

IN THE SUPREME COURT OF TEXAS

=====
No. 00-0140
=====

IN RE JANE DOE

=====
ON PETITION FOR REVIEW
=====

JUSTICE HECHT, joined by JUSTICE ABBOTT, dissenting.

The Court today deals a heavy blow to parents’ fundamental, constitutional rights to raise their children, rights the Legislature had absolutely every intention of protecting by passing the Parental Notification Act in 1999.¹ Described by one of its sponsors, Senator Florence Shapiro, as a “parental rights bill”, the Act was plainly meant to encourage minors to seek their parents’ advice and counsel in making what the United States Supreme Court has sympathetically called the “grave and indelible”² decision whether to have an abortion. The Act permits a judge to authorize a minor to make the decision herself if she is “mature and sufficiently well informed”. But, explains the Court, all that really means is that a minor must know something of the health risks of the abortion procedure (which is not too hard, since for most women the physical risks are easily assessed), the alternatives to abortion (although she need not explain her choice among them), and, from “reliable

¹TEX. FAM. CODE §§ 33.001-.011. All statutory references are to the Family Code unless otherwise noted.

² *Bellotti v. Baird*, 443 U.S. 622, 642 (1979) (*Bellotti II*).

and informed sources”,³ whatever that means, the emotional and psychological aspects of having an abortion. To think that a minor should choose abortion based merely on such antiseptic considerations trivializes the decision. As the Court reads the statute, no one need counsel a minor, as her parents should if they were told of her situation, that the family, social, moral, and religious aspects of her decision may radically affect her life, her family, and her future. Of such things — the really important part of the calculus of the abortion decision — a minor can be largely unappreciative and still be, in the Court’s view, well informed. She need not have the benefit of differing viewpoints; she may obtain all her information from abortion proponents. “Well informed”, for the Court, means only that a minor has thought about what she knows, not that she knows what to think about.

The Court does not base its statutory interpretation of “mature” and “well informed” on the ordinary meanings of those words, or on the purposes the Legislature intended them to achieve, or on the United States Supreme Court cases from which they were undoubtedly drawn, but on its own predilections. Other states’ laws cited by the Court vary widely, some specifying the information a woman must be given, others prescribing only a general standard, and none shedding more than a faint light on the proper construction of Texas’ statute. The result of today’s decision is that it is not much harder now for a minor to obtain an abortion without telling her parents than it was before the Parental Notification Act was passed. Mostly, the Legislature has wasted a lot of time and

³ *Ante* at ____.

energy. Before the statute a minor needed a willing clinic; now she just needs a lawyer, whose fees will be paid by the State.

The essential intent of the Parental Notification Act, as I read it, is that if the State is going to cut off a parent's right to advise a minor about her pregnancy, and to authorize the minor to choose abortion without the benefit of parental involvement, then the State must ensure that the minor has had the same kind of assistance in making her decision that a parent should provide. The last thing the State should want to hear is a minor's belated cry: "Why didn't someone tell me?" It is precisely that kind of assistance that the Legislature intended to ensure but the Court ignores.

Because I believe the Court's construction of the Act conflicts with its language, purposes, and sources, I dissent.

I

Jane Doe will be eighteen years old in a few months. She is a high school senior with a high-"B" or low-"A" grade average, is involved in some extracurricular activities, and has a part-time job. She has never been married and lives at home with both her parents. She has a boy friend, a recent high school graduate, who is attending college. Doe and her boy friend have been, in her words, "sexually active", and Doe thinks her mother is aware of that fact, although they do not discuss it. Doe is not sure whether her father is aware that she has had sex.

Doe has used birth control pills for years, but about ten weeks ago she discovered she was pregnant. About a month ago she went to a Planned Parenthood office where she received some information about abortion and, in her words, "partial counseling". A week later she applied to the trial court for authorization to have an abortion without notifying her parents.

At the hearing, Doe was asked what kind of information she had obtained and how she had made her decision. Her entire testimony on this subject is as follows:

Q And what kind of information did you look at to evaluate your options?

A I got information on abortion and that procedure and what goes on with it and process of adoption and what it would actually be to have the child and I looked them over and I decided the abortion would be the best for me personally.

Q Briefly describe for the Court, I mean briefly, your understanding of what the abortion procedure entails.

A Okay. Well, I know I would have to get up and go to Planned Parenthood early and take a slight sedative, so be less painful, and they would flush it out and suck out, remove it, and I would have to go out — to go back in a month to a checkup, make sure there is no infection, no hemorrhaging, and that's pretty much how they remove it.

Q Did the information that you examined include information about medical risks associated with abortion?

A Well, there is a slim chance of death, a very, very rare. It is a pretty safe procedure, safer than actually having a child. There is some emotional factor that can distress you and there is a slight risk of infection, not much. It is a pretty safe procedure.

Q Did you also attempt to find any information on alternatives to abortion?

A Yes, I looked at other information such as adoption and actually having the child.

Q And what information did you look at, what information did you evaluate in deciding to get an abortion as opposed to pursuing one of those other options?

A Well, I just thought about my options and what would be best for me and actually the child and abortion in the long run I see as being most positive and best one there is.

Q Could you explain to the Court why you made that decision?

A Well, for me I feel if I were to have the child, my parents, they would be slightly upset to actually know that I became pregnant and they are very against abortion. So, first of all, they wouldn't even give me that chance to have an abortion. And I am planning after I graduate this year to go off [from home] to college. And I would like to pursue my own career. And I feel if I had the child I couldn't do any of that now and be a major setback. And I don't favor the adoption. I know it could be done, but if I were to go nine months having this child, I would feel to keep it. But that is — I already decided that would be, would be holding me back from my future, what I want to become. So, I decided abortion would be overall the best solution.

Doe has not consulted a physician. She testified that she had talked with a close relative who had had an abortion when she was 17. Doe's entire account of the conversation was that "she told me how she felt about it and what went on." Doe's guardian told the trial court that Doe's conversations with her relative "were pretty limited in terms of having the real advice". Doe also testified that she had spoken with three friends. One, a high school graduate, had a child and could not go to college but had to move in with her parents. Another, age 15, was, in Doe's words, "trying to go to school and have her baby, you know," and her parents had forced her to marry. In Doe's words: "[T]hey both have a very hard life right now and they say they wish they could take it back." A third had had an abortion and felt strongly that it was, according to Doe, "a good thing that she had it done so she can look into the future and say she's glad she had this done". Doe did not talk with anyone else about her decision. No one she spoke with expressed any reservations about her having an abortion or about abortion in general.

Doe's guardian asked her to get counseling at a crisis pregnancy center, and she made an appointment to do so, but she was unable to locate the office. She testified that she "did further

research over the internet, different sites, different places, for how they feel about it, you know, what their procedures were about. So, I looked up on my own.” Doe did not give further specifics about her internet research. Doe has not spoken with a member of the clergy. Asked whether she thought she needed any further counseling on the abortion procedure or alternatives to it, she said: “I haven’t thought about it, but I do not think I need further counseling. I feel that my decision, and once it is followed through, would be fine. I am aware of it.”

Asked why she did not want to involve her parents in her decision, Doe testified as follows:

Q Could you briefly describe for the Court, you have talked a little bit, but maybe a little bit more information, as to why it is you don’t believe you can tell your parents about your decision to have an abortion?

A Okay. Both of my parents are active members at our church. . . . And they strongly believe that it’s not a wise thing to do. It is something they do not believe in. They much rather me have a child. And they wouldn’t even give me the opportunity to have this done. They have it set in their mind what would go on. It is something they strongly disapprove of.

* * *

Q You say that your parents, you seem pretty sure that they would not be in favor of abortion. Have you . . . had some general discussion with them about how they would feel if someone in their family got an abortion, or what is your basis for that?

A Well, when my [relative] had her abortion . . . my mom felt very strongly since then that it is something that she doesn’t believe in, something that she doesn’t want anyone else in the family to have done. She feels that the child would be a part of her and she would not give me that option. She’s told me before that is not a thing that she does believe in. She doesn’t want her daughter to go through that. It would be wrong. So, she just strongly disagrees with it.

* * *

Q And can you tell me if there is any reason that you wouldn't want to have your mother there when you wake up [from the sedative after the abortion procedure]?

A She wouldn't let me do it. I know for a fact she wouldn't. She is very against this and she would be disappointed in me. She wouldn't be there to support me with it. I know she wouldn't go along with it. She wouldn't be there in the first place. She totally detests the fact of people that actually do that.

Having heard this evidence, and after argument by the guardian and by Doe's attorney, the trial court made the following findings:

5. The applicant has not shown by a preponderance of the evidence that: Applicant is mature and sufficiently well informed to make the decision to have an abortion without notification to either of her parents, her managing conservator, or guardian.

6. The court finds that although applicant shows sign of being mature, she has not demonstrated that she is sufficiently well informed about the medical procedures and the emotional impact of the procedure.

7. The applicant has not shown by a preponderance of the evidence that: Notifying either of the applicant's parents, managing conservator or guardian would not be in her best interest.

II

Texas' Parental Notification Act was enacted in the context of a developing body of federal constitutional law that attempts to determine the extent of a woman's right to choose abortion and the kinds of limitations that can be placed on it. Understanding this context is necessary to construe and apply the Texas statute.

A woman's right to choose abortion that the United States Supreme Court has recognized is not absolute.⁴ The Supreme Court explained in *Planned Parenthood v. Casey*:

At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. . . .

These considerations begin our analysis of the woman's interest in terminating her pregnancy but cannot end it, for this reason: though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted.⁵

When the woman is a minor, her right is subject to two important limitations: the State's interest in protecting the welfare of all its citizens and the life of the unborn,⁶ and the interest of parents and families in living their lives free from undue state interference.⁷ I examine each of these limitations in turn.

A

The State has a legitimate interest in protecting its citizens' welfare, and it may constitutionally favor normal childbirth and encourage a woman to make that choice. In *Casey*, the Supreme Court explained:

⁴ *Planned Parenthood v. Casey*, 505 U.S. 833, 869 (1992) (plurality opinion).

⁵ *Id.* at 851-852.

⁶ *Id.* at 872-873.

⁷ *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) (plurality opinion).

Though the woman has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the State is prohibited from taking steps to ensure that this choice is thoughtful and informed. Even in the earliest stages of pregnancy, the State may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the pregnancy to full term and that there are procedures and institutions to allow adoption of unwanted children as well as a certain degree of state assistance if the mother chooses to raise the child herself. “[T]he Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth.” It follows that States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning.

* * *

What is at stake is the woman’s right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman’s exercise of the right to choose.

* * *

It cannot be questioned that psychological well-being is a facet of health. Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible.

* * *

[W]e permit a State to further its legitimate goal of protecting the life of the unborn by enacting legislation aimed at ensuring a decision that is mature and informed, even when in so doing the State expresses a preference for childbirth over abortion. In short, requiring that the woman be informed of the availability of information relating to fetal development and the assistance available should she decide to carry the

pregnancy to full term is a reasonable measure to ensure an informed choice, one which might cause the woman to choose childbirth over abortion.⁸

To sum up, the Supreme Court stated: “[t]he woman’s liberty [to choose abortion] is not so unlimited . . . that from the outset the State cannot show its concern for the life of the unborn”⁹ “Only where state regulation imposes an undue burden on a woman’s ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.”¹⁰

The State’s interest is particularly acute when the woman is a minor. The Supreme Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.¹¹

Among those choices, the Supreme Court has insisted, is abortion:

The State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely. That interest, which justifies state-imposed requirements that a minor obtain his or her parent’s consent before undergoing an operation, marrying, or entering military service, extends also to the minor’s decision to terminate her pregnancy.¹²

⁸ *Casey*, 505 U.S. at 872-883 (citations omitted).

⁹ *Id.* at 869.

¹⁰ *Id.* at 874.

¹¹ *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (*Bellotti II*).

¹² *Hodgson*, 497 U.S. at 444-445 (plurality opinion) (citations omitted).

B

A minor's right to choose to have an abortion can be restricted not only by the State's interest in her welfare but by the interest of her parents and the interest of the family unit.¹³ These interests are subject to constitutional protection. The Supreme Court has stated:

[T]he demonstration of commitment to the child through the assumption of personal, financial, or custodial responsibility may give the natural parent a stake in the relationship with the child rising to the level of a liberty interest.

* * *

[T]he family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference.¹⁴

This Court has also recognized the constitutional rights of parents in the relationship with their children.¹⁵

Specifically with respect to parental involvement in a minor's decision whether to have an abortion, the Supreme Court has explained:

[T]he guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. . . . "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." "The duty to prepare the child for 'additional obligations' . . . must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.

¹³ *Id.* at 444.

¹⁴ *Id.* at 446.

¹⁵ *E.g., Patterson v. Planned Parenthood*, 971 S.W.2d 439, 447 (Tex. 1998) (Gonzalez, J., concurring); *In the Interest of J.W.T.*, 872 S.W.2d 189, 194-195 (Tex. 1994); *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976).

We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is something we expect the State *not* to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice. Thus, “[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include *preparation for obligations the state can neither supply nor hinder.*”

* * *

[T]he parental role implies a substantial measure of authority over one’s children. Indeed, “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.”

Properly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child’s chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding. Under the Constitution, the State can “properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children’s well-being are entitled to the support of laws designed to aid discharge of that responsibility.”

* * *

[P]arental 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. It may further determine, as a general proposition, that such consultation is particularly desirable with respect to the abortion decision — one that for some people raises profound moral and religious concerns.¹⁶

¹⁶ *Bellotti II*, 443 U.S. at 637-640 (emphasis in original, citations omitted).

The Supreme Court has held that a parent cannot have an absolute and arbitrary veto over a child's choice of an abortion.¹⁷ But by the same token, a parent's right to be involved in a child's decisions cannot be abrogated without sufficient reason.

III

In the context of this developing federal constitutional law, Texas' Parental Notification Act was passed, as its abundant history repeatedly emphasizes, to encourage parental participation in a minor's decision to have an abortion, to discourage abortion generally, and to discourage teen pregnancy with the warning that an abortion without parental involvement would not be readily available. The Act prohibits a physician, with certain exceptions, from performing an abortion on an unemancipated minor without giving a parent, managing conservator, or guardian at least 48 hours' actual notice.¹⁸ One exception to this prohibition is that a court may grant a minor's application to consent to an abortion without the prescribed notice if the court determines, by a preponderance of the evidence, that either (1) "the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to either of her parents or a managing conservator or guardian," (2) "notification would not be in the best interest of the minor," or (3) "notification may lead to physical, sexual, or emotional abuse of the minor."¹⁹ As I have already noted, petitioner bases her application on the first two of these grounds. I consider each ground separately.

¹⁷ *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976).

¹⁸ EX. FAM. CODE § 33.002.

¹⁹ *Id.* § 33.003(i).

A

The Legislature has not defined the phrase “mature and sufficiently well informed” in section 33.033(i). Accordingly, we are obliged to give the words their ordinary meaning,²⁰ a requirement acknowledged by the Court and then wholly ignored.

According to the *Oxford English Dictionary*, the word “mature”, used in describing a person, means “having the powers of body and mind fully developed.” With reference to thought and deliberation, the word means “duly prolonged and careful.” And as applied to “plans, conclusions, etc.,” the word means “formed after adequate deliberation. The *Oxford English Dictionary* defines the word “well-informed” as: “Well equipped with information; fully furnished with knowledge, whether of a special subject or of things in general; having a well-stored mind.” Thus defined, the statutory phrase, “mature and sufficiently well informed”, refers to the basis for a decision — full information and knowledge of the subject — as well as the manner in which it is made — as by a person of ample years and experience.

A decision cannot be well informed if the person making it does not have a full knowledge of the relevant considerations. In the present context, this does not mean that a minor must know all there is to know about abortion as a medical procedure or the alternatives to it and the factors involved in a choice. Some of the relevant factors are not hard to assess, such as the health risks of the procedure to the woman. But many of the relevant factors involve more unknowns: the consequences to the fetus, the risks of psychological and emotional problems, the woman’s ability

²⁰ EX. GOV’T CODE § 312.002(a); *Owens Corning v. Carter*, 997 S.W.2d 560, 577 (Tex. 1999).

to mother the child if it is born, the availability of alternatives including adoption, the availability of financial assistance if the child is carried to term, the impact of the decision on the woman’s present and future family, and the “philosophic and social”²¹ — including religious — concerns that favor continuing the pregnancy to term. Mastery of these issues is not necessary for a person to be well-informed, but an appreciation of them is. A minor worried about the financial burdens of parenthood, for example, should know what support is available to her; that information could affect her decision. While people disagree about the more subjective factors, a minor should nevertheless have some awareness of the issues in the disagreement in making her decision. As the United States Supreme Court has observed, the State has a legitimate purpose in “reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.”²²

The abortion decision does not turn merely, or mostly, on simple facts, such as that in most instances abortion is a very safe medical procedure. The risks in a particular case may be greater and may determine the decision, but that is not true in most situations. Far more important are concerns about the family, social, psychological, emotional, moral, and religious implications of the abortion decision. Ordinarily, some of these issues are none of the State’s business. A person’s religious views, for example, are entirely a private and individual matter. But minors who have not yet thought seriously about such matters should be aware that their views may someday change. It is critical that a minor appreciate that decisions made today can have consequences decades into the

²¹ *Planned Parenthood v. Casey*, 505 U.S. 833, 872 (1992) (plurality opinion).

²² *Id.* at 882.

future. The essential approach taken by the Legislature in the Parental Notification Act is that if a minor is to be allowed to choose abortion without the guidance parents should give a child in such circumstances, then she must have an appreciation of that guidance from somewhere else. Because there is deep disagreement over the subjective elements of a choice of abortion, a minor should be aware of and appreciate the differing views. She is free to credit some and discount others, of course, but she ought not to make a decision without knowing what others believe to be at stake. As the United States Supreme Court has observed, “It seems unlikely that [a woman] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.”²³ The landscape is not revealed in any single setting.

Whether a minor is well informed is more of an objective determination than whether she is mature. As noted above, the latter quality is an ability to act as an experienced adult would. The United States Supreme Court has observed that “the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended.”²⁴ The Court fails to take this obvious fact into account. Maturity is not so much a matter of what a person knows as it is of how she thinks and acts. A trial judge who can watch a minor’s demeanor and hear the inflections in her voice is in a far better position to determine her maturity than an appellate judge confined to the typed transcript of her testimony.

From the meanings of the words themselves and the purposes of the Parental Notification Act, informed by the United States Supreme Court’s reference to the same ideas in numerous

²³ *H. L. v. Matheson*, 450 U.S. 398, 410 (1981).

²⁴ *Bellotti v. Baird*, 443 U.S. 622, 644 n.23 (1979) (*Bellotti II*) (plurality opinion).

opinions, I conclude that by “mature and sufficiently well informed” the Legislature means a minor who has obtained for herself the kind of complete and balanced information relevant to her decision and evaluate it as a person who no longer needed parental guidance on so grave a matter. For reasons that I am about to explain, the Court reads the statutory standard to mean something far less.

B

Although petitioner in this case has not focused her arguments on appeal on the alternative ground on which she based her application — that notifying her parents of her intent to have an abortion would not be in her best interest — I address that ground briefly.

In essence, petitioner does not want to notify her parents because she fears they will not approve. This concern, standing alone, should not justify excluding her parents from her decision, as the trial court found. For one thing, petitioner may have judged wrongly. But assuming her fears are well founded, petitioner must choose between parental disapproval and the burden of knowing that she has kept something very important from them. The latter does not simply trump the former. A minor’s concealment from her parents of so profound a decision, like the decision itself, may have lifelong, and unforeseen, consequences. The trial judge must ensure that the minor appreciates those consequences and must attempt to determine whether it would not be in a minor’s interest to attempt to involve her parents in her decision despite their disappointment and disapproval.

IV

The Court’s opinion minimizes what a minor must prove to show that she is “mature and sufficiently well informed” to choose abortion without involving her parents. This is not immediately apparent from all its language. For instance, at one point the Court states that a minor

must demonstrate that her decision “is based upon careful consideration of the various options available to her and the benefits, risks, and consequences of those options.”²⁵ But this broad statement is belied by the specific requirements set out in Part V. There are only three, and while they are what the Court would require “at a minimum”,²⁶ they are nevertheless sufficient as a matter of law for a minor to obtain judicial authorization for an abortion.

This point is crucial: as the Court reads the statute, once a minor has proved what she must by a preponderance of the evidence, then she is *entitled as a matter of law* to an abortion without parental notification. The trial court has no discretion in the matter. Thus, if a minor offers evidence to satisfy the Court’s three requirements, her application *must be granted*. This standard is, of course, foreign to the language, intent, and purposes of the Act.

The Court’s first requirement is that a minor must obtain information about the health risks of the procedure. While such information is certainly essential to the minor’s decision, it will not be significant in most instances. Abortion is, for the most part, a physically safe procedure. There are instances when this is not true, and a minor should be advised of the risks *to her*, but in most instances it will not be difficult for a minor to meet this requirement.

The Court’s second requirement is that a minor should “have an understanding of the alternatives to abortion and their implications” and have given them “thoughtful consideration”, although she need not “justify why she prefers abortion above other options”.²⁷ In the Court’s view,

²⁵ *Ante* at ____.

²⁶ *Ante* at ____.

²⁷ *Ante* at ____.

this requirement can be satisfied by a simple declaration by the minor that she has thought long and hard about her decision. But in fact, a minor is not well informed merely because she knows that she can carry her pregnancy to term and then either keep the child or offer it for adoption. She should have an appreciation of what her options entail.

The Court's third requirement is that a minor should have received information "from reliable and informed sources" concerning the "emotional and psychological aspects of undergoing an abortion".²⁸ Just who such sources might be the Court does not say, but nothing prohibits them from all being promoters of abortion. A minor is not well informed simply because she has heard one side of a matter.

The Court acts as if these three requirements are significant, but they plainly are not. Any competent attorney representing a minor in a case like this can easily script testimony that will meet all three requirements. All a minor need tell the trial court is: that she has consulted with a clinician who told her that abortion presented insignificant physical risks to her, that some people regret having an abortion but not very often, and that she could always have the child and keep it or put it up for adoption; and that she carefully considered all the clinician said. Once the minor has covered these bases, she is *entitled* to an order authorizing her to consent to an abortion. A trial court that is convinced that a minor is not entitled to an abortion without parental notification must therefore base the decision on the minor's overall credibility and evidence of her immaturity that cannot be fully reflected in the appellate record.

²⁸ *Ante* at ____.

The Court refuses even to acknowledge that a minor's decision can profoundly affect her future and present family relationships. In the Court's mind, the most significant issues involved in the abortion decision do not even exist. According to the Court, a minor is well informed if she knows a little about a few things which may matter and nothing about the very profound consequences of her decision.

The Court completely ignores the fundamental, constitutional rights of petitioner's parents which must, as the United States Supreme Court has stated,²⁹ be balanced against petitioner's right to choose an abortion. The Legislature's express intent in passing the Parental Notification Act was to protect parents' rights to provide children guidance in making difficult decisions. In essence, the Court holds that minors can get by without the help.

V

I have set out above in complete detail petitioner's testimony, omitting only those facts that tend to identify her. It is fair to say that she based her decision to have an abortion on what she called "partial counseling" one Saturday at a Planned Parenthood clinic; the unsurprising encouragement of her 19-year-old boy friend, who is the father of the child and now wants no part of the responsibility; a brief conversation with a relative who had an abortion when she was petitioner's age; conversations with three teenage friends, one of whom was glad she had had an abortion, and two of whom, one age 15, said they wished they had; and unspecified information

²⁹ *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990) (plurality opinion).

obtained on the internet. I agree with the Court that this does not prove as a matter of law that petitioner is mature and sufficiently well informed to have an abortion without telling her parents.

Incredibly, the Court never hints at the specific deficiency in petitioner's proof. In this "matter of first impression" the Court hides any reasoning it has. Why has petitioner's proof failed? What was missing? How much more, or how little, was required? Ordinarily, the Court would answer these questions, would apply its construction of the statute to the facts of the case and explain the consequences. But the JUSTICES in the majority cannot agree on enough issues, even after days of compromise among themselves, to come up with a single ecumenical justification for their result. The Court says that it writes to give the lower courts guidance, and then in Part VII of its opinion, on the issue dispositive of the case, offers no explanation. None, except "Sorry, you lose, try again." To undertake an opinion in this case and then give no explanation for the result is a blatant abnegation of the Court's responsibility to the lower courts and the petitioner, and an affront to the Legislature.

I would hold that the trial court's decision to deny petitioner's application was based on some evidence, and I would deny her appeal. I do not agree that she should simply have a second try, especially since she will have no trouble improving her case. While the court's decision should be given res judicata effect, it would not bar petitioner from reapplying if her circumstances changed materially.

I agree with the conclusion in Part II of the Court’s opinion that this Court must publicly explain its decisions, even in cases like this one in which there is a special need for confidentiality.³⁰ Neither our duty to the rule of law, nor our constitutional role in the government, nor our obligations to the people whose government it is, permit this Court to rule in secret. It may well be that the lower courts’ rulings in cases like this cannot be secret either, but petitioner has not raised the issue, and no one else can raise it in this case, since no one besides her attorney and guardian will have known before today that the case was before us. So the issue must be left for another day.³¹

I also agree with the conclusion in Part III of the Court’s opinion that the trial court’s decision in this case should be affirmed on appeal if it finds sufficient support in the evidence.³² Because our jurisdiction to review evidentiary sufficiency is limited, we must affirm the trial court’s decision if there is any evidence to support it. We can reverse only if petitioner demonstrates that she has proven her right to an abortion without parental involvement as a matter of law, which I agree she has not done, for the reasons I have explained and the Court has not.

* * * * *

The people of Texas, like the American people, are deeply divided over abortion. That division will almost certainly affect the present and future life of every minor who has an abortion. If the Legislature’s mandate that a minor be well informed before choosing abortion without

³⁰ *Ante* at ____.

³¹ *See also* TEX. PARENTAL NOTIFICATION RULES & FORMS, Explanatory Stmt. (“such issues should not be resolved outside an adversarial proceeding with full briefing and argument”).

³² *Ante* at ____.

involving her parents does not mean that she be given the same guidance a child should have from her parents, then it offers her little protection. If the Legislature's mandate means that parents can be deprived of their fundamental right to guide their child's decisions when she has no more appreciation of her circumstances than the Court requires, then the statute is almost meaningless. I would not deny the Parental Notification Act its intended purposes. I dissent.

Nathan L. Hecht
Justice

Opinion delivered: February 25, 2000