

IN THE SUPREME COURT OF TEXAS

No. 97-0889

PATTI PATTERSON, M.D., INTERIM COMMISSIONER OF HEALTH, IN HER OFFICIAL
CAPACITY, WILLIAM REYN ARCHER, RECENTLY APPOINTED COMMISSIONER OF
HEALTH, IN HIS OFFICIAL CAPACITY, AND THE TEXAS DEPARTMENT OF HEALTH,
APPELLANTS

v.

PLANNED PARENTHOOD OF HOUSTON AND SOUTHEAST TEXAS, INC., APPELLEE

ON DIRECT APPEAL FROM THE 250TH JUDICIAL
DISTRICT COURT OF TRAVIS COUNTY, TEXAS

Argued on February 4, 1998

JUSTICE GONZALEZ, joined by JUSTICE ABBOTT, concurring in the judgment.

I concur with the Court that the challenge to rider 14 is not ripe. I write separately to address the threshold issue the Court leaves open — whether Planned Parenthood has standing to challenge rider 14, even assuming the case is ripe. I would dismiss the case because Planned Parenthood lacks standing either in its own right or on behalf of the minors of the State of Texas.

In Texas, “[a] two-part test governs whether a plaintiff has standing to challenge a statute.” *Barshop v. Medina Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996). First, the “plaintiff must . . . suffer some actual or threatened restriction under that statute.” *Texas Workers’ Compensation Comm’n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995). “Second, the plaintiff must contend that the statute unconstitutionally restricts the *plaintiff’s* rights, not somebody else’s.” *Id.*

Planned Parenthood maintains that rider 14 “unconstitutionally restricts its own rights” in two ways. First, if the United States Department of Health and Human Services (DHHS) determines that Texas Department of Health’s implementation of rider 14 will result in a loss of federal family planning funds, then Planned Parenthood “will not be able to subsidize all the costs of providing expensive prescription drugs to minor patients who cannot obtain parental consent.” Second, even if the DHHS is satisfied that “Plan B” does not violate federal regulations, Planned Parenthood claims it is harmed by the administrative costs expended to implement Plan B. However, Planned Parenthood fails to identify the source of its “right” or “entitlement” to Texas tax revenues or to the most efficient and cost-effective administration of those tax revenues.

In *Texas Association of Business v. Texas Air Control Board*, 852 S.W.2d 440 (Tex. 1993), we held that “[t]he standing requirement stems from two *limitations* on subject matter jurisdiction: the separation of powers doctrine and, in Texas, the open courts provision.” *Id.* at 443 (emphasis added). The open courts provision provides:

All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

TEX. CONST. art. I, § 13. We held that this provision “contemplates access to the courts *only for those litigants suffering an injury.*” 852 S.W.2d at 444 (emphasis added). This provision, which authorizes the courts to remedy injuries done in one’s “lands, goods, person or reputation,” implicitly defines the bounds of potentially justiciable issues. *Cf. Baptist Mem’l Hosp. Sys. v. Arredondo*, 922 S.W.2d 120, 121 (Tex. 1996) (recognizing that under the open courts provision, the legislature may limit a cause of action unless it unreasonably restricts “a well-recognized common law cause of action”). For a plaintiff to have standing, it must demonstrate that it at least arguably has some legal

or liberty interest grounded in the constitution, a statute, or the common law. *See Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 561 (Tex. 1985) (“A property or liberty interest must find its origin in some aspect of state law.”).

Planned Parenthood, therefore, must have some arguable basis for asserting that rider 14 abrogates some legal or liberty interest of its own. Planned Parenthood has not alleged that rider 14 abridges any common law right arising under property, tort, or contract law. It has not identified any fundamental right to state subsidization, *see Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (“To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, indeed, have a legitimate claim of entitlement to it.”), or to the most efficient and least wasteful administration of the state’s health care resources. *Cf. Flast v. Cohen*, 392 U.S. 83, 102 (1968) (“[To establish Article III standing] [i]t will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute.”). Generally, a state’s choice of whether to fund a particular program or the efficiency of its administration is not actionable. Furthermore, Planned Parenthood does not identify any implicit right or entitlement owing it under the Texas Constitution or the Texas Human Resources Code abridged by rider 14, even if federal funds are cut off.

The unity-in-subject clause of the Texas Constitution does not, by itself, provide Planned Parenthood any legal or liberty interest. *See TEX. CONST. art. III, § 35*. This Court has previously invalidated riders as void under Section 35 of Article III of the Texas Constitution, but only where the plaintiff asserted an otherwise protected interest. In *LeCroy v. Hanlon*, 713 S.W.2d 335, 338 (Tex. 1986), for example, this Court held that sections of an omnibus fee bill increasing filing fees violated the “caption requirement” of Article III, Section 35. However, the plaintiff’s standing to

raise this claim was not in doubt because he claimed that the filing fees burdened his personal, constitutional right to open courts. *See id.* at 337. In *Moore v. Sheppard*, 192 S.W.2d 559, 562 (Tex. 1946), this Court held that an amendment to an appropriation bill directing that fees paid to clerks for either official or unofficial documents be deposited with the State Treasury violated the unity-in-subject clause. There, the plaintiffs' standing was also not in question, because they had an arguable property interest in the compensation they received "for [services] that they [had] no obligation, under the law, to perform." *Id.* at 560.

Planned Parenthood asserts that rider 14 conflicts with the purposes of Section 32 of the Human Resources Code. That section provides, in pertinent part, that:

- (a) This chapter shall be liberally construed and applied in relation to applicable federal laws and regulations so that adequate and high quality health care may be made available to all children and adults who need the care and are not financially able to pay for it.
- (b) If a provision of this chapter conflicts with a provision of the Social Security Act or any other federal act and renders the state program out of conformity with federal law to the extent that federal matching money is not available to the state, the conflicting provision of state law shall be inoperative to the extent of the conflict but shall not affect the remainder of this chapter.

TEX. HUM. RES. CODE § 32.002. This section provides indigent children and adults with a statutory interest in maintaining the flow of federal health care funds, but it does not give Planned Parenthood, a conduit for these taxpayer-supported services, a similar statutory interest. The statute's purposes are directed to the beneficiaries of the state and federal funds, not to fund Planned Parenthood's budget.

What the Legislature gives the Legislature can take away. The adults and children deprived of further entitlements may have a remedy if the process by which the Legislature terminates them

does not accord with due process. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 263-64 (1970) (holding that procedural due process requires that evidentiary hearing be held before public assistance payments to welfare recipients are terminated); *Goldsmith v. United States Bd. of Tax Appeals*, 270 U.S. 117, 123 (1926) (holding that Board's refusal to admit petitioner to the practice of law without a prior hearing or statement of reasons for denial violated due process). Planned Parenthood has no standing in its own right to challenge rider 14's alleged conflict with the provisions of the Texas Human Resources Code.

In its Original and First Amended Original Petition, Planned Parenthood argued that it has standing to represent the interests of the minors of the State of Texas. Under Texas law, however, only the parents or guardians of a minor may represent their legal interests. *See* TEX. FAM. CODE § 151.003(a)(7). Planned Parenthood is not the surrogate parent of Texas's minor children. Its status as an advocacy organization for certain rights of minors (e.g., access to contraceptives without parental consent) does not confer it standing. *See, e.g., Texas Dep't of Mental Health and Mental Retardation v. Petty*, 778 S.W.2d 156, 163-66 (Tex. App. — Austin 1989, writ dismissed w.o.j.) (holding that Advocacy, Inc., a non-profit advocacy organization for the rights of the mentally disabled, lacked standing to sue on behalf of the rights of the mentally disabled).

The question of Planned Parenthood's standing to represent the minors of the state of Texas obscures the larger issue underlying this case — parental rights. The purpose of rider 14 was to withhold state funds from a program that, as currently implemented, interferes with parental supervision over the health care and sexual behavior of minor children. Indeed, Planned Parenthood's policy of providing minors prescription drugs without parental consent, for which it

seeks this state’s subsidies, is inconsistent with Texas law. Section 151.003(a)(6) of the Texas Family Code provides, in pertinent part:

(a) A parent of a child has the following rights and duties:

...

(6) *the right to consent to the child’s marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological and surgical treatment*

TEX. FAM. CODE § 151.003(a)(6) (emphasis added).

The importance of parental involvement in minors’ decisions to avail themselves of contraceptive or abortion services is aptly illustrated in the amicus brief of several families supporting rider 14 who unsuccessfully attempted to intervene at the trial level. The daughter of one of the individuals filing the amicus brief was impregnated on two separate occasions by her mother’s boyfriend while she was living with her mother. Both times, the live-in boyfriend took the daughter — once when she was twelve and once when she was thirteen — to an abortion clinic in order to conceal his criminal deeds. A parental consent requirement would have prevented the live-in boyfriend from being able to continue his abuse. The irony of Planned Parenthood’s argument that it represents the state’s minors is that when some of those minors sought to intervene to speak for themselves — through their lawful representatives — Planned Parenthood opposed their intervention.

Unlike the federal authorities the Court cites early in its opinion, other courts, including our own, have strongly affirmed the ancient and well-established right of parents to guide and direct the decisions of their minor children. “The natural right which exists between parents and their children is one of constitutional dimensions.” *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976). “The

child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Only a generation ago, this Court recognized the fundamental importance of parental rights in reaffirming the doctrine of parental immunity:

We trust that it is not out of date for the state and its courts to be concerned with the welfare of the family as the most vital unit in our society. We recognize that peace, tranquility and discipline in the home are endowed and inspired by higher authority than statutory enactments and court decisions. Harmonious family relationships depend on filial and parental love and respect which can neither be created nor preserved by legislatures or courts. The most we can do is to prevent the judicial system from being used to disrupt the wide sphere of reasonable discretion which is necessary in order for parents to properly exercise their responsibility to provide nurture, care, and discipline for their children.

Felderhoff v. Felderhoff, 473 S.W.2d 928, 933 (Tex. 1971). These principles cannot be reiterated often enough, especially in the context of a minor’s health and sex-related decisions. To grant Planned Parenthood standing to represent the state’s minors would usurp this vital parental role.

Accordingly, I would hold not only that the case is not ripe, but also that Planned Parenthood has failed to otherwise establish standing to challenge rider 14.

Raul A. Gonzalez
Justice

Opinion Delivered: June 23, 1998