

# IN THE SUPREME COURT OF TEXAS

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No. 00-0224  
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IN RE JANE DOE

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APPEAL UNDER SECTION 33.004(F), FAMILY CODE  
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JUSTICE GONZALES, joined by JUSTICE ENOCH, concurring.

I fully join in the Court's judgment and opinion. I agree that there is no evidence supporting the trial court's finding that Jane Doe was not sufficiently well informed. And I agree that the contrary position is established as a matter of law.

Only in this, an appeal after remand of the first of four *Jane Doe* cases, has the Court granted a minor's application to bypass notifying her parents before she consents to an abortion.<sup>1</sup> Yet in each case, the Court has struggled to render the correct decision, and some members of the Court have strongly disagreed. The tenor of the opinions have been unmistakably contentious. It has been suggested that the Court's decisions are motivated by personal ideology. See \_\_\_ S.W.3d \_\_\_ (HECHT, J., dissenting). To the contrary, every member of this Court agrees that the duty of a judge is to follow the law as written by the Legislature.<sup>2</sup> This case is no different. The Court's decision

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<sup>1</sup>See *In re Jane Doe*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000)(*Doe 1(I)*); *In re Jane Doe 2*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000); *In re Jane Doe 3*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000); *In re Jane Doe 4*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000), *appeal after remand*, *In re Jane Doe 4*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000).

<sup>2</sup>See *National Liab. & Fire Ins. Co. v. Allen*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000)(BAKER, J.); *Quick v. City of Austin*, 7 S.W.3d 109,135-36 (Tex. 1999)(HANKINSON, J., dissenting); *Fleming Foods of Texas Inc. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999)(OWEN, J.); *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999)(GONZALES, J.); *Phillips v. Beaver*, 995 S.W.2d 655, 658 (Tex. 1999)(O'NEILL, J.); *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 380 (Tex. 1998)(ABBOTT, J.); *Abbott Lab., Inc. v. Segura*, 907 S.W.2d 503, 512 (Tex. 1995)(PHILLIPS, C.J.); *City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex. 1995)(HECHT, J.); *Bridgestone/Firestone*,

is based on the language of the Parental Notification Act as written by the Legislature and on established rules of construction. Any suggestion that something else is going on is simply wrong.

Legislative intent is the polestar of statutory construction. *See City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex. 1995). Our role as judges requires that we put aside our own personal views of what we might like to see enacted, and instead do our best to discern what the Legislature actually intended. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999). We take the words of the statute as the surest guide to legislative intent. *See id.* at 866. Once we discern the Legislature's intent we must put it into effect, even if we ourselves might have made different policy choices. *See id.*

The starting point for understanding the Parental Notification Act is its provision that a medical professional may not perform an abortion on a minor without first notifying one of the parents. *See* TEX. FAM. CODE § 33.003(a). The policy decision here is clear — to protect parents' rights to involve themselves in their daughters' decisions and to encourage that involvement. But that is only the starting point. The Legislature did not make this parental right absolute. Instead, the Legislature created three exceptions, allowing a minor to avoid notifying her parents if she can show: (1) she is mature and sufficiently well informed to make the decision to have an abortion performed without notification of either parent, (2) notification of the parents would not be in the minor's best interest, or (3) notification of the parents may lead to physical, sexual, or emotional abuse of the minor. *See* TEX. FAM. CODE § 33.003(i).

The dissenting opinions suggest that the exceptions to the general rule of notification should be very rare and require a high standard of proof. I respectfully submit that these are policy decisions

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*Inc. v. Glyn-Jones*, 878 S.W.2d 132, 135 (Tex. 1994)(ENOCH, J., dissenting).

for the Legislature. And I find nothing in this statute to directly show that the Legislature intended such a narrow construction. As the Court demonstrates, the Legislature certainly could have written section 33.033(i) to make it harder to bypass a parent's right to be involved in decisions affecting their daughters. *See* \_\_\_ S.W.3d at \_\_\_. But it did not. Likewise, parts of the statute's legislative history directly contradict the suggestion that the Legislature intended bypasses to be very rare. *See id.* at \_\_\_ (detailing legislative history). Thus, to construe the Parental Notification Act so narrowly as to eliminate bypasses, or to create hurdles that simply are not to be found in the words of the statute, would be an unconscionable act of judicial activism. As a judge, I hold the rights of parents to protect and guide the education, safety, health, and development of their children as one of the most important rights in our society. But I cannot rewrite the statute to make parental rights absolute, or virtually absolute, particularly when, as here, the Legislature has elected not to do so.

The Court said in *Doe 1(I)* that a minor must make at least three showings before she may exercise the bypass rights the Legislature gave "mature and sufficiently well informed" minors under section 33.003(i). *In re Doe 1(I)*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000). These showings are to ensure that the minor can demonstrate the level of maturity and knowledge the Legislature seems to have intended when it passed a statute that primarily protects parental rights, but also confers judicial bypass rights to certain minors. Based on the evidence of Doe's maturity and knowledge, I conclude the limitations upon parental rights in section 33.003(i) apply here. Therefore, I am compelled to grant Doe's application.

It is important to appreciate that the Legislature adopted a statutory scheme that subordinates parental rights in the case of a mature and sufficiently well informed minor, even if the minor has an ideal relationship with her parents, and even if notifying the parents would not only not place the

minor in emotional or physical danger, but may in fact be in her best interest. While the ramifications of such a law and the results of the Court's decision here may be personally troubling to me as a parent, it is my obligation as a judge to impartially apply the laws of this state without imposing my moral view on the decisions of the Legislature. JUSTICE HECHT charges that our decision demonstrates the Court's determination to construe the Parental Notification Act as the Court believes the Act should be construed and not as the Legislature intended. *See* \_\_\_ S.W.3d at \_\_\_ (HECHT, J., dissenting). I respectfully disagree. This decision demonstrates the Court's determination to see to it that we discharge our responsibilities as judges, and that personal ideology is subordinated to the public will that is reflected in the words of the Parental Notification Act, including the provisions allowing a judicial bypass.

Because the majority opinion correctly applies the Act as written to the facts in this record, I concur.

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Alberto R. Gonzales  
Justice

OPINION ISSUED: June 22, 2000