიცტელი their Notification to whom--if not to the parents?--for no one but perents are in a position to do any of the beneficial things that parents can do upon notification [6.4., quide and support

Bellotte

y

the child; provide additional medical information).

It makes more sense to me to propose reconciling the interests by requiring that a State which generally insists upon notification must provide an alternative procedure by which minors can bypass the notification requirement after someone other than the minor and her physician determines that the minor's best interest will be served by abortion without A minor who shows only that she is "mature" would must also show bust interest. notification. not be allowed to bypass the notification requirement. A Such a schem@ would generally serve parents' interest in knowing about their minor daughter's decision by requiring notification as the Notice It would, on the other hand, protect the minor's interest in making a wise decision and in effectuating her decision in those instances where there is good reason to believe that her parents would act to obstruct her upon notification. It would not, however, neglect parents' interest in those cases where the only interest at stake for a mature minor is an interest in her decision without emotional, effectuating an nonobstructing parental reaction. Conceivably, those Justices who did not join your proposal along these lines in Bellotti, because the proposal there still imposed a veto over the minor's decision, would join the proposal here because it imposes only a burden that is clearly something less than a veto.

This proposal strikes me as more sensible than the Utah statute, but that conclusion does not, of course, mean that

becoure

Udale

(3) The speculative arguments.

The arguments both for and against § 304(2) rely heavily on speculation as to how parents, minors, and physicians behave with and without the parental notification requirement. The bottom line of all this speculation must be simply this: sometimes parental notification will be a good thing; sometimes it will not. For that reason, the question which lies at the core of this case is whether the State can decide that parental notification will be a good thing often enough to warrant a blanket requirement. As to that question, I believe that you have already decided in Bellotti that the State Rather, because of the "need to preserve the may not. constitutional right and the unique nature of the abortion decision," the State must "act with particular sensitivity when it legislates to foster parental involvement in this matter." 443 U.S. at 642. 5/ Utah has not legislated sensitively. has subordinated, in all cases, the pregnant minor's interests in deciding wisely and in effectuating her, decision to her parents' interest in knowing of her decision.

I therefore conclude that reversing the Utah Supreme Coupele

Court would be consistent with your opinion in Bellotti.

you

8/20/80

GM

#### FOOTNOTES

- 1/ Much of the abortion statute passed by the Utah Legislature in 1973 had been held unconstitutional by a unanimous three-judge district court in <u>Doe v. Rampton</u>, 366 F.Supo. 189 (C.D.Utab), vacated and remanded, 410 U.S. 950 (1973).
- 2/ Class A misdemeanors are punishable by imprisonment for a term not exceeding one year and a fine not exceeding \$1,000. Utah Code App. 56 76-3-204(1) & 76-3-301(3).
- 3/ The constitutionality of the spousal-notification requirement of 6 304[2] has not been challenged in this action.
- 4/ In addition to her constitutional claim, H---L--arqued in the Utah Supreme Court, as she had in the District
  Court, that the phrase "if possible" in \$ 304(2) could be
  construed to orant a physician the discretion to determine
  whether, in light of all the medical, social, psychological, and
  whysical facts, notification of the minor's parents would be
  appropriate. The Supreme Court rejected this argument, and
  construed "if possible" to mean that a mignit's physician must
  notify the minor's parents

if under the circumstances, in the exercise

of teasonable diligence, he can ascertain their identity and location and it isfeasible and practicable to give them norification. Forthermore, within Fhe context of what is reasonable under the discumstances, the time element is an important factor, for there ភាពខ្ he sufficient expedition to provide an effective opportunity for an abortion.

H---L-- does not renew her statutory argument.

5/ The Juvenile Justice Standards Project of the American Bar Association has suggested one "sensitive" means of fostering parental involvement in this matter while preserving the constitutional right. See Standards Relating to Rights of Minors, Standard 4.2 (1977):

A. Where prior parental consent is not required to provide medical services or treatment to a minor, the provider should promptly notify the parent or responsible custodian of such treatment and obtain his or her consent to further treatment, except as bereinafter specified.

B. Where the medical services provided are for the treatment of ... pregnancy....the physician should first seek and obtain the minor's permission to notify the parent of such treatments.

1. If the minor-patient objects to notification of the parent, the physician should not notify the parent that treatment was or is being provided unless he or she concludes that failing to inform the parent

could seriously jeopardize the health of the minor, taking into consideration:

a. the impact that such notification could have on the course of treatment;

the medical considerations which require such notification;

c. The mature, basis, and strength of the minor's objections:

d. the extent to which parental involvement in the course of treatment is required or desirable.

2. A physician who concludes that notification of the parent is medically required should:

 a. Indicate the medical justifications in the minor-patient's file;
 and

b. inform the parent only after making all reasonable efforts to persuade the minor to consent to notification of the parent.

The Standards proposes this rule because "[t]he complexity of the sques and the variability in individual situations preclude adopting an absolute rule either barring disclosure or requiring notification under all circumstances where a minor has received medical treatment without parental consent." Id., at 56.

lfp/ss 9/15/80 79-5903 H.L. v. Matheson Memo to File: The briefs in 79-5932 Doc v. Belaware may be helpful - though certainly not in any sense necessary - in identifying authorities and arguments in support of the rights of both parents and children. See particularly the brief of ACLD. It reflects a good deal more respect for parental rights than, according to my recollection, the ACLU has manifested in the abortion cases. L.F.P., Jr. SS

79-5903 H.L. ETC. v. MATHESON (above) Argued 10/6/80

Whole statule required the physician, before performing an abortion on a minor, "to matily the parents" - if "horrible". Stated purposes in to enable physicial to exercise his best medical judgment.

Parente, however, were not given a veto right. There is no provision for account to account,

as in Bellotte.

Dolowity (appellant) Doctor/patient relationship violeted It also is over-brook. by this restall. . Facially involed.

Tenker (ant ally face of Utale) 5th tale passed \$ 1974 before Bellethit. emancipaled minion in not in Min case. There is, however, a of in the parding use (Fed care) (9. Stewart rays challenged here in on to face of statute). numers become emanufeated upon marriage.

Seen no conflict bet. the ted case & this case.

J. Steven says the certified class includes both enancipated & unemancipated mineres. John says & is before in & we should decide it. But J. \$5 fewant disagrees & said op. of 5/ct Utah definer of before we in tenur of numous like our before

Tinker (cont.) I & pareate veto abortion there u no . Stale action - it is prevate parental action. (But statule state statute sets stage for their by reguering notice to parents. Statute is releast as to make use minor & evanepated minor. Notting in statute about either. Turker noter expressed her ap. Heat of emancipated, statute does not apply. confrusa parks He also supposed to his of. that waterity alone would not M Q or to take mus out as statute. Therewhol are counsel's apruner. not even minos am of . at AG of Utah. are within 5 totale applies to all never statule

## Revene 5 - 4

· 79-5903 H.L., Etc. v. Matheson

Conf. 10/8/80

The Chief Justice affering

Q in marrow - not controlled by any

prior decision. I save in whether requirement

to give notice is invalid. Need not address

p "materialy" issue.

Then statute protects doctors. Utoh does int

parent a parent to delay abortion. Statute imparen menine burden on minor.

Mr. Justice Brennan Revenue

Dauforthe contract in principle

Mr. Justice Stewart Reverse

Mass relate in Ballatte II was not sumply
a motion requestment. But rationale controls.

The statute is Court deficient in that
it fails to provide a for independent

Alument Matthe or in Bellalli

Mr. Justice White affering

Extaision of prin care

Mr. Justice Marshall Revenue

lait limit merior's night

Mr. Justice Blackmun Reverce

a sign - neutral statute.

Cornwal statute - clear deporture from Rose.

Mr. Justice Powell Revene

Dut Court. The doctor thereget notice was underinded.

Altho Belletti docrit control,

the vationale of my op, veguerer

an importial documen realer

Mr. Justice Rehnquist afferm

expressed in Tal

Mr. Justice Stevens affer

Statule in valid because rusing

GM 10/28/80

full

To: Mr. Justice Powell

From: Greg Morgan

Re: H--L-- v. Matheson: "The Ambiguous Finding"

I summarize below our discussion about Justice Stewart's concern over the ambiguity in the trial court's finding of fact.

At oral argument, Justice Stewart asked HL's attorney whether the trial court found as a fact that HL's doctor had determined that an abortion without notification to HL's parents was in HL's best interests. In response, HL's attorney relied upon the trial court's Finding # 7 (Appendix, at 40). Justice Stewart considers that finding ambiguous. Heriel record in clear that

From a conversation with Carl Schneider, one of rola. Justice Stewart's clerks, I gather that Justice Stewart is coderances concerned about HL's standing to raise the question whether from desert parental obstruction of an abortion as a result of notification consultation unconstitutionally burdens the right to abortion. Justice with Lock Stewart's thinking appears to run as follows: Unless HL's doctor determined that it is in her best interest to have an abortion without parental notification, then the Court does not know whether HL is (1) a pregnant minor whose parents, if notified, will prevent her abortion, or (2) a pregnant minor whose parents, if notified, will make her abortion more difficult, but will not prevent it. If HL is a minor of the

second type — one who will receive the abortion she desires despite some adverse parental reaction — then the question which she has standing to raise is whether the parental—notification requirement unconstitutionally burdens the right to abortion by requiring minors to face, in the course of exercising the right, a parental reaction which is adverse but not obstructing. HL would not have standing to raise the claim that can be raised by a minor of the first type — one who will not receive the abortion she desires because of parental reaction — and that claim, again, is whether the parental notification requirement unconstitutionally burdens the right to abortion by making possible complete parental obstruction of the abortion.

correctly, I believe that it is misplaced. First, this is a class action, and HL purports to represent both types of pregnant minor. Second, it seems to me that all HL needs to do to acquire standing for the tough question is to allege that her parents will prevent her abortion if notified. Whether in fact there is evidence to support the allegation is a question for the independent decisionmaker; it is not a prerequisite to taking one's case before the independent decisionmaker. Of course, if the minor cannot show convincingly that her parents will prevent her abortion — that is, if she shows only that her

parents will react adversely, not that they are likely to

If I have construed Justice Stewart's concern

Have

provent the abortion -- them the independent decisionmaker should not allow the minor to bypass the notification requirement. In this way, the parental interest in notification will be preserved except where that interest threatens to undermine completely the minor's right to abortion. (I discuss this point in my bench memo, at 24).

lfp/ss 10/29/80

sent to Justice Stewart

79-5903 Matheson

In view of the unsettled state (at least in my mind) of this case. I have today reviewed more carefully the bill of complaint, the testimony, and the decisions below. It is perfectly clear that counsel for R.L. (the plaintiff) brought this class action as a test case to determine whether parental notification may ever be required constitutionally by a minor who merely states that she desires an abortion and will consult only a physician. By repetitive arguing, and even badgering, her counsel finally persuaded the trial court to rule that this was the only issue presented by this case under the statute.

The only relevant averment in the complaint is as follows:

"6. Plaintiff does not wish to inform her parents of her condition and believes that it is in

\*

her best interests that her parents hot be informed." (A. 4)

The complaint, in the next paragraph, states that plaintiff consulted a "counselor", who referred her to a physician, who - in turn - advised her that he was "unwilling to perform her abortion without complying" with the notice provisions of the statutes. The trial court first denied a preliminary injunction, stating that there has been "no special showing of detriment which might result if her parents are notified". [A. 17].

An evidentiary hearing followed that was largely a farce. (A. 24-36). H.L. was put on the stand, and - by leading guestions - simply affirmed what was said in the complaint. She never went beyond stating that she wanted the abortion and did not want to notify her parents. Counsel for the State attempted to cross examine her, and indeed the Court - for several pages of testimony - argued with

plaintiff's counsel that the "validity of her reasons" was relevant to the Court's judgment. Counsel responded. repetitively, as follows:

"It is our position constitutionally that she has the right to make that decision . . . The specifies of the reasons are quite irrelevant to the constitutional issue." (A. 28, 29, 32).

At another point, the importance of the doctor/patient relationship was emphasized in conjunction with counsel's statement as follows:

"The specific facts of any individual case, no matter how ridiculous they are or how strong or weak they are, really become irrelevant." (34)

After considerable haggling, the Court finally capitulted and sustained counsel's objection to any cross examination as to plaintiff's reasons for not wishing her parents to be notified. Then, plaintiff's counsel framed the Court's ruling as follows:

"If your ruling is that 'if possible' (in the statute means "physically possible", and there are no circumstances whatever that justify the violation of the statute, then the issue is closed." (A. 35)

The judge acquiesced in the foregoing statement and sustained the validity of the statute. In his order to this effect, he certified the class.

that were discussed at oral argument, including the ambiguous sentence on page A.4C. In light of what transpired at the evidentiary hearing, I now read the finding on A. 4O as meaning only that the doctor thought plaintiff should be allowed to go ahead with the abortion. I recall nothing in the record that indicates the doctor had even examined her. Nor does she rely on any medical necessity argument. Nor, indeed, do I find any testimony to support an interpretation of the ambiguous language as stating that the doctor thought that notification of the parents would be detrimental to the

minor's health, or that he had <u>any</u> information about her parents.

Thus, we have presented precisely the issue that our Brothers WJB. TM and RAB think is here, and they - agreeing with counsel for plaintiffs - think that the facts are irrelevant so long as a minor can find someone licensed to practice medicine who will agree to about her. We may presume, here, that the doctor would testify that he thought the abortion was medically "necessary". But this is not the theory of H.L's case. Whether the minor is mature, whether she is 12 years or 17-1/2 years old, whether her parents will be loving or likely to object, whether in fact the abortion is in her best interest - all of these, and similar facts, are irrelevant.

Bollove that Because this is a class action, perhaps we could assume that the class includes minors whose

parents would obstruct even where there were medical reasons for an abortion. Similarly, although parents would have no legal power to veto an abortion, the class may be presumed to include minors who are fully mature and capable of making their own decision. If the case is postured to include situations of this kind, I am still of the view that the failure of the statute to provide an opportunity for such a minor to go to an independent decision-maker, with proper authority, tenders the statute invalid.

On the other hand, making this sort of decision is rendering an advisory opinion. There are no facts in this case to support it.

This brings me to ask whether the case is postured so that one tutionally could decide it along the following lines: Plaintiff's counsel has made no showing as to who composes the class beyond averring that "the claims of H.L.,

members of the class. . . " (Complaint, A 4). Thus, the class may be considered as including only those minors who want to be aborted but give no reason - medically, psychologically, by virtue of maturity or otherwise - other than her only personal wish, a wish that could and no doubt would be rubber stamped by some physician in a clinic who may spend 10 or 15 minutes with the minor patient. In short, on the complaint and evidence in this case, plaintiff and her class have shown no reason not to notify parents. This class of minors apparently wish to be as free from independent decision—makers as from their parents. They want abortions on demand,

If the case may be viewed in the light just described, I could join an affirmance and write - in substance - what I said in Bellotti.

lfp/ss 10/29/80

Felr Copy (gnegs memo actached)

#### 79-5963 Matheson

In view of the unsettled state (at least in my mind) of this case, I have today reviewed more carefully the bill of complaint, the testimony, and the decisions below. It is perfectly clear that counsel for H.L. (the plaintiff) brought this class action as a test case to determine whether parental notification may ever be required constitutionally by a minor who merely states that she desires an abortion and will consult only a physician. By repetitive arguing, and even badgering, her counsel finally persuaded the trial court to rule that this was the only issue presented by this case under the statute.

The only relevant averment in the complaint is as follows:

"6. Plaintiff does not wish to inform her parents of her condition and believes that it is in her best interests that her parents not be informed." (A. 4)

The complaint, in the next paragraph, states that plaintiff consulted a "counselor", who referred her to a physician, who - in turn - advised her that he was "unwilling to perform her abortion without complying" with the notice provisions of the statutes. The trial court first denied a preliminary injunction, stating that there has been "no special showing of detriment which might result if her parents are notified". (A. 17).

An evidentiary hearing followed that was largely a farce. (A. 24-36). H.L. was put on the stand, and - by leading questions - simply affirmed what was said in the complaint. She never went beyond stating that she wanted the abortion and did not want to notify her parents. Counsel for the State attempted to cross examine her, and indeed the Court - for several pages of testimony - argued with

plaintiff's counsel that the "validity of her reasons" was relevant to the Court's judgment. Counsel responded, repetitively, as follows:

"It is our position constitutionally that she has the right to make that decision . . . The specifies of the reasons are quite irrelevant to the constitutional issue." (A. 28, 29, 32).

At another point, the importance of the doctor/patient relationship was emphasized in conjunction with counsel's statement as follows:

"The specific facts of any individual case, no matter how ridiculous they are or how strong or weak they are, really become irrelevant." (34)

After considerable maggling, the Court finally capitulted and sustained counsel's objection to any cross examination as to plaintiff's reasons for not wishing her parents to be notified. Then, plaintiff's counsel framed the Court's ruling as follows:

"if your ruling is that 'if possible' |in the statute means "physically possible"), and there are no circumstances whatever that justify the violation of the statute, then the issue is closed." (A. 35)

The judge acquiesced in the foregoing statement and sustained the validity of the statute. In his order to this effect, he certified the class.

In addition, the judge made the "findings of fact" that were discussed at oral argument, including the ambiguous sentence on page A.40. In light of what transpired at the evidentiary bearing, I now read the finding on A. 40 as meaning only that the doctor thought plaintiff should be allowed to go shead with the abortion. I recall nothing in the record that indicates the doctor had even examined her. Nor does she rely on any medical necessity argument. Nor, indeed, do I find any testimony to support an interpretation of the ambiguous language as Stating that the doctor thought that notification of the parents would be detrimental to the

minor's health, or that he had <u>any</u> information about her parents.

Thus, we have presented precisely the issue that our Brothers WJB. TM and BAB think is here, and they - agreeing with counsel for plaintiffs - think that the facts are irrelevant so long as a minor can find someone licensed to practice medicine who will agree to about her. We may presume, here, that the doctor would testify that he thought the abortion was medically "necessary". But this is not the theory of H.L's case. Whether the minor is mature, whether she is 12 years or 17-1/2 years old, whether her parents will be loving or likely to object, whether in fact the abortion is in her best interest - all of these, and similar facts, are irrelevant.

Believe that Because this is a class action, perhaps we could assume that the class includes minors whose

parents would obstruct even where there were medical reasons for an abortion. Similarly, although parents would have no legal power to veto an abortion, the class may be presumed to include minors who are fully mature and capable of making their own decision. If the case is postured to include situations of this kind, I am still of the view that the failure of the statute to provide an opportunity for such a minor to go to an independent decision-maker, with proper authority, renders the statute invalid.

On the other hand, making this sort of decision is condering an advisory opinion. There are no facts in this case to support it.

This brings me to ask whether the case is postured so that one rationally could decide it along the following lines: Plaintiff's counsel has made no showing as to who composes the class beyond averring that "the claims of H.L.,

members of the class. . . " (Complaint, A 4). Thus, the class may be considered as including only those minors who want to be aborted but give no reason - medically, psychologically, by virtue of maturity or otherwise - other than her only personal wish, a wish that could and no doubt would be rubber stamped by some physician in a clinic who may spend 10 or 15 minutes with the minor patient. In short, on the complaint and evidence in this case, plaintiff and her class have shown no reason not to notify parents. This class of minors apparently wish to be as free from independent decision—makers as from their parents. They want abortions on demand.

If the case may be viewed in the light just described, I could join an affirmance and write - in substance - what I said in Re)lotti.

15p/ss 10/29/80

9 sent to P.S.

#### 79-5903 Matheson

mind) of this case, I have today reviewed were carefully the bill of complaint, the testimory, and the decisions below. It is perfectly clear that counsel for B.E. (the plaintiff) brought this class action as a test case to determine whether purental mulification may ever be required constitutionally by a minor who merely states that she desires an abortion and will consult only a physician. By repetitive arguing, and even budgering, her counsel finally persuaded the trial court to rule that this was the only issue presented by this case order the statute.

The only relevant avacement in the complaint is as follows:

"6. Plaintiff does not wish to inform her parents of her condition and believes that it is in her best interests that her parents not be inferred." (A. 4)

The complaint, in the next paragraph, states that plaintoff consulted a "counselor", who referred her to a physician, who win turn - advised her than he was "unwilling to perform her abortion without complying" with the notice provisions of the statutes. The trial court first denied a preliminary injunction, stating that there has been "no special showing of detriment which sight result if her parents are satisfied". (A. 17).

An evidentiary hearing followed that was largely a face. [A. 24-36]. H.L. was put on the stand, and - by leading questions - simply affirmed what was said in the complaint. She never went beyond stating that the wanted the abortion and did not want to notify her parents. Counsel for the State attempted to cross examine her, and indeed the Court - for several pages of testimony - argued with

"If your ruling is that 'if possible" [in the statute means "physically possible"], and there are no circumstances whatever that justify the violation of the statute, then the issue is closed." (A. 35)

The judge argumented in the foregoing statement and socialized the validity of the Statute. In his order to this effect, he certified the class.

that were discussed at oral argument, including the arbiguous sentence on page A.40. In light of what transpired at the evidentiary hearing, I now read the finding on A. 40 as meaning only that the doctor thought plaintiff should be allowed to go ahead with the abortion. I recall nothing in the record that indicates the doctor had even examined her. Nor, indeed, So I find any testinony to support an interpretation of the arbiguous language as stating that the doctor thought that notification of the parents would be detrimental to the

minor's health, or that he had <u>any</u> information about her parents.

our Brothets WJB. The and BAB thick is here, and they agreeing with compact for plaintiffs - think that the facts
are irrelevant so long as a minor can find someone licensed
to practice medicine who will agree to about her. We may
presume, here, that the doctor would testify that he thought
the abortion was medically "necessary". But this is not the
theory of B.D's case. Whether the minor is mature, whether
she is 12 years or 17-1/2 years old, whether her parents will
be leving or likely to object, whether in fact the abortion
is in her best interest - all of these, and similar facts,
are irrelevant.

Because this is a class action, perhaps we could appear that the class includes sincer whose parents would

as class representative are typical of the claims of all werbers of the class. .. " (Complaint, A 4). Thus, the class may be considered as including only those miners who want to be aborted but give no reason - reducably, psychologically, by wirtue of maturity or otherwise - other than her personal wish, a wish that could and no doubt would be rubber stamped by some physician in a clinic who may spend 10 or 15 sinutes with the class patient. In short, on the complaint and evidence in this case, plaintiff and her class have shown no reason not to notify parents. This class of minors apparently wish to be an free from independent decision—makers as from their parents. They want abortions on demand.

if the case may be viewed in the light just described, I could join an affirmance narrowly written on an "as applied" basis. I also would write - in substance - topesting what I said in Rellotti.

GM 10/30/80

To: Mr. Justice Powell

From: Greg Morgan

Re: H---L--- v. Matheson: H---L---'s Allegations & Proof

greg's comments

No. 79-5903

I have now looked again at the complaint, testimony, and findings in the trial court. The short answer to the question in your memo of 10/29 is--yes, the case is postured in such a way that you can decide, substantially for the reasons expressed in <u>Bellotti II</u>, that the Constitutional does not quarantee to a minor the right to an abortion without parental notice simply because the minor does not wish her parents to know. Interestingly, I think that this is the conclusion upon which we agree before oral argument. I, at least, did not understand fully until now that that is the guarantee HL seeks.

For the file, I note my conclusions upon re-reading the record. HL never alleged that her parents would obstruct her abortion, and she never presented any evidence to support a finding that her parents would do so. Neither did HL allege or prove that her doctor believed that her parents would obstruct her abortion. Therefore, although I otherwise would read the trial court's Finding \$ 7 to find that the doctor believed (1) that an abortion of HL's pregnancy was in her best medical interest and (2) that an abortion without parental notification

was in her best interest, I am constrained to say that that reading lacks any evidence in the record.

What BL did allege, as your memo notes, is that she did not wish to notify her parents of her abortion for her own reasons. What the evidentiary hearing reveals, again as your memo notes, is that HL does not wish to have to justify or even reveal those reasons to anyone [other than a doctor). Purthermore, there is nothing in the allegations or the testimony to show that members of the class which HL purports to represent have any more reason than HL has to wish not to notify their parents. Upon this record, you could join in an affirmance, with the reservation that your opinion in <u>Hellotti</u> II indicates that you would reverse if the courts below had decided that the State can require notification even where evidence exists to indicate that parental obstruction will result.

October 31, 1980 79-5903 H.L. v. Matheson Dear Potter: Here is a memorandum that I wrote in an effort to clarify my thinking. Also enclosed is a copy of my clerk Greg Morgan's comment on my memo. For the reasons we both state, Greg now agrees that - on the very restricted record before us - I could join a carefully written affirmance and accompany it with a concurring opinion reiterating our views with respect to the need for an impartial decision-maker where the minor considers herself mature or that it would not be in her bests interests to notify parents. I no longer think I could join even the judgment that the present statute is invalid. What do you think? If you agree with me, perhaps we should notify the Brothers. Sincerely, Mr. Justice Stewart lfp/ss

### Supreme Court of the Mnited States Machington, D. C. 20343

THE CHIEF JUSTICE

November 7, 1980

Ker 79-5907 - H<u>.L., elm.</u> v. Mat<u>h</u>eso<u>n</u>

MEMORANDEM TO: Mr. Justice Stewart
Mr. Justice White
Mr. Justice Powell
Mr. Justice Schoquist
Mr. Justice Stevens

I will have a dissent out next week. I hope you are willing to "hold" until I get it to you.

/Rogards.

# Supreme Court of the United States Mashington, D. C. 20543



CHAPPERS OF ... JSTILE - STER STEWART

November 10, 1980

Re: No. 79-5903, M. L. v. Mathgson,

Dear Thurgood,

Your proposed opinion of the Count strikes me as an admirably thorough exposition of your position. It is, however, a position that I do not share, as you know from our Cenference discussion. Accordingly, I shall be unable to join your opinion.

Sincerely yours.

<u>و</u>م

Mr. Justice Marshall

Copies to the Conference

November 12, 1980 79-5903 H. L., etc. v. Matheson Dear Thurgood: My vote at the Conference was to reverse because the Utah statute provides no independent decision-maker, a provision I considered necessary in my Bellotti opinion. I agree with Potter that your proposed opinion for the Court is a most thorough exposition of your position, but it accepts appellant's argument that a pregnant minor, regardless of age or circumstances and without notice to parents, has a constitutional right to decide for herself, in consultation with a physician, whether to have an abortion. As this is a view that I rejected in Bellotti, I cannot join your opinion, nor am I at rest as to the judgment. I will await further writing, and probably will reiterate in summary my Bellotti view that a state validly may require, before a minor may decline to notify her parents, that she satisfy an independent decision-maker either that she is mature or that her best interests require no such notification. Sincerely, Mr. Justice Marshall lfp/ss cc: The Conference

Supreme Court of the United States Machington, P. C. 20543 Movember 13, 1980 C. 45 01 68 05 CUSTICE NAMED A 19 OF KINDS Re: No. 79-5003 - M.L. v. Matheson pear Thei goods I join your opinion. Your opinion is thoughtfel, thorough, and well crafted. I feel that of particular interest are the discussion of family interactions, the ideal as contrasted with the actual (pp. 8 13), the important rule played by physician obligations and capabilities (pp. 14, 23), and the account but unobtrusive in implications about ways in which state statutes sight pass constitutional muster (notes 39 and 42). The opinion accords constitutional recognition to the pature winer and emancipated minor doctrines (pp. 20-22), which became concernary and even own due in light of the "medoubled social reality," with which 1 wo beautily agree. I say again that this is a helpful opinion and I douply regret that it probably will not prove to be one for the court. I ned not say how disappointed I have been in what f perceive to be the Court's actionable withdrawal Sin recent causes from the more positive position taken in Roe, Due and paraforth. Simporely,

yn, destien Mashell

per absided broads

# Supreme Court of the Anited States Washington, D. C. 20543

CHARLES OF CONTRACTOR

November 13, 1980

RE: No. 79-5903 M.L.Lete, v. Matheson

Dear Thungood:

I agree.

Sincerely,

Mr. Custice Marshall

co: The Conference

The 15 yr. old in called a "womare" not a dailed. Utal Ct found two cup. to: The Chier Justice state interests - 4, 12 Justice Brennan Mr. Justice Stewart Rale of family 8, 9 Mr. Justice White Mr. Justice Blackmun Begs Q to refer to rumore Mr. Justice Powell Mr. Justice Rehnquist "right" to preserve her privacij Mr. Justice Stevens from her parents - 9. We have read to the Justice Marianis so held. Parents also have rights Circulatod: 17 NOV 1980 Rosiroulkseit " Selly argument anto "state's interest"-13,14 Can to benefit SUPREME COURT OF THE UNITED STATES of information from parents ar to encouraging consultation - 16

H. L., etc., Appellant, On Appeal from the Supreme

On to parental authority Court of Utah.

Scott M. Matheson et al. 17, 18 (encyclible!) Statute reacher material in will as atter 5-20 (the ( Defect in MR. JUSTICE MARSHALL delivered the opinion of the Court. At issue in this case is the constitutionality of a Utah statute, Utah Code Ann, § 76-7-304 (2), which imposes crimfree buesting sanctions against a physician who fails to notify parents of all prior to performing an abortion on their unmarried minor Musical daughter. The Supreme Court of Utah upheld the statute. as fungable. This sero is defect of this opinion The facts, according to the stipulations filed with the trial

The facts, according to the stipulations filed with the trial court, are as follows. When the suit was initiated appellant

a 3 rd party decession maker would be invaled though this is plain support.

<sup>&</sup>lt;sup>1</sup> Appellant challenges pt. 2 of § 76–7–304, which appears in the "Ofenses Against the Family" chapter of the Utah Criminal Code. In its entirety, § 76–7–304 provides:

<sup>&</sup>quot;To enable the physician to exercise his best medical judgment, he shall:

<sup>&</sup>quot;(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

<sup>&</sup>quot;(a) Her physical, emotion and psychological health and safety,

<sup>&</sup>quot;(b) Her age,

<sup>&</sup>quot;(c) Her familial situation.

<sup>&</sup>quot;(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor or the husband of the woman, if she is married."

A violation of this provision is a misdemeanor, § 76–7–314 (3), punishable by a maximum one-year sentence, § 76–3–204 (1), and a maximum fine of \$1,000 § 76–3–301.

H. L. was an unmarried minor, in her first trimester of pregnancy. She was financially dependent on her parents and resided in their home in Utah. She did not wish be inform her parents of her pregnancy and believed it was in her best interest that they not be so informed. After conferring with a comseler to assist her decision about whether to complete or terminate her pregnancy, appellant consuited her physician, who advised her that he believed that an abortion would be in her best medical interest. The physician conetheless refused to perform an abortion without first notifying her parents as required by Ulah law. The star are or question. Utah Code Ann. \$76,7,304 (2) requires a treating physican to "polotify, if possible, the parents of grarofian of the worder upon whom the abortion is in Sepertoreas). if the is a minute or the hashwell of the woman, it she is coarried. Failure to comply with the statute is a cranical offerse punishable by a messegreprison term general \$1,000 fire.

Appellect opposed milification of her parcets, and filed a class action on Aord 27, 1978, challenging the emistation of ality of the notification requirement. The class she sought to represent included all "minor women who are sufficing accounted programmes and desire to terminate the pregnatures but are unable to do so leasuagely as their physician will not perform an abortion upon them without compliance with the provisions of Section 76-7 304 (2), [10] Is a series of related

The clase

The US disdistries contributation agreements some at the proceed and a transposition of the Process flow one non-dissipative which shows known through Psops.

by at take in  $\Gamma(A) = 0$  the period of telescript extends in makes and tensiles to the age of eightfunctions for the minute above in property by the range  $\epsilon = 0.0$  the Code  $(Va) = \S(5/2, 2/2)$ .

<sup>&</sup>lt;sup>2</sup> The controller appropriate was a specific order. See West new Errar corporates 39, 1978; equation of Appendix Appendix Appendix as Information (1978), and for some

<sup>(2)</sup> any lamb probability Appendix Position removement for facility to their endocration tunion were in residing with their probability and management among the probability.

# H. L. & MATHESON

claims, appellant's complaint asserted that the statute infirmged each class member's right to have in hir first tramester of pregnancy an absertion free from state regulation, that the statute was memoritationally overbroad, and that it lacked astribution by a compelling state interest? Appellant requested class certification, declaratory and injunctive relief, and attorneys' fees.

On May 8, 1978, the District Court denied appellant's motion for a temporary restraining order or preliminary isometron. The court held a brief heating on May 31° and subsequently entered a venter order finding appellant in appropriate representative of the designated class by rejecting her challenges to the Utala statute. The court reperied

within a larger telephonently. For a gapter weaping providing graphs of 5 of 185 of the approximation of the parents graph for a standard on Theorem 1870 (Fig. 7). The above describing the first form the parents graphs are their months were at For these constant, the standard regions of all according to their first larger of For the sake of simplicity, and in keeping with the approach of the number of the correct forms of the correct forms with the parents of the correct forms.

2. No significant there is natively to the structure repairment of sport of totale whether twitted sport wirman website, denoting

This in character bearing considered in the examination of a collimit of the spin medical entermination of the complete of the spin medical entermination of the spin bearing the spin medical entermination of th

Cities control because bridge that it is not increase of appell or superpose would not move the const. We involve a product value of programs such a decrease to the test of the following control values where the constraint could be of the product value of the constraint of the cons

The find then to do not the model every appealed to the new class appeal to could prove of the doubt transform without the appear than to accomplish a doubt the property of the content to the property of the content to the content to the content of the content to the content of the content

appellant's argument that the statute should be construed as reserving discretion to the physician in deciding whether in a particular case, parental potification would be as the court interpreted \$76.7,304 (2) to brish, the treating physician to courty (the parents) if it is physically possible; that is, if he knows or can determine the identity of the parents of a normal and he is physically able to notify them? prior to the aborton? Finally, the court field that the statute passed constitutional rousier

The Supreme Court of Trab affirmed, 1. The court acsnowledge I that this bount has held mean still (no all statutes granting that of parties line along parents, an absolute vision over a progrest minor's decision to terminate her programmy but coordided that this Court had mover invalidated an acqualities (carental notification requirement. The court arternated that its State's collect requirement served two important state interests (1) improving the exercise of the physician conseque implyment by permitting parents to our year gibbt or all reformation, and (2) choosgraging shall per-

state

appelant of a foreign term for the end of the code value and pages as a contraction. The violated was a granting at wording to the foreign services becomes the con- all large Third edge, May 50 (1978) November

the Law Matterior Co. No. P. 78 2709 (Inc. the Satisface Care v.

[6] B. G. De J. G. St., Conclusions of Jan. 2, 1, App. 42.

(ii) Let a Habba on No. 1023 Casuparine Court, Parin, Inc. 1, potential of the actual gradient of the property of potential problem in this argument of the property of positive forms of the property of the \$70.7 (204 e2) should be computed by computed the property of the property

requiring the transpirited programs among the sock host parents fairness to him abouting decay, i.e., We notice probable prinspirite 145 (1) S. 2014 (1981), and we now reverse

## []

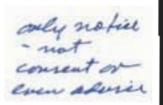
Our cases have established that a pregnant woman loas a ten lame, the right to choose whether to obtain an abouten or cately the pregnancy to term. Row v. Work, 410 U. S. Cl3 (1953). Doe v. Robins, 440 U. S. (79 + 1953). Her more like the deeply stronger decisions to matrix, this prescript, and to be sorthway these as granded from around interestate theory state by the light to privacy. Compute Leight to the University that of the Fourtweeth Americans the legit to

The first contract of the Coulomb and the Botton (2004) is the course of the course of the Coulomb and the Botton (2004) is the Coulomb and the Botton (2004) is the Coulomb and the Course of the Cou

[28] A. C. Carrier, C. Constantion, Sources, International, 447–17. Society, 187–18. Applied to Constantion, 187–18. Applied to National Society on Proceedings of the Computational Society on Proceedings of the Computational Society on Proceedings on Proceed

S. Lander, V. State and G. Serromann, and H. Lander, and D. L. S. Netherland, S. L. Lander, Phys. Rev. B 10, 100 (11 ft 11 models), A. Barten, and D. L. Serrag, A. Delling, and A. Delling

(i) Problem Rev. The solution of Lagrange [12] is so problem. Solution Science of the problem is a manager of many control of the grant for the grant for the problem. The solution of the problem is a many control of the problem. The problem is a many control of the problem in the problem.



privace — protects both the woman's "interest in independence to making certain kinds of important decisions" greather indict had interest in avoiding desclosure of personal matters — Worke v. Roy. 429 U. S. 589, 569 600 (1977)

In the absence current we have held that the right to privacy shields the worgen from unthe state intension in and external series, y of her very presental charge. Thus, in Roc y Wade super, 410 U.S., at 164, we held that during the first transster of the pregnancy, the State's intensis in protecting material health or the potential life of the terms could not override the pregnant womas is right to make the aboution decision Prough private unfortered consultation with her physician. We further emphasized the restricted could not private absence in this area when in Doc x Rolton, super, 410 U.S. at 198-200, we streek down state apposed providual requirements that subjected the woman's private decision with her physician to review by inthe physicians and a hospital committee.

To is also softly that the fight to privacy, like many constitutional rights, extends as majors. Planned Privathood

The region is some 7 sometiment of a right notes on the pressure 24 action on the real states 25 at 1.85 at 8.15 at 1928. Obtaining the first states 2.5 at 1.85 at 8.15 at 1928. Obtaining the 5.77 for 1920 at 1920

The result of displayed and matter and community of a region of property of the state of the sta

you

## 20.2003-091NI0N

#### HILL & MATTERON

Sy Central Missouri X. Danborth, 428 U. S. 52 (1976); Hellotth X. Bord, 443 U. S. 622, 639 (1979) (Powern, J.); id., or 653 (Scrivers) I. plurality); T. H. V. Joocs, 425 F. Supp. 874, 881 (Utah 1975) atfol or other grounds 425 U. S. 986 (1976). Indical Decause as the cantrel programy is probably more of a cross for a tenior fram for an adult, and because the abundance decision randot be postponed until her majority. There are few structured in which decision until her majority. There are few structured decision will have consequences so grave and indictable. Reliable X. Bared, sopra, 443 U. S. at 646 (1980); I. S. to both the adult and the innor woman state imposed burgers on the abutton, decision can be institled only upon a showing that the restrictions advance incompant state indexes:

[1] Rocky Wade argan, 440 U. S.

S. J. (10) Residues at Ast. From 200 J. S. 629 (1988). Physics B. A. G. (100) J. S. 629 (1988).
 Physical and Cartes Mission et al. Durb of Agr. Co. 8, 52–71 J. Co. (1979).
 S. J. H. G. A. Ham, Call Education 317 J. S. 483 (1981) General on 4400 (1914).

The provincial shockers of a company graph to the form of the constraints of graphs of the province form of the province of the form of t

Proceedings of a consequent and a two consequences are against a consequence of the process of the first tender \( \lambda \), as \$75, 115, protection as the sequence of the first tender \$75, 7, 100, 100, 5, as \$75, 115, a point of tenderation of the first tender to the first tender to the first tenderation of the first tenderation.

In our keys from the control of a factors abbreau against the above a control of many description of a control of the control

at 134° accord Physical Parentholog of Central Missoure's Proceedic, supply 128° U. S. at 61°. Before exacting the state interests asserted here we first consider 1 tank classes that its statute does not "impinged for a woman's decision to have an abortion" or "placed obstacles in the pairs of effectuating such a decision." Brust for Appelles 9°. Wether the respective whether the parental concernspance for the Utah statute supposes any leaders in the abortum decision.

The ideal of a supportive family so pervades our cultate that I may seem incongruous to examine "hurdens" imposed by a statistic requiring parental author of gomanic daughter's decision to terminate her pregnancy. This Court has long selected to the bonds which jum family members top nortual susticionec. See Paris C Speigly of Sofius, 268 U. S. 510. 530 535 (1925); May v. Anderson, 345 U. S. 528, 533 (1954). tetrocold v. Comovlant, 381 V. S. 479, 480 (1965); Study y Placas 105 U. S. 645, 651 (1972) Mass v. East Phys. brief 431 U.S. 454, 304-505 (1977). Powers, J. physikry : Especially in times of adversity, the relationships within a Entitly can offer the seen ity of constant enting and aid. See Moore to this Chairland, ed. 91 500, administration from Europe. an apportant decision will nationally well advice and support from her gazents, and they as turn will respond with comfort net wiscone, a fit the pregnant monor herself enotates in her taintly she planely relinquishes for right to accord felling or involving them. For a victor of that chromistance, the state story is parising too parec(a) notice basely unposes a binder

ya

Role of family

The Quadrate discongress that the provided rate to consequence of the energy of a problem of the displacement of the energy of

To Deduce a this dear however, the subject 1 on the expect of contract but who are not not the purely and not on again pattern and position to the Society of the Property (13.1) Supplying of Society of Property (13.1) Supplying of Society of Society (13.1) Supplying of Society (13.1) Supplying on the supplying of Society (13.1) Supply

#### H. L. & MATRISON

Regissionally Lowever many hamilies do not continue to tals bleak. Many nonors, like appellant, oppose parestal autics and seek instead to preserve the hardgmental, personal right to privary. It is for these remore that the percental sotification requirement creates a problem. In this context. involving the minor's parents against her wishes " effectively cancels her right to avoid disclosure of her personal choice. See Whalen v. Roe, supra, 429 U.S., at 599-600. Moreover, the absolute notice requirement publicizes her private consultation with her doctor and interjects additional parties in he very conference held confidential in Roe v. Wade, supra 10 U. S., at 164. Besides revealing a confidential decision. the parental active requirement may limit "access to the means of effectuating that decision." Corea v. Papalation Services International, 431, U. S. 678, 688 (1977). Many impos women will electrical interference fours then jarents after the state-imposed softdeation, to In addition to parental

Begs G to neter to "her mag ht

- we have never

Nothing accounts the physical motor erroringing the masses of a positive process and the native power stream as for every limit of the protection of the process of the process of the protection of the protectio

The property of the second three between two more beautiful than the second of the sec

The process is suffer a given to a systematic value of Kongay at Angaya at the Month Control Process College 477. It was profited from Month 197 to expect the two sets of some parents with process the two described and given the two described at the first of the two described and the first of the fir

disappointment and disapproval, the minor may confront physical or conclional alorse, withdrawal of linaucial support, or actual distriction of the glacetion decision. Furthermore, the threat of parental natice may cause some purso momen to delay part the first transster of programmy, after which the licaith risks increase significantly. Other programs

188 F. Supp. 181 (I.D. Lee Pesto). Percents also may oppose a name of some new to both Englished for Switz. 265 A 24 238 (Ma. 1977). Switzers 263 F. Faratrals eg. Unphased Percenthood. The Social Convergence of Tomograph Caldberring M. (1956). Josh A vering Ferrals and Cotton and Caldberring M. (1956). Josh A vering Ferrals and Cotton and Caldberring M. (1956). Joseph Switzer Change of March March Caldberring District Switzer Change of March March Caldberring District Annual Property of March March Caldberring District Annual Property of March March Caldberring District Annual Property of March M

Record & Carrier and e Hagel, Costa (Long Costa), a green Cartegral and a survival action of the value of a surface of the value of value of the val

A character of the desired the first transfer in pregnance. Oscillar to encourage the statement of the first transfer of the statement of the statement of the first transfer of

• Once within test at many a programmy extension of a result of the form of

Lorent Community Hamilt Control for a Children support 177 F. Support 518 calibration for manage pair term to diligat about a control than they prove notified a Socialise Karran Paker at Fromman The Lorent at Legitural About on the Markolay Resulting from Community Control (22) Annual (23) and General Blanco (13) and they are Lorent a to Laps when legal about a control than a flat in a great state of American Laps when legal about a control than a flat in a great state of American Laps (23) and they are Social (33) for App 334 1006 (14) 1128 (23) flat in the American American American American American American American American Products and Carran American Products and Lapsing American American American Products and Lapsing American American American Products and Lapsing American American American American Products and Lapsing American American American American American American American American Products and the Lapsing American Am

The other process of the control of parameters for more necessary of the control of the control of permeable states, the congent of the control of the contr

The constant computational products and cubic ship of a diameter to the description of Heavy v. McRee [18, 11, 8, 11, 8, 10, 10, 10, 10, 10]. The diameter of the constant of the content of the diameter of the constant of t

H. L. F. MATHESON

-child

of the minor woman's free choice." For the class of pregnant unions represented by appellant, this obstacle is so concons as to bur the desired identions." Sign ficantly the interference sanctioned by the statute does not operate in a neutral fashion. Because to notice is required for other pregnately related medical care, only the neutron women was wish to about encounter the blackin imposed by the natification statute. Because the Utah requirement of mandatory pretental voltes, unquestionably burdens the minor's private right, we must turn to the State's profferred justifications for the attempercents proved by the statute.

#### 111

As established by it is Court in Phonoid Proporthood of the state of the Massocial Chamberth super the state to cannot survive appellant's challenge unless it is justified by a Community State indicast 1.7. Further, the State noist demonstrate that the means it selected are closely indicated to serve that it.

So The C. Hardon, conserving Convendantly processing a personnel of a variative of the masses. Character Proportional Society of Personal of the Convendance of the C

<sup>&</sup>quot;See text computating it food on an 23-25, sopra

Adjustments program transformers of one and outsidenses figure. The and extremely the particle of an adjustment of the form of the particle of

The state of the

Where regulations burden the rights of pregnant adults, we have held that the state legitimately may be respreport with appotention of health, moderal standards, and prescatal late. 1. Rock, Wade supra 410 U.S., at 155. We concluded however, that during the first telemester of progtotact took of these interests sufficiently justifies state interteresce with the decising penelrel by the pregnant words and her physician, Roca, Barde, of at 162-163. Notether less. I tall asserts here that this parental notice registering ( advantes additional state interests not amplicated by a progthat adults the such to about. Specifically, Plah contains that the notice requirement improves the physician's medica. judgment about a pregnant minor in two ways: it permits the parents to seconds additional information to the physictain and if encourages consultating between the parents and the music vortice. Clab also advances an independent state interest to preserving parental rights and laintly autocomy We consider each of these asserted a ferests in time. "

Fr upbording the statute, the Utah Supreme Court cenrhesel that the notification provision might enrangage parettal transmission of radditional a formation, which might prove a valuable to the physician in exercising his thest coshcal suelga cut, ". Yet neither the Ptah Courts and the statute itself specifies the kind of information we templated for this purpose nor why it is available to the pairints but not to the minor woman herself. Most parents lack the medical expertise necessary to supplement the physician ;

Silly.

iii I. L. v. Matheson, No. 79-3003 (Dec. 6, 1979), App. 51.

The state interests in enforcing its criminal laws against statuta than, adultery, and nievest. Hrief for Appeller 28-30. The not asserted below, and are too tennous to be considered. "If L. v. Matheson, No. 79-3003 (Dec. 6, 1970), Appeller Line of the considered below to be a second to be considered below. The constant of the the con

is E. g., Roe v. Wode, supra, 410 U. S., at 155; Griswold v. Conns.

If Utah also argues that the notice requirement furthers a leg state interests in enforcing its criminal laws against statutory rupe, I'tion, adultery, and meest. Brief for Appellee 28-30. These interes not asserted below, and are too tennous to be considered seriously seriously

H. L. v. MATHESON

mental maturity

medical judgment, and at best could provide facts about the patient's medical history. It seems doubtful that a minor mature enough to become pregnant and to seek medical advice on her own initiative would be unable or unwilling to provide her physician with information crucial to the abortion decision. In addition, by law the physician already is obligated to obtain all information necessary to form his best medical judgment,36 and nothing bars consultation with the parents should the physician find it necessary.

Even if mandatory parental notice serves a substantial state purpose in this regard, the Utah statute fails to implement it. Simply put, the statute on its face does not require

or even encourage the transfer of information; it does not

<sup>36</sup> Section 76-7-304 (1) requires the physician to "[c]onsider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, emotional and psychological health and safety,

"(b) Her age,

"(c) Her familial situation."

Violations of this requirement are punishable by a year imprisonment and \$1,000 line. Utah Code Ann. §§ 76-3-204 (1), 76-3-301 (3), 76-7-314 (3). Criminal sanctions also apply if the physician neglects to obtain the minor's informed written consent, and such consent can be secured only after the physician has notified the patient:

"(a) Of the names and addresses of two licensed adoption agencies in the state of Utah and the services that can be performed by those agencies, and nonagency adoption may be legally arranged; and

"(b) Of the details of development of unborn children and abortion procodures, including any foreseeable complications, risks, and the nature of the post-operative recuperation period; and

"(c) Of any other factors he deems relevant to a voluntary and informed consent." Utali Code Ann. § 76-7-305 (2).

The risk of malpractice suits also casures that the physician will acquire whatever information be finds necessary before performing the abortion, See Utah Code Ann. § 78-14-5.

Moreover, "[1]f 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 rymedies." Doe v. Botton, supra, 410 U.S., at 199.

In theory

even call for a conversation between the physician and the pairitts. A letter from the physician to the parents would satisfy the statute, as would a finier telephone call made maments before the abortion," Moreover, the statute is patently underinclusive if its aim is the transfer of a toronstion known to the parents but insignifiable from the rethor women littsell. The statute specifically excludes anarchel makings from the parental aimice requirement; may be bashand used he told of the planned abortain. Ugh Code Ann. § 76, 7 (904)(2) and Utab wakes no claim that he possesses as a information valuable to the physicians judgment but hoavarlable from the pregignit woman. Furthermore, no notice is required for other pregnancy-related care sought by the numer. See Utah Code Ann. §78 14 5 14 off sacs thorizing woman of any age to consent to pregnately-related medical extens. The infrior winder may consent to surgical removal and analysis of minious fluid caosasian del very as d other madical care related to pregoancy. The physiciae's decisions concerning such procedures would be onlined by parental information as much as would the aborting decision yet only the sometime decision traggers the parental notice requestions. This result is especially anomalous given the comparatively lessor health risks associated with abortion as contrasted with other pregnancy-related medical corr-This the statute not only fails to ammute the transfer of Estormation as is claimed. It does not apply to other closely (elacted contexts in which such exchange of information would tal nat less important. The goal of proceeding consultation between the physician modition parents of the program of more rannot sustain a statute that is so all fitted to serve it

The proper canadal for much containing notice. To or Orio Aug 18 10 29 48

tali i 🎜 sega A

More to subdiving the row which defects to the observations and given for and decision of an emission production general transfers optopolated (17) of DA ANA Develope frame Standards Promet Standards Brazilia Co

Check ther

#### If It is MATRISON

#### Ŀ

The State also claims the statute serves the legitimate purpose of unproving the minor's decision by encouraging on sultation between the minor woman gueller parents. The State does not dispute that it cannot legally or practically remain such consultation." Not does the State contest the fact that the decision is ultimately the minor's to make. So Utah Code Ann. \$78-14-514000. Nametheless, the state seeks through the notice requirement to give parents the opportunity to contribute to the minor woman's abortion decision.

bically, facilitation of supportive conversation would assist to pregnant minur darrig an indoubtedly difficult expensions. Again, however when measured against the cotoughty of the means engloyed the Utah statute simply mis to advance this asserted goal. The statute imposes no requirement that the course of sufficiently timely to period any liseussion between the pregnant minor and the parents. Moreover, appellant's claims require as to examine the statute's purpose to relation to the provide who the minor befores are likely to respond with hostility or opposition. In this light the statute is plannly overlanded. Pariotal consultations

Bigin of Miners \$\$.4 %, 4 % describing and a management of pergences, a fixed model of the percent of the perce

If I is a Uniform New 2028 (11), to 1000 to 1000 to 100 to

H. J. A. Markesser, and Arap. 56. If a the opportunity of loss of the state of the experience of the first of the decision to temporal Lip (1922), and a first of the experience 
111

hardly stems a legitimate state purpose where the moon's pregnancy resulted from incest, where a finistic or almsive parental response is assured on even where the negor's fears. of some a response deter her from the abortion she desires The absolute nature of the statutory requirement watereseviction permitted only if the parents are physically may alable. Violates the requirement that regulations in this to damentally personal area be carefully tailored to serve a sigtitlicated state interest. "The rend to preserve the consti-Introval right and the unique nature of the abortion decision especially when rade by a caron regard a State to act with parties as seasonity when it legislates to faster parental Colvenient in plus matter," Belieff, C. Borof, supra, 443. [4] S. at 642 (Proyent, 1.) Because Utali's absolute corner requirement demonstrates no such sensitivity, we can of apprior its interference with the name's private cars dighorwith the physician during the first tenerates of her pregnance,

How could trequire

ċ

Figurity the state asserts an enterest in protecting parental buthoutly and faturity integrity. This Court of course, least recognized that the "primary role of the parents in the up-bringing of their studies is now established Seyand defacts."

A. State of stream of a modern service of the countries of could present the number of corresponding present the number of corresponding present the design of the first extended over the design of the corresponding to the corresponding t

A. His content. Photograph of the result in the structure. Some ways the structure of a Stable fraction argument before the Chap. The configuration for the Chap of the configuration of the Office of the Lands of the form of the configuration of the Lands of the Chap of the Lands of the Chap 
as an evoluting American tradition," Wescowin v. Vector 400 U. S. 205, 232 (1972). See Prime v. Massachusetts, 321 U. S. 158 (1944); Meyer v. Nebrushu (262 U. S. 381 (1923)) Indeed, "those who metric (the clob) and direct his destacy have the right coupled with the high daty, to recognize and prepare can for additional abbigations," Prime v. Security of Selets, sapra, 268 U. S. at 535 (1924). Similarly, on decisions "Gave respected the provide realm of fair dy line which the state course enter," Primer v. Mussichusetts supra, 322 U. S. at 466. See also Moore v. East Cherchool supra 431 U. S. at 466.

The critical threshot these discussions have been to protect the privary of individual families from unwarranted state intersion of I tale mescally invokes these decisions it seeks ing to easily state interference in the correct familiarithming of the family. Through its notice requirement, the State in incidenters the private realm of the family rather than leaving smallered the pattern of interactions chosen by the family Whatever its motive state intervention is basely likely to resture of parental authority that the patents themselves an incide to preserve. In rejecting a statute permitting gaste and veto at the union woman's also fundecision of Physical Sci. Sci. We found a difficult to conclude that

Corovelling a prince t with absolute power to inveringle a determination made by the physicial and his major

J. P. J. Golden, K. John, 382 F. PM, A. 1983, Phys. Nath. J. A. Mphyllon, 212 of Physics V. Londonson, pp. Science, Action 1994, 1994, 364 (1997).
 College J. 166, 1210, 1221 (1977).

meredeble

<sup>(</sup>ii) The Construct the name of some progression and single on respect, on their confidence is a second control of the process with a subject of the School of control of the process of the control of

#### II, L. J. MATEUSON

patient to terminate the patient's pregnancy will serve to strengthen the family unit. Neither is it tokely that such veto power will enhance parental authority or control where the numer and this nonconsenting parent are so fundame, tally in conflict and the very existence of the pregnatary already has featured the family structure.

More recently, in Belletti v. Band, supra, 443 U. S., at 638, Justice Powers, observed that efforts to gaide the social and moral development of young people are 'in large part's . . . is yould the competence of unpersocal political institutions.

Utab maintains Inoveyer that its statute through sales guar Is a reserved right which parents have to know at the modelant activities of Preincipleton by attempting to prevent a doubt of the parental rapids through disciption Bi of for Appeller 3. Casting its purpose this way likes not salvage the statute. For when the threat to parental a thority originates not from the State but from the minute child, invocation of "reserved" rights of parents cannot sutan: Japoket state intrasjon into family life such as that mandated by the Probestatijte. Such a result not only thus resinter to the prevate lumnin of the family which the State new not beauty it also conflicts with the burits traditionally placed or page tak authority. Parental authority is given glosoligie, and bas been denied legal protection when its eye;rise timeaters the health or safety of the namer children E. g. Primer v. Mossochusetts, supro, 321 U. S. at 169 170. Indeed degal protection for parental rights is frequently tempered if not replaced by concern for the rhold's extracts (



<sup>(</sup>i) Design of Court v. Through Limits content this Court high that were protected and the first New Mater knows adding burned by the South State and the Court of South State and S

Whatever its importance elsewhere patential surfacility disserves de minimus legal reinforcement where the minures exercise of a tradition tallinght is idialected.

We meet not however, decide whether patential rights never deserve legal protection when their assertion conflicts with the minor's rights and interests." We conclude that this statute round has defended as a more reinforcement of existing parental rights, for the statute reaches beyond the legal limits of those rights. The scatter applies without exception by emancipated minors," mature minors," and minors

1) (a) (b) S. (b) S. (b) H. (b) S. (b) S. (b) denoted by a both The Roman and Provent Annual Provents (Theory Persons) and the State Provide and State Provides Annual Provides Annual Provides Sci. 7, 72 (1976).

The contexts in a Cache this room arrangement for extract states as a second of the Appellular process prompt decreasing the large value of the Science of the Appellular process prompt decreasing the large value of the common compact at the large value of the run of the decreasing decrease of a possible to the run of the great antespects. Heavy, the common large in the context of the context to the antespects of the second of the context to a large value of the context to a large value of the context of the con

The resulting freeze in a similar and a substant programs of the contract of the substant of the substant of the contract of the substant of t

All of States through their legislaters or controll we compute the consensual appropriate to a manufacture of the property of the control of

Low as from the part

True

٦.

### H. L. & MATHISON

with emergency health care needs full of whom, as Utah preognizes, by law have long been entitled to medical care queneziahered by parental divolvement. To this area, this

\$52 respondible for a principle propried to go in softening value. 3.4-3. The Code Anal § 15.2. I terminet patternity on norm (201) Classical (80) Very 275-250, P. J. (201-1985). Common Account from book labance, achiepotskim by Supermelly with supporting, but who more diso come garonal accidence. See K. O. Schroeber A. Belmer. Car. Cop. C. by the rChitagor - Compagnet Logal Age on Amondo Chitago D. Ag. 212-215. (1972). Second States by autitionerous circuloperior for a specific acts pasa see his collegeng quotical care within the first the consent of security Control of the Characteristic April 2009 of the Particle of an orange of a may consider the programmer in larger and heat a decided (1911) the containing 3.75 19 No. Carrier Control Conference Annual Section 2004, Communication of the congard I gorgan top coast Alberta, New York State at 1147 (Alberta) nor form general for a Li wars old more or at September 10 minute. or drug description to See Pirel Misors, Rights to Making Core 25 Object 1: the 462 (1972) is second States provide Section of the conthe adjust the course in principle for all Key Bare. State April § 218 (85) 23 (1977). In Pedicialmore who be one parents are softened in Coss attended and American Springer (Opping). I thank side America's 19-19 77. See Jones Co. Color, v. Departs J. J. M. W. R. Co., 150 May 550. 15: 157 (80 N. N. 8) 67 (67) 65; (80) C. Pester I. R. C. Ricce, No. i. 89.0078, a [Vi. 8], [980). TPC for Loss hoory rating amount of Song Appear of purpoper dead that not a Goldstein, Modern Clift, 50, 50, 50 Classic Back So Yale Latter 15, 633 (1977), encommanding objective group to exoperate law to all transmitted of engaging and fit

Profits in a constraint in the destrict mentals of children on a first standard distance of the respective property and a constraint of the respective profits of the second standard distance of the second standard distance of the destruction of the second standard distance of the second distance

The Month is on the Chemicality of the report many increases:

(The Problem Service of Pro-

Court must long the state courts and logislatures which have acknowledged the undoubted social reality; some initial's is some rice austances, have the espacity to determine their health care needs without involving their parents. As we recognized in Planeral Parenthood of Central Messeure's Bandooth, supra, 428 U.S., at 75, "Any independent interest the parent may have in the termination of the moon daughter's pregramey is an more weighty than the right of privacy of the component minor mature enough to have become pregrant." I that itself has allocated pregnancy.

coron programs. It talls itself has allocated programsyscorresponding to the coronaction of a surface and coronaction of the surface of the coronaction of the surface of

or  $Q_{ij} = f_{ij} = 0.050$  (e.g., i = 1.056 p. i = 1.050 No. i, j = 1.050 No. i, j = 1.050 under Average Power as reasoning in Heriodic. The instant statute is unconstitutional. Not only does it preclude chose i, j = 0.050 no. i, j = 0.050 no. i, j = 0.050 in the minor, it also prevents individualized so the School of School of the Instant of the colors.

For a Rev. Rev. Sam. €211185 and (120%). With Code Man. § 20 (18 m) + 1 (1. 38 m) 98.7 (1079). The residence in eigenstate the relationship three sources are the relationship three souths process. For the relation 10 (19 m) 10 (20 
As any realistic attention observed to a more expression type of a conmodern and a neighborhoods that decision to be expression at the Trul

. :5

Vine 1

where the physician has cause to doubt the remore actual ability to understand and consent, by his he must pursuate the requisites of the State's paterate interest in adding to Pursulence or unit layer a legitimate interest in adding to Pursulence or unit latery parental nature of the minor's about on decision. This conclusion does not affect parents traditional responsibility to guide their children's development, especially in personal and moral concerns. We are persuaded that the Utah notice requirement is not necessary to assure parents this traditional child-rearing role, and that it burdens the minor's fundamental right to choose whether or not to terminally her pregnancy.

W

The reallerged statiste intringes upon the constitutional tight to privacy attached to a mean winning derision whether to complete or terminate her packagory. None of the reasons offered by the State justifies this intrusion, for the statute is not tailored to serve them. Rather than serving to containe the physician's judgment in case such as appellant's the statute prevents resplanmentation of the physician's medical recommendation. Rather than promoting the transfer of information held by parents to the amounts posterior. The statute neglects to require anything more than a communication from the physician mannerly before tin also

and is then tesperatible an inflation with professional asset for the Lie of Fair problem, is a see factor in that cannugh to assistant to be award and the real Historian tests of an Historian tests of the Lie of the Historian tests of the Manuscript Matter than Matter the Modern tests of Alone and Matter than Matter than Modern the Modern than Matter than the Modern Matter than the Modern than Matter than the Modern tests of the Modern tests

All than Code Ages \$78,14 5 (conf).

<sup>[1]</sup> C. Calegoria, Ann. S. W. C. 2005, responses various rays and partonness on their section 18, 1867, pp. 487–1976.

<sup>0</sup> . Here, it Course reprint  $582 \pm 97$  at 1388.

## DOMESTICAL

# H. L. & MATRISON

tion. Bather than respecting the private realized fairoly lifetive station is vokes the criminal machinery of the State in an attempt to influence the programms within the family. Accordingly we reverse the judgment of the Supreme Court of Tath insolar as it upheld the statute against constitutional attack, and remaind for further proceedings not inconsistent with this option.

Herrison

Supreme Court of the United States Washington, B. C. 20549

Revewed humidly, The C.J. maker an appealing argument for pasculal

Contract to the YOU, CONTINUES ON November 17, 1980

right that TA'S openin

Mr. Justice Stewart langely igueser. MEMORANDUM TO:

Mr. Justice White But ( & does not Mr. Justice Powell

Mr. Justice Rebuguist Come to grifer with

Mr. Justice Stevens the limitations of

HO: NO. 79-5903, H.L. V. MATHESON premarine on-

what we seem and

free to decide - 4.9.

Before undertaking to draft an "opinion", Ree, either by way of dissent or otherwise. I have Danforth. concluded to expose my views on this case by & Bellette I memorandum to those who appear not ready to join the proposed opinion reversing the Utah Supreme Not days ( ) Court. If the general thrust of these views is focus only acceptable. I will proceed to develop thom in an opinion.

At the outset, it is important to set on! facial or just what this case involves. First, it deals with the traditional authority of states to makera regulate tamily relationships -- a power reserved difference, to the states, not delegated to federal authority -- judicial or otherwise. Second, it deals with the equally traditional and constitutionally protected authority -- that of the parents is relation to their children -- rights not delegated by the parents to any governmental authority -federal, state, or local. The Court has

repeatedly made this point over the years, .as I will undertake to demonstrate.

Of course, these rights are not absolute: under some discumstances, for example, under the parens patriae power, minor children may be comoved (com parental control and custody: they may be compelled to attend school. But the discussion in the proposed opinion of "parental authority and family integrity" [pp. 17-23] casts aside centuries of human experience with human values. From dubious premises concerning the role of the family and parents in our society, the proposed opinion leaps to an unsupportable conclusion that simply giving notice to parents violates a mimor's privacy. This seems to me a new and wholly unwarranted invasion of the family unit and an unwarranted extension of the "rights" of minors, if that is a correct characterization.

The proposed opinion them sets up a series of straw men and proceeds to conclusions once the straw figures are rendered prostrate. For example, much is made of the failure of the statute to exempt "omancipated minors, mature minors, and minors with emergency health care needs." [pp. 20-21.] Yet the Dtah courts -- if given a chance -- could, and likely would,

construe the statute to mean that notice need not be given in such cases. Clearly a married minor girl is emancipated. The Utah statute calls for no more than notice "if possible". In relation to medical treatment, the common law has long recognized exceptions for medical treatment in emergencies as it has for emancipated minors.

We have never said -- or even hinted -- that every step that promotes abortions is desirable or that every step that may tend to deter some abortions is per se evil. Under our cases, the Utah statute should be sustained if it can be seen as a rational means to serve any "significant state interest". Proposed opinion at 12;

The Utah statute manifestly serves at least two compelling state interests -- (1) the constitutionally protected right of family privacy and family unity and (2) the important state interest in protecting the health and well-being of minor girls by seeking to provide that abortions are based only upon the best informed medical judgments.

Concurring in Canforth, 428 U.S. at 91, Potter appears to have anticipated the question now presented:

There can be little doubt that the State furthers a constitutionally permiss; ble 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 enotional stress, may be illequipped 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.

so true

To similar effect, concurring in Carey,

Lewis wrote:

Under our prior cases, the States have broad latitude to legislate with

Potter went on to describe in detail the assembly-line mode of operation of such a clinic:

"The counseling \*\*\* occurs entirely on the day the abortion is to be performed \*\*\*. It lasts for two hours and takes place in groups that include both minors and adults who are strangers to one another \*\*\*. The physician takes no part in this counseling process \*\*\*. Counseling is typically limited to a description of abortion procedures, possible complications, and birth control techniques \*\*\*.

"The abortion itself takes five to seven minutes
\*\*\*. The physician has no prior contact with the
minor, and on the days that abortions are being
performed at the jellnic), the physician, \*\*\* may be
performing abortions on many other adults and minors
\*\*\*. On busy days patients are scheduled in separate
groups, consisting usually of five patients \*\*\*.
After the abortion [the physician] spends a brief
period with the minor and others in the group in the
recovery room \*\*\*."

428 U.S. at 91-92m.2, quoting from the record in Bellotti II.

respect to adolescents. The principle, is well settled that "a State may permissibly determine that, at least in some precisely delineated areas, a child ... is not possessed of that full capacity for individual choice" which is essential to the exercise of various constitutionally protected interests. Ginsburg v. New York, 390 U.S. 629, 649-650 (1968) (STEWART, J., conducting in result). This principle is the premise of our prior decisions ... holding that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults." Prince v. Massachusetts, 321 U.S. 158, 170 (1944). Restraints on the freedom of minors may be justified "even though comparable restraints on adults would be constitutionally impermissible." Planned Parenthood of Central Missouri v. Danforth, [428 U.S.] at 102 (STEVENS, J., concurring in part and dissenting in part].

431 U.S. at 705-706.

In a similar vein, later in the opinion, Lewis said:

Requiring minors to seek parental guidance would be consistent with our prior cases. \* \* \*

A requirement of prior parental consultation is merely one illustration of permissible regulation in this area.

43) U.S. at 709-10, emphasis supplied.

The proposed opinion relies on <u>Doe v. Bolton</u>, 410 U.S. 179 (1973). [pp. 5-6.] However, in a crucial part of the Doe opinion, we emphasized that medical decisions take into account physical and emotional factors as well as the patient's

age: "This allows the attending physician the room he needs to make his best medical judgment [about whether am abortion is medically indicated]." 410 U.S. at 192. In applying this concept to a particular case, it is not the business of judges to act on an assumption either that the parents will be hostile to the idea of an abortion or that they will be sympathetic and understanding. Some parents may be anxious to approve an abortion, some opposed; others may be indifferent and uncaring. Legislatures, however, act on the generality of human experience.

If anything has been made clear in our opinions dealing with sensitive familial problems, it is that parents are presumed to act in the best interests of their minor children. This was the essence of our holding in Parham v. J.R., 442 U.S. 584, 602 (1979). That parents do so act is not an irrebuttable presumption, but it is the starting point: the presumption is valid until rebutted, Id. at 602-03, and there is nothing in this record to rebut it. That presumption is an adequate basis for legislative enactments. See McGowan v. Maryland, 366 U.S. 420, 425-28 (1961).

The proposed opinion treats that long accepted presumption as per so bad. To reject the

ancient presumption, the proposed opinion offers no evidence at all, unless we are to say that a 10-, 12- or 15-year-old immarried, dependent, pregnant girl's reluctance to let her parents know of her predicament is enough to rebut the presumption. Of course, no court would dare go so far. The shibboleth that an unmarried girl old enough to get pregnant is old enough to make a decision on abortion uncounseled by parents [pp. 14,22] is not a harrier to Utah's notice statute.

Much is made of the value of doctors' and social workers' counsel in the decision whether to have the abortion. Counseling is doubtless desirable, but to exclude even minimal notice to the girl's parents is to use the Constitution to reject centuries of tradition and accepted practice. The whole of our social structure and the concepts of family unity rest on this fabric, and courts have celied on it for centuries.

The proposed opinion seems to proceed on an unspeken assumption — unsupported by a scintilla of evidence — that giving notice to the parents is equivalent to giving them a veto power. The two ideas are not the same. Such notice to the parents may, in some situations, exeate an opportunity for them to compact their child, but

this can hardly be thought an evil to be shunned when the counsel of doctors and social workers is applicated by the Court.

Surely one of the important purposes of the Legislature in requiring this minimal notice was to afford the opportunity for the doctor to learn of the factors thought by this Court in <u>poc</u> to be relevant to the medical decision in order "that the medical judgment may be exercised in the light of all factors - physical, emotional, psychological, familial." 410 U.S. at 192. In the generality of experience, who is more likely than the parents to provide this information?

Now, abandoning the carefully worked out concepts of <u>Doe</u>, the proposed opinion casts them to the wind to sustain a cush to judgment by a dependent, unmarried, and very likely, a distraught 15-year-old girl caught in a tragic web which would readily render a mature unmarried woman distraught.

The [abric of a society at its peak strongth is [ragile. Even at its peak it can be no stronger than the collective endurance of not just the individuals, but of the family unit and structure. Anything that weakens the family, weakens the whole society. As Bill Brennun noted

in Ginsburg, 390 U.S. at 639, "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." The proposed opinion threatens the cohesiveness and unity of the family and, therefore, the strength of the society.

The Legislature of Utah gave expression to its concern for family integrity in its notice statute. However much the statute might be improved by judges with the benefit of hindsight, it articulates what has been accepted as a matter of state law since the beginning of the Republic and before that in England and the Colonies: family law is the province of the States. It bears repeating that regulation of domestic relations was clearly not one of the powers delegated to the Federal Government or any of its branches. In exercise of their reserved powers, the states for nearly two centuries have defined what constitutes a minor child. They have also defined emancipation of minors by state common law or statutes, and they have defined the criteria for contractual liability for "necessaries", and for child custody, divorce, adoption, and

guardianships.

Counsel for appellant, at trial and in this Court, has made much of the crucial need for compseling of minor girls in this dilemma by social workers and doctors. More likely than not, such counselors would be strangers to the pregnant girl. The doctor, of course, unlike the public social worker, has a financial interest in the decision he advocates. Far from discounting the value of such counseling, I repeat that it is of the utmost importance. But to give controlling weight to the analysis of a distraught 10- 12- 14or 16 year old pregnant unmarried girl in deciding whether to notify her parents and to hold by implication that she does not need their help is to jettison conturies of human experience and values of Western civilization.

I can readily assume that a minor girl in this tragic predicament is likely to cringe from informing her parents, no matter whether they are model parents or otherwise. The very emotional state of the girl could well render her incapable of predicting accurately whether they will be enderstanding and supportive or hostile, indifferent, or uncaring. But courts should not abandon the presumption that parents, once over

an initial shock, are more likely to give support than to deny it or to seek to prevent the

Yet, speculating in areas where we have neither authority nor competence, the proposed opinion tells us that the <u>Constitution</u> forbids a state to provide that even minimal notice is to be given. This surely trivializes and demeans the Constitution.

Apart from the Court's opinions in Parham, Pierce, and Meyer, there are numerous expressions relevant to our decision. 2 In his concurring opinion in Parham, Potter emphasized the parental role:

For centuries it has been a canon of the common law that parents speak for their minor children. So deeply embedded in our traditions is this principle of law that the Constitution itself may compel a State to respect it. Reyer v. Nebraska, 262 U.S. 390; Pierce v.

<sup>&</sup>lt;sup>2</sup> In two cases to be argued later in this term, we will consider the constitutionality of state action in conflict with these rights. Doe v. Delaware, No. 79-5932 (cert. granted, March 24, 1980; Johnson v. J.O.L. II, No. 80-45 (cert. granted, Oct. 6, 1980). The right of parents to rear their children is enshrined in the Fourteenth Amendment. A principal purpose of the Thirteenth and Fourteenth Amendments was to prohibit interference with "parental relation, robbing the offspring of the care and attention of his parents". See sources cited in footnote at page 19 of AUL amicus brief.

Society of Sisters, 268 U.S. 5:0. In ironic contrast, the District Court in this case has said that the Constitution in this case requires the State ... to disregard this established principle. I cannot agree.

442 U.S. at 621 (emphasis in original).

Parham was concerned with the authority of parents to hospitalize a distorbed minor child for medical diagnosis and therapy. Relying on the presumption that parents act in the best interests of their children, we concluded that an adversary type hearing to test the correctness of the initial step to hospitalize the child was not required to reexamine the parental decision to hospitalize the child. Concurring, Potter wrote:

[T]he hasic question in this case is whether the Constitution requires Georgia to ignore basic principles so long accepted by our society. For only if the State in this setting is constitutionally compelled always to intervene between parent and child can there be any question as to the constitutionally required extent of that intervention. I believe this basic question must be answered in the negative.

442 U.S. at 623.

Earlier, Thurgood had articulated similar concepts in Quilloin v. Walcott, 434 U.S. 246 (1978):

We have recognized on numerous occasions that the relationship between

.. .

parent and child is constitutionally protected. See, e.g., Wisconsin v.
Yoder, 406 U.S. 205, 231-233 (1972); Stanley v. Illinois, (405 U.S. 645 (1972)]; Meyer v. Nebraska, 262 U.S. 390, 399-401 (1923). "It 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. Masssachusetts, 321 U.S. 158, 166 (1944). And it is now firmly established that "freedom of personal choice in matters of ... family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Cleveland Board of Education v. La Fleur, 414 U.S. 632, 639-640 (1974). 434 U.S. at 255.

marshall?"

On the purely medical and psychiatric aspects of this case, important considerations are implicated. The statute promotes sound medical judgment in three ways: by facilitating the obtaining of data pertaining to a minor patient; by permitting the parents to suggest consultation with a family physician familiar with the minor; by making it possible for parents to protect their children against overreaching by zealous abortion clinics.

This does no more than recognize what the medical profession has long recognized in terms of the physician's need for the maximum information concerning a patient as a predicate for medical

treatment. Indeed one of the reasons for the physician-patient privilege is to encourage maximum disclosure to the physician. Parham underscored the need for the fullest cooperation between parents and the physicians treating a minor child. Both the State and its amici in this case have pointed to voluminous empirical data relating to the traumatic emotional, psychological, and medical consequences of an abortion, and particularly to the impact of an abortion performed on a minor child. In most instances a girl in the 10-17 age range has need of parental help in the days following an abortion, and their awareness could well serve to foster family unity and give emotional support to the girl.

The Legislature could reasonably believe that notice to the parents is essential to provide regulation to control unethical medical practitioners<sup>3</sup> and those providing inadequate

<sup>3</sup> The statute may well be superfluous in the case of an ethical medical practitioner. Such a practitioner will either insist on notice to the parents or require the consent of a guardian ad litem in every case simply for the physician's protection if for no other reason. A physician performing an abortion on an unmarried girl under age 17 may be confronted with a damage claim later by or on behalf of the girl, claiming a battery due to the absence of a

facilities and services. Central to the problem addressed by the State is that a minor girl under great emotional stress must often deal with the operators of an abortion clinic. Such a clinic, even if medically scrupulous, has an obvious conflict of interest that calls for independent counseling. To advance that interest, the Legislature could reasonably believe that parental notification is a proper first step. See Carey, 431 U.S. at 710 (Powell, J., concurring).4 A requirement of parental notification "if possible" clearly serves the state's interest in assuring that the potentially devastating experience and the irreversible consequences of an abortion occur only upon exercise of the "best judgment" of a qualified physician using the traditional sources to secure the most complete medical history available. We can hardly assume that parental

legally binding consent or the absence of an informed consent, notwithstanding the statute, which may be a fragile protection in a malpractice or battery suit.

<sup>4</sup> The proposed opinion suggests that the absence of a detailed description in the statute of the information parents may provide to physicians, or of a mandatory delay period, somehow undermines the constitutionality of the statute. [pp. 13-15,16.] That notion finds no support in our decisions.

support in the days preceding and following the abortion is undesirable as a purely medical matter.

In an effort to carry across some sort of equal protection theory, the proposed upinion would attach significance to the fact that Otah allows minors to obtain childbirth delivery without notice to the parents. Pp. 12,15. The state's inferests in that situation, however, are vastly different. The reason this case is before us is procisely that the parents are ordinarily to be notified about their child's decision whether or not to carry the unborn child to term. If the pregnant girl does elect to carry the child to term, the medical decisions to be made in themselves entail few, if any, of the emotional and psychological consequences of the abortion decision. Moreover, Nature, not physicians, fixes the time of delivery.

In our Roe, Doe, Danforth, and Bellotti II decisions, we focused on the rights of the pregnant woman or girl. We recognized, however, that these rights are not absolute and that they do not justify complete disregard of either traditional or constitutional rights of others.

E.g., Bellotti II, 443 U.S. at 634-39 (Powell,

J.); Roe, 410 U.S. at 153; see also Danforth, 428 U.S. at 79-81; Doe, 410 U.S. at 208 (Burger, C.J., concurring).

Nowhere is this more clear than in the area of abortions for minors. See Bellotti II, 443 U.S. at 637-39 (Powell, J.). The reason is self-evident: absent record evidence to the contrary, protection of family privacy and the historic rights of parents is itself an essential vehicle to protection of the rights and best interests of minors.

emancipated by marriage or otherwise. The record is totally silent as to her maturity or lack of maturity, silent as to her relations with her parents, 5 silent as to whether the doctor or social worker thought that giving the statutory notice was against the minor's interest. We have no more than the naked assertion of a 15-year-old that in her judgment it was not in her interest to notify the parents. 6 On this record it is

<sup>5</sup> There is no record support for the "surmise" at page 9,n.24, of the proposed opinion that "appellant expects family conflict over the abortion decision."

<sup>6</sup> Indeed, the premise in the proposed opinion that appellant's physician "advised her that he believed that an abortion would be in her best medical

inconceivable that the Constitution can be read to forbid a state to require that a physician contemplating an abortion on a minor unmarried girl must give some minimal notice.

For the foregoing reasons, I would affirm.

I expect to write along these lines. Obviously if

I write a dissent for myself, as this memo is

cast, the approach will not be the same as

writing a Court or plurality opinion affirming.

An opinion could be considerably shorter than this
exposition.

Regards,

interest" [pp. 2, 20n.47] and the conclusion that the Utah statute "prevents implementation of the physician's medical recommendation" [p.23] are totally unsupported by the record. The factual premise is not even alleged in appellant's complaint.

## Supreme Court of the United States Washington, D. C. 20543

CHAMBERS OF THE CHIEF JUSTICE

November 18, 1980

Re: No. 79-5903, H.L. v. MATHESON

Dear John:

I welcome your comments. My purpose in sending the memorandum of November 17, was to probe for a common denominator that might possibly grow into a narrow opinion. I am for making it narrow.

Regards,

Justice Stevens

cc: Justice Stewart
Justice White
Justice Powell
Justice Rehnquist

## Bupreme Court of the Enited States Mushington, D. C. 24:343



gas some Line of the American Street Man

November 18, 1980

Re: <u>79</u>-5903 - μ.L. γ. Μαξλοροή

pear Chief:

Thank you for sharing your preliminary memorandum with me. One can never be sure until a memorandum is converted into an opinion, but I am presently inclined to believe that I do not agree with a good deal of what you have written. My view is that the state's interest in protecting young people (rom harm justifies the parental notice requirement. I would say little more than I said in my separate opinion in Danforth, 428 U.S., at 102, 105.

Respectfully,

The Chief Justice

oc: Justice Stowart Justice White Justice Powell Justice Rehaduist

Supreme Court of the United States Mashington, D. C. 20549 CHARLIN OF PRAME OF MEDITION EDITINGS Governor 19, 1980 Ret No. 79-5903, M.L. V. Matheson Ocar Chief, My views closely parallel those expressed by lewis in his letter to you of today. Sincerely yours,

The Enjoy Dustice

Copies to Bustice White Justice Powell Justice Robinquist Justice Stevens

Soureme Court of the United States Washington, B. C. 20543 CHAMBERS OF JUSTICE LEWIS F. POWELL, JR. November 19, 1980 No. 79-5903 H. L. v. Matheson Dear Chief: This refers to your memorandum of November 17 in which you sketch out a draft opinion in this case, and ask whether it is generally acceptable. As you know, Potter and I voted to reverse. of us, however, has advised Thurgood that we cannot join his opinion. See my letter to him of November 12. You have written a strong memorandum. Although I agree with a good deal of what you say, I am not sure that portions of it can be harmonized with our precedents. any event, I could not join you because - as I read the memorandum - you would sustain a statute that required notice to the parents, but provided no independent decision maker to whom a minor could have recourse if she thinks she is mature or that notification would not be in her best interests. Thus, if the pregnant minor in this case (petitioner) had shown that she was mature enough to be emancipated or even that notification of her parents would be detrimental to her best interests, I would hold the Utah statute invalid as applied to such a minor because of the absence of any independent decision maker to whom she could turn. In this case, however, as you point out, the record is silent as to petitioner's maturity and as to whether notification would be adverse to her best interest. You correctly state that we have "no more than the naked assertion of a 15-year-old that in her judgment it was not

November 19, 1980 No. 79-5903 H. L. v. Matheson Dear Chief: This refers to your memorandum of November 17 in which you sketch out a draft opinion in this case, and ask whether it is generally acceptable. As you know, Potter and I voted to reverse. of us, however, has advised Thurgood that we cannot join his opinion. See my letter to him of November 12. You have written a strong memorandum. Although I agree with a good deal of what you say, I am not sure that portions of it can be harmonized with our precedents. In any event, I could not join you because - as I read the memorandum - you would sustain a statute that required notice to the parents, but provided no independent decision maker to whom a minor could have recourse if she thinks she is mature or that notification would not be in her best interests. Thus, if the pregnant minor in this case (petitioner) had shown that she was mature enough to be emancipated or even that notification of her parents would be detrimental to her best interests, I would hold the Utah statute invalid as applied to such a minor because of the absence of any independent decision maker to whom she could turn. In this case, however, as you point out, the record is silent as to petitioner's maturity and as to whether notification would be adverse to her best interest. You correctly state that we have "no more than the naked assertion of a 15-year-old that in her judgment it was not

## Styreme Court of the United States Washington, D. C. 20543

JSTICE BIRON IN WINTE

November 24, 1980



### Re: No. 79-5903; H. L. v. Matheson

Dear Chief,

I could join major parts of your circulating memorandum if converted to an opinion, whether majority, concurring or dissenting. Some parts I would not embrace since I continue to disagree with the original abortion opinions and would very likely say so.

I shall await developments.

Sincerely yours,



The Chief Justice Copies to the Conference Sting of with the State of the Justice State of the

Mr. Justice Branch

In Planned Parenthood of Central Missouri v. Danforth, 428

U.S. 52, 72-75 (1976), the Court held that a pregnant minor's right to make the decision to obtain an abortion may not be conditioned on parental consent. My dissent from that holding, 7.

id., at 102-105, does not qualify my duty to respect it as a part of our law. See Bellotti v. Baird, 443 U.S. 622, 652-656 (1979)

(STEVENS, J., concurring). However, as I noted in Bellotti,. neither that case nor Danforth "determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto." 443 U.S., at 654 n.l. Since the outcome in this case is not controlled by Danforth, the principles that I considered dispositive of the parental consent issue in that case plainly dictate that the Utah statute now before us be upheld.

The fact that a State statute may have some impact upon a minor's exercise of his or her rights begins, rather than ends, the constitutional inquiry. Once the statute's impact is identified, it must be evaluated in light of the State interests underlying the statute. The State interest that the Utah statute at issue in this case attempts to advance is essentially the same State interest at issue in <u>Danforth</u>. As I noted in <u>Danforth</u>, that interest is fundamental and substantial:

"The State's interest in the welfare of its young citizens justifies a variety of protective measures. Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel where he pleases, or even attend exhibitions of constitutionally protected adult motion pictures. Persons below a certain age may not marry without parental consent. such consent is essential even when the young woman is already pregnant. The State's interest in protecting a young person from harm justifies the imposition of restraints on his or her freedom even though comparable restraints on adults would be constitutionally impermissible. Therefore, the holding in Roe v. Wade [410 U.S. 113 (1973)] that the abortion decision is entitled to constitutional protection merely emphasizes the importance of the decision; it does not lead to the conclusion that the state legislature has no power to enact legislation for the purpose of protecting a young pregnant woman from the consequences of an incorrect decision.

"The abortion decision is, of course, more important than the decision to attend or to avoid an adult motion picture, or the decision to work long hours in a factory. It is not necessarily any more important than the decision to run away from home or the decision to marry. But even if it is the most important kind of a decision a young person may ever make, that assumption merely enhances the quality of the State's interest in maximizing the probability that the decision be made correctly and with full understanding of the consequences of either alternative." 428 U.S., at 102-103.

In my opinion, the special importance of a young woman's abortion decision, emphasized by the Court, <u>ante</u>, at 6-7, provides a special justification for reasonable State efforts intended to ensure that the decision be wisely made. Such reasonable efforts surely may include a requirement that an abortion be procured only after consultation with a licensed

physician. And, because "the most significant consequences of the [abortion] decision are not medical in character," 428 U.S., at 103, the State unquestionably has an interest in ensuring that a young woman receive other appropriate consultation as well. In my opinion, the quality of that interest is plainly sufficient to support a State legislature's determination that such appropriate consultation should include parental advice.

Of course, the Court's conclusion that the Utah statute is invalid does not prevent young pregnant women from voluntarily seeking the advice of their parents prior to making the abortion decision. But the State may legitimately decide that such consultation should be made more probable by ensuring that parents are informed of their daughter's decision:

"If there is no parental-[notice] requirement, many minors will submit to the abortion procedure without ever informing their parents. An assumption that the parental reaction will be hostile, disparaging, or violent no doubt persuades many children simply to bypass parental counsel which would in fact be loving, supportive, and, indeed, for some indispensable. It is unrealistic, in my judgment, to assume that every parent-child relationship is either (a) so perfect that communication and accord will take place routinely or (b) so imperfect that the absence of communication reflects the child's correct prediction that the parent will . . . [act] arbitrarily to further a selfish interest rather than the child's interest. A state legislature may conclude that most parents will be primarily interested in the welfare of their children, [1] and further,

Footnote(s) 1 appear on following page(s).

that the imposition of a parental-[notice] requirement is an appropriate method of giving the parents an opportunity to foster that welfare by helping a pregnant distressed child to make and to implement a correct decision." 428 U.S., at 103-104.

Utah's interest in its parental-notice statute is not diminished by the fact that there can be no guarantee that meaningful parent-child consultation will actually occur. Good faith compliance with the statute's requirements would tend to facilitate communication between daughters and parents regarding the abortion decision. The possibility that some parents will

<sup>1</sup> My conclusion, in this case and in <u>Danforth</u>, that a state legislature may rationally decide that most parents will, when informed of their daughter's pregnancy, act with her welfare in mind is consistent with the "pages of human experience that teach that parents generally do act in the child's best interests" relied upon by the Court in <u>Parham v. J.R.</u>, 442 U.S. 584, 602-603 (1979). It is also consistent with JUSTICE BRENNAN's opinion in Parham, which I joined. Id., at 625-639.

As the Court noted in Parham, the presumption that parents act in the best interests of their children may be rebutted by "experience and reality." Id., at 602-603. In my opinion, nothing in the fact that a minor child has become pregnant, and therefore may be confronted with the abortion decision, undercuts the general validity of the presumption. However, when parents decide to surrender custody of their child to a mental hospital and thereby destroy the ongoing family relationship, that very decision raises an inference that parental authority is not being exercised in the child's best interests. See id., at 631-632 (BRENNAN, J., dissenting in part). Accordingly, while the abortion decision and the commitment decision are of comparable gravity, reliance upon the "pages of human experience" is, in my judgment, more appropriate in the former case than in the latter.

Indeed, the Court's criticism of this aspect of the Utah statute, ante, at 16, is curious in light of the Court's statement that Utah "cannot legally or practically require such consultation." Id. Certainly the statute cannot be constitutionally defective because the State failed to require what the Court believes it is without legal authority to require.

not react with compassion and understanding upon being informed of their daughter's predicament or that, even if they are receptive, they will incorrectly advise her, does not undercut the legitimacy of the State's attempt to establish a procedure that will enhance the probability that a pregnant young woman exercise as wisely as possible her right to make the abortion decision.

The opinion of the Court properly emphasizes the important and sensitive nature of a minor's decision to procure an abortion; the Court improperly, in my judgment, bars the State from taking reasonable steps to ensure that this decision is well-advised and wisely made. Because my view in this case, as in <u>Danforth</u>, is that the State's interest in protecting a young pregnant woman from the consequences of an incorrect abortion decision is sufficient to justify the parental-notice requirement, I respectfully dissent.

Mr. Justice Stewart Mr. Justice White Mr. Justice Marshal Mr. Justice Blackmun Mr. Justice Powell Mr. Justice Rehnquist Mr. Justice Stevens From: The Chief Justice DEC 1 6 1980 Circulated: Recirculated: \_ 1st DRAFT SUPREME COURT OF THE UNITED STATES No. 79-5903 12/16 H. L., etc., Appellant, On Appeal from the Supreme Court of Utah. 1. a vast improvement Scott M. Matheson et al. over ( )'s mano. [December —, 1980] originally circulated Chief Justice Burger, dissenting. The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the attack by Try parents of a dependent, unmarried minor girl prior to per- to per- to per- to forming an abortion on the girl violates federal constitutional rejected . There guarantees. appellant 5 the topave no standing to allege In the spring of 1978, appellant was an unmarried 15- bucklessitt. 5year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. 3. James She consulted with a social worker and a physician. The defined. physician advised appellant that an abortion would be in her properly - 6 best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion with- ( though 9 out first notifying appellant's parents. Section 76-7-304, enacted in 1974, provides: "To enable a physician to exercise his best medical 4 . I probably judgment [in considering a possible abortion], he shall: could goin "(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed ante I & II. including, but not limited to. "(a) Her physical, emotional and psychological health purposts to and safety. nestale the "(b) Her age, law of aboutions "(c) Her familial situation. trouble joining. 5. Part III is good rome verfects, but want to write ely as to all of IT!

To: Mr. Justice Brennan

"(2) Notify, if possible, the parents or gaudian of the brown upon whom the abortion is to be performed, if she is a record or the husband of the woman, if she is narried." (Emphasis supplied.)

Violation of this section is a misdemeanor punishable by impresonances for not more than one year or a fine of not more than \$1,000.5

Appellant believed "for [her] own reasons" (hat she should proceed with the abortion without notifying her parents. According in appellant, the social weaker concerned in this decising. While still at the first (timester of her pregnancy, appellant lies) (i.e. it this section in the Third Judicial District Court of Utah it. She sought a declaration that § 76-7-304 (2) is barronstitutional and an e-junction prohibiting appellees the Governor and the Atlantey General of Utah from enforcing the statute. Appellant sought to represent a class consisting of unmarried funition women who are suffering anywanted programmies and desire to term note the pregnancies had may not do self-because of their physicians' maisteries on

<sup>(4.1)</sup> It also should be not the that we destrict in a vibre perfectised endown a volume two in a control water is correct. Its first abranced by the attended 2 play according to the potent. In order for each is consent to be two but of a volume to the parameters of the consent at a meanting about conductive, do play to the parameters in the consent at a meanting about conductive, do play to the parameters in the chyridenia, and do not forecastly nearly to use and pick of age the prior. She if the Complete consent parameters of Private and the Control Microscopy Democratic States of the Control Microscopy and a constitutional active on with the control of private and

Fireholds for the matter of \$8.75-75 should be the 204 (1), 76.3 should be the Appellour's course has been a few acts decreased statement, and again an 2d. Fireford Course place of a sample of extensive that he also stick expected by the profiler's bost after the particular materials of the strong profiler's bost after the strong and argument, a consequence of district of the course of the materials of the strong course of th

Client result blood is a state of which is appelling to see colod with which or out only.

complying with \$76.7-304 (2). The trial judge declined to grant a temporary restraining order of a preliminary injunction:

The trial judge held a bearing at which appellant was the only witness. He construed the statute to require the treating physican to notify appellant's parents "if he is able to physically contact them." In sustaining appellant's objection, the judge refused to allow the State to imprire into the specific reasons why appellant did not wish to notify her parents. Thereafter, the trial judge catered findings of fact and constant the resting that the statute require notice of "physically possible." The constanted that \$76.7.364 (2) "the estimated his ruling that the statute require notice of "physically possible." The constanted that \$76.7.364 (2) "the estimated meanistrationally restrict the right of privary of a nozor to obtain an abortion or to entire into a doctor-particle relationship." Accordingly, he dismissed the complaint.

On appeal, the Signs no Court of Ulah magnimus by upbeld the statute. H. I. v. Mathysia, 604 P. 2d 907 (1979). Rollying on our decisions in Planced Parenthesial of Central Missouri v. Danial ii 428 U. S. 52 (1976). Carry v. Population Scribers Interself and 431 U. S. 678 (1977), and Belliati v. Baird, 443 U. S. 622 P. 700 Hello G.H. the court concluded that the statute serves the official state interest(s)? that greepresent with respect to minors but alread in the case of adult window.

The court hodest first to subsection (1) of \$76.7-304. This provision the court observed expressly incorporates the

THE final malgorallowed appell on the process without appearing a growth as the Mark He methol that a grandian would be regarded to particular the process.

<sup>2.</sup> There is the expression of the confideration to a runner of an the proposed Court appropriate service 0.0 (21) the foliagraphic the express bornly replied on an the Dorbard decision.

<sup>&</sup>lt;sup>1</sup>The training of a relations the parameter of spin cycles (2.47 S, C § 198).

factors we identified in *Doc* v. *Bolton*, 410 U. S. 179 (1973), as perturent to exercise of a physician's best medical padgment in making an abortion decision. In *Doc*, we stated:

"We agree with the District Court . . . that the medical judgment may be exercised in the light of all factors—physical conclusion, psychological, familial, and the arms and age - relevant to the well-being of the palent. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment"—Id., at 192 (emphasis supplied).

Section 76.7.2.4 is now the Urah statute suggests that the logislature sought to left is the longerage of Doc.

The I tab Super. It and held that antifying the purerity of a minar seeking in all (from is 'substantially and logically telated' to the Doc factors set out in § 76.7–304 (1) because putents ordinarily possess information eisenful to a physician's exercise of his best medical judgment concerning the child. 604 P 2d at 000 010. The court also concluded that exacutaging an amount of pregnet Uninor in sock the advice of her puterts in making the decision of whether to carry left child to betto promotes a significant state interest as supporting the important role of parents in child-rearing. 604 P 2d, at 912. The court measured that spire the statute allows no veto power very the tomor's decision it does not inposity introde upon a minor's rights.

The Viab Supreme Court also rejected appellant's argument that the physics of possible im \$76.7,304 (2) should be constitued to give the paysician discretion whether to notify appellant's parents. The court concluded that the physician is required to courfy parents fif under the eigenostances, in the exercise of reasonable diligence, he can ascertain their identity and location and it is frasible or practicable to give them notification. The court added, however that The time discount is an important factor for their must be sufficient expedition to provide an effective apportantly for an abortion." [604 P. 2d. a) 943

Parente ordinanty possers relevant info.

11

Appellant challenges the statute as unconstitutional on its face. She contends it is overbroad in that it can be construed to apply to all unmarried minor girls, including those who are mature and emancipated. However, she did not allege or offer evidence that either she or any member of her class is mature or emancipated. The record shows only that appellant is an unmarried female living at home and wholly dependent on her parents. That affords an insufficient basis for a finding that she is either mature or emancipated. Under Harris v. McRae, — U. S. —, — (1980), she lacks "the personal stake in the controversy needed to confer standing" to advance the overbreadth appenent.

There are particularly strong reasons for applying established rules of standing in this case. The United States District Court for Utah has held that § 76-7-304 (2) does not apply to emancipated minors and that, if so applied, it would be unconstitutional. L. R. v. Hansen, Civil No. C-80-0078J (Feb. 8, 1980). Since there was no appeal from that ruling, it is controlling on the State. We cannot assume that the statute, when challenged in a proper case, will not be construed also to exempt demonstrably mature minors. See Bellotti v. Baird, 428 U. S. 132, 146-148 (1976) (Bellotti I). Nor is there any reason to assume that a minor in need of emergincy treatment will be treated in any way different from a similarly situated adult. The Utah Supreme Court has

tacial

no standing to make "overobrealthe argument. Stang reasone for applying standing rules.

grapout (

<sup>5</sup> In Bellotti II, by contrast, the principal class consisted of "unmarried [pregnant | minors in Massachusetts who have adequate capacity to give a valid and informed consent [to abortion], and who do not wish to involve their parents." Id., at 626 (emphasis supplied). The courts considered the rights of "all pregnant minors who might be affected" by the statute. Id., at 627, n. 5.

Bellotti Bestugueshed

<sup>&</sup>lt;sup>6</sup> There is no authority for the view expressed in the proposed Court opinion that the statute would apply to "minors with emergency health care needs" —, at 20-21. Appellant does not so contend, and the Utak Supreme Court in this case took pains to say that time is of the essence

#### 40, a. e. MATHESON

had no occasion to consider the application of the statute to such situations. In Belletti I, supra, we manimumly declined to pass on constitutional challenges to an abortion regulation statute because the statute was "susceptible of a construction by the state underary (which might avoid in whole or is part the accessity for federal constitutional adjustication, or at least materially change the nature of the problem "I Id., at 147, quoting Harrison v. NAACP, 380 U.S. 167, 177 (1959). See Kleppt v. New Mexico, 426 U.S. 529, 546-547 (1976); Astronology v. New Mexico, 426 U.S. 529, 546-547 (1976); Astronology v. Tenessee Valley Authority, 297 U.S. 288-346 (44) (1966) (see curring against a Irration that a procedular intelligence of statutory exclusion of negture and enumeipated numers.

The only issue before us, then, is the facial constitutionality of a statute requiring a physician to give notice to parents "if possible," prior to performing an abortion on their minor daughter "in" when the get is having with guid dependent upon her parents ("or when the is not engaginated by marriage or otherwise and core when the has made no claim or showing as to her materialy or as to her relations with her parents.

or that her parenty would interface

#### Á

Appellant contends the statute riolates the right to privacy recognized in our prior cases with respect to abortions. She places primary reliance on Rellotti II supra 443 U.S., at 642, 655. In Projectic supra, we struck closer state statutes that imposed a requirement of prior written consent of the patient's

is an electron local (0.5, 0.5, 0.5) at 30.3. Where the operitie question was properly at each (0.00, 0.00) the  $M_{\odot}$  the  $M_{\odot}$  and so the standard constraint (0.00, 0.00) and (0.00, 0.00) at (0.00, 0.00)

The same is true for minors with hospite frome ariminates to class test (et.) of the expectation is a minor with hospite the programmed a result of projects.

sponse and of a minor patient's parents as a prerequisite for an abortion. We held that a state

Pidoes not have the constitutional authority to give a third party at absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnately, segondless of the reason for withholding the consent," Id. at 74.

We emphasized however "that nor holding . . . does not suggest that every minor, regardless of age or maturity may give effective consent for town, advan of her pregnacy." Id. in 75 or . . . . or "or . therein. There is no logical relationship be veen incompactly to become pregnant and the capacity for matter [adjance: renceroing the wisdom of agral ortion.

In Belletti II Chairing with a class of concededly mature pregnant minors we struck down a Massachusette statute requiring parental en paliteul cosses? before an abortion could be performed as a consequenced minor. There the State's linguest 6 and had been able by standie to allow a majet to overrule the a mork discisor, even if the court found that the minur was expatible of easking and in fact had made gar infratoria and region the decision to have so abortion. We held, among other things, that the statute was unconstitutional for failure to allow mature minors to decide to undergo abortions without parental consent. Four Justices concluded that the flaws in the statute were that as construed by the state court care it pero their overrolog of a mature minor's decision to about her pregomey, and the fit requires parental consultation or notification in every distance, without affordhig the pregnant filmor an opportunity to precive an independent and cial determination Plat she is matthe enough to consent or that an abortion would be in her best interest." [64] at 651. From Justices concluded that the defect was in making the abustion secision of a minor subject to veto by a third party, whether patent of halge, the matter how mature Check Hir.

and capable of informed decisionmaking" the minor might be. Id., at 653-656.

Our cases to date stand for three propositions;

(a) Although there is no per se prohibition of state regulation affecting abortions during the first trimester of pregnancy,<sup>10</sup> any such regulation must be carefully scrutinized in light of the important and sensitive interests at stake.<sup>11</sup>

(b) The power of the state to regulate abortions of minor children "reaches beyond the scope of its authority over adults." <sup>12</sup> This is so because minors are more vulnerable and generally lack the experience, perspective, and judgment to recognize and avoid choices that are detrimental to their best interests. We have also recognized that parents have an important "guiding role" to play in the upbringing of their children, which must include some right to counsel with them on important decisions. Legislation regulating minors' access to abortions therefore need only serve a significant state interest. Danforth, supra, 428 U.S., at 75.

(c) Although a state may not constitutionally legislate a blanket, unreviewable power of parents to voto their daughter's abortion,<sup>12</sup> a statute setting out a "mere requirement of parental notice" does not unconstitutionally invade

22

Bellotti

<sup>&</sup>lt;sup>16</sup> E. g., Bellotti II, supra, 443 U. S., at 643-644; Bellotti I, supra, 428 U. S., at 148-149; Danforth, supra, 428 U. S., at 65-67, 79-81; Connecticut v. Menillo, 423 U. S. 9, 11 (1975); West Side Women's Services, Inc. v. City of Cleveland, 450 F. Supp. 796, 798 (ND Ohio), aff'd mem., 582 F. 2d 1281 (CA6), cert. denied, 439 U. S. 983 (1978).

<sup>11</sup> See Bellotti II, supra, 443 U.S., at 642.

<sup>&</sup>lt;sup>18</sup> Bellotti II, supra, 443 U. S., at 636, quoting Ginsberg v. New York, 390 U. S. 629, 638 (1968).

<sup>&</sup>lt;sup>18</sup> Bellotti II, supra. 443 U. S., at 633-639; accord, id., at 656-657 (dissenting opinion); see Danforth, supra, 428 U. S., at 75, 90-91; Bellotti I, supra, 428 U. S., at 145, 147.

<sup>&</sup>lt;sup>14</sup> Bellotti II, supra, 443 U. S., at 642-643, 653-656; Danforth, supra, 428 U. S., at 74.

a minor's pricacy or unconstitutionally burden her right to seek an abortion,"

Five Members of this Court in Bellotte H agreed that as a general ride, a more requirement of povertal notice does not offend the Chastitution. Four Justices jouand in stating:

The first section and that the State furthers a constitute of the principle and by encouraging an influence that the principle and advice of the futbody in a word to seek the help and advice of the futbody in a word the very important decision, whether or not to hear a chall. That is a grave decision, and a graph of ten let years under emotional stress, may be be expense to make a without that the advice and mortifical support. It seems adjudy that she will obtain adequate cone set and support from the attending physical at an absolute ruling, where abortions for pregnant towns to mostly the place. It is at 641 quoting



 $<sup>(0.165)^{1/2}</sup>$  .  $I=1,2,\cdots$  , and the special control of the senting operators  $(0.57)^{1/2}$  .  $(0.57)^{1/2}$  .  $(0.58)^{1/2}$  . So the bound of control of the property of the special control of the speci

#### B. L. MATHINON

Dinforth, supra, 428 (U. S), at 31 (concurring opinion). Godinous control).

Accord 5d., at 657 (desenting opinion)

In addition, "constitutional interpretation has consistently recognized that the parents claim to authority in their own bousehold to direct the training of their children is basic in the structure of our society," Glasfiery v. New York, 390 U.S. 629, 639 (1968) (plurality opinion). In Qualities v. Walcott, 434 U.S. 246 (1978), the Court expanded on this theme;

<sup>2</sup> W — the reageness on numerous agrashes that the relationship between parent and right is constitutionally orangent), Section 1, Hospinson X, Yieler 408, U. S. 205–231–233 – 972). Stockey V. Hilliams 1405, U. S. 645 (1972) — Using a Collisistic 262, U. S. 350, 399–401 (1973) — This catomal with us that the custody, care and outtine of the child posals first in the parents, whose primary function and feedbar include preparation for obligations the state can be offer supply for hander 15 – 10 – 2044.

See also Problem 3. A. H. (442 F. S. 584, 602) (1979); Problem 3. Some by  $m(8, t) \approx (2.84 \pm 8.040, 535)$  (1925).

#### F

The Utah statute as 1 taylor poind earlier, gives to other process to thirdges a very power over the mater's abortion the slate. As in BeBate(I) support we are concerned with a statute the end toward minutes as to whom there are more storaidly greater tasks of materity to give an informed

If the minimum part of the property of the common arrays of the first of the property of the common arrays of the property of the common of t

consent." Id., at 147. The important considerations of Jazzily integrity? and protecting adulescents? which we identified in Bellotte B are plainly served by the statute Also, the Utah Supreme Court correctly held that the statute serves a significant state interest by providing an opportunity for parents to supply essential medical and other reformation to a physician. The medical, emotional, and psychological consequences of an abortion are to put it mildly serious; and this is particularly so when the patient is immature." An adequate medical and psychological case bestony is papartant to the physician. Bos des provioung anaderal and psychological data, parents are in an excellent position to refer the physician to other sources of medical history, such as family these mass.

Appellant intimates that the statute's tailure to declare in terms, a detailed description of what information parents may provide to physicians, or of a mandatory period of delay after the physician notifies the parents, renders the statute unero structorial. She reasons that with these lapses at as much less likely that meaningful parental consultation will occur. The notion that the statute mast itemize that kind of information hads an support in logic, experience, or our decisions. And as the Utah Supreme Court recognized 694 P.

<sup>&</sup>quot;Reflect  $H_{i}$  represent the  $\lambda$  (Sigma) of GS (GS). The short since given by the product of the energy representation of the energy of the

P. Berger, M. Japan, Asia L. S. (2) of Carall.

Abort of is also stated eather a centre of ask of complication in subsequent page cames. A March Doc Arona, Affect Love Progress of Error Page 1999. The constant of polyper Long at the set that a grane of a forecast of set of the constant of the set of the set of the constant of the set of the constant of the set of t

2d, at 93d, time is of the essence in an abortion decision." The Utah statute is reasonably calculated to protect minus in a gellant's class by enhancing the potential for parental too saltation concerning a decision that has potentially fraumatic consequences."

Appellant also contends that the constitutionality of the statute is undertained by the fact that Utah allows a pregnant action to consent to other medical procedures without formal notice to her parents if she earlies the child to term? The State's interests in full-term pregnancies, however, are sufficiently different to instity the line digion by the statutes CL Maker C. Roy 142 C. S. 464, 473,474 (1977). If the pregnant girl elects to carry her short to term the medical decisions to be made rotal term perhaps none of the patentially grave conditional and psychological consequences of the decision to about.

That the no ultrine it of notice to parents may adabit some releases from seeking abortons is not a valid basis to wild the statute. Some unuarmed pregnant me are may desire to avoid disclosing the aborton to their parents no matter what may be the timely a latienship. But the Constitution does not energy by state to fraction its statutes so as to construct on lacitual phonons. To the contrary well-re-

For each test in the control of the

For There is the force of the force of the total content in the Rev Cowell has a most total content in the test of the policy of the force of the content in the force of the policy of the force of the content in the content of the policy of the force o

<sup>(8)</sup> So Theorem A. (1976) \$78.14 Addition of mining one founder to good matrix along the property of the property and the high line than a first should be agreed by an addition of

#### H. L. & MATHESON

the past year, we become sed that state action "encouraging childrath except in the most argent circumstances" is "rationally related to the logitimate governmental objective of protecting potential libe." Harris v. M. Ruc, supra. [4] S. at 4.5. Accord. Maker v. Ruc, supra. 432 U. S. at 473 474

As applied to the class properly before us, the statute plaintly serves important state raterests, is narrowly drawn to protect only those interests and does not violate any guarantees of the Constitution." I would affirm the judgment of the Supreme Court of Utah.

<sup>#180</sup> aboves a felling 20 copie

If  $\Delta(\varphi)$  into any new for the street expolate, her right to so the receiving treatment at the analysis can also in the exposure of his best in the digragan, as there is at the large the property of order to next at S in a there is no explain a that the effective of A is an A in equation we describe the reach this Q best and S in Q in A is an Q and A is a Q-constant.

# Supreme Court of the Anited States Washington, D. C. 20543



December 18, 1988

Be: 79-5903 - N. L. v. Matheson

Down Chiaf:

CONTRACTOR STUNART

I agree with the views that Sewis has expressed in his letter to you of December 18.

Sincerely yours,

23.

The Chief Justice

Copies to: Justice White

Justice Powell Justice Schaquist Justice Stavens

December 18, 1980 79-5903 H.L., etc. v. Matheson Dear Chief: This refers to your opinion circulated December 16, characterized as a dissent. As stated in my letter to Thurgood of November 12, I cannot join his opinion as it recognizes a far more absolute right in a minor than I could accept. I still adhere generally to the views expressed in my Bellotti II opinion. I agree with you that, on the basis of the facts in this case, appellants have no standing to argue overbreadth. Your statement of the "issue before us" on page 6 is quite close to my view as to the posture of the case. I therefore believe I can join your Parts I and II. Part III, as presently written, gives me some difficulty in view of Bellotti II. I believe that portion of your opinion will be read as holding that a state validly may require notice to parents in cases that may differ substantially from this one. In Bellotti, four of us stated that a statute of this kind should provide for an independent decision maker to whom a minor could have recourse if she thinks she is mature and needs no parental quidance, or if she thinks that notification otherwise would not be in her best interests. Your Part III also purports to summarize our abortion decisions, and quotes selectively from several opinions including Bellotti II. As there has been so much writing in these decisions, with varying shades of opinion expressed, I would prefer not to try to make a general "restatement" of abortion law. I wonder whether in this case it is useful to undertake this. At Conference, Potter and I voted to reverse. At that time I read the trial court's finding on page 40 of the appendix as saying - though inartfully - that a physician

2. had concluded it would not be in the best interest of this minor to notify her parents. Now that I have read the record with greater care, I am satisfied that my initial reading of the ambiguous language on App. 40 was incorrect. Thus, as you state, we have a test case that presents the most extreme situation: a 15-year-old minor, living with her parents, claims an absolute right to be aborted without being required to give any reason other than her own personal wish and belief that it is in her best interest not to inform her parents. I find nothing in the record that indicates even that the doctor had examined her or that there were medical reasons for not notifying her parents, Accordingly, I will now join a judgment to affirm, holding that the statute is valid as applied to these facts. I am drafting a concurring opinion along the foregoing lines, and should have it shortly. I would like to be able also to join your opinion. Since I am committed to my Bellotti II views, would it be possible for you to revise your Part III to accommodate the two concerns expressed above: (i) reserve the notion that an independent decision maker should be required, and (11) reduce substantially the selective quotations from other decisions especially Bellotti II? Sincerely, The Chief Justice LFP/lab CC: Justice Stewart Justice White Justice Rehnquist Justice Stevens

lfp/ss 12/26/80 MEMORANDUM TOI Greg DATE: Dec. 26, 1980 FROM : Lewis F. Powell, Jr. 79-5903 H. L. v. Matheson Despite what at times seemed almost like a losing battle with the flu, I have reviewed your draft memorandum of 12/18. Its substance is fine, and in accordance with our previous discussion and memos. I have redictated a substantial part of it. My preimary purpose was to reduce the length, incorporating by reference the relevant portions of Bellotti II. I also have omitted from the text the discussion of the famous ambiguous finding on page 40 of the appendix. My recollection is that Justice Marshall does not rely primarily on it. Even if he did, I would prefer to deal with this in a footnote. Your treatment of the evidence, demonstrating that it did not enlarge on the complaint averments and indeed can be said to have narrowed them, would have left the trial court's finding unsupported by evidence even if it were not ambiguous. Not only was there an absence of supportive evidence, but - as you noted - appellant's counsel expressly argued that the facts beyond the complaint's averments were irrelevant. I would prefer, however, to take the position

2. in the note that at best the Court's finding is ambiguous; in light of the evidence and statements by counsel, it must be construed as we have read it; but, in any event, in view of counsel's concession as to irrelevancy, the finding is redundant. I approve of your setting forth in the footnotes the entire pertinent testimony. You might also include counsel's final summation, as the end of the hearing, of what the trial court ruled. I included this in my memorandum. In describing the interests that may be weighed where a minor is concerned, I would like to add a reference to the state's interest in the family itself as one of the great humanizing institutions of civilization. I think you will find a good quote along these lines in my opinion in Moore v. East Cleveland. I suggest that you put this "humpty-dumpty" together again in a second draft, having a co-clerk read it and send it down for a Chambers draft. L.F.P., Jr. 28

### ter DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 79 5903

H. L., etc. Appellant, b. On Appeal from the Supreme Court of Utab,

[January - , 1961]

JUSTICE POWELL, concurring in the judgment,

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See Planned Parenthood of Central Missouriev. Dauforth, 428 U. S. 52 (1976); Bellutti v. Buird, 443 U. S. 662 (1979) (Bellutti II). Upon Parts I and II of the Court's opinion, and concur in the polyment of the Court. I agree that Utah Code Ann. \$76-7-394 (2) does not unconstitutionally burden this appellunt's right to an abortion. I do not pain Part III of the opinion however, for the views that I express in Bellutti II lead me to conclude that a State cannot properly require, without allowing for exceptions that parents be notified of their minor daughter's abortion decision,

Y

Section 3/4 (2) complete that a physician "palatify, if possible the parents of guardent of the winning upon whom the abortion is to be performed, if she is a numer." Appellant attacks this notice requirement on the ground that if burdens the right of a minor who is connected, or who is assitute exough to teak the abortion decision independent of physical involvement or whose parents will react obstructively apon notice. See such at 5, "the Gueshold question as the

Assertion attricts is an electric products the Court's opinion. Additionally

Court's opinion notes is whether appellant has standing to make such a challenge. Standing depends untially on what the complaint alleges Black v. School 422 U. S. 490, 498, 501 (1977), as courts have to power loady to reduces or otherwise in protect against minry to the complaining party [1] Id., at 499. The complaint in this case was carefully chave. Appellant's allegations about nerself and her familial situation are line and become. She alleged that she did from wish to inform her parents of her condition and behave[d] that a [was] in her best interest that her parents not be informed of her condition." Complaint [6]. She also alleged that she understood factor is involved as her decision." [9] and that the physician she consulted had told for that the condition and would not perform an abortion open her without informing her parents prior to aborting her. [7] 7.

Appellant was 15 years of age and lived at home with her parents when she filed her complaint. She did not claim to be mature, and made on allegations with respect to her relationship with her parents. Nor nadeed, did she aver that there was reason to believe that they would be hostile or obstructive if notified. Similarly, the complaint contains no allegation that the physician while apparently willing to perform the abortion believed that notifying her purents would have adverse consequences. In fact, nothing in the record shows that the physician had any information about appellant's parents or familial situation or even that he had examited appellant.

Α

This case does and come to us on the allegations of the complant above. As evidentiary bearing common after the trial court had defined appellant's motion for a preliminary injuration. Appellant was the only witness, and her testimony, and statements by her course! make clear beyond any question that the "bare bones" averiments of the complaint were deliberate and that appellant is arguing that a

## BIT > MATHEROX

mere notice requirement is invalid puz so without regard to the minor's age, whether she is enumripated, whether for parents are likely to be obstructive or understanding and sympathetic or whether there is some health or other reason why notification would not be in the minor's best interests.

On threet examination appellant merely certified the idligations of her complaint by affirming each allegation as paraphrased for her by her lawyer. Her testimony added nothing

<sup>2</sup> Appellant's total destinance about her designational her founds is asfellows.

<sup>(1.2)</sup> Pro MR (DOLOWPEZ, appellant's lawcer]: At the time (Lee the complete) in the matter was signed, you note program?

<sup>14 14.</sup> 

<sup>1</sup>Q. You foot consisted with a entangliar about that prognancy?

<sup>&</sup>quot;A Yeah

<sup>&</sup>lt;sup>1</sup> Q. Yuro had 26t-reduct after talking to the connector that year (d).
You should get an abortion?

PA Yes.

<sup>&</sup>quot;Q. You leds that you did that would be noticy your parents so

<sup>&</sup>quot;A 10al (

<sup>&</sup>quot;Q is of that decision". You did not feel for your own reasons that you could also see it with Count".

<sup>&</sup>quot;A llasta

<sup>&</sup>lt;sup>1</sup> Q. After discussing the matter with a cornector, you still believed that you should not discuss it with your parents?

<sup>1.3</sup> Right

<sup>10.</sup> And they shouldn't be notified?

<sup>&</sup>quot;A Rigid.

Fig. After talking the matter over a discrementary the compater is increased in vortice in vortice of that year permits should thought their first that the first the appearant become present that the force appears between agree of that the first standard  $M_{\rm b}$  is consistent. The first tradition of  $M_{\rm b}$  is a second of the first standard  $M_{\rm b}$  is a first tradition of the first tradition.

<sup>1.</sup>A. Right

<sup>&</sup>lt;sup>18</sup>Q. A new records odd that the Jordana condition by perfermed with our field ring. Conf. 2.

<sup>&</sup>quot;A Air

Appropriate and the protocols and thing could

CA Mogla

<sup>(2.4)</sup> Note that I discussed it is to which our not said that a right by the plant you where it is pay?

#### H. L. v. MATHESON

to the complaint. In addition, appellant's lawyer insistently objected to all questions by counsel for the State as to the appellant's reasons for not wishing to notify her parents. The trial court, on its own initiative, pressed unsuccessfully to elicit some reasons, inquiring how it could "find out the validity of [appellant's] reasons without [the state's lawyer.]

"A Yes.

"Q You decided that, after our discussion, you should still proceed with the action to try to obtain an abortion without notifying your parents?

"A Right.

"Q You feel that, from talking to the counselor and thinking the situation over and discussing it with me, that you could make the decision by your own that you wished to about the pregnancy?

"A Yes.

"Q You are living at home?

"A Yes.

"Q You still felt, even though you were living at home with your parents, that you couldn't discuss the matter with them?"

"A Right.

"MR. DOLOWITZ: I think that would be those questions to support the allegations we put out in the complaint."

Appellant's total testimony on cross-examination was the following: "MR. McCARTHY [the State's lawyer]: Let's start out this way. Are you still living at home?

"A Yes.

"Q Are you dependent on your parents?

"A Yes.

"Q All your money comes from them?

"A Yes.

"Q How old are you now?

"A. Fifteen.

"Q Aside from the issue of abortion, do you have any reason to feel that you can't talk to your parents about other problems?

"A Yes,

"Q What are those reasons?

MR. DOLOWITZ: Now you are moving into the problem area that I indicated. . . . . "

being permitted to cross-examine her." Tr., at 86. Appellant's lawyer replied:

"It is our position constitutionally that she has the right to make [the abortion] decision and if she has consulted with a counselor and the counselor concurs that those are valid reasons, why then—. . . . In terms of going beyond [the complaint allegations], our point is that the specifics of the reasons are really urrelevant to the constitutional issue." Tr., at 86-87 (emphasis supplied).

When appellant's lawyer insisted that the facts with respect to this particular minor were irrelevant, the trial court sustained the validity of the statute.

In sum, appellant alleges nothing more than that she desires an abortion, that she has decided—for reasons which she declined to reveal—that it is in her best interest not to notify her parents, and that a physician has agreed to perform the abortion. Although the trial court did not rule in terms of standing, it is clear that these bald allegations do not confer standing to claim either that § 304 (2) unconstitutionally burdens the right of a mature minor or a minor whose parents will react obstructively to notification.<sup>5</sup> They confer stand-

<sup>\*</sup>At the end of the evidentiary hearing, appellant's lawyer framed the trial court's fuling as follows:

<sup>&</sup>quot;If your ruling is that "if possible" [in the statute means "physically possible"] and there are no circumstances whatever that justify the violation of the statute, then the issue is closed." Tr., at 96.

Because this case is a class action, it might be presumed that other members could raise the question whether a pregnant minor woman has a right to abortion, without parental notice, upon a showing that she is mature or that her parents will interfere with her abortion. But the record in this case contains no facts to support a presumption that the class includes such members. The only complaint allegations about the class are that appellant's claims "are typical of the claims of all members of the class," and that the class consists of "minor women who are suffering unwanted pregnancies and desire to terminate the pregnancies but may not to so that much as their physicians will not perform an abortion upon

Ú

ing only to chain that \$304 (2) is an unconstitutional byrdes upon no unconscipated tomor who desires an abortion without present notification but also desires not to explain to anyone her reasons either for warring the abortion or for wanting it without parental notifications?

them without sixing baths only the provisions of Section 718 7-314 (2) in Complaint 1, 400. Thus, the recent only supports the conclusion that the other class parallels as on the about at classical chain that appell (1) property is constitutional right to an absention content nonlying their persons are viplaining that the sense to arrows class at they and their physics are agree that an absention is in their best into rest.

The final court content in they of best and conclusions of his after the end-to or meaning. Perograph 7 at the trial court's findings reads. The plantific consolited with a counterlor to asset for an decoding whether or not one should be mean to for programs. So determined, after consultation with her two issues, the she should be now an absorption but was advised when consoliting her physician that maker the provisions of Section 75-7 304 (2). Under Code Annotated, 1954, that he believed along with her than she should be asserted and that he tell in was in high best medical antetest to do so that he could not and would not perfer to a borring high because it was required of him by that should easier to shorting higher the short and considered of which required of him by that should easily be preferred on shorting to perform an electron mean few vertical or plantic properties with the provisions of the statute event, though to between it was 1- at an decorate H La v. Mathematic Civil No. C. 78-2719 (Theo. 20, 1958).

Precisely what this promptople pasts is ambiguous. At the vost it hads that appellant constant off a physician and that the physician agreed with appellant that an about previously be in appellant that an about previously be in appellant that an about propellar the first portion of the finding. In was atwarding to perform an abortion upon the action of the property of the starte even though be believed in a twent or good to the provision of the starte even though be believed in a street with appellant that are well to find the physician are acted with appellant that are well to find operation of abortion equal to the waste of constitution which the physician waste of the performance with the physician waste of a period in an abortion without completing with the statute even though the theory are absorbed abortion completing with the statute even though the theory of the treat of well-tending computing with the legal action of the document of the freeze of the appellant contains part in a perform the solution of the physical detection of appellant abortion discusses.

7

B

On the facts of this case, I conclude that \$ 304 /27 is not an unemostitutional burden on appellant shight to an abortion. Numerous and significant interests compete when a minor decides whether or and to abort her pregnancy. The right in make that decision is constitutionally protected, of course, Roc v. Wade, 410 U.S. 113, 154 (1973); Planned Parenthinal of Central Missour: v. Dauforth, supra, at 74-75. In addition, the major has an interest in effectuating her decision to abort, if that is the decision she mellos - Id., at 75; Bellotti supra, at 647. The State, uside from the interest it has in encouraging chaldbirth rather than shurtion, cf. Maker v. Roc, 432 U. S. 464 (1977); Harris v. McRay, . . . U. S. (1980), has an interest in fostering such consultation as well assist the minor in making ber decision as wisely as possible Physical Parenthood of Central Missouri v. Dauforth, supra at 91 (Stewart J., concurring); post, al + 1 (Stevens, J. dissenting). The State also may have an interest in the family itself the institution through which "we inculcate and pass down many of our most cherished vidues, more) and cultural." Moore v. City of East Clinicland, 431 U. S. 495 503 504 (1977) Parents have a traditional and substantial interest in as well as a responsibility for, the regang and welfare of their children especially during immaters years | Hellotte H supra at 637 (59)

Note of these interests is absolute. Even an adult woman's right to an abortion is not uniqualified. Reselve Wade, super, at 154. Particularly when a minor becomes prepared and considers an abortion, the relevant circumstances may vary wately depending upon her age, maturity mental and physical condition, the stability of ker financist sho is not enumerated, her relationship with her parents, and the like. If we were to accept appellant's claim that \$394.625 is per so an available on the asserted right of a ratio to make the abortion dressor, the enumerators which page

mally are relevant would his ber counsel conceiled—be immagerial. The Court would have to decide that the minur's wishes are virtually absolute. To be sure, our cases have couplinsized the insensity to consult a physician. But we have never held with respect to a minor that the opinion of a single physician as to the need or desirability of an abortion outweighs all state and parental neterests."

Although I join the judgment of affirmence in this case. I ain not able to join Part III of the Court's opinion. If apparently would hold that a State validly may require antice to parents in all cases, without providing any type of independent decisionagiker to whom a pregnant minor can have reconnse if she believes that she is insture enough to make the abortion decision independently or that notification otherwise would not be in her best interests. My onunion in Bellotti II, joined by three other Justices, stated at some length the reasons why such a decisjon-angler is needed Bellotte II, supra, at 042-648. The circumstances relevant to the abortion decision by a minor can end do vary so substantially that absolute rules oreguining parental notice in all cases or in more "- would create as inflexibility that often would allow for no consideration of the rights and interests identified above. Our eases have never gone to this extreme, and in my view should not. Accordingly, I cannot min-Part III of the Coart's upinion.

While the steedard judgment of a plat-scient of cautor is to be pespected, there is no second to behave as a governly properties. That even the most conscientions obviseballs into est no the overall welfare of a name can be equated with that all mass) percents. Moreover, shown a choice most stable available in most urban communities, much be appeared on a communitied lasts where about all others may be obtained from a most of Basic where about all others may be obtained by separational tiles of the second of the se

<sup>5</sup> The descripting regions of the size of Massissian relation would hold the Utality of the ray did is the face, elevated the location of the general spid for physician to an absolute status ignoring state and parental property.

January 6, 1981 No. 79-5903 H. L., Etc. v. Matheson Dear Potter: Here is a first draft of a concurring opinion in this unattractive little case. As I have heard nothing further from the Chief, what would you think of circulating our draft at this time? It might get the process moving, and give the Chief a clear understanding of our position. The alternative would be to send him the draft privately. Sincerely, Mr. Justice Stewart LFP/lab Enclosure

6 t 5 81

Z ~~. Jat DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 79 5903

H. L., etc., Appellant, to
On Appeal from the Supreme Court of Utab.

[January - , 1981]

Neeman scarleng of

Jeanne Powers communing in the judgment.

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See Placead Parenthood of Central Missouri v. Proforth, 428 U. S. 52 (1976); Bellotti v. Bajird, 443 U. S. 662 (1979) (Bellotti H). I just Parts I and II of the Court's epision, and concar as the judgment of the Court. I agree that Clab Code Ann. § 76-7-304 (2) does not inconstitutionally burden this appellant's right to an abortion. I do not just Part III of the opinion, however, for the views that I express in Bellotti H lead for in conclude that a State exercet properly require, without allowing for exceptions that parents be notified of their minor daughter's abortion decision.

1

Section 304 (2) regulars that a physician "[n]otify, if possible the parents or gravitan of the woman upon whom the aboution is to be performed, if she is a minor," Appellant attacks this notice requirement on the around that it burdens the right of a minor who is expancipated, or who is matter or ough to make the aboution decision independent of parental involvement, or whose parents will rover obstructively apon notice. See safe, at 5. The threshold question as the

CANTIFEE TO

<sup>&</sup>lt;sup>4</sup> Section 1894 (2) is approach in the Cantaly opinion. Astronor 192.

#### H. L. v. MATHESON

Court's epinion notes, is whether appellant has stending to make such a challenge. Standing depends is stially an what the complaint alleges, Worth v. Schlin, 422 U. S. 490, 498, 501 (1975), as courts have the power "only to redress or otherwise to protect against injury to the complaining party," Id., at 459. The complaint in this case was carefully drawn. Appellant's allegations about herself and her familial situation are few and become. She alleged that she did "not wish to inform her parents of her condition and helieveful) that it [was] in her best extensit that her parents not be informed of her condition." Complaint § 6. She also alleged that she understood "what is involved in her decision." "9, and that the physician she consulted had told her that "he could not said would not perform an abortion open her without informing her parents prior to aborting her." "7.

Appellact was 45 years of age and lived at home with her parents when she find her complaint. She fild not claim to be mature, at it made no allegations with respect to her relationship with her parents. Nor, indeed, let \$\foralle{\text{lin}}\) be there was reason to believe that they would be inclided obstructive if notified, \$\foralle{\text{Simplarty}}\) the complaint contains no allegation that the physician while apparently willing to perform the abortion believed that notifying her parents would have adverse consequences. In fact nothing in the record shows that the physician had any information about appellant's parents or familial situation, or even that he had examined appellant,

A

This case does not recent to us on the allegations of the complaint alone. An evidentiary hearing occurred after the trial rount had denied appellant's motion for a preliminary injunction. Appellant was the only vitness and her testimony and statements by her counsely make clear beyond any question that the "bare times" avernoests of the range plaint were deliberate, and that appellant is arguing that a

som advance any other reason when provente world not here to h

mere notice requirement is invalid per so without regard to the minur's age, whether she is emancipated, whether her purents are likely to be obstructive or understanding and sympathetic, or whether there is some health or other reason why notification would not be in the minur's best interests.

On direct examination, appelling merely verified the allegations of her complaint by affirming each allegation as paraphrased for her by her lawyer. Her testimony added nothing

<sup>&</sup>quot;Appellant's total testimany about for decision and her family is as follows:

<sup>&</sup>quot;'Q [by MR, DOLOWITZ, applicant's lowyer]: At the time that the compleme in this neater was signed you were programt?

<sup>&</sup>lt;sup>9</sup>A. Yes.

<sup>&</sup>quot;Q. You had conserted with a connector about that properties?"

<sup>&</sup>quot;A Yeals,

<sup>&</sup>quot;Q. You bolt iferentiated after talking to the rounselor that you felt you should get an abording?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You felt that you did not want to posify your purents-

<sup>&</sup>quot;A Right

<sup>&</sup>quot;Q —of that decision? Yest did not feel for your own recover that you entitled decreases that there?

<sup>&</sup>quot;A Hight.

<sup>&</sup>quot;Q. After the to the the matter with a comocher, you still heliocost that you the dalance chooses is with your parents?"

<sup>&</sup>quot;A Right

<sup>&</sup>quot;Q. And they shatddg't be nutified?

<sup>&</sup>quot;A Bight,

<sup>&</sup>quot;Q. After talking the matter over with a compositor, the compositor concerns in your decimal that your parents should just the matter? (In temporal to a specific from the bonds, appeal of a lawyer second that "not" should be interested in this question. Trust Oral Arg, at —)

<sup>&</sup>quot;A Pleba

<sup>\*</sup>Q. You were added that an obsertion rouldn't be performed without notifying those?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You then can't to me to see deep thing a wift?

<sup>&</sup>quot;A Right.

<sup>&</sup>quot;Q. You shall I discussed it as to whether or not you had a right to do what you in that to do?"

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You disided that, after our discussion, you should still proceed with the action to try to obtain an absention without multipleg your parents?"

<sup>&</sup>quot;A Hight.

<sup>&</sup>quot;Q. Yet feel that, from talking to the rotateler and thinking thin situation over and discussing a with me, that you could make the decision on year own that you wished to about the programmy?

<sup>&</sup>quot;A Yes

<sup>&</sup>quot;Q. You are living at boare?

PA Yes.

<sup>&</sup>quot;'Q. Yan still felt, even though you were living at home with your parents, that your couldn't discuss the sixter with them?"

<sup>&</sup>quot;A Hight.

<sup>&</sup>quot;MIL DOLOWITZ: I think this would be those questions to support the adequations we just out in the complaint,"

<sup>&</sup>quot;Appellant's total testing by iso cross evaluation was the following: "MR. McCARTHY [the State's hawyer]: Let's start nor this way. Are you still having at home?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. Aze you dependent no your pspenda?

<sup>&</sup>quot;A Yes,

<sup>&</sup>quot;Q. All your money entary from them?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. Thro old are you now?

<sup>&</sup>quot;A. Esforan-

<sup>&</sup>quot;Q. As the from the issue of abortion, if a you have as a masses to help that you estill talk to your parents shoul other problems?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. What are those product

MR, DOLOWITZ: Now you are tooking into the problem area that I bothchied. . . . ,"

#### H. L. e. MATHESON

being permitted to cross-examine her." Tr., at 86. Appellant's lawyer replied:

"It is our position constitutionally that she has the right to make [the abortion] decision and if she has consulted with a counselor and the counselor concurs that these are valid reasons, why then -... In terms of going beyond [the complaint allegations], our point is that the specifies of the reasons are really preferent to the constitutional issue," Tr., at S6-87 (emphasis supplied).

When appellant's lawyer insisted that the facts with respect to this particular minur were irrelevant, the trial court sustained the validity of the statute.

In sum, appellant alleges nothing more than that she desires an abortion, that she has decided—for reasons which she declined to reveal—that it is in her best interest not to notify her parents, and that a physician has agreed 76 perform the abortion. Although the trial court did not role in terms of standing, it is clear that these hald allegations do not confer standing to claim either that \$304(2) unconstitutionally bordens the right of a mature minor or a minor whose parents will react elastimetically to notification. They confer stand-

\*At the cod of the coidentiary laboring, appellant's lowyer frames the treat courts rising as follows:

"If your rolling is that of possible" (in the statute means "physically no dide") and there are no citemast since whatever that justify the collature of the statute, then the issue is skeed." Trust 56

Shower this case is a class action if might be premised that other tactibers could raise the construction whether a pregnent minor volume has a right to absorber, without presental action, upon a shawing that she is not one or that her protects well outers a with her absorber. But the resord in this case contains to facility appears a property product the class actions a hardeness. The only complaint allegations about the class are that appears the class are that appeared of the class of from a weight of all assubers of the class," and if it the class can develop from a weight observe had a resolution of defining the class, "and if it the class can develop from a weight observe had a raw and the solution of the preparation but they are the solution with so the structure of their preparation but the polynomials.

would be

bestinterests
would not
be served
by
parentalnotefication

of notice of wear not required. ing only to claim that § 304 (2) is an unconstitutional burden upon an unemancipated minor who desires an abortion without parental notification but also desires not to explain to anyone her reasons either for wanting the abortion or for wanting it without parental notification,

them without compliance with the provisions of Section 76-7-304 (2)." Complaint, ¶ 10. Thus, the record only supports the conclusion that the other class members assert the identical claim that appellant presents: a constitutional right to an abortion, without notifying their parents or explaining their reasons to anyone clse, if they and their physicians agree that an abortion is in their best interest.

the trial court entered findings of fact and conclusions of law after the evidentiary hearing. Paragraph 7 of the trial court's findings reads: "The plaintiff consulted with a counselor to assist her in deciding whether or not she should terminate her pregnancy. She determined, after consultation with her counselor, that she should secure an abortion, but was advised when consulting her physician that under the provisions of Section 76-7-304 (2). Utah Code Annotated, 1953, that he believed along with her that she should be aborted and that he felt it was in her best medical interest to do so but he could not and would not perform an abortion upon her without informing her parents prior to aborting her because it was required of him by that statute and he was unwilling to perform an abortion upon her without complying with the provisions of the statute even though he believed it was best to do so." H. L. v. Matheson, Civil No. C-78-2719 (Dec. 26, 1978).

Precisely what this paragraph finds is ambiguous. At the least, it finds that appellant "consulted" a physician and that the physician agreed with appellant that an abortion would be in appellant's best medical interest. The final portion of the finding—"he was unwilling to perform an abortion upon her without complying with the provisions of the statute even though he believed it was best to do so"—could be read to find that the physician also agreed with appellant that "it was best" to "perform an abortion upon her without complying with the provision[]" requiring parental notice. Or, the final portion could be read to find only that the physician would not perform an abortion without complying with the statute even though he believed that "it was best" to abort appellant's pregnancy. In light of appellant's limited allegations and tertimony, and the legal argument of her lawyer, the trial court's finding cannot be read to find that the physician determined that appellant's parents would react bostilely or obstructively to notice of appellant's abortion decision.

not wanting to notify her parents

 $\mathbf{B}$ 

On the facts of this case, I conclude that \$304 (2) is not an unconstitutional burden on appellant's right to an abortion. Numerous and significant interests compete when a minor decides whether or not to abort her pregnancy. The right to make that decision is constitutionally protected, of course. Roe v. Wade, 410 U.S. 113, 154 (1973); Planned Parenthood of Central Missouri v. Danforth, supra, at 74-75. In addition, the minor has an interest in effectuating her decision to abort, if that is the decision she makes, Id., at 75; Bellotti II, supra, at 647. The State, aside from the interest it has in encouraging childbirth rather than abortion, cf. Maher v. Roe, 432 U. S. 464 (1977); Harris v. McRae, --- U. S. ---(1980), has an interest in fostering such consultation as will assist the minor in making her decision as wisely as possible. Planned Parenthood of Central Missouri v. Danforth, supra, at 91 (Stewart, J., concurring); post, at — (Stevens, J., dissenting). The State also may have an interest in the family itself, the institution through which "we inculcate and pass down many of our most cherished values, moral and cultural." Moore v. City of East Cleveland, 431 U. S. 495, 503-504 (1977). Parents have a traditional and substantial interest in, as well as a responsibility for, the rearing and welfare of their children, especially during immature years. Bellotti II, supra, at 637-639.

None of these interests is absolute. Even an adult woman's right to an abortion is not unqualified. Roe v. Wade, supra, at 154. Particularly when a minor becomes pregnant and considers an abortion, the relevant circumstances may vary widely depending upon her age, maturity, mental and physical condition, the stability of her home if she is not emancipated, her relationship with her parents, and the like. If we were to accept appellant's claim that § 304 (2) is per se an invalid burden on the asserted right of a minor to make the abortion decision, the circumstances which nor-

mally are relevant would—as her counsel conceded—be immaterial. The Court would have to decide that the minor's wishes are virtually absolute. To be sure, our cases have emphasized the necessity to consult a physician. But we have never held with respect to a minor that the opinion of a single physician as to the need or desirability of an abortion

heel Juntuces

outweighs all state and parental interests."

Although Ljoin the judgment of affirmance in this case, I am not able to join Part III of the Court's opinion. It apparently would hold that a State validly may require notice to parents in all cases, without providing any type of independent decisionmaker to whom a pregnant minor can have recourse if she believes that she is mature enough to make the abortion decision independently or that notification otherwise would not be in her best interests. My opinion in Bellotti II, joined by three other Justices, stated at some length the reasons why such a decisionmaker is needed. Bellotti II, supra, at 642-648. The circumstances relevant to the abortion decision by a minor can and do vary so substantially that absolute rules—requiring parental notice in all cases or in none ---would create an inflexibility that often would allow for no consideration of the rights and interests identified above. Our cases have never gone to this extreme, and in my view should not. Accordingly, I cannot join Part III of the Court's opinion.

900

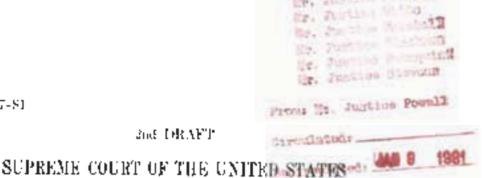
While the medical judgment of a physician of course is to be respected, there is no reason to believe as a general proposition that even the most conscientious physician's interest in the overall welfare of a minor can be equated with that of most parents. Moreover, abortion clinics, now readily available in most urban communities, may be operated on a commercial basis where abortions often may be obtained "on demand." See Planned Parenthood of Central Missouri v. Danforth, supra, at 91-92, n. 2 (Stewart, J., concurring); Bellotti H, supra, at 641, n. 21.

The discenting opinion of Justice Masshall, which would hold the Utah statute invalid on its face, elevates the decision of the minor and her physician to an absolute status ignoring state and parental interests.

8. Although Bellotti II involved a statute requiring parental consent.
The vationale of the pluralely spinion with respect to this need in applicable here.

1-7-81

Just DRAFT



Mr. Justice Brennes Mr. Justica Physors

To: The Chief Justice

No. 79 -5903 

H. L., etc., Appellant, On Appeal from the Supreme Court of Utali, Scott M. Matheau et al.,

1

[January -- 1981]

Mercorandom of Justice Powerld

This case requires the Court to consider again the divisice questions unised by a state statute introduct to carourage parental involvement in the decision of a pregnant minor to have an abortion. See Plannel Parenthood of Central Mossouri v. Danjorth, 428 U. S. 52 (1976) Bellotti v. Band, 443 F. S. 662 (1979) (Religite II). A join Parts I and H of Tan. Citizen Justice's opinion. It also agree that Utah Code Ana-\$76.7 304 (2) does not immonstitutionally burden this ago pellant's right to an abortion. I do not min Part III of his opinion however, for the views that I express in Bryate H head the to conclude that a State eighbot properly require without allowing for exceptions, that parents he similarly of their times daughter's abortion decision

Section 304 (2) requires that a physician "Lefotify, if poswhile, the parents of guardian of the woman upon whose the abortion is to be performed if she is a numer." Appellant attacks this notice requirement on the ground that it highers the right of a bilinor actors enumerpaired, or actors is matterenough to toolar the abortion decision independent of parental involvement or whose parents will react abstractically upon a stare. See so he at 5 . Has threshold question as the Charles nonce, notes, is whether appellant has standing to

The law 900 Critical and respect to the Court component (Axio, of \$12)

make such a challenge. Standing depends initially on what the complaint alleges, Warth v. Reldoc. 422 U. S. 490–498, 501–11975), as courts have the power budy to redress or otherwise to protect against money to the complaining party." Id., at 499. The complaint in this case was carefully drawn. Appellant's allegations about herself and her familial situation are few and laconic. She alleged that she did not wish to inform her parents of her condition and behave [4] that diffusel in her best interest that her carents not be informed at the condition." Complaint "6. She also alleged that she understood twhat is needed in her decision." "9, and that the physician she consulted had told her that the rould not and would not perform an abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents prior to abortion upon her without informing her parents.

Appollant was 15 years of age and lived at home with her parents when she filed her complaint. She did not claim to be mature, and made no allegations with respect to her relationship with her parents. She did not aver that they would be obstrative if notified or advance any other season why notice to her parents would not be as her best interest. Smalarly the complaint remains no allegation that the physician—while apparently willing to perform the abortion believed that notitiving her parents would have adverse mesospacies. In fact anching a the record shows that the physician had any accommation about appellant's parents or familial situation or even that he had examined appellant,

:

This case does not come to us on the allegations of the complaint alone. An evider terry hearing occurred ofter the trial court had decayed appellant's motion for a preliminary injunction. Appellant was the only witness, and her testimony, and statements by her course! make clear beyond any question that the fears bone," averagents of the complaint were deblerate, and that appellant is arguing that a

more notice requirement is invalid per so without regard to the minor's age, whether she is engagingated, whether her parents are likely to be obstructive or whether there is some health or other reason why notification would not be in the minor's best potents.

On desert examination, appellant merely verified the allegations of her complaint by affirming each allegation as paraphrased for her by her lawyer. Her testimony added anticing

 $<sup>2\</sup>Delta p_{\rm p}$  ellipses for districting about the abscordance and her family it as follows:

<sup>(</sup>ii) The MR (DOLOWILZ, appell of Covered At the fine that the someone in this protter was agreed you were presented."

<sup>&</sup>quot;A Yes

by You had complete out a some for about that programme?

Yeah

<sup>(20)</sup> Yan, had determined after talking to the councilor that you list you don't get an absorber?

<sup>&</sup>quot;A Visa

<sup>(</sup>Q) You felt that very did not want to matrly your parents—

the Bagle

 $Q = \pi / (2\pi \sigma)$  decision? Yes defined feel for year was reasons that  $g_{CP}$  model absences is with them?

the Bright

<sup>(</sup>iii) After discussing the matter with a couns for, you still believed that you does 5 not. Below it with your percent?

CA Ingle.

<sup>2</sup>Q And they shouldn't be nealed?

AA Right.

 $<sup>\</sup>pi Q$ . After a Boing the marker as a with a counselor, the counselor conservation were decision that some property should frust be noticed. The asspection is question from the fertile applicants have entartied that the Q of sold be greated in the constant. Q or Q and X Q , X Z Z

ha Rigid

 $<sup>^{12}(</sup>Q)$  Are; were integral that the absolute for evolution is performed without notations the  $m^{2}$ 

A. No.

<sup>2</sup>Q. You Cambridge to the following bound flog a smith

<sup>1</sup>A Their

Q - Year and I described in as we alterface at a movembal a reglative diagram of a contract to do. (

### 11 I. c. MATHESON

ኒት ስም-

(i) Q. Yan declied that, after our discrepant, you should call preced with the extremate my so about an election within a contribute point parents?

A. Bush

- (Q) A on hed may intensitable got the consider red Cardotz the substitution over and discussing a with one, that you could make the doctrien in your lower that you resided to about the programs?
  - A. Yes
  - 2Q. You are living at home?
  - 23 800
- Q. You wall relatively a thought you were fixing at heme with your parents that you out for discuss the matter with them?
  - Ragio

 $\pm 3000$  (SO), 0000 Z. It think there would be those questions to enjoying the advictors were to a unit the complaint  $\Gamma$ 

Appelling to the restaurant on a resorganization and the following: 
(MR) Mac ARTHY (G). Share's lawyer] (Let's start est this way 
Are your of Taylor of United

- 4 31-
- Q. Are use dependent on your parents?
- A 16
- Q. All oser metals comes from them?
- V 300
- Q. Howard it company
- CA February
- -2Q. As the frequency of a faction of even have proven on to leaf that case in a Cark Connecting rather about other problems I.
  - A. Yes
  - Q. Which is of a consist.
- MRC 100 OW UZ. New very recommoning rate the problem is a fleet I recorded.

being permitted to cross-examine ker." To, at 86. Appellant's lawyer replied:

This our position constitutionally that she has the right to make [the abortion] decision and if she has consulted with a counselor and the connector randoms that these are valid reasons why then . . . . In terms of going beyoud [the complaint allegations], our point is that the specifies of the reasons are really uncleaved to the constitutional uses ." This at SG-87 (compliasis supplied)

When appelled's lawyer insisted that the facts with respect to this particular minor were irrelevant, the trial court sustained the caladity of the statute."

In sum, appellant alleges nothing norm than that she designs an abortion, that she has decided—for reasons which she declined to reveal—that it is in her best interest not to rotify her purents, and that a physician would be willing to perform the abortion of notice were not required. Although the trial court she not rule at terms of standing, it is clear that these bald allegations do not confer standing to claim either that \$304.12, in constitutionally landers the right of a matrix minor or a minor whose best interests would not be served by parental notification.—They confer standing only to claim

ON the level of the conformacy ligrang, appellant's lawyer transition tend on the form gravitables.

The many engines is that are passed for the statute macross opinionally provided in addition of the content of the additional state of the engine of the state of the provides of the state of the state of

The core this calculated a classical order at long a 16 presenced 11 of other month pseudo 11 per classical space of which is a program of more warrenthy or sign of the fertilent water in parent 11 notice, upon a showing that the requiring of the 12 per classical principles with Legisland program. But the second a charge of the 12 per classical sections appeared for the 13 so not also so in morphors. The cabo camplant is light one after the 13 so not also so in morphors. The cabo camplant is light one after the 13 so the classical program of the 13 so of the classical section where so eithering activated program of the 14 degree of the program of 18 so that

- - - ----

### H. J. & MACRESON

that \$ 304 (2) is an unconstitutional burder upon an uncounterparted uniner who classics in abortion without parental not firstion but also desires unt in explain to anyone betweeness either for waiting the abortion or for not waiting to mostly betweeness.

end and obtain acceptable to the rights of the will be figure-remain sheather it, on the new their compliance with the grows one at resolute, 76.7 (2000) 1. Change one for the Third discrepted only a possible the end beam that the other class members assert the electrical of in the opposition presents in a substitutional legislation as beginning without motiving their patents of expensive their constants of the proposition accordingly to the constant of the

(2) The result of the content of the burge of the formula expedition is a following to the content of the content of the content of the burger part of the first objects for the content of the burger parts.

The plantage constituted with the medical to assert for more than the large wirds of the short large matching programmy. She destinated, and reconstitution with the process sharp that the significance is not she turn but a conference of the reconstitution for the significance in the provisions of Section 75.7 (1947). The following knowledged for the two significant conference of the short short of the short of the short of the significant short of the shor

The soft infinitely process plantides of all groups. At the host, it finds at applications of office a way of our of that the plantier agrees with a political field on the the by way of a supplicant block mode. In the set the body performs of the trial by the way was alwaying to perform at abots to a result of the plantier of the extra complete and be trial to find the the plantic field according to a performance of the extra conditions are a set of the extra conditions as a function because of the condition field to the plantier beautiful or and the trial of the plantier of the extra conditions and the trial of the extra conditions and the extra conditions are the extra conditions without the plantier and the extra conditions with the plantier of the hold of the extra conditions with the extra conditions with the extra conditions with the extra conditions and the legal regiment of the hold of the real or extra the local and the total delegating against the total conditions. But the legal regiment is the hold of the real or extra the local or the total delegations and because the total conditions.

F

On the facts of this case, I conclude that § 304 (2) is not Kar mirroustitutional burden on appellant's right to an abortion. Numericus and significant interests compete when a toinor decides whether or not to about her programmy. The right to make that decision is constitutionally protected, of course, Roy v. Wade, 410 U. S. 113, 154 (1973); Planted Parenthood of Central Missouries, Dandorthe supra, 40–74–75. In addition. Do minor has an interest in effectuating her decision to about, if that is the decision she makes. Id., at 75; Brillotti H. sepro, at 547. The State, aside from the interest it has in ecoeutaging childbirth rather than abortion, cf. Mulice v. Row, 432 U. S. 464 (1977); Harris v. McRag, ... U. S. (1980), bas as asterest in fostering such consultation as well assist the minur be making her derisjon as wisely as possible. Planned Potenthood of Central Missouri v. Dauforth supra. al 91 (Stewert, J. concarring); past, at .... (Strucks, J., dissenting). The State also may have an interest in the laindy itself the justifiction through which the jugalexte and pass down many of our most elactished cables, quiral and cultural." Moore v. City of East Chereland, 431 U.S. 495, 503-504 (1977). Parents have a traditional and salstantial interest in as well as a responsibility for, the regroe and welface of their clubben, especially during humature veats = Bellotti 11, supra, at 637-639.

None of these reterests is absolute. Even an gileli woman's right to an abortion is not inequalified. Roe v 0 adv. super. at 154. Particularly when a meter becomes pregnant and considers an abortion, the relevant eleminastances may vary widely depending upon her age, maturity, mental and obvisical condition, the stability of her home if she is not emagnificate, her relationship with her parents, and the like. If we were to secont appellant's claim that § 304 (2)

to the father the place of problem and that to rellate spatients regularized by

is per so an invalid burden on the asserted right of a minor to make the abortion decision, the circumstances which our mally are relevant would as her counsel corrected for immagnerial. The floart would have to decide that the minor's wishes are virtually absolute. To be sure, our cases have emphasized the necessity to consult a physician. But we have rever held with respect to a minor that the opinion of a single physician as to the need or desirability of an abortion outweighs all state and parental interests."

Although I could join a judgment of affirmance to this case. I am not able to aim Part III of Tan Curry Justice's operation. It apparently would hold that a State validly may require notice to parents in all cases, without providing my type of independent decisionmaker to whom a pregnant minor can have recourse if she believes that she is mature enough to make the abortion decision independently or that notification otherwise would not be in her best interests. My opinion in Billiotti II, joined by three other Justices, stated at some length the reasons why such a decisionmaker is needed. Belliotti II supro, at 642 (488). The circumstances relevant to the abortion decision by a minor can and do vary so substantially that absolute rules, requiring parental notice in all cases or in none." would create an inflexibility that often

While the method pedgment of a physician of control is to be respected, there is no trassen to behave a larger toll preposition that even the rand conclusions physician's horizon in the coural policies of a more can be expected with that of most persons. Moreover, abortion choices new people of with that of most persons. Moreover abortion choices new people with a most orbital remaining may be operated on a commercial basis where abortions often may be obtained from demand for Sec Physica I Propertional of Control Mission, v. Dandorth, supposit 91-92, p. 2 (Standorth, concurring). Belletti II sequence 644, p. 21.

Next that  $g = ReR \sin k / H$  involved in soft, a period integrating point of the constant, as a rate of the restriction of proper with  $x_i$  specifies that there is applied the form

<sup>&</sup>quot;The opinal conditions of Massaytt, which would hold the Utah state to invalid the life in a constant of the decision of the inner their being playered to in decision decision of the inner the playered to indicate the state of proving of the indip terms interests."

# H. L. & MATHESON

would allow for no consideration of the rights and reterests identified above. Our cases have never gone to this extreme, and in my view should not

January 8, 1981 79-79-5903 H.L., etc. v. Matheson, et al Dear Chief and Thurgood: As Potter and I were somewhere "in the middle" in this case, and as I cannot join either of the circulated opinions, I have written the enclosed memorandum. On the facts of this case I do not believe that appellant has standing, as she makes an insufficient showing of injury to herself or the class she describes. Thus, the Utah statute does not burden appellant's right to an abortion. On the other hand, for the reasons stated in Bellotti II, I cannot agree that a state may require parental notification by every pregnant minor, desiring an abortion, regardless of the circumstances. Thus, in the present posture of the writing in this case, I could join the Chief in a judgment of affirmance but would write separately along the lines of the enclosed memorandum. Sincerely, The Chief Justice Mr. Justice Marshall lfp/ss cc: The Conference

# Supreme Court of the Anited Sinles Mashington, D. C. 20543

CHAMBERS OF JUSTICE POTTER STEWART

January 9, 1981

Re: No. 79-5903, H.L. v. Matheson

Dear Lewis,

[ agree with your newbrandom, circulated yesterday.

Sincerely yours,

PS

Justice Powell

Copies to the Conference

To: Mr. Justice Brennan 1-2,7-12 and stylistic Mr. Aust - Stewart Mr. Just of White Jershal! Justle blacknup Justi | rewell Mr. Justian Relinquist 1/10/81 Mr. Justice Stevens 2nd DRAFT Mr. Justice: I think that you SUPREME COURT OF THE UNITED STATES TO SUSTICE still can jour parts I EII. Circulated: . No. 79-5903 Regirculated. JAN 10 1886 but cornel jour part III. H. L., etc., Appellant, (In particular, I On Appeal from the Supreme make suggestions dean your attacher Scott M. Matheson et al. Court of Utah. to the sentence [January -, 1981] beginning "That she..." CHIEF JUSTICE BURGER delivered the opinion of the Court. The question presented in this case is whether a state at the bottom of statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to perp.11) forming an abortion on the girl violates federal constitutional guarantees. GM In the spring of 1978, appellant was an unmarried 15year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. She consulted with a social worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents. Section 76-7-304, enacted in 1974, provides: "To enable a physician to exercise his best medical judgment [in considering a possible abortion], he shall: "(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to.

"(a) Her physical, emotional and psychological health

and eafety.

"(b) Her age,

"(c) Her familial situation.

### H. L. - MATHESON

(2) Notely of massible the parents or quardian of the women upon whom the abortion is to be performed, if she is a remot of the hashfull of the woman, if she is marked "— (Emphasis supplied.)

Violation of this section is a misdemensor punishable by maprisonation for not more than may year in a fine of indmore than \$1,000.

Appellant behaved "for (her) own reasons" that she should proceed with the absortion without notifying aer parents. According to appellant, the social worker emerged in this decision. While still in the first transser of her pregnancy, appellant instruced (his action in the Third Judicial District Court of Fight). She singlify her largeting that \$76.7-304-121 is moreostitutional and an important probabiling appellant the Governor and the Attorney General of Fight from enforcing the statute. Appellant sought to represent a class consisting of unmarried "minor women who are suffering in wanted pregnancies and desire to terminate the prognancies.

2 Whether percents seem in money habits under the horizontal expense. Of successful or or large took often sure is any decreased by the percent.

The Laboratov decimal at the first are partition may be permitted as a first of the authors and a formed with the constitution by the attention process of the process of the accomplished with a first of the process of the process of the constitution of the property parameters of the constitution of the property parameters of the constitution of the process of the

3.6.1 Code Code (1985) \$\$ 76.7 \$24 (1965) with quality for a sulfactor Appellant school of an electron process of all forgeneral and again to the Newton Code (1985) and on the local process of the large electron would set to prefer a local process would not be according to the large electron electron of the local process of large electron electrons (1985) and (1985) and (1985) and (1985) and (1985) are the large electron electrons (1985) and (1985) and (1985) are the large electron electrons (1985).

 Of the relaxionship field reveal of letter in pelling proceeded with the controls. Let year for do so' because of their physicles' assistance of ecoplying with \$76.7 WM (2). The trial indeed declined to grant a temporary restraining order of a problemary minuscipe.

The trial index hald a bearing at which appellant was the ordy witness. He constraind the statute to require the treating physician to notify appellant's parents of it is able to physically contact there." Sustaining appellants objection the order refused to allow the State to income into the specific reasons why appellant old not wish to config her accents. Therefore the trial rudge entered findings of fact and conclusions of law. He first critified the class represented by appellant, then readified his ruling that the statute requires mores if "physically mossible." He concluded that \$76.7.004 (2), "dolps," into menestly the abive restrict the right of privary of a rapper to obtain an aboution of to enterprise a doctor-patient arbitration should have dissented the contribute.

On annual the Supreme Court of Trale cognimensly uplofd the start for H, L, v, Mathesiae  $G(4, \mathbb{P})$  2d 907 (1979). The lying in our decisions v. Plannof Proportions and Control M is some v. Irradiath A28  $\Gamma$ , S, S2 (1976). Consider Population Section International, A31  $\Gamma$  S G78 (1977), and Indiate vIndial A43  $\Gamma$  S  $A22 \times 1979$  in Probability D. The court concluded that the statute serves objectional state interest  $\{v\}$  that inverse sent with respect to nations but absent in the case of adult v due:

The court book (after the subsection of code (76.7–30). This provision of a rount observed expressly surerpointes for

A complexity of the following process of a fitting process of a graph of the process of a graph of the following process of a graph of the following process.

The spin consists of an electric position. So the remaining of the count with the probability of the constant of the country 
<sup>.</sup> The second map (0,0) is the contraction of the second map (0,0) in the second map (0,0)

factors we see tailed a  $Doc \propto Bolton$  (410-17) 8, 170 (1967); espectation to exercise of a physician's sections call neighbors breaking an absorbin decision. In Doc we started

"We take with the Destrict Court — that the entire cal indigeneration to exercised in the light of all factors observed, can though as a belonged for Hall and the manes of any extension of the patient — All these factors may relate to registe. This allows the court touch go devices the rate of the patient of the hall go devices the rate of the patient of the hall court of the state of the state of the state of the hall court of the state of the state of the hall court of the state 
So bon 70.7 304 (1) of the 1 (ab statute suggests that the legislature sought to called the language of  $Dm_{\rm s}$ 

The Pfa. Statemer Court hold four notifier 2 the powers of a rather sick of an about sick of an about sick of a rather sick of an about sick of an about sick of a rather the Doc factors so and a \$76.7-304-1. Jumpse the other working by possess at formation assembly to a bindle court is ever is as his best medical hadement energy and a bin desired so about a significant energy for a bit. 300 P; 2 is at not 1900. The court give concluded by the object of an area of six concludes in a particle of an area of windher to an explicit of for a greats in anchorage days a significant extension, and the same six of windher to an explicit of the according to the object as a religious or winder state of the same and the sam

The Utah S foreign Court also rejected acquible its argament that the access of possible in a 76-7 floor 23 stood or construct to give the all especial construction whether its interview eige flat its courts. The court concluded that the play can is frozenski to ratify parents of anchor the extraostructions on the causes of regionalizations, he can assert an element of the action and boardions; of this feasible or practicable in greatern to discuss of fication. The court added, involved that the substance should be a conjugate factor for their most be sufficient extends on the provide an effective opportunity for an allowing the 1934 P. 2d. at 513

#### 10 L o MATRESON

#### 14

Appellact challenges the statute as unconstitutional on its trace. She contends it is overlengel in that it can be construed to another all uninquired intuiting these who are enabled and enablepated. However, she did not allege of other evidence that either she is any member of her class is negligible in enablepated. The record shows only that appellant is an inaginaried founds living at home and wholly dependent on the parients. That affords an insafficient basis for a finding that she is either mature or enabligated. Under Harris v. Mellac, ..., U.S. ..., ... (1980), she lacks "the personal stake in the controversy needed to confer standing in advance the overbreadth argument.

There are particularly strong reasons for applying established rules of standing in this case. The United States District Court for Utah has held that \$76.7-304 (2) does not apply to engagingted minus and that if so applied, it would be parconstitutional. I. R. v. Hanson Civil No. C. 80 (0784 (166), 8, 1980). Since there was no appeal from that calling it is controlling on the State. We cannot assume that the statute when childrenged in a proper case, will not be construed also to exempt demonstrately neglect minus. See Billette v. Burel, 428 U.S. 132, 146-148 (1976); (Bellotte I). Not is there any reason to assume that a mean in used of energency mathematical will be treated in any way different from a similarly situated estable. The Utah Supreme Court has

The Helpette II. The matrices of a principal dissection of deficience programs and matrices of Massech entrs. The tenth college the expectation of consequents and a tenth entry of and a tenth entry of the entry of

Find the result of the first of the Court of proceeding the design of the status of the first of the result of the result of the result of the first 
#### M. R. S. MATTERSON

isot no organizate consistent the application of the statute to such situations. In British II, supra, we increasesty declared to pass on constitutional challenges to an abertion regulation statute breaks the statute was associately decided in construction by the state indicinal taken might acceld in whole of is part the correspondence the nature of the molecular or at least materially change the nature of the molecular. In 147, aparting Hardson & V.14CP, 360 P. S. 167, 177 (1959). See Kleppe a New Mercan 426 U. S. 529, 546, 547 (1970); Asherode, & Tennessee Pullen Authority, 207 P. S. 288, 336, 347 (1930), communical approach as in feed of our training the confidence of allowing that approach as in feed of our training tenter is soften as appellant challenges a perpention statutory exclusion of that reconditional challenges a perpention statutory exclusion of that reconditional challenges a perpention statutory exclusion of the reconditional challenges at the perpention of the perpention o

The only issue before is, there is the facial coest torion-lifty of a statistic require graph visiting to give notice to prove to if the statistic require graph performing a calculation on their major on glottic fact when the girl is living with and dependent up or long parents, the ways she as not empty girls by matriage or otherwise, and convolved when she has read not claim or showing as to her majority or as to her relations with her careets

## 113 - \

A coellant contends the statute guides the right to privacy to reguized to our prior cases with respect to absorbers. Sight east orimory reliance on R. Rotte H. support 443 U.S. at 642 655. In Danforth, supra, we satisfy down state statutes that colsoed a requirement of prior withthe consent of the partie is a

Where g=100 Proof is the second Where g=1 is a second constant g=1 and g=1 an

The same of the original product of the same open as a point of the same of

sponse and of a minor patient's parents as a prerequisite for an abortion. We hold that a start

These not have the constitutional authority to give a third party as absolute and possibly informative versioner the decision of the physician and his patient to terms at the patient's programey regardless of the reason for whichelding the consent."  $Id_{\rm c}$  at 74

We simplies and however, "that air habiting", does not a suggest that every mine, regardless of age or materity may give effective consent for termination of her pregnance. Id., c4.75, citing B(Rott, I, super.) There is no logical relationship between the capacity to become pregnant and the capacity for material .

It Belletti H dealing with a class of concededly matrice throughout minute one struck down in Massachuseits statute recording process," or radicial consept before an abortion could be perfected on any innegrated mater. There the States is ghost ownthiad construed the statute to allow a court to evertale the annot's disasion even if the easts found that the motor was capable of making and in fact had made an e forced and reaso able dension to have an abortion. We field, proong other things, that the statute was unconstitut road for failure to allow maters minors to decide to padergs. chomous without parents? eresent. Four Justices courlided that the flaws in the statute were that, as construed by the state magnitudes percented over-uling of a nightire minor's users on its about her programmy; and she list requires parent; I consultation of potification to every instance, without affording the program indication importunity to sorely can indeanalent in licial determ cather that sincus reature enough to consent or that an information would be extended interest if [14] at 651. For other Justices we childed that the defort was to traviting the ghorston decreases of a minor subject to you be a third of the whother parent or order this matter how partins at Loupable of intermed cases overally as the property split  $\delta \phi = D_{\rm max} (0.53) 650$ .

Where gover here the total a state may not constitute ally looks to a blanker of a variable and a of process in variable and all the state is a variable and a state of parental notice does not violate the constitutional rights of an immature, dependent minor. Four Justices in Rellatti II initial by statings

of parental notice fundative appears the registrosis king of parental notice fundative appears the registrosis king abortion. As state a Part II also a increase the special testion at the research people features that tested the registrosis fundations of the state of a testion stage of a fact of a parental ability to trake failty a force of the less that take proved of both immediate and and range constraints, in Mail testionably may determine that parental consultationalism is desirable and in the best interest of the minor it may further determine as a general reconstitution of a such consultation is desirable and in the best interest of the minor it may further determine as a general reconstitute of a such consultation of a desirable and in the best interest of the minor it may further determine as a general reconstitute of all such consultations of a desirable and in the best interest of the minor it may further determine as a general reconstitute of all such consultations are desirable with passent in

The first of the last of the start the State for the sigconstitutionally pertuising a relative enemanging to one constitutionally pertuising a relative transfer and a force of the start of the early given where the start of decision whether or terminates and detailed a grave become and a god of temperature of leave arisinal stress may be

 $<sup>\</sup>frac{\partial f}{\partial s} = \frac{\partial f}{\partial s} + \frac{\partial f}{\partial s} = s + \frac{1}{2}  

illinguipped 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 clude, where abortions for pregnant minors frequently take place  $^{100}$  Id, at 640-641 quoting Douborth, super 428 U.S., at 91 (concurring opinion), (feotpotes omitted)

kerord af jut 657 obsenting opining (

In addition, "constitutional reterpretation has consistently accognized that the parents' chain to authority is their own touschold to direct the rearing of their children a basic in the structure of our society." Goosberg v. New York, 339 F. S. 629, 639 (1968) (plurality opinion). In Quation v. III direct, 434 U. S. 246 (1978), the Court expanded as this thems.

"We have recognized on numerous occasions that the relationship between pagest and child is constitutionally protected. See, *i. g.* Wesconsine v. Voder. 406 U.S. 205, 233–233. 1972); Stanley v. Polanis, [405 U.S. 645 (1974)]; Meyer v. Nebruska. 262 U.S. 396, 399–406 (1925). At is cardinal with us that the custody, care and numerous of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." In [40, 255] quantity Prime v. Messuchusetts, 324 U.S. 158, 156 (1944).

See also Partonia v. I/R, 442 U. S. 584, 602 (1979); Photoc v. Society of Sisters 268 U. S. 540, 535 (1925). We have recognized 05at parents have an important "guiding role" to play  $\nu$  the upbraising of their children Bellotti  $H_{\rm c}$  supra, g) 633-639, which presumptively includes some emisseling them on important decisions

Ë,

The Utah statute gives neither parents do pudges a vern

power over the miser's abortion decision." -4s in  $Relliotti I_s$ soper, "we are concerned with a statute directed toward minute, as to whom there are magnestingably greater risks of mability to give an informed consent," DL, at 147. As applied to immature and dependent mirrors, the stat to slainly serves the important considerations of family integrity" and protecting adolescents" which we identified in B. Potti H. In addition and application aligns, the statute serves a significant state interest by providing an epportunity for parents to supply resential medical and other information to a physician. The medical, constitutal and psychological en sequences of an abortion are serious and can be lasting. this is particularly so when the patient is isometrize. An adequate medical and psychological case history is in nortant to the physician. Parents can provide endical and psychologind data refer the physical to other sources of pickagl historn such as latelly obesidens, and pothorize family physicines to give relevant data

Appellant betimates that the statute's failure to declare a terms, a Actailed description of what information agreets

The graph of place of the discrete action of the distribution of a conservation of the second of the

Labor Manager 1994 Serving the The Joseph Laping of the Object Appropriate the Object Control of the Serving Labor Control of the Object Control of the Ob

Plant 10 March 10 (11 store of the

When the content of t



may provide to physicians, or to provide for a mainlatory period of delay after the physician notifies the parents " renders the statute unconstitutional. The notion that the statute mass prompt information to be supplied by parents finds no support at logic experience or our decisions. And as the Utah Supprise Court recognized 504 P. 2d. at 913, time is likely to be of the essence in an abortion decision. The I tah statute is reasonably calculated to product infinite it appellants class by enhancing the potential for parental consultation concerning a decision that has potentially transacting and performent rouseouteness."

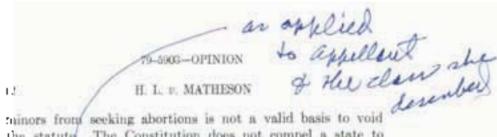
Appellant again contends that the constitutionality of the statute is undernoted because Utah allows a pregnant minor to consent to other posteral procedures without formal notice to her parents if she carries the child to term." But a State's agreests at full-term pregnancies are sufficiently different to justify the boschawa by the statutes. Cf. Maker village 432 U. S. 464, 473-474 (1977). If the pregnant girl elects to carry her child to term, the medical decisions to be made entail tew spechaps none of the potentially grave emotional and psychological consequences of the decision to along

That the requirement of notice to parents may inhibit some

is Free sested by the rest of purchase notification statutes relatively to a manufactory washing periods. Lat Rev. Stat. Mon. § 40 (2.8 m3.5) and 60 september 1.2 hours construct to a consequence of the rest construct to a consequence of the rest 
"Monthers of the particular class new Science is the case have no constitutions, fight to nextly a court in one of non-ying their parents. See Helicity II. Append 113 P. S. of 947. We need not and do not decide by wise opinions to account neither to be parental neither as in

Press, Trac. Code for a code of \$18.14 \$ (1) in appropriating any female or give incomes a consensuate of a code of the original probability by law in galance continuate the representation of a condition to

lemited to numoro in appellente class



tomors from seeking abortions is not a valid basis to void the statute. The Constitution does not compel a state to rine-tune its statutes so as to encourage or facilitate abortions. To the contrary, state action "encouraging childbirth except in the most ungent encouraging childbirth except in the most ungent encourages," is "rationally related to the legitimate governmental objective of protecting potential like." Higgs v. McRon. supra. ..... P. 8., a) Accord. Market v. Roc. supra. 432 U.S., a) 473–474

As applied to the class properly before its, the statute plantly serves important state interests, is narrowiv drawn to protect only those excresss, and does not violate any guarantees of the Constitution. The Judgment of the Supreme Court of Utah is

1 fformed

\*\*See don Bellings II + period to 1 \*\*See to 10 \*\*C14 \*\* Belling II, supra. \$28 (1 \*\* 1) \*\* 15 \*\* 20 \*\* II + to ourse (28 \*\* 1 \*\* 1 \*\* 25 \*\* 25 \*\*). Unmerte at a \*\* Market (28 \*\* 1 \*\* 20 \*\*) Market (36 \*\* 10 \*\* 128 \*\*) See to 11 \*\* 20 \*\* 20 \*\* Market (36 \*\* 10 \*\*) Inc. a \*\* 20 \*\* 2

Characteristics of the characteristic description of the sector power of the appear of frequency were made as a fixed cover, so of the best productly digital product, these general temperatures of the power of the product of the pr

January 15, 1981 79-5903 H.L. v. Matheson Dear Chief: I will be happy to join your most recent circulation if you could clarify footnote 17, and add the few words to the sentence at the top of page 12 that I have suggested. I enclose these two pages with the suggested changes. Potter agrees that he also will join you if these changes are made and also will join my separate concurring opinion. Sincerely, The Chief Justice lfp/ss cc: Mr. Justice Stewart

## Supreme Court of the United States Washington, B. C. 20543

CHAMBERS OF THE CHIEF JUSTICE

Luciary 15, 1971



Ref. 79-2903 -  $80.2_{\odot}$  v. Marheody

Control Lewis at

Fince I see no difference in the suggested countries in vote demonstry 15 more and by Japoury 19 draft, I am give to make the changes.

Ворчаная і

Justice Powers

Copy to Custice Stewart

January 16, 1981 79-5903 H.L. v. Matheson Dear Chief: As your opinion (3rd draft) now meets the concerns I have previously expressed, I am happy to join it. I am making appropriate changes in the memorandum I circulated to convert it to a concurring opinion. Sincerely, The Chief Justice lfp/ss cc: The Conference

# Supreme Court of the Anited States Washington, D. Ç. 2051/3

## 79-5903 H.L. v. Matheson

January 16, 1981

Dear Chief:

JUSTICE LEWIS F. POWELL, JR.

As your opinion (3rd draft) now meets the concerns I have previously expressed, I am happy to join it.

I am making appropriate changes in the memorandum I disculated to convert it to a concurring opinion.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

En. The Chief JuntinEr. Justice Brennau
Er. Justice Enite
Er. Justice Harshall
Er. Justice Banchun
Er. Justice Bahoquist
Er. Justice Stavans

1.21.81

Brown Mr. Justice Fowell

Circulated:

## 3rd DRAFT

JAN 2 1 1981

# SUPREME COURT OF THE UNITED STATES

No. 79-5903

11. L. etc., Appellans.

12. On Appeal from the Supreme Scott M Matheson et al. Court of Utah.

Changaev 1 , 4981;

JUSTICE POWERS, concurring

This case requires the Court to consider again the divisors questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See Plannet Parenthood of Central Massouri v. Danforth, 428 U. S. 52 (1976); Beffolti v. Buird, 443 U. S. 562 (1976); Beffolti v. Buird, 500 Court (bal Utah Code Ann. \$76-7-304 (2) does not unconstitutionally burden this appellant singlet to an aburtion. I pain the opinion of the Court on the understanding that it leaves open the question whether \$304 (2) unconstitutionally burdens the right of a mature minor or a minor whose best interests would cut be served by parental notification. See inde. (44.9-1) 17. I write to make their that I contains to entertain Parviews on this question stated in the opinion in Bellatri H. See tofor, at (1) S.

Section 304 (2) requires that a physician 'in'otify if possible the patents or guardian of the woman upon whom the abortion is to be performed if she is a major "". Appellmat attacks this notice requirement on the ground that it burdens the right of a minor who is employipated, or who is another enough to make the abortion decision independent of parental accolerant, or whose parents will react obstructively upon

VSection 200 CCL is mosted in follow the Court's opinion of talk, at 1.2

notice: See ante, at 5. The threshold question, as the Court's opinion notes, is whether appellant has standing to make such a challenge. Standing depends initially on what the complaint alleges. Worth v. Scidin, 422 U.S. 490, 498, 501. (1975), as courts have the power "only to redress or otherwise to protect against injury to the complaining party." Id., at 499. The complaint in this case was enrofully drawn. Appellant's allegations about herself and her familial situation are few and laconic. She alleged that she did "not wish to inform her parents of her condition and believe[d] that it [was] in her best interest that her parents not be informed of her condition." Complant 56. She also alleged that she understood "what is involved in her decision." 59, and that the physician she consulted had told her that the could not and would not perform an abortion upon her without informing her parents prior to aborting her."  $\leq 7$ .

Appellant was 15 years of age and lived at home with her parents when she filed her complaint. She did not claim to be mature, and made no allegations with respect to her relationship with her parents. She did not aver that they would be obstructive if notified, or advance any other reason why notice to her parents would not be in her best atterest. Similarly, the complaint contains no allegation that the physician—while apparently willing to perform the abortion—beloived that notifying her parents would have adverse consequences. In fact, nothing in the record shows that the physician had any information about appellant's parents or familial situation, or even that he had examined appellant,

٨

This case does not come to us on the allegations of the complaint alone. An evidentiary bearing occurred after the trial court had denied appellant's motion for a preliminary injunction. Appellant was the only witness, and her testimony—and statements by her counsel—make clear beyond any question that the "bare bones" avergonts of the com-

## H. L. e. MATRIESON

plaint were deliberate, and that appellant is arguing that a mere notice requirement is invalid per se without regard to the minor's age, whether she is emancipated, whether her parents are likely to be obstructive, or whether there is some health or other reason why notification would not be in the minor's best interests.

On direct examination, appellant merely verified the allegations of her complaint by affirming each allegation as paraphrased for her by her lawyer.\* Her testimony added nothing

<sup>2</sup> Appellant's total testimony about her decision and her family & as follows:

<sup>&</sup>quot;Q [Dov MR. DOLOWITZ, appellant's lawyer?] At the time that the complaint in this matter was signed, you were pregnant?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You had expended with a counselor about that pregnancy."

<sup>&</sup>quot;A Yeah.

<sup>&</sup>quot;Q. You had determined after talking to the compation that you felt you should get an abortion?"

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q You felt that you did not want to notify your parents-

<sup>&</sup>quot;A Right

<sup>\*</sup>Q wol that decision? You find not feel for your own respons that you could discuss it with them?

<sup>&</sup>quot;A Right

<sup>&</sup>quot;Q. After discussing the matter with a counselor, you still believed that you should not due use it with your pasents?"

A Right

<sup>&</sup>quot;Q And they shouldn't be normed?

<sup>&</sup>quot;A Right.

<sup>&</sup>quot;Q. After talking the matter over with a cromselor, the counselor encoursed in your decision that your parents should [soot] be notified." "In Tesponer to a question from the bouch, appoint is lawyer agreed that "not" should be inserted in this question. The of Oral Arg. or ==1.

<sup>&</sup>quot;A Hight

<sup>(4)</sup> You were advised that an abortion consider be performed without notifying them?

 $<sup>^{\</sup>circ}A$  Yes

<sup>&</sup>quot;Q. You then easie to use to see about filling a sure?

<sup>&</sup>quot;A Ruhe.

## H. L. e. MATHESON

to the complaint. In addition, appellant's lawyer insistently objected to all questions by counsel for the State as to the appellant's reasons for not wishing to notify her parents.' The trial court, on its own initiative, pressed unsuccessfully to elicit some reasons, inquiring how it could "find out the

<sup>&</sup>quot;Q . You and I discussed it as to whether or not yet had a right to database you wanted to do?"

<sup>&</sup>quot;A Yes

<sup>\*\*</sup>Q. You decided that, after our discussion, you should still present with the action to try to obtain an abortion without notifying year parents?

MA Blight,

<sup>&</sup>quot;'Q. You feel that, from talking to the connector and thinking the stitution over and also using it with the that yet, read make the disciplatic your own that you wished to about the program;"

<sup>&</sup>lt;sup>6</sup>A Yes

<sup>&</sup>quot;Q. You are living at home?"

<sup>14</sup> Yes

<sup>&</sup>quot;Q. You still felt, even though you were living at home with your parents, that you couldn't discuss the names with thous?"

<sup>&</sup>quot;A Right

<sup>&</sup>quot;MR DOLOWITZ I Gark that would be these questions to engograthe allogations we pureful in the emigraph

<sup>\*</sup> Appellant's total testimone on cross-systemation was the following

<sup>&</sup>quot;TMR McCARTHY the State's "lever" Let's start not this way are you still imag at hom?

<sup>&</sup>quot;A Yes

<sup>&</sup>quot;Q. Are you dependent or your patents?"

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q All your movey comes from today."

<sup>64</sup> Am

<sup>\*</sup>Q. How ald are yes non

<sup>&</sup>quot;A. Fiftren.

 $<sup>^{12}{\</sup>bf Q}$  . Asale from the issue of aborton, do you have any reason in feet that you can't talk to your parents about other problems?

A. Yes

AQ Who as they resond

MR DOLOWITZ, Note to a rate moving how the problem area that I independ a . . . .

validity of (appellant's) reasons without (the state's lawyer) being permitted to cross-examine her." Tr., at 86. Appellant's lawyer replied:

"It is our position constitutionally that she has the right to make [the abortion] decision and if she has empedied with a counselor and the rounselor concurs that those are valid reasons, why then—. . . . In terms of going beyond [the complaint allegations], our point is that the specifics of the reasons are really preferent to the constitutional issue." Tr., at 86-87 (emphasis supplied).

When appellant's lawyer insisted that the facts with respect to this particular minor were irrelevant, the trial court sustained the validity of the statute.

In sum, and as the Court's opinion emphasizes appellant alleges nothing more than that she desires an abortion, that she has decided—for reasons which she declined to reveal—that it is as her best interest not no notify her parents, and that a physician would be willing to perform the abortion if notice were not required. Although the trial court did not rule as terms of standing, it is clear that these bald allegations do not confer standing to claim either that 3.304 (2) upconstitutionally burdens the right of a mature minute or a minor whose best interests would not be served by parental notification.) They confer standing only to claim that § 304 (2) is an

<sup>&</sup>quot;At the end of the evidentiary hearing, appellant's twyer framed the trial court's ruling as follows:

If your roding is the his passible justile statute means highly leading possible "J and there are no discount terrors whatever that partify the gradient of the statute, then the scale is should." Trust 98

A Because this case is a sine action of anglit be presumed that other includes a could be jor the quasion where a pregnant motor someon has a right to abortion, bothout parental notice, again a showing that she is contain in that he parents is unfarther with bee abortion. [For the present of a this case contains no firsts in support a presumption that the class includes so a material result in only conceptant allogations about the classical stage that appears at all members of

unconstitutional burden upon an unemancipated minor who desires an abortion without parental notification but also desires not to explain to anyone ber reasons either for wanting the abortion of for not wanting to notify her parents?

the class," and that the class rousists of "minor wanger who are suffering towarded governances and desire to remainate the pregnanties but may not do a maximuch as their physicians will not perform an abortion appeared on without compliance with the provisions of Section 76-7-304 (2)." Complaint, fill Thus, the record only suggests the conclusion that the other class members assert the detailed claim that appellant presents: a constitutional again to an abortion, without notifying their parents of explanating file in research to account size of they and their physicians agree (5,5) of abortion is in their best interest.

"The trial court of terest findings of fact and conclusions of law after the evidentiary hearing. Paragraph 7 of the trial court's findings reads.

The planted consided with a consistor to asset for a deciding whether of our she should remain to her programmy. She detectioned, effect consultation with her computer, that she should seeme an abortion, but was advised when considering her physician that under the precisions of Section 76.7-30 (2), Coah Code Animated, 1933, that he believed along with her that she should be aborted and that he left it was no ber best product interest in this so but he could not still would not perform an abortion upon her without polaroning her parents prior to aborting her because it to a required of him by that statute and he was conflict to reform an abortion upon her without of contact an applying with the provinces of the statute seen though he believed it was best to do so that I will although Coal No. Coal Section (Dec. 26, 1978).

Provide what this periograph finds is antibiguous. At the least, it finds that tops that the proposition a physician and that the physician agreed with a population that an illustrate would be in appellant's best medical interest. The find particle of the finding with the processor of the statute even though by tell collision complying with the processor of the statute even though by tell collision with a population of the find that the physician also agreed with appellant that the processor also agreed with appellant that the processor also agreed with appellant that the processor of the find perform on abortion upon her without complying with the processor would not perform a abortion without complying with the physician would not perform a abortion without complying with the statute even though he belowed that "processor local extension, and the legal organization has been appelled a programmation by the law etc. The statute appellant is

#### H. L. e. MATHESON

## F

On the facts of this case, I agree with the Court that § 304; (2) is not an unconstitutional burden on appellant's right to an abortion. Namerous and significant interests compete when a minur decides whether or not to about her pregioney. The right to make that decision may not be unconstitutionally burdened. Roc v. Wade, 410 U. S. 113, 154 (1973); Planna d Parenthood of Central Missouri v. Dauforth, supra at 74, 75. In addition, the minor has an interest in effectuaring her decision to almst. If that is the decision she angkes Id., at 75; Bellotti II, supra, at 647. The State usade from the interest it has in encouraging childbarth rather than abortion, cf. Maker v. Roc. 432 U. S. 464 (1977); Harris v. McRac. — 1', S<sub>c</sub> — (1980), has no interest in fostering such consultation as will assist the import in making her decision as wisely as possible. Planned Parenthood of Central Missouri v. Dauforth, supra, at 91 (Stewart, J. concurring); post, at (Stevens, J., dissenting). The State also may have an interest in the family itself, the institution through which "we inculeate and pass down many of our most cherished values. moral and cultimal." Moore v. City of East Chrysland, 431 17. S. 495, 503-504 (1977). Parents have a traditional and substantial interest in, as well as a responsibility for the coning and welfare of their children, especially during immature years. Belletti II. supm. at 637-639.

None of these interests is absolute. Even an adolit woman's right to an abortion is not amountified. Roc v. Wade, supra, at 154. Particularly when a major becomes pregnant and considers an abortion, the relevant eigenmental and physical condition, the stability of her home if she is not emancipated, her relationship with her parents and the like. If we were to accept appellant's claim that \$304 (2)

to find that the physician determined that appearantly parents would received desirably or obstructively to relice of appearants aboston decision.

is per so an invalid burden on the asserted right of a minor to make the abortion decision, the circumstances which normally are relevant would—as her counsel conceded—be immaterial. The Court would have to decide that the minor's wishes are virtually absolute. To be sure, our cases have emphasized the necessity to consult a physician. But we have never held with respect to a minor that the opinion of a single physician as to the need or desirability of an abortion outweighs all state and parental interests.'

In sum a State may not validly require notice to parents in all cases, without providing any type of independent decision-maker to whom a pregnant innear can love recourse it she believes that she is mature enough to make the abortion decision independently or that notification otherwise would not be in her hest interests. My opinion in Bellotti II, wined by three other Justices, stated at some length the reasons why such a decision-maker is needed. Bellotti II, supra, at 642-648.\* The coronastances relevant to the abortion decision by a minor can and do vary so substantially that absolute rules requiring parental notice in all cases or in none beworth create an inflexibility that often would allow for so consulctuation of the rights and interests identified above. Our cases have never gone to this extreme, and in my view should not,

While the medical judgment of a physician of course is to be respected, there is an reason to believe as a general proposition that even the most consciousness physician's anterest in the social isolate of a miner can be equated with that of most parents. Moreover abortion clinics, now readily available in most uthan consciousness, may be ejectated on a commercial basis where abortions often may be electroned from detinant." See Planned Parenthood of Central Missouri v. Danjorth, supra, at 91–92, n. 2 (Stewart, J., concurring). Belieft H., supra, at 641, p. 21.

Although Reliable II involved a statute requiring parental consent, the nationals of the planning opinion with respect to this read is applicable here.

A The dissenting replaces or describe Albustrata, which would had the Utah surface award on the trot, closures are decision of the nation and her physician to an absolute status ignoring state and patients at these to.

## Supreme Court of the United States Mashington, D. C. 20543



PARAMETER DE L'ANDRE L'ARTER ART.

Campary 22, 1981

Re: No. 79-5903, H.H. v. Mitheson

Dear Chief,

I have greatly repretted our previous fragmentation in cases falling into the area that this one falls. Accordingly, I am particularly glad to join your opinion for the Count.

Sincerely yours.

0 š.

The Chief Justice

Copies to the Conference

## Supreme Court of the United States Washington, D C. 20543



CHAMBERS OF JUSTICE POTTER STOWART

January 22, 1981

Re: No. 79-5903, H. t. v. Matheson

Dear tewis.

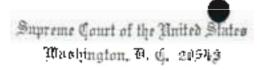
Please add my name to your concurring opinion, which also joins the opinion of the Court.

Sincerely yours.

2.5.

Justice Powell

Copies to the Conference



CANCEL AND LINE OF THE PARTY PARTY.

January 22, 1981



Re: No. 79-5903 H.D. v. Matheson

Char Chief:

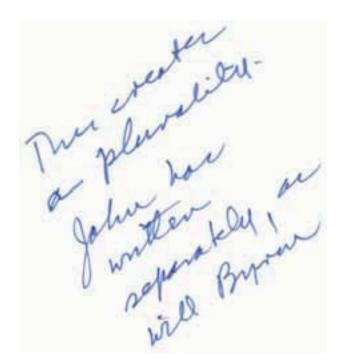
Please join me.

Sincerely,

y, M

The Chief Justice

Capies to the Conference



Mr. Justice Brecess
in Justice Brecess
in Justice Steeper
Mr. Justice Steeper
Mr. Justice Marchall
Mr. Justice Machine
Mr. Justice Makinguist
Mr. Justice Makinguist
Mr. Justice Steeper

The There's

Trulades:

3-2 81

## 4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-5908

H. I., etc. Appellant, v. Scott M. Matheson et al.

[January -, 1981]

JUSTICE Powers, with whom Justice Stewart joins, [

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See Planned Parenthood of Central Missouri v. Danforth, 428 U. S. 52 (1976); Bellotti v. Baird, 433 U. S. 662 (1979) (Bellotti II). I agree with the Court that Utah Code Ann. \$76-7-304 (2) does not unconstitutionally borden Pas appellant's right to an abortion. I join the opinion of the Court on the understanding that it leaves open the question whether \$304 (2) inconstitutionally burdens the right of a mature minor or a minor whose best interests would not be served by parental notification. See anti, at . . ., b. 17. I write to make clear that I continue to entertain the views on this question stated in my opinion in Bellotti II. See pafer, at n. S.

•

Section 304 (2) requires that a physician "Injotify, if possible the parents or genedian of the woman tipon whose the abortion is to be performed, if she is a minor." Appelliant attacks this notice requirement on the ground that it burdens the right of a minor who is emancipated, or who is mature enough to make the abortion decision independent of parental involvement, or whose parents will react obstructively upon

<sup>2</sup> Section 304 (2) is quisted in full in the Court's aginton. Acts. st 1-2

See ante, at 5. The threshold question, as the Court's opinion notes, is whether appellant has standing to make such a challenge. Standing depends initially on what the complaint alleges, Warth v. Seldin, 422 U. S. 490, 498, 501 (1975), as courts have the power fonly to redress or otherwise to protect against injury to the complaining party." Id., at 499. The complaint in this case was carefully drawn. Appellant's allegations about herself and her familial situation are few and laconic. She alleged that she did "not wish to inform her parents of her condition and believe[d] that it [was] in her hest interest that her parents not be informed of her condition." Complaint "6. She also alleged that she understood "what is involved in her decision," § 9, and that the physician she consulted had told her that "he could not and would not perform an abortion upon her without informing her parents prior to aborting her." 🧍 7.

Appellant was 15 years of age and lived at home with her parents when she filed her complaint. She did not claim to be mature, and made no allegations with respect to her relationship with her parents. She did not ever that they would be obstructive if notified, or advance any other reason why notice to her parents would not be in her best interest. Similarly, the complaint contains no allegation that the physician while apparently willing to perform the abortion—believed that notifying her parents would have adverse consequences. In fact, nothing in the record shows that the physician had any information about appellant's parents or familial situation, or even that he had examined appellant.

#### A

This case does not come to us on the allegations of the complaint alone. An evidentiary hearing occurred after the trial court had denied appellant's motion for a preliminary injunction. Appellant was the only witness, and her testimony—and statements by her counsel—make clear beyond any question that the "bare bones" avernents of the com-

## H. L. D. MATHESON

plaint were deliberate, and that appellant is arguing that a mere notice requirement is invalid per as without regard to the minor's age, whether she is emancipated, whether her parents are likely to be obstructive, or whether there is some health or other reason why notification would not be in the minor's best interests.

On direct examination, appellant merely verified the aliegations of her complaint by affirming each allegation as paraphrased for her by her lawyer in a series of leading questions.

Appellant's total testimony about her dreision and her family is as follows:

<sup>&</sup>quot;Q (by MR, DOLOWITZ, appellant's lawyer): At the time that the complaint in this matter was signed, you were pregnant?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You had consulted with a counselor about that pregnancy?

<sup>&</sup>quot;A Yeah.

<sup>&</sup>quot;Q. You had determined after talking to the enumselor that you felt you should get an abortion?"

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You felt that you did not want to notify your parents-

<sup>&</sup>quot;A Right.

<sup>&</sup>quot;Q —of that decision? You did not feel for your own reasons that you could during it with them?

<sup>&</sup>quot;A Right.

<sup>&</sup>quot;Q. After discussing the matter with a counselor, you still believed that you should not discuss it with your parents?

<sup>&</sup>quot;A Right

<sup>&</sup>quot;Q. And they about the notified?

<sup>&</sup>quot;A Right.

<sup>&</sup>quot;Q. After talking the matter over with a counselor, the counselor constanted in your decision that your parents should [not] be notified? [In response to a question from the beach, appellant's lawyer agreed that not should be inserted in this question. Tr. of Oral Arg., at ——]

<sup>&</sup>quot;A Right.

<sup>&</sup>quot;Q You were advised that an abortion couldn't be performed without notifying them?

<sup>&</sup>quot;A Yes.

<sup>&</sup>quot;Q. You then came to tun to see about filing a mill?

<sup>&</sup>quot;A Right.

Her testimeny added nothing to the complaint? In addition, appellant's lawyer insistently objected to all questions by sourced for the State as to the appellant's reasons for not wishing to notify her parents.' The trial court, on its own

"A Yes

74 Bight.

- "Q. You feel that, from talking to the courselor and thinking the intention over end discussing a with me, that you could make the decision on your own that you washed to about the pregnancy?"
  - "A Yes
  - "Q You are living at home?

"A Yes.

"Q. You still felt, even though you were living at home with your parents, that you couldn't discuss the matter with them?"

"A Right

- "MIL 1001.0001TZ: I think that would be those questions to support the allegations we put out up the complaint."
- \* Appellant's total testimony on cross-examination was the following: "MIL McCARTHY [the State's lawyer]: Let's start out this may. Are you still living or hume?
  - "A Yes.
  - "Q. Are you dependent on your parents?
  - "A Yes.
  - "Q All your money comes from them?
  - MA Yes.
  - "Q. Blac old are you now?
  - "A. Fifteen.
- "Q Aside from the issue of abortion, do you have any reason to feel that you must talk to your parents about other problems?

\*\*A \*\*Yes\*

- "Q. What are those scarons?
- MR INDIOWITZ: Now you are moving into the problem area that I indicated, . . . . . . . . . . . . . .
- A After the direct examination of appellant, supports 2, and the State's hard gassessment of an appearance, appellant's lawyer most of reprotedly

<sup>&</sup>quot;Q . You and I discussed it as to whether or not you had a right to do what you wanted to do?

<sup>&</sup>quot;Q. Yer decided that, after our discussion, you should still proceed with the artison to try to obtain an abactica without antifying your patents?"

initiative, pressed unsurcessfully to elicit some reasons, inquiring how it could "find out the validity of [appellant's] reasons without—the state's lawyer] being permitted to cross-examine her,"—Tr., at 86.—Appellant's lawyer replied:

"It is our position constitutionally that she has the right to make [the abortion] decision and if she has consulted with a connscior and the coanselor concurs that those are valid reasons, why then .... In terms of going beyond [the complaint allegations], our point is that the specifies of the reasons are really are levent to the constitutional issue." Tr., at 86-57 (emphasis supplied),

When appellant's lawyer insisted that the facts with respect to this particular minor were irrelevant, the trial court sustained the validity of the statute."

In sum, and as the Court's opinion emphasizes, appellant alleges nothing more than that she desires an aburtion, that she has decided for reasons which she declined to reveal—that it is in her hest interest not to notify her parents, and that a physician would be willing to perform the abortion if notice were not required. Although the trial court did not rule in terms of standing, it is clear that these hald allegations

during subsequent presence? Our otherwise personalist to sexuative better "Till, at 34" that other personalist facts that come before in uniform doctors are articles at J. 20% and that "J. be specify that soft any indicated degree or mother have tale faces they are or have strong or week. One are, worth because irrelevant, That I is summarizing its position, appellant's lower stated. This poemic is that at is the doctor patient relationship that is the key. If the doctor determines he should go about with the patient, then he should. The specific toots not by user whether John dector is wrong at right are constitutionally protected to make that the semi-and go about ordinal action it. They well I is not just the vant." Peak

<sup>\*</sup>A) the end of the evidentiary learing, appellantly haven franked the trial court's reling as follows:

<sup>&</sup>quot;May be recting as that the probabilities used for the state of access apply should possible Tanal there are no caronistances wild to very that postify the violation of the state of their than the probabilities of the state of their than the probabilities of the state of the st

do not confer standing to claim either that § 304 (2) unronatitutionally burdens the right of a mature minor or a minor whose best interests would not be served by parental notification.\* They confer standing only to claim that § 304 (2) is an unronatitutional burden upon an unemaneighted minor who desires an abartine without purental notification but also desires not to explain to anyone her reasons either for wanting the abartion or for not wanting to entity her parents."

<sup>\*</sup>Receive the case is a class action, it might be presumed that other to polyter could be on the operation whether a pregnant matter box a right to abserver, withour parental motion upon a showing that she is notago as that her parents with interfere with her shortion. But the resent in this case contains no facts to support a presupption that the class ancholies such mornbars. The only complaint allegations about the class are that appellant's riving "are typical of the rigins of all accribers of the class," and that the class consists of highest women who are suffering movanted programmes and desire to terminate the programmes but may not do so mosmarli as their physicians will not perform an abortion upon them without compliance with the provisions of Section 78-7-304 (2)." Contributed, \* Lit. Thus the record supports only the contribution that the class consists energely of pregnant copies who assert the identical claim than appethan presented a constitutional gight to an abortion without noti-Sung their parents, and without a surprights be instead or that not desirable would not be an their last auterest. The door, the class marniors—bloappellouts assert an absolute right to make this decision themselves, its dependent(s) of excision except a play-lead-

The first court outs sol features or their advanctionars of low after the evidentiary branch. Paragraph 7 of the trial court's lindings reads: "The planniff consulted with a counselor to assist her in deciding whether or not shot-lands' terminate her pregnancy. She determined, after consultation with her counselor that she should sware an abortion, but was advised when consulting her physician that mater the provisions of Section 76-7-304 (2). Utah Cesle Atmotated, 1953, that he believed along with hir that she should be aburded and that he felt it was in her best medical interest to do so but he could not and would not perform an abortion upon her without informing her pursues prior to abserting her her upon the mass input of the best that starting and he was inwiding to perform an abortion upon her without complying with the provisions of

#### H. L. e. MATHERON

## E

On the facts of this case. I agree with the Court that \$ 304 (2) is not an unconstitutional burden on appellants right to an abortion. Numerous and significant interests compete when a minor decides whether or not to abort her pregrancy. The right to make that decision may not be unconstitutionally burdened. Ros v. Wode, 410 U. S. 113, 154 (1973); Planned Parenthood of Control Missouri v. Danforth, supra. at 74 75. In addition, the minor has an interest in effectualing her decision to abort, if that is the decision she makes, Id., at 75; Bellotti II, supra, at 647. The State, aside from the interest it has in encouraging childbirth rather than abortion, cf. Maher v. Roe. 432 V. S. 464 (1977); Harris v. McRae. U. S. - (1980), has an interest in fostering such consultation as will assist the minor in making her decision as wisely as possible. Planned Parenthood of Central Missouri v. Danforth, supra, at 91 (Stewart, J., concurring); post, at (Stevens, J., dissenting). The State also may be or an interest in the family itself, the institution through which "we inculrate and pass down many of our most cherished values,

the statute even though he believed it was best to do so." H/L v. Matheson, Civil Nu C+78-2719 (Dec. 26, 1978)

Precisely what this paragraph finds is ambiguous. At the least, it finds that appellant "consulted" a physician and that the physician agreed with appellant that an abortion would be in appellant's best number, interest. The final parties of the finding—"he was unwilling to perform an abortion again her without complying with the provisions of the statute electhrugh he believed it was best to do solit-could be trud to find that the physician also agreed with appellant that "it was best" to "perform an abortion upon her without electhrugh with the provision" ji" requiring parental notice. On the final portion could be read to find only that the physician would not perform an abortion without complying with the mattute even though he believed that "it was best" to abort appellant's pregrancy. In light of appellant's limited allegations at a festimony, and the legal argument of her lawyer, the trial court's finding cannot be read as solying that the physician is not be trial court's finding cannot be read as solying that the physician to be only on appellant's parents would push her dely or obstructively not only on appellant's parents would push her dely or obstructively not or or appellant's abortion deciden.

moral and cultural." Moore v. City of East Cleveland, 431 U. S. 495, 503-504 (1977). Parents have a traditional and aubstantial interest in, as well as a responsibility for, the rearing and welfare of their children, especially during immuture years. Bellotti H. supra. at 637-639.

None of these interests is absolute. Even an adult woman's right to an abortion is not unqualified. Roe v. Wade, supra, at 154. Particularly when a minor becomes pregnant and considers an abortion, the relevant circumstances may vary widely depending upon lar age, maturity, mental and physical condition, the stability of her home if she is not emancipated, her relationship with her parents, and the like. If we were to accept appellant's claim that \$304 (2). is per so an invalid burden on the asserted right of a minor to make the abortion decision, the circumstances which normally are relevant would us her counsel insisted he jugmaterial. Supra, at 5. The Court would have to decide that the minor's wishes are virtually absolute. To be sure, our cases have employsized the necessity to consult a physician, But we have never held with respect to a minor that the opinion of a single physician as to the med or descrability of an abortion outweighs all state and parental interests."

In sum, a State may not calledly require notice to parents in all cases, without providing an independent decision-index to whom a prognant minor can have the abortion decision independently or that outification otherwise would not be in her best interests. My opinion in Bellotti II, joined by

<sup>•</sup> While the mechant intigment at a play-innum of course is to be respected, there is no reason to believe as a general proposition that even the most conscientions physician's interest in the evental welfare of a minor can be equated with that of thost parents. Marrover, abstract clinics, now readily as while in most urban communities, may be operated on a commercial thas where abstracts often may be obtained from demand." See Pienred Proporthand of Central Misseuri v. Doujerth, supra, at 91-92, p. 2 (Stowart, J., concurring). Buildat II, supra, at 641, p. 21.

## R L r MATRESON

three other Justices, stated at some length the reasons why such a decisioningker is needed. Belletti II, super, at 642-648.\* The circumstances relevant to the abortion decision by a minor can and do vary so substantially that absolute rules—requiring parental notice in all cases or in more "would create an inflexibility that often would allow for no consideration of the rights and interests identified above. Our cases have never gone to this extreme, and in my view should out.

<sup>•</sup> Although Bellott, II linvelved a stature receiving percental consent the rationale of the plurality opinion with respect to this need is applicable here.

<sup>4.</sup> The discenting opinion of Justice. Macsimum which would hild the Understance profile on its first, elsevies the decision of the minor and her physician to an absolute static ignoring state and perental interests.

# Anpreme Court of the United States Manfrington, D. C. 20543

March 4, 1981

Res <u>79-59</u>03 - M. C. V. Matheson

Dear Chief,

I join your circulating opinion of January 16.

Sincerely yours,

The Chief Justice

Copies to the Conference

To: Mr. Justice Bronnan Mr. Justice "towart Mr. Justin Thite Mr. Just reshba? et .un Mr. Je Pages 3,4,5,7,8,12,13; Mer. 3 :1 stylistic changes: 1. . :Lst and footnotes remumbered. . :::0 No. 79-5903 Appeal from the Supreme substantially Court of Utah. evere run H. L., etc., Appellant, Court of Utah. Stott M, Matheson et al.

[March]

CHIEF JUSTICE BUSGER delivered the opinion of the Court

The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarablees.

Ī

In the spring of 1978, appellant was an unmarried 15year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was promant. She consulted with a sucial worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents,

Section 76, 7-304, exected in 1974, provides:

"To enable a physician to exercise his best medical [udgment [in considering a possible abortion], he world:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, contional and psychological health. and safety,

"(h) Her age,

"(c) Her familial situation.

"(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a monor or the husband of the woman, if she is matried." (Umphasis supplied.) \*

Violation of this section is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000.

Appellant believed "for (her) own reasons" that she should proceed with the abortion without notifying his parents. According to appellant, the social worker concurred in this dress on." While still in the first trimester of her pregnancy, appellant instituted this action in the Third Indicial District Court of Utah." She sought a declaration that § 76-7-304 (2) is unconstitutional and an injunction probabiling appellees, the Governor and the Attorney General of Utah, from enforcing the statute. Appellant rought to represent a class consisting of themserical "minur women who are suffering unwanted pregnancies and desire to terminate the pregnancies

\* Whether pure its of a pointer are little order. Utilities for the expense of an about on and addited after care is not the food for the recent.

Finds also provides by statute that position more by performed unless a "valuntary and othermed existed to seed" is first charised by the attracting physician from the patient. En order for such a consent to be two letters and affore ed," the patient until be advised at a remaining bout available adoption erritors, about feed divelopment, and about treatment to please or please and risks of an interior. See Pitch Code Ann. (1968) § 70,7–305. In Physiol Physiothecolor, dief Control Marson & Physiology § 21, S. 52, 65 67 (1976), we rejected a constructional attack on written exceeds previous.

<sup>#10</sup>tab Code Ann. (2000) §§ 70 7 314 (3), 76 3-204 (1), 78 3 301 (3)

<sup>\*</sup>Applitudes control stated to his periode to and state out and again in his land. that the physician is called not only that an election would be in applitudes best afterests, but also that parameter netheration would not be in applitudes best interests. However, at oral argument course corrected the statement and consciled that there is no record evidence to support this case train. To, of Oral Arg., at 8, 17.

<sup>\*</sup>The record does not reveal whether appellant proceeded with the about on.

but may not do so" because of their physicians' insistence on complying with \$76-7-304 (2). The trial judge declined to grant a temporary restraining order or a preliminary injunction."

The trial judge held a-hearing at which appellant was the only witness. Appellant affirmed the allegations of the complaint by giving monosyllabic answers to her attorney's leading questions. However, when the State attempted to

The testimony was as follows:

[BY MR. DOLOWITZ, appellant's counsel]:

"A. Yes.

"A. Yeah.

"A, Yes.

"A. Right.

"A. Right.

"A. Right.

"A. Right. --

"A. Right

"A, Yes.

"A. Right.

<sup>&</sup>lt;sup>5</sup> The trial judge allowed appellant to proceed without appointment of a guardian ad litem. He noted that a guardian would be required to notify the parents.

<sup>&</sup>quot;Q. At the time that the Complaint in this matter was signed, you were pregnant?

<sup>&</sup>quot;Q. You had consulted with a counselor about that pregnancy?

<sup>&</sup>quot;Q. You had determined after talking to the counselor that you felt you should get an abortion? -

<sup>&</sup>quot;Q. You felt that you did not want to notify your parents -

<sup>&</sup>quot;Q. —of that decision?- You did not feel for your own-ressors that you could discuss it with them?-

<sup>&</sup>quot;Q. After discussing the matter with a counselor, you still-believed that you should not discuss it with your parents? —

<sup>&</sup>quot;Q. And they shouldn't be notified?...

<sup>&</sup>quot;Q. After talking the matter over with a courselor, the courselor concurred in your decision that your parents should not be notified?

<sup>&</sup>quot;Q. You were advised that an abortion couldn't be performed without notifying them?

<sup>&</sup>quot;Q. You then came to me to see about filing a suit? .

<sup>&</sup>quot;Q. You and I discussed it as to whether or not you had a right to do, what you wanted to do?

#### H, L. v. MATHESON

cross-examine appellant about her reasons for not wishing to notify her parents, appellant's-counsel vigorously objected, insisting that "the specifics of the reasons are really irrelevant to the Constitutional issue," The only consti-

<sup>&</sup>quot;A. Yes.

<sup>&</sup>quot;Q. You decided that, after our discussion, you should still proceed with the action to try to obtain an abortion without notifying your parents?"

<sup>&</sup>quot;Q. Now, at the time that you signed the Complaint and spoke with the counselor and spoke with me, you were in the first trimester of pregnancy, within your first twelve weeks of pregnancy?

<sup>&</sup>quot;A, Yes,

<sup>&</sup>quot;Q. You feel that, from talking-to-the counselor and thinking the situation over and discussing it-with me, that you could make the decision on your own that you wished to abort the pregnancy?"

<sup>&</sup>quot;A, Yes.

<sup>&</sup>quot;Q. You are living at home? .-- \_\_\_

<sup>&</sup>quot;A. Yes.

<sup>&</sup>quot;Q. You still felt, even though you were living at home with your parents, that you couldn't discuss the matter with them?

<sup>&</sup>quot;A. Right."

Tr., at 82-84.

<sup>&#</sup>x27; [BY MR. McCARTHY, counsel-for the State]:

<sup>&</sup>quot;Q. . . . Are you still living at home? --

<sup>&</sup>quot;A Yes

<sup>&</sup>quot;Q. Are you dependent on your parents? -

<sup>&</sup>quot;A. Yee.

<sup>&</sup>quot;Q. All your money comes from them? ----

A. Yes.

<sup>&</sup>quot;Q. How old are you now?

<sup>&</sup>quot;A. Fifteen.

<sup>&</sup>quot;Q. Aside from the issue of abortion, do you have any reason to feelthat you can't talk to your parents about other problems?

<sup>&</sup>quot;A. Yes.

<sup>&</sup>quot;Q. What-are those reasons?

<sup>&</sup>quot;MR. DOLOWITZ: Now you are moving into the problem area that—

Tr., at 85.

<sup>&</sup>lt;sup>8</sup> Tr., at 87. Appellant repeatedly pressed this point despite the trial court's statements that it could "conceive of a situation where a child probably wouldn't have to tell the parents" and that the statute "might

tutionally permissible prerequisites for performance of an abortion, he insisted, were the desire of the girl and the medical approval of a physician. The trial judge sustained the objection, tentatively construing the statute to require appellant's physician to notify her parents "if he is able to physically contact them."—

On appeal, the Supreme Court of Utah unanimously upheld the statute. H. L. v. Matheson, 604 P. 2d 907 (1979). Religing on our decisions in Planned Parenthood of Gentral Missouri v. Danforth, 428 U. S. 52 (1976); Carey v. Population Services International, 431-U. S. 678 (1977), and Bellotti v. Baird, 443 U. S. 622 (1979) (Bellotti II), the court concluded that the statute serves "significant state interest[s]" that are present with respect to minors but absent in the case of adult women.

The court looked first to subsection (1) of § 78-7-304.

be unconstitutional as it relates to a particular fact situation but constitutional as it relates to another fact situation." Id., at 87, 94,

There is accordingly no evidence to support the "surmise" in the dissent, post, at 13, n. 24, that "appellant expects family conflict over the abortion decision." –

o Tr., at 95.

<sup>10</sup> The trial judge adopted, verbatim, findings of fact and conclusions of law prepared by appellant.—Neither the findings nor the conclusions nor the opinion of the State Supreme Court make any mention whateover of the precise limits of the class.—

<sup>&</sup>lt;sup>11</sup> The trial judge also ruled that the statute does not violate 42 U. S. C., § 1983.

This provision, the court observed, expressly incorporates the factors we identified in *Doe* v. *Bolton*, 410 U. S. 179 (1973), as pertinent to exercise of a physician's best medical judgment in making an abortion-decision. In *Doe*, we stated:

Section 76-7-304 (1) of the Utah statute suggests that the section reflect the language of Doc.

The Utah Supreme Court held that notifying the parents of a minor seeking an abortion is "substantially and logically related" to the Doe factors set out in § 76-7-304 (1) because parents ordinarily possess information essential to a physician's exercise of his best medical judgment concerning the child. 604 P. 2d, at 909-910. The court also concluded that encouraging an unmarried pregnant minor to seek the advice of her parents in making the decision of whether to early her child to term promotes a significant state interest in supporting the important role of parents in child-rearing. 604 P-2d, at 912. The court reasoned that since the statute allows no veto power over the minor's decision, it does not unduly intrude upon a minor's rights.

The Utah Supreme Court also rejected appellant's argument that the phrase "if possible" in § 76-7-304 (2) should be construed to give the physician discretion whether to notify appellant's parents. The court concluded that the physician is required to notify parents "if under the circumstances, in the exercise of reasonable diligence, he can ascertain their identity and location and it is feasible or practicable to give them notification." The court added, however, that "the time element is an important factor, for there must be sufficient.

#### H. L. v. MATHESON .

expedition to provide an effective opportunity for an abortion." 604 P.2d, at 913.

#### II

Appellant challenges the statute as unconstitutional on its face. She contends it is overbroad in that it can be construed to apply to all unmarried minor girls, including those who are mature and emancipated. We need not reach that question——since she did not allege or proffer any evidence that either she or any member of her class-is mature or emancipated. The trial court found that appellant "is unmarried, fifteen years of age, resides at home and is a dependent of her parents." That affords an insufficient basis for a finding that she is either mature or emancipated. Under Harris v.

McRae, — U.S. —, — (1980), she therefore lacks "the personal stake in the controversy needed to confer standing" to advance the overbreadth argument.

There are particularly strong reasons for applying established rules of standing in this case. The United States District Court for Utah has held that § 76-7-304 (2) does notapply to emancipated minors and that, if so applied, it wouldbe unconstitutional. L. R. v. Hansen, Civil No. C-80-0078J.

(Feb. 8, 1980). Since there was no appeal from that ruling, it is controlling on the State. We cannot assume that
the statute, when challenged in a proper case, will not be construed also to exempt demonstrably mature minors. See

In Bellotti II, by contrast, the principal class consisted of "unmarried"

[pregnant] minors in Massachusetts who have adequate capacity to give

a valid and informed consent [to abortion], and who do not wish to involve
their parents." Id., at 626-(emphasis supplied). The courts considered
the rights of "all pregnant minors who might be affected" by the statuts.

Id., at 627, n. 5.

The record shows that the State unsuccessfully argued in the trial court that it should be permitted to inquire into appellant's degree of maturity. Tr., at 88.

JUSTICE STEVENS and the dissent argue that the Utah Supreme Court held that the statute may validly be applied to all members of the class

Bellotti v. Baird, 428 U. S. 132, 146-148 (1976) (Bellotti I). Nor is there any reason to assume that a minor in need ofemergency treatment will be treated in any way different from a similarly situated adult.14 The Utah Supreme Court has had no occasion to consider the application of the statute to such situations. In Bellotti I, supra, we unanimously :: declined to pass on constitutional challenges to an abortion regulation statute because the statute was "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 materailly change the nature of the problem." Id., at 147, quoting Harrison v. NAACP, 360 U.S. 167, 177 (1959). See Kleppe v. New Mexico, 426 U. S. 529; == 546-547 (1976); Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 346–347 (1936) (concurring opinion). We reaffirm that approach and find it controlling here insofar as -appellant challenges a purported statutory exclusion of mature and emancipated minors.

described in the complaint. Post, at \_\_\_\_, \_\_\_\_ However, as we have shown, neither the trial court's findings and conclusions nor the State Supreme Court's opinion mention the scope or limits of the class. See not supra. Moreover, appellant's counsel prepared the findings and conclusions. In addition to considerations of standing, we construe the ambiguity against appellant.

statute would apply to "minors with emergency health care needs." Rest.

at 25-26. Appellant does not so contend, and the Utah Supreme Court
in this case took pains to say that time is of the essence in an abortion
decision. 604 P. 2d, at 913. When the specific question was properly
posed in Bellotti II, the Massachusetts statute was construed by the state
court not to apply in such cases. Id., at 636;

The same is true for minors with hostile home situations, a class referred to by appellant's umici curiae and by the dissent, post, at 13-14. her parents, (b) when she is not emancipated by marriage or — otherwise, and (c) when she has made no claim or showing — as to her maturity or as to her relations with her parents.

## III

## A

Appellant contends the statute violates the right to privacy recognized in our prior cases with respect to abortions. She places primary reliance on Bellotti II, supra, 443 U.S., at 642, 655. In Danforth, supra, we struck down state statutes that imposed a requirement of prior written consent of the patient's spouse and of a minor patient's parents as a prerequisite for an abortion. We held that a state

"does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Id., at 74.

We emphasized, however, "that our holding", does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy.

Id., at 75, citing Bellotti I, supra. There is no logical relationship between the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion.

In Bellotti II, dealing with a class of concededly mature—
pregnant minors, we struck down a Massachusetts statute—
requiring parental or judicial consent before an abortion could—
be performed on any unmarried minor. There—the State's—
highest court had construed the statute to allow a court to—
overrule the minor's decision even if the court found that the
minor was capable of making, and in fact had made, an
informed and reasonable decision to have an abortion. We
held, among other things, that the statute was unconstitu—
tional for failure to allow mature minors to decide to undergo

abortions without parental consent. Four Justices concluded—that the flaws in the statute were that, as construed by the state court, (a) it permitted overruling of a mature minor's—decision to abort her pregnancy; and (b) "it requires parental—consultation or notification in every instance, without affording the pregnant minor an opportunity to receive an inde——pendent judicial determination that she is mature enough to—consent or that an abortion would be in her best interest."—Id., at 651. Four other Justices concluded that the defect was—in making the abortion decision of a minor subject to veto by—a third party, whether parent or judge, "no matter how mature—and capable of informed decisionmaking" the minor might——be. Id., at 653-656.

"[Plaintiffs] suggest . . . that the mere requirement of parental notice funduly burdens the right to seek an abortion]. As stated in Part II above, however, parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor.

<sup>&</sup>lt;sup>15</sup> Bellotti II, supra, 443 U. S., at 642-643, 653-656; Danforth, supra, 428 U. S., at 74,

<sup>&</sup>lt;sup>16</sup> Bellotti II, supra, 443 U.S., at 640, 649; id; at 657 dissenting opinion); Danforth, supra, 428 U.S., at 90-91 (concurring opinion); see Bellotti I, supra, 428 U.S., at 145, 147; cf. Carey, supra, 431 U.S., at 709-710.

#### H. L. v. MATHESON

"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." Id., at 640-641, quoting Danforth, supra, 428 U. S.; at 91 (concurring opinion).

Accord, id., at 657 (dissenting opinion)

"We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected. See, e. g., Wisconsin v. Yoder, 406 U.S. 205, 231-233 (1972); Stanley v. Illinois, [405 U.S. 645 (1972)]; Meyer v. Nebraska, 262 U.S. 390, 399 401 (1923). 'It 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.

Id., at 255, quoting Prince v. Massachusetts, 321 U. S. 158, 166 (1944).

See also Parham v. J. R., 442 U. S. 584, 602 (1979); Pierce v.——
Society of Sisters, 268 U. S. 510, 535 (1925). We have recognized that parents have an important "guiding role" to play—
in the upbringing of their children, Bellotti II, supra, at 633———
639, which presumptively includes counseling them on important decisions.

B

The Utah statute gives neither parents nor judges a veto:

power over the minor's abortion decision. As in Bellotti I,

supra, "we are concerned with a statute directed toward

minors, as to whom there are unquestionably greater risks

of inability to give an informed consent." Id., at 147. As

applied to immature and dependent minors, the statute

plainly serves the important considerations of family integ
rity "and protecting adolescents." which we identified in

Bellotti II. In addition, as applied to that class, the statute

serves a significant state interest by providing an opportunity

for parents to supply essential medical and other information

to a physician. The medical, emotional, and psychological

consequences of an abortion are serious and can be lasting;

this is particularly so when the patient is immature. An

The main premise of the dissent scene to be that a requirement of notice to the parents is the functional equivalent of a requirement of parental consent. See post, at 12-16. In Bellotti II, however, we expressly declined to equate notice requirements with consent requirements.

Id., at 640, 657.

<sup>&</sup>lt;sup>18</sup> Bellotti II, supra, 443 U. S., at 637-639. The short shrift given by——
the dissent to "parents" authority and family integrity, post, at 22,——
runs contrary to a long line of constitutional cases in this Court. See
cases cited supra, at 9.

<sup>18</sup> Bellotti II, supra, 443 U.S. at 634-637.

<sup>&</sup>lt;sup>20</sup> Abortion is associated with an increased risk of complication is subsequent pregnancies. D. Maine, Does Abortion Affect Later Pregnancies?, 11 Fam. Plng. Persp. 98 (1979). The emotional and psychological effects.

adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.

Appellant intimates that the statute's failure to declare,—
in terms, a detailed description of what information parents—
may provide to physicians, or to provide for a mandatory pe—
riod of delay after the physician notifies the parents, renders—
the statute unconstitutional. The notion that the statute—
must itemize information to be supplied by parents finds no
support in logic, experience, or our decisions. And as the
Utah Supreme Court recognized, 604 P. 2d, at 913, time is—
likely to be of the essence in an abortion decision. The—
Utah statute is reasonably calculated to protect minors in—
appellant's class by enhancing the potential for parental con—
sultation concerning a decision that has potentially traumatio—
and permanent consequences.<sup>22</sup>—
and permanent consequences.<sup>23</sup>

Appellant also contends that the constitutionality of the statute is undermined because Utah allows a pregnant minor to consent to other medical procedures without formal notice

of the pregnancy and abortion experience are markedly more severe in girls under 18 than in adults. J. Wallerstein, et al., Psychosocial Sequelae of Therapeutic Abortion in Young Unmarried Women, 27 Arch. Generally See also H. Babikian & A. Goldman, A Study in Teen-Age Pregnancy, 128 Am. J. Psychiatry 755 (1971).

<sup>21</sup> Five states have enacted parental notification statutes containing brief mandatory waiting periods. La. Rev. Stat. Ann. § 40:1299.35.5. (1980 Supp.) (24 hours actual notice or 72 hours constructive notice except for court-authorized abortions); Mass. G. L. A. ch. 112; § 128 (1981 Supp.) (24 hours); Me. Rev. Stat. Ann. tit. 22, § 1597 (1980). (24 hours); N. D. Cent. Code § 14-02.1-03 (24 hours); Tenn. Code Ann. § 30-302 (1979 Supp.) (two days).

<sup>22</sup> Members of the particular class now before us in this case have no constitutional right to notify a court in lieu of notifying their parents.

See Bellotti II, supra, 443 U.S., at 647. This case does not require us to decide in what circumstances a State must provide alternatives to parental notification.

to her parents if she carries the child to term. But a State's interests in full-term pregnancies are sufficiently different to justify the line drawn by the statutes. Cf. Maher v. Ros., 432 U. S. 464, 473-474 (1977). If the pregnant girl——elects to carry her child to term, the medical decisions to be—made entail few—perhaps none—of the potentially grave—emotional and psychological consequences of the decision to—abort.

That the requirement of notice to parents may inhibit some minors from seeking abortions is not a valid basis to void the statute as applied to appellant and the class properly before us. 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 of protecting potential life." Harris v. McRae, supra. — U. S., at —. Accord, Maher v. Roe, supra, 432 U. S., at 473-474.

As applied to the class properly before us, the statute plainly serves important state interests, is narrowly drawn to protect only those interests, and does not violate any guarantees of the Constitution. The Judgment of the Supreme Court of Utah is

Affirmed.

<sup>\*\*</sup> See also Bellotti II, supra, 443 U. S., at 643-644; Bellotti I, supra, 428 U. S., at 148-149; Danforth, supra, 428 U. S., at 65-67, 79-81; Convecticut v. Menillo, 423 U. S. 9, 11 (1975); West Side Women's Services, Inc. - v. City of Cleveland, 450 F, Supp. 796, 798 (ND Ohio); affiliament, 582.

sary treatment from a physician who, in the exercise of his best medical judgment, does not believe the parents should be notified. Since there is no evidence that the physician had such an opinion, we decline to track this question. See p. 2, n. 3, and pp. 5, supra.

5th DRAFT

93.

Broad Re. I we

1981

## SUPREME COURT OF THE UNITED STATES

No. 79-5903

H. L., etc., Appellant, o., On Appeal from the Suprema Court of Utah.

[January -, 1981]

JUSTICE POWELL, with whom JUSTICE STEWART joins, concurring.

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See Planned Parenthood of Central Missouri v. Danforth, 428 U. S. 52 (1976); Bellotti v. Baird, 443 U. S. 662 (1970) (Bellotti II). I agree with the Court that Utah Code Ann. § 76-7-304 (2) does not unconstitutionally burden this appellant's right to an abortion. I join the opinion of the Court on the understanding that it leaves open the question whether § 304 (2) unconstitutionally hurdens the right of a matture minor or a minor whose host interests would not be served by parental notification. See unter at —, n. 17. I write to make clear that I continue to entertain the views on this question stated in my opinion in Bellotti II. See infra, at n. 8.

ì

Section 304 (2) requires that a physician "[n]otify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor," Appellant attacks this notice requirement on the ground that it burdens the right of a minor who is emancipated, or who is mature enough to make the abortion decision independent of parental involvement, or whose purents will react obstructively upon

Section 301 (2) is quoted in full in the Court's opinion. Ante, at 1-2.

See onte, at 5. The threshold question, as the Court's opinion notes, is whether appellant has standing to make such a challenge. Standing depends initially on what the complaint alleges, Warth v. Seldin, 422 U.S. 490, 498, 501 (1975), as courts have the power "only to redress or otherwise to protect against injury to the complaining party." Id., at 499. The complaint in this case was carefully drawn. Appellant's allegations about herself and her familial situation are few and laconic. She alleged that she did "not wish to inform her parents of her condition and believe[d] that it [was] in her best interest that her perents not be informed of her condition." Complaint 16. She also alleged that she understood "what is involved in her decision," \* 9, and that the physician she consulted had told her that "he could not and would not perform an abortion upon her without informing her parents prior to aborting her." - ¶ 7.

Appellant was 15 years of age and lived at home with her parents when she filed her complaint. She did not claim to be mature, and made no allegations with respect to her relationship with her parents. She did not aver that they would be obstructive if notified, or advance any other reason why notice to her parents would not be in her hest interest. Similarly, the complaint contains no allegation that the physician—while apparently willing to perform the abortion—believed that notifying her parents would have adverse consequences. In fact, nothing in the record shows that the physician had any information shout appellant's parents or familial situation, or even that he had examined appellant.

A

This case does not come to us on the allegations of the complaint alone. An evidentiary hearing occurred after the trial court had denied appellant's motion for a preliminary injunction. Appellant was the only witness, and her testimony—and statements by her counsel—make clear beyond any question that the "bare bones" averments of the com-

#### M. L. u. MATHESON

plaint were deliberate, and that appellant is arguing that a mere notice requirement is invalid per so without regard to the minor's age, whether she is emancipated, whether her parents are likely to be obstructive, or whether there is some health or other reason why notification would not be in the minor's best interests.

On direct examination, appellant merely verified the allegations of her complaint by affirming each allegation as paraphrased for her by her lawyer in a series of leading questions. Her testimony on cross-examination added nothing to the complaint. In addition appellant's lawyer lesistently objected to all questions by counsel for the State as to the appellant's reasons for our wishing to notify her parents. The small court, on its own injustive, pressed unsuccessfully to clicit same reasons impairing how it could 'find out the validity of [appellant's] reasons without [the state's lawyer] being permitted to cross-examine her." Tr., at St. Appellant's hayer replied:

"It is one position constitutionally that she has the right to make (the abortion) decision and if she has consulted with a counselor and the counselor concurs that those are

emission's

 <sup>\*</sup>Appellants testimony on direct examination is quoted in fail in the ...
 Court - openen ... dof. 191 (6.5)

<sup>\*</sup>Appellant's testimony care as examination is specied in bill in the p. Court's equipment Acts, it 3, to 7.

<sup>\*</sup> More Listing of exemination of appellant and the State Union reservation that appellant's Lower consisted appearedly depict absence of grant for there is no zoes only the construction. The or 945 that this particular facts had every before journeers due to both the irrepresentation for the facts had every before journeers due to both the irrepresentation from the facts of the special data of the second matter flow testingloss that are or had obtained and they are really become intelement," But the second range by position, appellant's lower street. The production of that are is the theorem testing testing that is the key. In the doctor between the should. The special acts in new roots which the doctor had once in fight, are constituted by proposed the make of the decimal and graphed and acts on a. The is why I may a corrective of the decimal and graphed and acts on a. The is why I may a corrective of their

valid reasons, why them—.... In terms of going beyoud [the complaint allegations], our point is that the specifies of the reasons are really unclevant to the constitutional issue." Tr., at 86-87 (emphasis amplied).

When appellant's lawyer insisted that the facts with respect to this particular minor were irrelevant, the trial court sustained the vehiclity of the statute.

In sum, and as the Court's upinion emphasizes, appellant alleges nothing more than that she desires an abortion that she has decided—for reasons which she declined to reveal—that it is in her host interest and to notify her parents, and that a physician would be willing to perform the abortion if notice were not required. Although the trial court did not rule in terms of standing it is clear that these hald allegations do not confer standing to claim either that \$304 (2) unconstitutionally luminous the right of a mature minor or a minor whose best interests would not be served by parental untification." They confer standing only to claim that \$304 (2) is an

At the east of the existencing bearing appel acts tower framed the trial court's rating as follows:

<sup>&</sup>quot;If we are ruling as that its passifide has used to the statute means to by signify passible") and there are two caregrastiness what were that justify the violation of the statute, then the issue is closer? "If , at 98

A Because this case is and as action, a largest be previously that other members could raise the question whether is program than a right to observe, without personal native open a showing that she is marge or that her parents will interfere with her abortion. But the resord in this case contains so farts to support a presumption that the class includes such members. The ordy compliant allegations about the class are that appointn't claims form typical of the class of all members of the class. That the class consists of framer women who are suffering now, need preparates and desire to remark the preparation but may not do so attended as their physicians will not perform an abaction upon those within a compliance with the provisions of Section 76-7-304 (24.)? Compliance, 5 to 10 the, the recent support of the conclusion that the class consists out the program in makes who assert the identical obtain that appellant products, a constitutional right to consider within a tistout product, and walls of claiming to be must record that nonthermore

#### H. L. e. MATHESON

unconstitutional burden upon an unemancipated minor who desires an abortion without parental notification but also desires not to explain to anyone her reasons either for wanting the abortion of for not wanting to notify her parents.

## В

On the facts of this case I agree with the Court that \$ 304 (2) is not an unconstitutional lander on appellant's right to

would not be in their best interest. In short, the class awarbers—like appelling—assert an absolute again to make this decision themselves ins dependently of ay assist except a place can.

The took error earlied believed it was best to do so," B. L. v. Mulheron Civil No. 2011.

Precisely what this paragraph finds is unbaguous. At the least, it finds that appellant "consulted" a physician and that the physician agreed with appellant that an abortion would be in appellant's best medical satetest. The final portion of the finding—"he was miscilling to perform an abortion upon her without complying with the precisions of the statute even though he believed it was best to its so"—could be read to find that the physician abortion upon her without couplying with the provisional l" requiring parental posice. Or the final position could be read to find only that the physician would not perform an abortion without complying with the statute even though he blicked that "it was best" to about appellant's pregnancy. In light of appellant's broated allegations stat testimany, not the legal argument of her lawyer, the trial court's finding rained be send as social that the physical abortion decision, that the physician decision is performed by a color of the lawyer in the legal argument of her lawyer, the trial court's finding rained be send as socials that the physical abortion decision.

#### 49-5968—CONCUR

#### H. L. e. MATHESON

an abortion. Numerous and significant interests compete when a minor decides whether or not to abort her pregnancy, The right to make that decision may not be paronstitutionally burdened. Ros v. Wade, 410 U. S. 113, 154 (1973); Planned Parenthood of Central Missouri v. Danforth, supra. 8) 74 75. In publition, the minor has an interest in effectuating her decision to abort, if that is the decision she makes, Id., at 75; Bellatti II, supra, at 647. The State, aside from the interest it has in encouraging childlight brother than abortion, cf. Maker v. Roc, 432 U. S. 464 (1977); Harris v. McRac, - U. S. - (1980), has an interest in fostering such consultation as will assist the minor in making her decision as wisely as possible. Planned Parenthood of Central Museumi v. Denforth, supra, at 91 (Stewart, J., concurring); post, at (Strevens, J., dissenting). The State also may have an interest in the family itself, the institution through which "we inculcate and pass down many of our most cherished values. moral and cultural," Moore v. City of East Cleveland, 431, U. S. 495, 503-504 (1977). Parents have a traditional and substantial interest in, as well as a responsibility for, the rearing and welfare of their children, especially during immature years. Bellotti II, supra, at 637-639.

None of these interests is absolute. Even an adult woman's right to an abortion is not unqualified. Roc v. Wade, supra, at 154. Particularly when a minor becomes pregnant and considers an abortion, the relevant circumstances may vary widely depending upon her age, maturity, mental and physical condition, the stability of her home if she is not emancipated, her relationship with her parents, and the like. If we were to accept appellant's claim that § 304 (2) is per se an invalid burden on the asserted right of a minor to make the abortion decision, the circumstances which normally are relevant would as her counsel insisted—be immaterial. Supra, at 5. The Court would have to decide that the minur's wishes are virtually absolute. To be sure, our

#### H. L c MATHESON

cases have emphasized the necessity to consult a physician, But we have order held with respect to a minor that the opinion of a single physician as to the need or desirability of an abortion outworghs all state and parental interests."

In sum, a State may not validly require notice to parents in all cases without providing an independent decisionnuker to whom a pregnant moor can have recourse if she believes that she is mature enough to make the abortion decision independently or that notification otherwise would not be in her best interests. My opinion in Belletti II, joined by three other Justices, stated at some length the reasons why such a decisionnuker is needed. Belletti II, supra, at 04% 04%. The circumstances relevant to the abortion decision by a minor can and do vary so substantially that absolute rules—requiring parental notice in all cases or in none? would greate an inflexibility that often would allow for no consideration of the rights and interests identified above. Our cases have never gone to this extreme, and in my view should not,

<sup>&</sup>quot;While the medical judgment of a photonian of course is to be tespected, there is no reason to believe as a general proposition that even the most conseignment physician's interest in the overall welfare of a minor can be equated with that of mast parents. Moreover, abortion clinics, now readily available in test urban communities, may be operated on a commercial basis where abortions of a may be obtained from demand." See Planted Postnike of all Control Mississip v. Danforth, supraset 91-92, n. 2 (Strivant, J., committing): Beliefti H. rappe, at 641, n. 21.

Although Berbett D involved a state temporary parental consent, the rationale of the plurality opinion with respect to this need is applicable here.

Without sensing opinion of firstner. Marsurant, which would hold the Utah statute involve on its first, classifies the decision of the minor and her physician to an absolute status ignoring state and passaral matricess.

/

GM 03/09/81

To: Mr. Justice Powell

From: Greg Morgan

Re: No. 79-5903: <u>A.L. v. Matheson</u>

9 our

Martha Minow has given me a copy of Justice

Marshall's latest draft in this case. Footnote 12, the note

which we considered to misstate our position, has been

reducted. As it now stands, I think note 12 states a sensible

position (albeit one we disagree with) and a sensitive reading

of our note 6. I do not think that we need to do anything with

our opinion.

note 7 by adding a paragraph in response to our description of the argument of H.L.'s lawyer at the evidentiary hearing. This note emphasizes that HL's lawyer objected to cross-examination by the State after the trial judge had ruled that the statute applied without regard to discumstances. As a matter of timing, Justice Marshall is correct; but it is perfectly clear from reading the transcript that HL's lawyer badgered the trial judge into making that holding. In short, and we have known all along, he's lawyer "ran the show" at the evidentiary hearing.

But having said this, I do not suggest that we respond in our opinion to this footnote. Our position is clear, as is Justice Marshall's; and neither position is going

to change because of quibbling in fontnotes. So long as

Justice Marshall's opinion does not misstate our position -and it no longer does -- then I suggest that we stand upon what
we have written.

greg. Thank Martha & tell her we will not respond further.

## 3nt DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 79-3903

H. L., etc., Appellant. On Appeal from the Supreme Scott M. Matheson et al.

(March -, 1981)

Justice Massirate dissenting.

The decision of the Court is carrow. It finds shortcomings in appellant's complaint and therefore decies relief. Thus, the Court sends out a clear signal that more carefully drafted pleadings could secure both a plaintiff's standing to challenge the overbreadth of Utah Code Ann. (1953) § 70-7-304 (2), and success on the merits.)

Clipdes the manority's view, to assure standing, the plainfull programs minor samply need all gother disign to obtain it also trop, but it bully to do so because of the stander, and list wore that she is enoughful, motore, or cholory is on Ser Sest inverests to bove an abortion performed without partitions for puriods. The injury field in standing problem where the complete alleges that the plantall is emancipated or instance. and their products the stood by analysis stuployed in Bels (17 y. Barel 144) 17. S. (ed.) (1979). (Bellott, ICC). Society, 18. 5, n. 8, topology of Bryand  $C_{i}(A, Y_{i})$ . In soldings, the Caura values in teach on a decision by the Follomb Descript Court on Utah behades apound applies from all the come Utah state the involved here to entercapated industs (L. R. v. Huasen, Civil No. CSLLOGES (1705) S. 1980). The Court appealed's court optimies step school far eleftings, will meet with somess in the femine. For example, the District Comp. in L. R. & Harrier (18) are refer intervener status and , which of preliminaries a feel to a major warman what like appell on, is moder 17 years o'd and and pend or upon a perent with whom the work of The in perhaps one between the integration of the defort procedure and those of that intervenor is the latter's express allegation 0.00 parental nation would result in the expansion from Large and district an of the relation dop with the period of  $L_{\rm c}(R)$  v.  $R_{\rm boson}$  (for New Statellar of the least of Photocal Conductors of Law §4) (Oct. 2), PSO: Finally, the Court

## H. L. C. MATHESON

Nonetheless, I dissent. I believe that even if the complaint is defective, the majority's legal analysis is incorrect and it yields an improper disposition here. More important, I cannot agree with the majority's view of the complaint, or its standing analysis. I therefore would reverse the judgment of the Supreme Court of Utah.

## Ī

The Court finds appellant's complaint defective because it lails to allege that she is neature or connecipated, and medicate to specify her reasons for wishing to avoid notifying her parents about her abortion decision. As a result, the Court reasons, appellant lacks standing to challenge the overbreadth of the Utah parental notification statute.

o law above for a question conference de idop a physician the standing of physicians to all florge physics from the  $\pi$  . See  $\pi$  ,  $\Phi$  , of  $\pi$ 

so, have requirely refer that appearant detentions look so relagion of a

after executed the Court provided soften because open lattern glasted to make specified the set of subsect these found for so that so show the Webs the personal stabe in the operator received for earlier to direct thinds in a the overland of the right constituence at the present of Parasis of Co. L.C. Galleting  $H_{B} \sim e^{-\frac{1}{2} M_{B} R_{B} e^{-\frac{1}{2}}} = 0$  (8)  $\rightarrow$  (1980a). The funder to their constructhere is placed a comparison the orbital page to the distance of the comparison allows that the both felts will be the standard overbroad to the This question from Hercoll, such refer to an emple billeral face of a in large root of the relative physics. First set of in large because  $0 \le l \le l \le 1$ page also show were in a positive enter to sook. For the sorrior reserve Melle all and the offset field distribution cross otherwise incressing to olympe their elegacity the Moline Direction disgress for large. Nonof the end construction point in the end token the question age ( Sectionary Landers, 211 U.S. 48, (1973), option for taken of the to the articlere to the end of from the Rebes V Particles (1984) S programming the large transport of the property of the programming of under Misqueen's Lie (hoster are a trace) since the calleton alog (256) they have been associated and some about the constraint of the first A stroding Figure in a syether lither allogs in an electric state. 1. A rich signs and results of developed the instance of a Torovick

## I!. L. c. MATHESON

The majority's standing analysis rests on productful concerns and not or the constitutional limitations so by Art. III. See Gladston. Realtors v. Value of Bellicood. 441 U.S. 91, 69-109 (1979); Worth v. Seld v. 422 U.S. 499, 498-499, 517-518 (1975). For the Court does not question that appellant's injury due to the statute's requirement fulls within the lexally protected ambit of her privacy exterest, and that the relief requested would reverly the basis. See quite at 7-9 (upinion of Tim Urius destand) and c. 9.7-8 (opinion of Powers, J.). The Court decides only that appellant cannot elafleage the blacket nature of the statute because she regionful to allege that by her personal characteristics, she is a member of particular groups that undoubtedly deserve exemption from a particular notice requirement. Thus, the Court scenes to apply the familiar

longer and trately overlor a Physical effect conduct in lost evolve Sells, within the archively by transfer core is, as, Posted States v. Not some Danie Prod. Page, 272 L. S. 21 (1978), Pr. 5.3 (896), A. Hostor, 237 C. S. 612 (2004); Whitehold V. P. P. & Shares, 742, 47, 8, 57, (1951); Pass Prints be optimized included an experience of the control of the control of the control of For ever so of a find ment larger. See Place of Providence of Correct More as Fig. Day both, 428-47; S. 72 (1)764; Doc v. Rector, 420-77; S. 479. 11970). Mene religible 1 belong it for per bis of stording tackling if you suppress a costos additional to a found manifold the Community of cogreatered by the First Americana. Bodies of the role that we related present the data are also allow her discrete than we retrieve to all avertire detailed the prescription in the weighted the market perfect couldn't for section the producted cars. Golden v. Boson, 400 U.S. 518 (1952); Corps w. Confut Conversely 402 (1) 8 (611) (1971); Period States 8. Holis (18) 17, S. 208 (1967) (200 U/S) 197 Coop U/Lensury, 37 CU/S. [530] (1974) April 3 (1978) Section Probabilities I 198, 204 (1974); Known Now Park (356-17) 8 (266) (1951). So I fee United States v. Reese, 92 17. S. 21y (1876) Blackfull Programater Pitter th American Co.

As a real, wyrear III. Court does not up this in the worst of stream aspects and refer the moment are to be large to tenders expected from the court dynamics would be a present, and the most of the moments of the decrease that the court of the property of the court was an aborton, as to, at 7-8 (appears of Bernaul, C. J.). Security Hellich H.

prodential principle that an individual should not be heard to mise the rights of other persons. This principle, of course, has not precluded standing in other instances where, as here, the party has established the requisite and legally protected interest, capable of redress through the relief requested. See, v. g., Duke Power Co. v. Carolina Environmental Study Group, 438 U. S. 59, 80-81 (1978); Singleton v. Walf, 428 U. S. 106, 113-118 (1976) (Blackman, J.) (plurality); Due v. Bolton, 410 U. S. at 118-189; Granold v. Connecticut, 381 U. S. 479-481 (1965); NAACP v. Alabama, 337 U. S. 449, 459-460 (1958); Barrows v. Jackson, 346 U. S. 249, 259 (1953).

I do not believe that productial rensiderations should har standing here for I am persuaded that appellant's complaint establishes a claim that nothing her parents small not be in her interests. She alleged that she "believes that it is in her

supre, at 650 (Percent, J.); id at 633 (Sayares J.A. Nor does the Court of per from the view much each at a finement Provent's arithmetic Beth in H. super 1965), that a Sent success returns particular to the interest to decent Theoretic when it would not be in the times that interests to decent. The resisting is and obtained about the transfer from Provent contents of South Indeed by the confective which advantable (H. and for exception where the part of dependent to the first such as a first or the first of the grant to the first of the part of the first of the provent to the first of the first of the provent to the first of the firs

<sup>•</sup> In is expecially actionarily, that we have not wireless to an entertime to providing, therefore I and the periodal voice of entertials, stocking to the following the right of the violation to tradition by no ring the right of the violation patents. E. a. Plantal Paraelloud of Mesoner v. Dardotth, \$28.1.8, \$2, \$62, \$187615, \$15.6.8, \$60,000, super. Groundly, Carrott at 33.11.8, \$179, \$19050.

Sign the instant state weight after all the products of sub-causes under containing of products of pad mosts is so. For the other third-entity operate do not over a containing play until appelling wide to relate the State's process, which there we are accorded in the dressing all of this

## H. L. C. MATHESON

best interest that her parents not be informed of her [pregmart] emplition." Complaint, "6. Appendix (App.) 4, and that after consulting with her physician, attended and social worker, "all moderations what is involved as her decision," to seek an abortion, al., "50. This chain was further supported, albeit without detail, at the evide flaty hearing. There are pellant test field size did not feel she could discuss the giortion decision, with her parents even after she consulted a social worker on the ison. App. 26, Tr. 85.—In my judge-

could, I. die hinden in his prote bellem nette. Fact, the appel on most satisfy a court that we the means, I. it need most I again to provide an one of tag her play, and the means, I. it need most I again to provide an open to 0 agree of the State as it as romators along State at the rotation who I take with the best method promoting tends anticovary and parental authorise. And only its relation from the type flow to state the flow as a value I the means and low the State for the Technology of the development of the rotation of the appendix plants and the state of the st

App. Lattle constraint with three propositions of the outed draft on the rate. Present it is against that, a surface of the temperature desires and to replain to a symmetric property of a surface of the rate with the present of 
(7) This propose of the track topy is not with a full soil, not a 2-forming theorem, J.D.

Assume Frwitz controllers parts as to the Copyrity of a tile and interesting a greater in from the place of the strain of the violation of the last controllers as the control of the control of the experience of the control of the c

ment, appellant has adequately asserted that she has persists certly held reasons for helicying parental notice would not be in her best interests. This provides a sufficient basis for standing to raise the challenge in her complaint. Appellant sorks to challenge a state statute, construed definitively by the highest court of that State to permit no exception to the notice requirement on the basis of any reasons offered by the soften - 604 P. 24 007, 013 (1070). As standing is a jurisdictional issue, separate and distinct from the parties a court need not confuste the personstrates of her reasons for opposing parental notice to conclude that appellant has a rous cross interest in determining whether the purental notice stands is valid.

Not even if the Court's view of appellant's complaint is correct, and even if predecte calls for denoting but standing to raise the everlies ofth claim, the Court exponently enacholes that the class represented by appellant suffers the identical standing disability. In so doing the Court is approachly indifferent to the federalism or comity issues mising when this Court presumes to supervise the procedural determinations made by a state trial court ander state law. Even if application of federal law coverning class actions were appropriate in this case, the majority misapplies federal law by distorting the class definition as approved by the trial court. The Court acknowledges, auto, at 2-3 (Brieger C, L.); gate, at 6-n, 6 (Powers, L.), that the trial court granted speedland's module to represent a class and it is undisputed that this class includes all "minor women who are suffering un-

wanted programmies and desire to terminate the programmies but are unable to do so inasmuch as their physician will not

<sup>&</sup>quot;I also deals the midden in pinning a miner's success in shall noing a 12 also prepared matter to market to requisit matter of their prepared spaces and the property of the property of the property of the involution the control in 2 or a left courts. On Beylatti v. Hand, 143, U. S., or 0.35-1.35 (Stave No. 5.).

## H. L. v. MATHESON

perform an abortion upon their without compliance with the provisions of Section 76-7-304 (2)." Complaint \* 10, App. This class by definition includes all prinor women, selfsupporting or dependent, sophisticated or univer as long as the Utah statute interferes with the ability of these wemen to decide with their physicians to obtain abortions. If the Court is correct that appellant exempt raise challenges based en the interest of enancipated or realize minute, or others whose best interests call for avoiding parental notification, the proper disposition under federal law would be a remard. This remaind would proteet such class members by permitting the trial court to determine whether appellant is a proper and adequate class representative, and whether her clams are sufficiently similar to the class to warrant the class action." Since the tool court enjoys crowldetable latitude in approving class actions, such a rereard is appropriate only on those rare occasions where the reviewing Court discerns an alorse of discretion," But where an abase of discretion

As the Chart abserved in Piece v. Co let M. Jeogache, 417 U. S. 136, 175 (1974). The federal conditions procedure two parameters of method in the progress relatively of a control of a condition of the progress relatively of the Theological Chart the process of the Theological Chart the process of the Theological Chart the process of t

Where review of the Times control is imposed by an observe link of homeometry to the class approved by the intercept, the reserving error and the time of the class definition. Known the Burtley, 431 P. S. (20, 13)-105 (1977) and for the class definition will then the according to the project of the class. Markoving Theorem The Law For Table 111 (CAS (977)).

Tr E : a : Boyes A : Abo : cane Specific & House a Ason. [582] F. 2d 277
 CA3 (1978); Bohars C : Proceeds at V. S : Veg. 10, C. — 130) F. 2d
 CC577; can : detail : CS : C : A : 0.6 (1978); However V. W. T. Grant Co., 518 F. 2d 512 (CA4 2078); Arbanan F.J. (Ason. a Hom. Foll Educ. a) (Er Particle), Arbanan S. S. S : Proc. (CA8 1971); Abid Grade Strong Co. A. CV (strong a Vic F. 2d 701 (CAM 1970).

This difficult is consisted what the true padge below in fact abin of his

is clear from the retord, remaind should ensue, and could result in redefinition or dismissal of the class, addition of other named plaintiffs to represent interests appellant cannot advance, or creation of subclasses with additional representative parties. In contrast it is improper to assume appellant adequately represents the entire class as defined by the trial court, but redefine the class appellant is deemed to represent, and deny relief on that basis. Nonetheless, that is exactly the course selected by the majority today.

I instead assume that appellant adequately represents the

Constraint in appearing the class. Other courts have approved discline Constraint properties by similar respect phintiffs of g., Comp. Various & Ledging William Science, v. (1998). Supply 133 (NI) [; 1 1076), affold 429 [V. 8. 1067] (1977) (alice true) properties to be for the color of the source properties and the source of the s

B.A. class grow and to be published in g, Grosslary. Osciald, their Figure 307, 371 (SDNY 1973) (three-grains court), dead of incomes incomes, e, g, Francis v. Decode at 340 F. Supp. 351 (MH. 1972) (three-grains would), or otherwise to state detected by product its members) in traces. So, generally 7 Wright A. Müler, Federal Bracket and Proceeding §§ 1758–1771 (Stepp. 1979).

Open with the I topy join of Sharles, John Joseph Parenta reserves to the state of 
## H. L. v. MATHESON

class which the trial judge concluded she represents—all minor women steking an abaction but finding the parental notice requirement as obstacle. I then would find that their rights and interests can be raised here by appellant in support of a facial challenge to the Utah statute, and conduct the appropriate review of appellant's claure.

## H

Because the Court's treatment is so cursory. I review uppellant's claims with due attention to our precedents.

Our cases have established that a pregiond woman has a fundamental right to choose whether to obtain an abortion or carry the pregnamy to term. Roc v. Wade, 410 U. S. 113 (1973); Doc v. Bolton, supra, "Her choice, like the disply intimate decisions to marry," to processe," and to use contraceptives," is guarded from anyonranted state intervention by the right to privacy." Grounded in the Due Process Clause of the Fourteenth Amendment, the right to privacy."

<sup>43</sup> Sept also Carry V. Population Services International 431 U.S. 678, 654-655 (1977); Granual V. Carrestin at 381 U.S., 51 482 485.

<sup>[6]</sup> Zabbiecki v. Riedinik 433 U. S. 374, 384-385 (1978); Larry v. Virginia, 388 U. S. 2, 22 (1967).

<sup>&</sup>lt;sup>10</sup> Stances v. State of Oklohoma ex. rel. W Planeton, 316 U. S. Still (1942).
Second-a Chird and Board of Education v. LaPters, 414 U. S. 192 (1964).

<sup>26</sup> Energias v. Build. 416 U. S. 438, 433 (1972). Graneld v. Connecticut, supra; Carry v. Population Services International, supra; Post v. Ullmor. 307 U. S. 407, 578 (1961). (Burbon, J., disconting). (bur objective policy is "initially blooming to table involves of gravity in the conduct of the most intimate correctives on individually personal (de").

of Servation Course Proofs. Realizing Co. v. Basisheef, 141-17. S. 250, 251 (1891). C.Ne right is held incree-secret, at is more carefully granded by the common law, than the right of every individual to the possession and control of life person, free from all restrator of interference of others, unless by electrand arguest or object and arguest or object.

<sup>[19]</sup>The pight has often been termed fittle tight to be list alone." See Objectingly, Partial States, 277 U. S. 435, 478 (1928) (Brandels, J., desenting) (quoted with approval in Starten v. Georgia, 794 U. S. 555, 564 (1969), and Eurostadt v. Harri, 495 U. S., et 453 454, n. 161. Defining

protects both the woman's "interest in independence in making certain kinds of important decisions" and her "individual interest in avoiding disclosure of personal matters." Wholen v. Roc. 429 V. S. 589, 599-600 (1977).

In the abortion context, we have held that the right to privacy shields the woman from undue state intrusion in and external senting of her very personal choice. Thus, in Ros v. Wade, 410 U. S., at 164, we held that during the first trimester of the pregnancy, the State's interests in contecting maternal health or the potential life of the fetus could not override the right of the pregnant woman and the attending physician to make the abortion decision through private, unfettered consultation. We further emphasized the restricted scope of permissible state action in this area when, in Doe v. Bolton, 410 U. S., at 198-200 we struck down state-imposed procedural requirements that subjected the woman's private decision with her physician to review by other physicians and a hospital committee.

It is also settled that the right to privacy. like many constitutional rights, extends to minutes. Planned Percuthond

On sphere swithin which the generalizations not not without sufficient institution the net on of privacy "emigrates from the tet has of the constitutional scheme under which we have," Pac v. 1750ac, 367-17, S. 477, 521-11951) (Dangles, J., dissenting).

The gardney right does not use starily giptonts, that the ere minor, regardless of age or gratienty, may give effective consent for termination of

<sup>19 &</sup>quot;Construction rights do not instant and rane into being magically only what one attains the state defined age of majority. Minute as well as adollo, are protected by the Constitution and process renstitutional fights. See, e. v. Rived v. Janes, 421 U. S. 546 (1975); Gass v. Lopez, 419 U. S. 545 (1975); Timber v. Des Moores School Batt. 200 U. S. 543 (1969); In se Goott, 387 U. S. 1 (1967). The Court undeed invoces long has recognised that the State has somewhat breader pathware to regulate the activates of children than of adults. Prime v. Massachusetts. 321 U. S., at 170; Giosberg v. New York, 360 U. S. 520 (1958). "Placed Parcethood of Control Missouries, Respectif, 428 U. S. 52, 74-75 (1975). See also Brown v. Rando of Education, 347 U. S. 483 (1954) (children equal) d to Equal Protection in schools).

#### St. L. e. MATHIESON

of Central Missouri v. Danforth, 428 V. S. 52 (1976); Rellotti v. Baird, 443 U. S. 622, 639 (1979) (Powerz, J.) (Bellatti 11); id., at 653 (Stevens, J.); T. H. v. Jones, 425 F. Supp. 873, SSI (Utab 1975), affid on other grounds 425 U.S. 986 (1976). Indeed, because an animated pregnancy is probably more of a crisis for a minor than for an adult, because the abortion decision cannot be postponed until her majority, fithere are few situations in which denying a minor the right to make an important decision will have consequences so grave and midelible." Belletti II, 443 U.S., at 646 (Powerts J.). Thus, for both the adult and the minor woman, states imposed burdens on the abortion decision can be instifted only upon a showing that the restrictions advance "important state interests" Roc v. World 410 U. S., at 454; accord. Playmet Parenthand of Central Missouri v. Danforth, 428 U. S. at 61. Before examining the state interests asserted here, it is necessary first to consider Utah's claim that its statute does not "implage[] on a worsen's decision to have an abortion" or "place") obstacles in the path of effect asing such a decision," Brief for Appellee 9. This requires an

log pregnancy." Planned Parentheod of Control Microsoft v. Darforth, 428 U. S., at 75 Ur. I. here e. i. essent the consent outlest v. In a consent of low against seeks pregnancy triated used at each Urah Code Ann. § 78-545 (4030), subject to the State's informed consent requirements, see Urah Code Ann. § 78-7305 (4038), § 78-33-5 (1053). The appeal the consent product of the consent of the consent product plant I consent outlet the consent of the code of the consent plant I for the product of the consent of the code of the consent outlet of the consent outlet outlets.

26 In striking down a related Utals probabilized against Junily plot olog assistance for minors absent parental consent, a debrial destrict count researed that the "forested psychological and social problems arising from recing pregnancy and mode thood areas for our temperature of the subst of minors to privacy as being count to there of adults." T. H. v. Johns, 425 F. Supp. 873, 881 (Utals 1975), afrill at other grounds, 425 F. Supp. 873, 881 (Utals 1975), afrill at other grounds, 425 F. Supp. 876.

examination of whether the parental notice requirement of the Utah statute imposes any burdens in the abortion decision.

The ideal of a supportive family so pervades our culture that it may seem incongruous to examine "burdens" imposed by a statute requiring parental notice of a minor daughter's decision to terminate her pregnancy." This Court has long deferred to the bonds which join family members for mutual sustenance. See Pierre v. Society of Sisters, 268 U.S. 510, 534-535 (1925); May v. Anderson, 345 U.S. 528, 533 (1953); Griswald v. Connecticut, 381 U. S. 479, 486 (1965); Stepley v. Blinois, 405 U. S. 645, 651 (1972); Moore v. East Cleve-Irad, 431 U. S. 454, 504-505 (1977) (Powers, J., plurality). Especially in times of adversity, the relationships within a family can offer the security of constant caring and aid. See Moore v. East Chiteland, id., at 505. Ideally, a minor facing an important decision will naturally seek advice and support from her parents, and they in turn will respond with comfort and wisdom,22. If the pregnant prigor herself confides in her family, she plainly relinquishes her right to avoid telling or involving them. For a minor in that discuspitance, the statutory requirement of parental notice hardly imposes a burden.

Realistically, however, many families do not conform to this ideal. Many minors, like appellant, oppose parental notice and seek instead to preserve the fundamental, personal right to privacy. It is for these minors that the parental notification requirement creates a problem. In this context,

Appeller also argues that "[iii is difficult to contemplate a relationshap where the right of privary as Fermulated in the absorption context could be less relevant than in the confiner of the modern family." But if for Appeller 22. This view between was expressly rejected in Plannel Parsettle of of Central Mesonally Duefo, th. 428 U.S., at 75

<sup>&</sup>lt;sup>17</sup> Reshts that of this ideal, bowever, tenst depend on the quality of contribution transforms within the fately, and not read patterns proposed by the State. See Quillon v. Webs 9, 431 U. S. 246, 255 (1978); Money v. East Clerkland, 431 U. S., 25 566.

involving the minor's patents against her wishes a effectively cancels her right to avoid disclusive of her personal choice. See Whaten v. Roy 429 U. S., at 599 600. Moreover, the absolute notice requirement publicizes ber private consultation with her doctor and interjects additional parties in the very conference held confidential in Rue v. Work supra, 410 C. S., at 164. Besides revealing a confidential decision, the parental volice requirement may limit "access to the means of effortuating that decision," Carry v. Population Services Internalizated, 431 U.S. 678, 688 (1977). Many minor women will encounter interference from their parents after the state-imposed multication. In addition to parental dis-

44 Nathing presents the played in from eccorriging the inless to consult ber parented only the minor who strongedly objects will remove hors-

depend by the notice proposessent

so The recent to releast on the feedback agreed that of sention become the ir. I jude reschaded any each explained is firely of the ber facility halflenge to the mands one parties requirement. In light of bor down that the tertion propagation to the last the express of her right to obtain an abortion Cawey r, we may same a that apps that expects fourte conflict over the Shorter 2 . for Indeed the transcript of the evic etcay become quared only, at 3-4, at 2 requires of Provent, 30, departs rates that conself-open with her some worker, her playsour, and for lower did not ther appellants steading today that she could not discuss the reservoirth her increase

The rounds in other cases are also instructive as to the interference panel by a mer proof to the excesse of community private mich. So L. R. v. Ray vov. Cast. No. C80 1978 (CS) 21, 12800 (CH) Utala Drefitting andy reach worded to minur allegang testest expelled from base industenter why declared in its of progress when I abortised the Wiesen's Plan-See J. Howley Cont. of Phys. v. Public, 477 F. Supp. 552, 548 (Mains 1979). payout shid alto the come yet and ewill proceed the miner, notions after entiri entidestress and atherwise decograp the family of book ship? ( Basef H. A.M. DO, T. Solito, 207, 1001 (Most 2078) (The fit of electric electric process. orally progress would be obtained balloured maintage for our built an orall of the telephanest is parished to for even play in the harm. The consents William [5] Phys. Rev. B 24, L475 (1988) at 24 (CA7 1978) (specific ring some profes. Jerreit, In a. 1950. 318, A. 26 629, 630 (Dec. Co. Ch. 1974) (father of peses miner's abertion on religious grounds (\* 859te v. Koome, 8) Wash, 2d appointment and disapproval, the minut may confront physital or emutional abuse, withdrawal of financial support, or actual obstruction of the abortion decision. Furthermore, the threat of parental notice may tause some major women to delay past the first trimester of pregnancy, after which the health risks increase significantly.35 Other pregnant

901, 608, 500 P. (81,200, 963, (1975). Opened Chinks foreign dangement to hear shift will derect be furnise prepriate and . See Margaret S. v. Edwards 488 F Supp. 181 (17) Lo. (1980). Parents discuss oppose a numeria d. Islam and to short | E. a., In st. Suith, 209 A 24 288 (Mill 1972) | Soc. generally F. Fresterberg, Unplumed Parenthosal: The Social Consequences of Two age Childle crine 54 (1970); Jolly, Young Feta do and Optsale the Love, in Two age Wagners in the Javende Javeine System: Charging Values, at 102 (1970) in Wheelb years and becomes program, many (smiles tothere to pllew her back into their Fornell. Confekt and Declete Torrage Pregion of Psychosomal Cardiditations, 21 Clinical Obs. A Gener, 1261. 1164-7165 (1978). Secular J. Bodzer, Technic Projectory (23, 124 (1980)) Clarge projective of scoopled polymore minors profest processed appropriation to their obsertionals.

of Wismon's Commonly Wealth Conter, Inc. v. Calent carrest faffiliavity shown a parce to be type "andy career adolescent for delay or Wag as is tance with her progressive increasing the legardeness of an decrease should structure one type Corner Advisorate Observator gradient extent Section particle and the Castron Broker of Kat Dalvack Re-By Daniel Mariet A. B. Swiger M. Och & Anne a 191 Am. A of a with a pass 140 (2075). Bolis on Conserval Const. or less SOLD STATES INVESTIGATION OF SECULORS OF MICKELLIA Model a Cost of the Administration (2) for Occasion Bookley Guidfords, fid-

68 29703

If the decides to obsert after the first transfer of progress, the miner force more series liquid, risks. Risk v. Risk., 416 (1. S. 5) 103. Betality, Second-Trum (to Abortion in the United States, 1) Four Plan Perspective 958 (1979); Cates Schulz Crimes & Tyler The Effect of Delay and Method Cheers so the Rick of Abortica Methicity, 9 Fam. Plan Perspectives 266 (1977). If she decides to bear the failed her health risks are also greater than if she had a first transitor abortion Charles and M. Phase & Tieber Startman, I March Phys. Vol. \* acces with Legal Above in Class Circle 1975, 1077, 1077, 1077. Proposition 2 × 41978) for the witter section of the American Section 2. if an electronic programmer for forms. The Properties Social Applies to all minors may attempt to self-abort or to obtain an illegal abortion rather than risk parental notification. Still others may foresake an abortion and hour an unwanted child, which, given the minor's "probable education, employment skills, financial resources and emotional resources. . . . may be exceptionally burdensome." Bellotti H. 143 U. S. at 642 (Powers, J.). The possibility that such problems may not occur in particular cases does not alter the hardship created by the notice requirement on its face." And that hardship

Aberdone, (0) This Prin, Prophers of Colorest Street of Zewler, And there is Prince The Year & Additional to a Colorest Block, 200 April J. Obst. & Cons. 1025 (1990) Comply stress and intelligible of Defendance.

25 W. Konk's Commonstan Horself Center The N. Cohon, 477 F. Supposal 5 P. (attebrais God money to by turn to allege) distribution rather than I see parents perifod). So of a Kaban Baker & Proctom, Th. Fffect of Legaland Abortion on Mortaday Residing Communication Abortion, 121 Ann. J. (Soc.) & Gyres, 214 (1975); a legal abortion rate drops when legal abortion available. The monor than the oak to abort be self, Abor v. Dept. of Social Welford, 55 Cal. App. 3-1 1,00, 2041, 128 Cal. Rept. 371, 377 (App. 2076); A. Halder, Legal Issue in Pediatri s and Adolesco to Medicase 285 (1977); as even common miscle s. Teacher A Selgtion to the Chresic Problem of Living: Adolesco to Attempted Sociale, at Correct Issue in Adolesco to Pediatri Sociale, at Correct Issue in Adolesco to the action of the state of the safe and the action of the safe to safe action of below Cov. are programed.

<sup>27</sup> It is the presence of the particl requirement and not be tely its anphenomentation in a particular case, that exercise the introduct of Plancet Projection I of Control Missionia, Despirit, support scaling the effects, not exercise of sect. (and enconstructional)

Despite the Centrils objection to-have that we have in the post expressly of fixed to equate pulses with consent, bester of 191 to 12 to purpose of Brown C. J.A. in Both Re III. the Court type ted a station combon and pulse of two-word atmosphishment as an obtaining contribution of the court person model into date. These first two Propositions for four members of the Court, of the Proposition of the court person with the state, and part person to be struct, and part person to be proposed, the main persons who would obstruct, and part persons as a proposition, the transfer order to go to court by the Theory is no proposed, the transfer order to go to court by the Theory is no proposed, the transfer order to go to court by the Theory is no proposed.

is not a more disincentive created by the State, but is instead an artial state-imposed obstacle to the exercise of the minor winner's free choice. For the class of pregnant minors represented by appellant, this obstacle is so ourrous as to but the desired abortions. Significantly, the interference sanctioned by the statute does not operate in a neutral fashion. No notice is required for other pregnancy-related medical care, so only the minor women who wish to abort encounter the burden imposed by the notification statute. Hecause the Utah requirement of manulatory parental notice magnestionally burdens the minor's privacy

emierity of elses where consent is withheld. But grown parents held strong views on the subject of all ording and execute terms of misers, established two laws at later, are period as a literal black to their consent of first confection and their zeros to court " 143 C S at 647.

<sup>27</sup> These the notice to quirement produces near only predictable definetions to choose to about Hamis v. McRov. 48 U. S. L. W. 4941, 4952 (June 20, 1980) (Maystakra, J., descending): ed., or 4950 (June 20, 1980) (Buckrass, J., descending), but also "Threat state interference with the protected policity," Hamis v. McRov. 48 U. S. J. W. 4941, 4945 (June 32, 1980) (quaring with protected Maker v. Roy. 432 U. S. 454 (1977)).

\*\*So Dec v. Bellon, versa 19973) (invalidating provided restrictions on availability of alerted 4): Carry v. Populative Services International, 431 U. S. on 687-689 (partial restrictions on access to contraciplizer subject to an expensional challenged. Reg relies of the research views each of a stary held, the process field by definition scenes between twittings of character 41- preparational, without State represal of one decision over mathet. Thus, decision scenes impropeds not return the research of the abortion decision over mathet. Thus, decisions shows improped ways in the importance of the abortion decision points to a military with a transmission of the abortion decision points to a military with and will full understanding of the consequences of other alternative in each of a topicion of Stay 8s. 1.1 templasis added).

13 Sec text second any net by 8 and socials 20, 24, 25, supra.

<sup>&</sup>lt;sup>24</sup> Flab permits respected minors to eccessive to any medical procedure in connection with programmy and childbarth, but respires parental period only before an aborton. Compare Ural, Caste Ann. § 78-14-5 (1) (f) with Utal- Code Ann. § 76-7-804 (2).

right. the proper analysis turns next to the State's proffered justifications for the infringements posed by the statute.

# III

As established by this Court in Planned Parenthood of Contra! Missouri v. Danforth, supra, the statute cannot survive appellant's challenge unless it is justified by a "significant state interest," 22 Further, the State most demonstrate that the means it selected are closely tailored to serve that intorest." Where regulations burden the rights of pregnant adults, we have held that the state legitimately may be concerned with "protection of health, modeal standards, and pre-patal life." Roc v. Wade, 410 U. S., at 155. We concluded, however, that during the first trime-ter of pregnancy mine of these interests sufficiently justifies state interference with the decision reached by the pregnant woman and her physician, Id., at 162-163. Nonetheless, U(ab asserts here that the parental notice requirement advances additional state interests not implicated by a pregnant adult's decision to abort. Specifically, Utab contends that the actice requires ment improves the physician's medical indigment about a pregnant miture in two ways: if permits the parents to provide additional information to the physician, and it encourages consultation between the parents and the number woman.

<sup>\*\* (28 °</sup>C, 8° at 25° Cf. Zubboll, v. Redhall, 434° C, 8°, at 288 (2078); NAACP v. Bullius, 371° C, 8° 418, (38 (1966)). In Rec v. Wabe, support the Court concluded that the warrant's previous such that the Court altimately applied the Becompelia c state anterest lites commonly world at reciewing state landers at fundamental lights. Id. (155° Although at many south that the court is a state anterest lites commonly world in the south that the many literature by a state interest literature for many disconnected from the many souther than that state interest little many southers with that state process literature for supplicable to state interest little many southers with the state process in prophrable to state interest little many density for supplied by the state of Court Mississipplied for the 
<sup>&</sup>lt;sup>24</sup> E. g., Rev. v. Wage, 410 U. S., at 155; Galv. old v. Connecti et 381 U. S., at 485.

Utah also advances an independent state interest in preserving parental rights and family autonomy. I consider each of these asserted interests in turn."

# A

In upholding the statute, the Utah Supreme Court concluded that the putilication provision might encourage purental transmission of "additional information, which might prove invaluable to the physician in exercising his flest medical judgment." "A Yet neither the Utah courts not the statute itself specifies the kind of information contemplated for this purpose, nor why it is available to the parents but not to the minor woman berself. Most parents lack the medical expertise processary to supplement the physician's medical judgment, and at best could provide facts about the patient's medical history. It seems doubtful that a minor mature enough to become pregnant and to seek medical advice on her own initiative would be unable or unwilling to provide her physician with information crucial to the abortion decision. In addition by law the physician already is obligated to obtain all information necessary to form his best medical judgment." and nothing bars consultation with the parents should the physician fine it necessary.

<sup>&</sup>quot;YUM also argues that the notice requirement furthers legitimate state into restant soforcing its criminal laws against statement rape, fornication, adultory, and incest. Brief for Appelloc 28-30. These interests were not asserted below, and are too tentions to be expedient seriously here.

<sup>2517/4</sup> Pt 2J, at 909-910.

as Section 76-7-304 (1) requires the abysician to

<sup>&</sup>quot;In Jude let all factors relevant to the well-being of the woman openwhom the shutton is to be perfectional including, but not limited to,

<sup>&</sup>quot;(a) Her playstral, emotional and psychological health and safety,

<sup>&</sup>quot;(b) Her age,

<sup>&</sup>quot;(c) Her familial situation."

Valutions of this requirement are publishable by a war imprisonment and \$1,000 flux. Finh Code Ann. §§ 76-3-204 (1), 76-3-301 (3), 76-7-314 (3). Criminal submittees also apply if the physician neglects in obtain

Even if mandatory parental notice serves a substantial state purpose in this regard, the Utah statute fails to implement it. Simply put, the statute on its face does not require or even encourage the transfer of information; it does not even call for a conversation between the physician and the parents. A letter from the physician to the parents would satisfy the statute, as would a brief telephone call made moments before the abortion." Moreover, the statute is patently underinclusive if its aim is the transfer of information known to the parents but unavailable from the minor woman berself. The statute specifically excludes married minutes from the parental notice requirement; only her husband need by told of the planned abortion. Utah Code Ann. § 76-7-304 (2), and Utah makes no claim that be possesses any information valuable to the physician's judgment but unavailable from the pregnant woman. Furthermore, no notice is required for other pregnancy-related care sought by the minor. See Utah Code Ann. § 78-14-5 (4)(f) (40-

the named's informed written consent and such consent can be scraped only after the physician has notified the partient;

"(a) Of the papers and addresses of two becaused adaption agencies in the state of Ctab and the services that can be performed by those agencies and nanogeness adoption may be legally arranged; and

"(b) Of the details of development of unborn didleten and abortion protedutes, including any fetosecoble complications, risks, and the nature of the post-operative recognization period) and

"(c) Of any other factors be deene relevant to a voluntary and informed consent." Utab Code Ann. § 76-7-305 (2)

The risk of malprosture only also ensures that the physician will acquire whatever information be finds meroscopy before performing the abortion. See Urab Code Ann. § 78-14-5.

Marcover, "julk a physician is literard by the State, he is assegnized by the State as expublic of exercising asseptable claimed pidement. If he fails in this, professional sensite and depression of his hirmse are available remained." Due v. Belton 410 U.S. at 150

<sup>41</sup>The parties concided as much at oral argument. Tr. of Oral Arg., 18-19, 29, 49 thorizing woman of any age to consent to pregnancy-related toedical care). The minor woman may consent to surgical removal and analysis of anniotic fluid, caesarian delivery, and other medical care related to pregnancy. The physician's decisions concerning such procedures would be enhanced by parental information as much as would the shortion decision, yet only the abortion decision triggers the parental notice requirement. This result is especially anomalous given the comparatively lesser health risks associated with abortion as contrasted with other pregnatory-related medical care." Thus, the statute not only fails to promote the transfer of information as is claimed, it does not apply to other closely related contexts in which such exchange of information would be no less important. The goal of promoting consultation

<sup>2.</sup> In builded by the majority's stable of teday that Militable programs. girl elects to corry her child to temp the made of decisions to be made rated few perfects processed the potentially grave real enotional real pay helppical represents of the decision to about," nate at 11 females. of Brighes, C. J.A. Choosing to purpoint to in degree the roots involved ti-k- to be the mathet and child and also near burden the attenues assume with knowledge that the child will be harden used. See Prevention of Electronic First and Period I Process 347-332 (C. Brech & M. Horne, 1976); Risks in the Printper of Mod in Obsterries 59:81, 599-370. 48 Abeliem, of 1975). The decision to molecus, engage to skyle the elfolls life to at high carries as period formation for engage who ego forces segment of for the esogeant polyles entires does the decision to gherts in both institutely. One provide confidence the so-kersi calculating the code and lead take that also all the policy according to giving both to a sheld See Roke in the Process of Modern (Bototages, concepts) 20081. For an mixed adelegant, these is new operate her fators relacational and perexport policy as well as the prore array distory cablers, of flocking function stak emotional support for offsering dispendent entirely as her . Made of M. v. Scholich Popular Superior Physics (Ph. P. S. — 1994) (Representation) Ophradity) (Sept. ep., 2015). When the repression one the CVPS life. poses greater risks to the methods life, the equational and other) dimensides of the mode fleate decision assume stisis proportion. Of course, for minors. The proce fact of polynomic y and the larger face of child burth cona toduce pevelological tephanisti.

between the physician and the parents of the pregnant minor cannot sustain a statute that is so ill-fitted to serve it.19

#### Ħ

The State also claims the statute serves the legitimate purpose of improving the minor's decision by encouraging consultation between the minor woman and her purpose. The State does not dispute that it cannot legally or practically require such consultation. Nor does the State contest the fact that the decision is ultimately the minor's to make." Nonetheless, the state seeks through the notice requirement to give parents the opportunity to contribute to the minor woman's abortion decision.

Ideally facilitation of supportive conversation would assist the pregnant minus during an undoubtedly difficult experience. Again, however, when measured against the rationality of the means employed, the I'tah statute simply fails to advance this asserted goal. The statute imposes no requirement that the notice be sufficiently thicky to permit any discussion between the pregnant reliens and the parents. Moreover, appellant's claims require us to examine the statute's

<sup>&</sup>lt;sup>12</sup> More Pevalde regulations which slates to the physician's judgment but provide for proportial notice in concrete is have been proposed. E(a), 10.5 -A54 A. In each of testing Standards Propost, Standards Relating in Rights of Micros 8§ 4.2, 4.6, 4.8 (1980). (a feet can consent to program, yielded at death ourse, physician should seek to obtain names's p-phistophic startly postal and notice papers as a minorisk objection only of faderate in from freedth sephensial papers as a minorisk objection only of faderate in from freedth sephensial papers are the bouits of the minorisk.

A 671 P. 25, 51 962 Citie State has a special universe in reconnecting Contract explicitly an encountry diproposal universe to seek the advice of the purents in making the proportion decream as to whother or can to bear a childrin.

<sup>&</sup>lt;sup>15</sup> Hed. (notification status of does not per secingular new restriction (or the teleprit as to ber decision to terminate ber pergamey"). C7. Public Code Ann. § 78-14-5 (OAC) (note to of any age can constant to any medical code related to pregnance). So, generally Physical Proportional of Coding' Massack v. Danforth. 428-15. So is 71-180. Common terminal deligate absolute visit and order to propose of ground remotive king abortion).

purpose in relation to the parents who the minor believes are likely to respond with hostility or opposition. In this light, the statute is plainly overbroad. Parental consultation hardly seems a legitimate state purpose where the minor's pregnancy resulted from invest, where a hostile or shusive parental response is assured, or where the minor's lears of such a regionse deter her from the abortion she desires. The absolute nature of the statutory requirement, with exception permitted only if the parents are physically unavailable, violates the requirement that regulations in this fundamentally personal area be carefully tailored to serve a significant state interest.50 "The need to preserve the constitutional right and the unique nature of the abortion decision. especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter." Bellotti H, 443 V, S., at 642 (Powritt, J.). Because Utah's obsolute notice requirement demonstrates no such sensitivity. I cannot approve its interference with the minor's private consultation with the physician during the first trimester of her programmy.

C

Finally, the state asserts an interest in protecting parental authority and family integrity. This Court, of course, has

<sup>\*\*</sup> State sprinsored counseling vervices in contrast, and 4 premate family dislogue and also unprove the minor's decision making process. Appelliant H. L. for example, consulted with a counseler who supported her decision. The take of counselors can be significant in familiating the program weaken's adjustment to decisions related to ber pregnancy. See Smith, A Follow-Up Study of Women who Request Abortion, 43 Acc. J. Orthopsychiatry 574, 583-585 (1973).

<sup>\*</sup>This interest, sithough not discussed by the state courts below, was the subject of the State) must exercis argument before this Court. The claffenged provision does Life within the "Offenses Against the Family" chapter of the Pulk Crimenal Code, and that I (opinion of Briesen, C. J.) which also provides combinal superiors for big stay, Pulk Code Age § 76—

recognized that the "primary role of the parents in the upbringing of their children is now established beyond debate as an embring American tradition." Wisconsin v. Yoder. 406 U. S. 205, 232 (1972). See Prime v. Massachusetts, 321 U. S. 158 (1944); Meyer v. Nebraska, 262 U. S. 300 (1923). Indeed, "those who nurture [the child] 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. at 535 (1924). Similarly, our decisions "have respected the private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U. S. at 166. See also Moore v. East Cleveland, 431 U. S., at 400.

The critical thrust of these decisions has been to protect the privacy of individual families from unwarranted state intrustion." Ironically, Utah invokes these decisions in seeking to justify state interference in the normal functioning of the family. Through its notice requirement, the State in fact enters the private realm of the family rather than leaving analtered the pattern of interactions chosen by the family. Whatever its motive, state intervention is hardly likely to resurrect parental authority that the parents themselves are mable to preserve." In rejecting a statute permitting parental veto of the minor woman's abortion decision in Planned

<sup>7–101.</sup> incose, § 76–7–102, windery, § 79–7–103, formication. § 76–7–104, and non-apport and sole of clabbra, §§ 76–7–201 to 76–7–200.

<sup>\*\*</sup> Wond v. Caren, 582 F. 2d. at 1985—1986. Nett., The Minur's Right of Privary: Languages on State Action after Despetts and Carry, 77 Colona I. Rev. 1216, 1221 (1977).

Courte fact that the report became program and single an abortion country to the parents wishes indicates that whatever control the parent uncertail and over the topost has dimensional, if and evaporated entirely. And we believe that entering a single, affect important, parental discover—at a time when the minor is near to inspectly statete—by an instrument as blunt as a state statute is extractely indicate to restain parental control? Poetly, Gerstein, 317, F. 24, 787, 704-785, (CA7, 1975), summarily affile, 428, U.S. 901, (1976).

Parenthood of Central Missouri v. Danforth, 428 U. S., at 75, we found it difficult to conclude that

"providing a parent with absolute power to overrule a determination, made by the physician and his minor patient, to terminate the patient's programmy will serve to strengthen the family unit. Neither is it likely that such veto power will cohance parental authority or control where the minor and the nonconsenting parent are so fundamentally in conflict and the very existence of the programmy already has fractured the family structure."

More recently, in Bellotti v. Baird H. 443 U. S., at 638 Justice Powers, observed that efforts to guide the social and moral divelopment of young people are "in large part". . . . beyond the competence of impersonal political institutions."

Utah maintains, however, that its statute "therely safeguards a reserved right which parents have to know of the Important activities of their children by attempting to prevent a denial of the parental rights through deception." Brief for Appellee 3. Casting its purpose this way does not salvage the statute. For when the threat to parental au-Courity originates and from the State but from the minor child, invocation of "reserved" rights of parents cannot sustain blanket state intrusion into family life such as that mandated by the Utah statute. Such a result not only runs counter to the private domain of the family which the State may not breach; it also conflicts with the limits traditionally placed on parental authority. Parental authority is never absolute and has been deciral legal protection when its exerrise threatens the health or safety of the minor children. E. g., Prince v. Massachuschis, 321 U. S., at 169-170. Indeed, legal protection for parental rights is frequently tempered if not replaced by concern for the child's interest,15

<sup>&</sup>quot;Claim, in Prince v. Massachusetta, supra, this Centr Is M that even parental rights protected by the First Amordiaem could be limited by the State's integers in probabiling chât labor. See Warrania v. Yoder,

### H. L. B. MATHISON

Whatever its importance elsewhere, parental authority deserves de minimus legal reinforcement where the minor's exercise of a fundamental right is burdened.

To decide this case there is no need to determine whether proceedal rights never deserve legal protection when their assertion conflicts with the minor's rights and interests." I conclude that this statute cannot be defended as a more reinforcement of existing parental rights, for the statute reaches beyond the legal busits of those rights. The statute applies, without exception, to enumeripated minors." mature tolinors,"

406 V. S., at 203-204 (disensing Prince). The State analytically exercise, a parents perfore function in protecting three who consist (ske care of the resilve). See Garch 29 v. New York, 300 P. S. 520, 641 (1963). Seese of the exiliest applications of percola parents protected cladden against the relative transmitted. E. p. Wellechen v. Wellechen v. Forg. Rep. 1078, 1682 (St. L. 1828). See generally Kleinfeld, The Balasse of Power Among I: (and Their Process and the State, Part 111, 5. Formist L. Q. 64, 65, 73 (1971). Every State has emisted legislation to defend children from parents along where, Calib Alors Lones. Past, Present, and Forms, 21 J. Ference Sci. 71, 72 (1976).

\*\* The scatters in which this is no proviatise are too varied to suggest and general only. Appello, eyes our recent decision in Parkets s, J, R . 442 11 S. 684 (1972), to support its claim that parents should be presented comperent to be its deed in their point daughter's abortion decision. That decrees to image site to this rose in several respects. First, the autor child at Philonophic was compared to a negral his job was presided incomplication gake the commutation decrease Supports 19, at 623 (Striving, J., concurring). To enorpsi, appellant by striple is presented roughts at its price the decision about whether the ecopyate or about her (regulately). Furthermore, in Pathons, the Court placed critical relative on the althorate to deterape stace, and global at recipes of the communicated state. sion by modulal expense. How the physical is independent medical judgemont—that are displicatives be expediently be a mode dilutorest mot sody. was containing to, it was defeated by the action represented. Facilly as District Sprover emplished in his concurring opinion in Parking the pregnant materials as personal substantive right? to decide a substantive tions, 161 pp. 923-924, pp. 6

2 Most States through their legislature of courts have adepted the concentrative principles of the process with the treatment of the discheries

[Footback Officers & Sec.]

28

# H. L. v MATHERON

and minors with emergency health case needs." all of whom, as Utah recognizes, by law have long been entitled to medical case unencumbered by parental involvement. Most relevant

of that status—and at the same time release his parents from their parental abbigations, print to the actual date of his majority. Certain arts, in and of themselves, josy occasion contrapation. See, e.g., Cat. Civ. Code § 62 (Supp. 1979). [emancipation upon superiore or entry as armed serve iess); Ptah Code Ann. § 15-2-1 (emphation upon martiage); Crank v. Crook, 80 Aria, 275, 296 P. 2d 931 (1956) (some) - A minor poly become partially emancipated if he is partialized supporting, but still entitled to some parental assistance. See Watz, Schroeder & Sulman Patantipats. ing Our Children—Comme of Legal Age in America, 7 Prin. I, Q. 211, 215. (1973) Several States by statute permit engagination for a specific purpose, such as obtaining medical care without parental consent, e.g., Cal-Civ. Code § 34 B.; Most. Code Aub. § 69-6101 (1999). (woman of any age. may corecpt to pregnancy-related medical care); Ptali Code, Ann. § 79-14-5 (4) (f) (same). Utab Code Aug. § 26-2-39.1 (miner can concept to medical (recipient for veneral) discovery Tex. Ann. Stat. act. 4447 (Vers. neg 1976) (person at least 13 years old may consent to medical treatment for drug (Sepandency). See Pilpal, Microst Rights to Medical Circ. 33. Albary L. Rev. 462 (1972) Several States provide for encapsipation once the individual becomes a parent. E. g., Ky. Rev. Stat. Ann. § 214 185. (2) (1977). In 17th industrials become purents are authorized to make all medical rere decisions for their offspring. Clab Code Ann. § 75-44-5. (a). See correctly Cohen v. Delayare, L. & W. R. Co., 150 May, 450, 453-457, 200 N. Y. S. 667, 671-676 (Sep. Ct. 1934); L. R. v. Hansen, No. C-80-0078J (Feb. S. 1980) (CD 19ab) teelf-apporting major seeking abortion is emancipated and mature); Goldstein, Medical Care for the Clubbat Risk: On State Supervention of Parental Authority, 86 Yale L. J. 645, 663 (1977) (recommending objective criteria to social case-by-case determination of extrairigation),

\*\*The "mature number" dectrine permits a child to consent to medical treatment if he is capable of appreciating its nature and consequences, E. g., L. R. v. Humson, No. C. 80-00781 (Feb. 8, 1980) (CD Utah) (this mature union "is rapable of understanding her condition and socking an informed decision which she has done after carefully considering the alternative available to her and consulting the persons with whom she felt she should consult" prior to chartoon decision): Ark, Stat. Ann. § 52-363 (g) (1970). See Lenou v. Laird, 166 Olgo St. 12, 139 N. E. 24-25 (App. 2056). (physician not liable for battery after acting with minor's

[Funtante 25 is on p. 37]

to appellant's own claim, the statutory restriction applies even where the minor's host interests -as evaluated by her physician—call for an abortion. The Utah trial court found

consently, Smith v. Scable, 72 Wash, 2d 16, 21-22, 431 P. 2d 749, 723 (1967); Finally v. St. Francis Hospit & School of Nutring, Inc., 205 Kar., 202, 300-301, 459 P. 2d 530, 337 (1970).

Four Members of this Court embraced the "mature miner" concept in striking down a statuse requiring parental active and consent to a dutor's abortion, regardless of her own property. Bedulle H, 443 U/S, at 643-644, and no. 22 and 23. In Bellotti II, Justin i Poweral's opinion for four Members of this Court suggested that a statute read withstand entists fusional attack of it permitted earliby-case administrative or judicial determination of a pregnant issue its conscient to make an abortion deriviou with her physician and independent of her parter; 443 71 S. of 643-644. and not 22 & 23. Because this year was expensed in a case for involving such a statute, and because it would expose the pion too the arrhous spd public signs of administrative or judicial process, four other Members of this Court rejected at as advisory and at odds with the privary interest at Buke, Id., at CM 656, and 656, n. 4 (Storess, J.) Nonetheless, even under Protick Downth's resoning in Belieff, H. the instant statute is onconstitutional. Not only do seat preclade resesby-case entrideration of the graticity of the minor, it also prevents individualized geries to determine whether parental notice would be harmful to the minor.

[29] R. G. Ny. Rev. Stat. 5244 185 (2) (1977); Pitch Under Aug. § 264. 31-8; Plate Laws etc. 98-7 (1970). The need for emergency medical care may even discrepance the religious objections of the parents.  $E,\,g$  , h we Clark, 24 Obio Op. 24 89, 88-90, 183 N. F. 2d 128, 131-102 (C. P. Lucia County 1962); In to Sompton 65 Mirc. 2d 638, 317 N. Y. S. 2d 641 (Family Ct.), affil, 37 App. Do., 24 668, (Sup. Ct. 1970); Mass. Gen. Law- Ann. ch. 112, § 12F (Supp. 1974). Miss. Code Ann. § 41-41-7. (1972). Delay in treating principlegency health needs may, of rooms. produce an emergency, and for that teason, this Court found statistical provision of emergency but not nonemerg-ney extending tall. Memorial Hospital v. Memorph Conv.ty, 415 U. S. 230, 261, 265 (1974). To asserting that the Utili statics would not apply to infects with emergency health care needs the Court 1-15 to point to snything in the statute the zevord, on Titals case law to the contains. The Suptemb Court of Titals addressed only one kind of emergency, where the pursuits connect bephysically for ded in such operations to person performance of the abortion. GOA P. 2d of 013. The court rejected any other emergency education as an exception to the statute when it declared to affined a broad as a fact that appellant's physician "helieved along with her that she should be aborted and that he felt it was in her best medical interest to do so but he could not and would not perform an abortion upon her without informing her parents prior to aborting her because it was required of him by that statute and he was unwilling to perform an abortion upon her without complying with the provisions of the statute even though he believed it was best to do so." Civ. No. C-78, 2719 (Dec. 26, 1978) (Findings of Fact "7). Even if further review by adults other than her physician, courselor and altorney were necessary to assess the minor's best interests, see Bellotte II, supra (opinion of Powers, J.), Utab's rejection of any exception to the notice requirement for a pregnant minor is plainly overloard. In Bellotte II, we were in willing to cut a pregnant minor off from any avenue to obtain help beyond her parents, and yet the Utah statule does just that.

In this area, I believe this Court must join the state courts and legislatures which have acknowledged the undurabted social reality; some minors, in some circumstances, have the capacity and need to determine their health care needs without involving their parents. As we recognized in Planced Paranthood of Central Missouri v. Danborth, supra, 428 U.S., 75, "Julyay 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." Utab itself

interpretation of the physics, "if people," which modifies the nation requirement. Even where the emergency is completely that the period except he was been about the state applies, the physical subject to its virtue merely the been granted an attribution defense that he exist soft in standard about the physical state he exist soft in standard about the defense that he exist soft in standard about the precision of the filling standard in the soft soft.

As one medical authority electronic inpute on well argue that an adolescent old rangel, to anke the decrease to be securily active . . . , and who is then repensible scound, to so k preferenced assistance for his or her problem, is ipop facto mature enough to consent to his own health

has allocated pregnancy-related health care decisions entirely to the pregnant many? Where the physician has cause to doubt the minor's actual ability to understand and consent, by how he must pursue the requisites of the State's informed consent procedures. The State cannot have a legitimate interest in adding to this scheme mandatory parental notice of the minor's abortion decision. This conclusion does not affect parents' traditional responsibility to gaide their children's development, especially in personal and moral consents. I am personaicd that the Utah notice requirement is not measure to assure purents this traditional child-regarder role, and that it burdens the minor's fundamental tight to choose with her physician whether to terminate her pregnancy."

# ΙV

The challenged statute infringes upon the constitutional right to privacy attached to a minor woman's decision whether to complete or terminate her programmy. None of the reasons offered by the State justifies this intrusion, for the statute is not tailored to serve them. Rather than serving to enhance the physician's judgment, in cases such as appellant's, the statute prevents implementation of the physician's medical recommendation. Rather than promoting the transfer of information held by parents to the minor's physician, the statute neglects to require anything more than a communication from the physician moments before the abortion. Rather than respecting the private realm of family life.

care T. Hufmann, Cutsgot and Confidentiality and Their Legal and Ethical Implications for Adalescent Michaellan, in Medical Care of the Adalescent 42, 34 and 4 that epics, Hedd Antonyillois, 1976 and Son Gobberto Mail and Care for the Circle of Red. On Son Supervention of Personal Associations, So Yang U.J. (61) 683 (1977).

<sup>#</sup>FU(al: Code Ann. \$79-14-5 (1) (5).

<sup>22</sup> Utah Code Ann. § 76-7-305 requires voluntary and informed within consent. See 9, 30, suppose

<sup>28</sup> Cf. Worm v. Careg. 582 F. 2d, at 1388.

# $H_*(L_{\rm c}) \approx MATHEFON$

the statute invokes the criminal machinery of the State in an attempt to influence the interactions within the family. Accordingly, I would reverse the judgment of the Supreme Court of Utah insofac as it upheld the statute against constitutional attack.

Down 28 Down CS Ind Brook Drin TH John CS 1/8/81 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
B.R.W. E.M. H.A.B. L.E.P.  1-1/10/80  John CS Ind Book Join TH John CS  1/1/80  1/1/80  1/1/80  1/1/80  1/1/80  1/1/80  1/1/80  1/1/80  1/1/80  2/2/80
July 18 LEP.  July 18 Sunday  July 8 1/2/81  July 8 1/2/81  Suddy
Jubles LEP.  Jubles Manne  Jubles 1/2/8  Jubles 1/2/8  Jubles 1/2/8  Jubles 2/2/8  Jubles 2/2/8  Jubles 2/2/8  Jubles 2/2/8
2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2