Court upholds states' parental notification laws in teen abortions

by Linda Everett

To the consternation of the malthusian abortion lobby, the Supreme Court on June 25 upheld the right of states to require teenage girls to notify one or both parents of their intention to have an abortion but only so long as states provide minors with the option of bypassing their parents and obtaining a judge's permission for the abortion. The Court's rulings in the twin cases of *Hodgson v. Minnesota* and *Minnesota v. Hodgson,* and *Ohio v. Akron Center for Reproductive Health,* are expected to have immense impact on the widely supported, though heavily challenged and often unenforced laws in 32 states that require unmarried, unemancipated minors to attain some form of parental involvement in the abortion decision.

At issue is the state's interest in supporting parents' involvement in the upbringing of their children, and the allegedly fundamental, absolute right of adolescents to abortion without their parents' consent or knowledge. While states routinely contact parents about a child's truancy or traffic offense, the abortion lobby calls it a breach of privacy for states to inform parents that their daughter faces a serious medical procedure that not only destroy the life of an unborn child, but may destroy the teenager's life as well. About one-quarter of the more than 1.6 million abortions performed every year (last available statistics for 1985) are performed on girls under the age of 18.

Ambivalence

In its June 25 decisions, the Court drew heavily on a half-dozen of its past decisions concerning parental notification laws. The justices cited the positive supportive role of both parents and states toward minors, only to repeatedly rip at it in favor of an alleged "liberty right" of women and adolescents as young as 10 years of age, to abortion. "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," and, while "the State has an interest in protecting the independent right of the parents 'to determine and strive for what they believe to be best for their children,' " the Court says that neither that interest, nor the parents' right, "is more weighty than the right of privacy of a competent minor mature enough to have become pregnant."

In a 6-3 decision, the Supreme Court affirmed as constitutional a 1985 Ohio law that made it illegal for a physician to perform an abortion on an unmarried and unemancipated (i.e., still living at home) woman under the age of 18 unless certain conditions are provided. The abortionist could perform the abortion if he gave 24-hour notice of the child's intentions to her parents or guardian or relative, if the minor fears parental abuse; or, if he is unable, after reasonable effort, to give such notice; if the minor's parent or guardian consents to the abortion in writing; or if the juvenile court authorizes the abortion through a judicial bypass, a procedure that allows the minor to go to court, rather than her parents, to demonstrate that she has sufficient maturity to make the decision without parental notice, or, that it is not in her best interests to bear the child.

Before the bill became law in 1986, the Akron Center for Reproductive Health, an abortionist, and a patient went to U.S. District Court and obtained a permanent injunction against the law. The Court of Appeals agreed with the lower court's decision, citing several constitutional defects. The State of Ohio then appealed to the Supreme Court.

The justices found that all of the Akron clinic's complaints about how the law *might* impede a minor's right to abortion in certain "worst case scenarios," were without merit. Justice Arthur Kennedy, for the majority, said a state had the right to ask a teenager, especially one with the assistance of an attorney, for "clear and convincing" evidence of her maturity in making her abortion decision. The majority discounted the clinic's claim that Ohio hoped to entrap confused pregnant minors by having them choose among three different court forms to apply for judicial by-pass, which Justice Harry Blackmun, with Justices William Brennan and Thurgood Marshall joining in his dissent, castigated as a "tortuous maze." It was reasonable, the majority concluded, to require that abortionists themselves, notify the minor's parent since "the parent may provide important medical data to the physician."

How the Minnesota law works

Minnesota's parental notification statute is actually of two parts. The 1988 Minnesota law provides that no abortion can be performed on a minor until 48 hours after both her parents (whether separated or not) have been notified (if reasonably possible) unless the minor claims parental abuse or neglect, in which case, authorities will be notified and an investigation immediately begun. But, Minnesota also provides that should this segment of the law be enjoined, another section, subdivision 6, would be enacted in its place. Besides the mandatory two-parent notification and 48-hour waiting period, subdivision 6 allows the minor the option of a confidential court bypass procedure where, instead of notifying her parents, she presents in court proof that she is mature enough to make the abortion decision, or that the abortion, without her parents' notification, is in her best interest.

Days before the law went into effect, a group of abortionists, clinics, and pregnant minors filed suit in District Court, alleging that the statute violated the due process and equal protection clauses of the Fourteenth Amendment. The court obliged them by declaring the entire law unconstitutional, but this was reversed by the Court of Appeals which held that subdivision 6 saved the statute as a whole. This was affirmed by the Supreme Court in what was characterized as "fiendishly complicated" ruling on June 25. Justice John Paul Stevens wrote the opinion striking down the two-parent notification version of the law in which Justices Brennan, Marshall, Blackmun and Sandra O'Connor joined. In a second vote, Justices Kennedy, Byron White, Antonin Scalia, O'Connor, and Chief Justice William Rehnquist upheld the second version of the Minnesota law, saying the judicial bypass option protects the minor's access to abortion, thereby overriding the unconstitutional or burdensome notification restrictions. Justice Stevens considered the law unconstitutional even with the bypass option; Justice Kennedy said the bypass was constitutionally unnecessary.

The Supreme Court opposed the mandatory two-parent notification rule which it called an "oddity" among state and federal consent provisions that generally call for a single parent's participation in health or welfare issues concerning their children. They reasoned that mandatory two-parent notification did not further any legitimate state interest that was not already fulfilled by contacting one parent. The majority also cited extensive testimony presented in District Court alleging that mandatory notification of both parents, whether or not they wished to be notified, had harmful effects on minors and single custodial parents due to the large number of abusive, violent or "dysfunctional families" residing in Minnesota—which, if it is to be believed, is an epidemic of major proportions. Also, the Court considered a short mandatory waiting period reasonable, because it provides "the parent the opportunity to consult with his or her spouse . . . [to] discuss the religious or moral implications of the abortion decision, and provide the daughter needed guidance and counsel in evaluating the impact of the decision on her future." Indeed, abortion clinic "counselors" are no substitute in this respect. In fact, a named plaintiff in Minnesota's case is a 17-year-old, untrained, inexperienced clinic "counselor" for teens who boasted of her ability to get pregnant at 15 and of being sexually active since age 13.

The abortion lobby screams that decisions like these erode women's abortion rights guaranteed by *Roe v. Wade* in 1973. Yet, the judicial bypass option is generally seen as simply rubberstamping permission for abortions. In some states, it may decrease the number of abortions performed, but in Minnesota where the two-parent notification law has been enforced for the last five years, 3,573 abortion petitions for judicial approval were filed with the courts during that period. Only nine were denied.

Parents a threat to abortion industry

When the Ohio and Minnesota cases were heard before the Supreme Court last December, the abortion industry went into apoplectic fits, with the press screeching that teenagers were unable to defend themselves against the "anti-abortion zealots" who were assaulting their "bodies, dignity, and rights" with "unspeakable meddling" and restrictions to abortion. Why all the hysteria if notification laws really do not limit abortions? The answer is simple: Abortionists cannot financially afford the fact that Americans are choosing laws that require parental notification before abortions are performed on their children. The abortionists' concern is twofold: that parental involvement will lead to 1) a decrease in business, and 2) an increased threat of medical liability suits.

The main opponents of these laws are abortion operators like Planned Parenthood with hundreds of clinics nationwide. These abortionists remain virtually free of any prosecution in the event of post-abortion complications or death of a young patient—as long as parents are kept in the dark about the procedure or those responsible. Teens tend to ignore such complications and have the highest rate of infection and permanent damage of all abortion patients. And, while teenagers aren't likely to take up a legal battle after a botched abortion, their parents are. If the parental notification laws now being challenged by abortionists in 14 of the 33 states where they exist, were enforced, abortionists would face a definite increase in prosecution for malpractice. A 1985 Centers for Disease Control study ranked abortion as the sixth most common cause of maternal death—which was, by the way, thought to be underreported by as much as 50%.

The same pro-abortion lobby that attacked Minnesota's 48-hour waiting period as dangerous to the pregnant girl's health, waged a major campaign to wipe out that part of Ohio's informed consent provisions that required physicians to disclose to parents the risks of the technique to be used, instructions on post-abortion care, status of the teen's pregnancy, development of her fetus, its possible viability, and potential physical and emotional complications of the abortion.