

# 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), TEXAS FAMILY CODE  
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JUSTICE HECHT, dissenting.

Often a court construing a statute wishes that it had more information about what the Legislature intended. Since issuing its first opinions construing the Parental Notification Act,<sup>1</sup> this Court has received extraordinary assistance from Members of the Legislature in reviewing the history of the statute. The Senate and House sponsors of the legislation, together with eight other senators and forty-six other representatives, have informed the Court as amici curiae that its construction of the statute to date is incorrect, and they have provided citations to the hearings and debates on the statute to support their view. While the Court is certainly not bound by the post-enactment views of legislators, the Court is wrong to simply dismiss the parts of the legislative record that these legislators have cited in support of their position. Relying instead on a few minor, isolated comments it can find in the legislative history to support its own view, and disregarding significant portions of that record to the contrary, the Court dares the Legislature: If we have not got the

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<sup>1</sup> *In re Doe 1*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000); *In re Doe 2*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000); *In re Doe 3*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000); *In re Doe 4*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000); *In re Doe 4(II)*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000).

statute's meaning right, then amend it. "This," says the Court, "is precisely how the separation of powers doctrine should work."<sup>2</sup>

I disagree. The Court's utter disregard for the legislative history cited by fifty-six legislators in support of their view of the Parental Notification Act is an insult to those legislators personally, to the office they hold, and to the separation of powers between the two branches of the government. I cannot conceive of another context in which the Court would pay so little heed to legislators' statements concerning the meaning of a statute. The Court adamantly refuses to listen to all reason, and the only plausible explanation is that the JUSTICES who comprise the majority — CHIEF JUSTICE PHILLIPS, JUSTICE ENOCH, JUSTICE BAKER, JUSTICE HANKINSON, JUSTICE O'NEILL, and JUSTICE GONZALES — have resolved to impair the Legislature's purposes in passing the Parental Notification Act, which were to reduce teenage abortions and increase parental involvement in their children's decisions.

The Court is well aware of the near-universal criticism of its construction of the Parental Notification Act, and the defensiveness of the majority and concurring opinions is striking. I cannot recall ever having seen a court or its members so abject in apologizing for their decision or so profuse in proclaiming their own integrity as this Court is today. Launching its opinion with a discourse on "The Proper Role of Judges", the Court makes this extraordinary statement:

In deciding this case we squarely confront the question of whether, as judges, we should apply the Parental Notification Act as it is written by the Legislature or according to our own personal beliefs.<sup>3</sup>

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<sup>2</sup> *Ante* at \_\_\_\_.

<sup>3</sup> *Ante* at \_\_\_\_.

This appears to be a hard question for the JUSTICES who comprise the majority. One wonders what the Court has done previously when it only *obliquely* confronted the question of whether it should do its duty. But at least these JUSTICES are able to confirm that they have reached the right answer:

In reaching the decision to grant Jane Doe’s application [to have an abortion without notice to either of her parents], we have put aside our personal viewpoints and endeavored to do our job as judges — that is, to interpret and apply the Legislature’s will as it has been expressed in the statute.<sup>4</sup>

Still, they say, laying aside personal views has been terribly hard to do. In a section of the opinion bearing the remarkable label, “Respecting the Rule of Law”, the JUSTICES who join the Court’s opinion confess:

We might personally prefer, as citizens and parents, that a minor honor her parents’ right to be involved in such a profound decision. But the Legislature has said that Doe may consent to an abortion without notifying her parents if she demonstrates that she is mature and sufficiently well informed.<sup>5</sup>

After struggling with themselves, say the JUSTICES in the majority, they have decided in the end to follow the rule of law:

As judges, we cannot ignore the statute or the record before us. Whatever our personal feeling may be, we must “respect the rule of law.”<sup>6</sup>

To this JUSTICE GONZALES adds his personal testimony:

While the ramifications of [the Parental Notification Act] and the results of the Court’s decision here may be personally troubling to me as a parent, it is my

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<sup>4</sup> *Ante* at \_\_\_\_.

<sup>5</sup> *Ante* at \_\_\_\_.

<sup>6</sup> *Ante* at \_\_\_\_.

obligation as a judge to impartially apply the laws of this state without imposing my moral views on the decisions of the Legislature.<sup>7</sup>

We are not judicial activists, say the JUSTICES in today's majority. Surely they know that remonstrances like these do not allay doubts but only exacerbate them. "The lady doth protest too much, methinks."<sup>8</sup> The Court has construed scores of statutes without seeing any need to provide the reassurances with which today's opinion is slathered. In all those other cases the Court sought to demonstrate its fidelity to legislative intent and purpose by the strength and integrity of its analysis, not by empty rhetoric. If the Court's usual practice is to respect the rule of law without having to say so, why does it have to say so today, repeatedly, unless the Court senses itself that its deeply flawed statutory analysis makes resort to rhetoric essential?

Three aspects of the Court's opinion belie its rhetoric. First, the Court claims to have announced its ruling without opinion, contrary to its usual practice, "on the concern that Doe be able to undergo a less risky abortion procedure, if that option was still available to her and that was her decision."<sup>9</sup> In fact, Doe had finished her fourteenth week of pregnancy at the time the Court ruled, and nothing in the record suggests that any delay, let alone a few days, would have impaired her in any way. Moreover, if the Court was concerned as it now says, it showed none of the same concern in the appeal in *In re Doe 4*, which was filed the day before this appeal, and in which the Court waited fifteen days to rule, with opinion. Second, as I have already noted, the Court mostly ignores

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<sup>7</sup> *Ante* at \_\_\_\_ (Gonzales, J., concurring).

<sup>8</sup>WILLIAM SHAKESPEARE, *HAMLET* act 3, sc. 2.

<sup>9</sup> *Ante* at \_\_\_\_.

an extraordinary amicus brief filed on behalf of the two legislative sponsors of the Parental Notification Act and fifty-four other legislators, which not only states their view of the statute's history and purpose but cites extensively to the legislative record. Finally, the Court persists in its view of the Act as liberally allowing minors to have abortions without involving their parents against the solid and overwhelming reality that the statute's supporters and opponents all shared the same view — that the statute would make it harder for minors to obtain abortions without notifying a parent.

If the Court were construing any other statute, it would by now have conceded that it was wrong. Logic, law, and legislative history cited by the legislators themselves all argue against the Court's construction of the Parental Notification Act. Why would six JUSTICES on this Court ignore fifty-six legislators if they were trying to follow the law rather than their own personal views? This is not merely a rhetorical question; if the Court has an answer, it should give it. Its refusal to do so is answer enough. Because the Court continues to misconstrue the Parental Notification Act and misapplies it in this case, I dissent.

## I

The Court's haste in deciding this case on the merits without issuing an opinion explaining its decision is unjustified. The Court's deviation from its usual procedures demonstrates again its determination to see to it that minors' applications for abortions without parental notification are quickly and summarily granted.

Doe filed her notice of appeal to this Court on March 8, and we received the record by fax late that evening. The Court granted the application by order without opinion late on the afternoon

of March 10.<sup>10</sup> Four JUSTICES dissented from the issuance of a decision on the merits without an accompanying opinion.<sup>11</sup> The Court now explains its haste as follows:

the record indicated both that Doe was entitled to a bypass and out of concern that any further delay might expose her to greater risk. . . . We issued our order on the concern that Doe be able to undergo the less risky suction curettage procedure, if that option was still available to her and that was her decision. While the stage of Doe's pregnancy at the time of the hearing and her doctor's general policies about the procedure are in the record, the exact date that Doe would no longer be eligible for the safer procedure is not. Any significant delay would have guaranteed that Doe could not have the safer procedure.<sup>12</sup>

Doe testified in the trial court at her first hearing on February 10 that she had first learned she was pregnant eight-and-one-half weeks (i.e., 59.5 days) earlier. She testified at the hearing on remand on February 29 that an ultrasound exam on February 19 showed that she had been pregnant eleven weeks and one day (78 days). Assuming that she learned she was pregnant about ten days after she actually became pregnant, her testimony was consistent with the results of the ultrasound exam. Thus, according to the record, Doe had been pregnant for fourteen full weeks (98 days) on March 10.

If, as the Court believed, the safest procedures could be used only "until the fourteenth week", or even "up to the fifteenth week",<sup>13</sup> they were no longer available to Doe, who finished her fourteenth week of pregnancy the day the Court issued its decision, was already in her second

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<sup>10</sup> 43 Tex. Sup. Ct. J. 505 (Mar. 10, 2000) (Phillips, C.J., and Hecht, Owen, and Abbott, JJ., dissenting).

<sup>11</sup> *Id.*

<sup>12</sup> *Ante* at \_\_\_\_.

<sup>13</sup> *Ante* at \_\_\_\_.

trimester, and was in her fifteenth week of pregnancy the day after the Court ruled. The Court's explanation for hurrying the process is thus nonsense: "we needed to rule when we did so that Doe could take advantage of medical procedures no longer available to her." This is what passes for careful consideration in the Court's parental notification cases. The Court can point to nothing in the record to indicate that if the Court had taken ten days to issue an opinion, as it did when Doe first appealed,<sup>14</sup> or six days, as it did in *In re Doe 2*,<sup>15</sup> that Doe would have been adversely harmed in any way. On the contrary, Doe had just requested and received a seven-day continuance in the court of appeals immediately before she appealed to this Court.

Moreover, if concern that Doe 1 be able to have a less risky procedure was what prompted the Court to hasten its decision in her case, it showed none of the same concern for Doe 4, who had filed her appeal the day before Doe 1 did.<sup>16</sup> The Court waited fifteen days to rule in Doe 4's case, until she was nearly twelve weeks' pregnant, then remanded her to the trial court to start over. When she returned to this Court eight days later, and then thirteen weeks' pregnant, the Court waited twelve days to deny her appeal,<sup>17</sup> thus denying her any access to a "less risky" abortion, even by the Court's shaky medical reckoning. Had the Court ruled sooner, Doe 4 could have notified her parents and obtained an abortion in her first trimester. But the Court was not concerned for Doe 1 and unconcerned for Doe 4; the truth is that in its haste to grant Doe 1's application, the Court simply had

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<sup>14</sup> *In re Doe 1(I)*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000).

<sup>15</sup> \_\_\_ S.W.3d \_\_\_ (2000).

<sup>16</sup> *In re Doe 4(I)*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000).

<sup>17</sup> *In re Doe 4(II)*, \_\_\_ S.W.3d \_\_\_ (Tex. 2000).

no time to review the record and see that a delay of a few days to issue a reasoned decision would not impair her in any way. Indeed, as I have noted, Doe herself had just requested a seven-day postponement in the court of appeals — not the action of someone pressed for time. Now that the Court can see that the delay in issuing an opinion would not have mattered to Doe 1 in any way, the Court must concoct a new, and regrettably misleading, explanation for its haste. That the JUSTICES in the majority are willing to shade the truth, even about the procedures followed, illustrates their personal investment in outcomes, not an adherence to the rule of law.

The Court says that it was concerned that “any additional delay might call into question whether the proceedings were sufficiently expeditious to pass constitutional muster”,<sup>18</sup> but it is hard to find much basis for any such concern when Doe had herself delayed the proceedings a total of eight days. The Court cites *Ohio v. Akron Center for Reproductive Health*<sup>19</sup> and *Bellotti v. Baird*,<sup>20</sup> but neither case supports the Court’s supposed concern for expedition. In *Bellotti*, the Supreme Court required only “sufficient expedition to provide an effective opportunity for an abortion to be obtained”,<sup>21</sup> and Doe has not even questioned whether such opportunity was available to her. In *Akron*, the Supreme Court held that a process that could last up to twenty-days was not unconstitutional on its face, and that it had previously upheld a bypass procedure “that could require 17 calendar days plus a sufficient time for deliberation and decisionmaking at both the trial and

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<sup>18</sup> *Ante* at \_\_\_\_.

<sup>19</sup> 497 U.S. 502, 513 (1990).

<sup>20</sup> 443 U.S. 622, 644 (1979).

<sup>21</sup> *Id.*

appellate levels.”<sup>22</sup> If the Court had waited until March 13 to rule and had issued an opinion at that time, no serious argument could be made that the bypass procedure had denied Doe “an effective opportunity for an abortion”.

The Court notes that Rule 4.3 of the Parental Notification Rules requires it to rule “as soon as possible”, and that Doe’s notice of appeal “specifically stated, in large, bold-faced type: “PLEASE EXPEDITE.”<sup>23</sup> Actually, the request is directed to the clerk: the notice of appeal states, “ATTENTION CLERK: PLEASE EXPEDITE”, as prescribed by the standard form for such notices.<sup>24</sup> Doe’s first notice of appeal to this Court bore the same inscription, and the Court took ten days to rule. The notices of appeal in all the other parental notification cases in this Court have been on the identical form, and the Court has taken fifteen days to rule once, twelve days on two occasions, and six days on another. In every other case the Court accompanied its decision with an opinion. In *In re Doe 4*,<sup>25</sup> the Court took fifteen days to rule, even though it left the minor at the beginning of her thirteenth week of pregnancy and only a week short of the different procedure and increased risk that the Court claims to have been trying to avoid in this case. The Court cannot explain why it had to hurry in this case but could take its time in *Doe 4*.

The Court notes that it is prohibited from “disclosing the substance or course of our deliberations”, then proceeds to violate that prohibition by asserting that “any suggestion that we

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<sup>22</sup> 497 U.S. at 514.

<sup>23</sup> *Ante* at \_\_\_\_.

<sup>24</sup> Forms 3A and 4A, PARENTAL NOTIFICATION R.

<sup>25</sup> \_\_\_\_ S.W.3d \_\_\_\_ (Tex. 2000).

issued our March 10th order without a majority consensus on the merits is incorrect because a majority consensus was necessary to issue the order.”<sup>26</sup> In other words, the Court states not just that a majority of the Court had agreed to grant the application, which is of course obvious from the issuance of the order, but that there was a majority consensus *on the merits* and basis for decision before the order issued. The implication that the Court gave anything approaching reasoned deliberation to this case before it granted Doe’s application is false, nor could it have done so, given the haste with which the Court acted. If the Court can recite the events that led to its ruling and demonstrate that it gave careful consideration to this case before it reached a decision, then it should do so, rather than hide behind the confidentiality of our deliberations.

Finally, the Court cites five instances when it has announced its judgment without opinion. None supports its action in the present case.

In the first, *Republican Party v. Dietz*,<sup>27</sup> the trial court had issued a temporary injunction prohibiting the Republican Party of Texas from denying the Log Cabin Republicans an exhibit booth at the two-day state convention which was to convene six days later. The Party filed its petition for mandamus and motion for an emergency stay in this Court on the next business day after the injunction issued, and we heard oral argument two days later, the day before the convention began. It is true, as the Court states, that “we granted a stay with an opinion to follow that provided the Party all the relief it was entitled to.”<sup>28</sup> But we did so after briefing and oral argument and without dissent.

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<sup>26</sup> *Ante* at \_\_\_\_.

<sup>27</sup> 940 S.W.2d 86, 94 (Tex. 1997).

<sup>28</sup> *Ante*, at \_\_\_\_.

We also issued an opinion with the stay order explaining our reasons and the basis for the stay.<sup>29</sup> The Court does not bother to cite that opinion. Whether we had granted the stay or not, the case would have been moot the day after oral argument.

The second case the Court cites is *Texas Water Commission v. Dellana*.<sup>30</sup> There, the Water Commission had denied an application by Hunter Industrial Services, and Hunter petitioned in the district court for approval to take the depositions of nine Commission staff members to obtain evidence for use in Hunter's motion for rehearing due in two weeks. One week before Hunter's motion was due, the district court ordered that the depositions be taken within three days, and the Commission immediately petitioned the court of appeals and then this Court for mandamus relief. The day before the deadline for the depositions we granted the Commission's motion for an emergency stay of the trial court's order and requested that Hunter respond to the Commission's mandamus petition. After reviewing Hunter's response, on the day before its motion for rehearing was due, we directed the trial court to set aside its order. Even though as a practical matter we granted the Commission no more relief than our stay afforded, we issued our judgment without opinion so as not to delay Hunter in filing its motion for rehearing. No JUSTICE dissented. As in *Dietz*, whether we had granted relief or not, the case would have been almost immediately mooted.

In the third case the Court cites, *Davenport v. Garcia*,<sup>31</sup> the district court had enjoined the participants from discussing the case with outsiders. Petitioner sought relief in this Court by

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<sup>29</sup> 924 S.W.2d 932 (Tex. 1996) (per curiam).

<sup>30</sup> 849 S.W.2d 808 (Tex. 1993) (per curiam).

<sup>31</sup> 834 S.W.2d 4 (Tex. 1992).

mandamus, and we heard oral argument.<sup>32</sup> More than four months later, before the Court's opinions were completed, we granted petitioner's motion for an emergency stay of the district court's order without opinion.<sup>33</sup> We expressly noted that other issues remained under consideration. The Court's decision was unanimous.

Thus: In *Dietz*, we issued an opinion with our ruling, albeit a preliminary one; in the present case we issued no opinion at all. In *Dietz* and *Davenport*, we issued a ruling only after oral argument; in the present case there was no argument. In *Davenport* we did not grant final relief; here we did. In *Dietz* and *Dellana* the controversy would have been mooted within a day or so whether the Court had acted or not; in the present case, there was no indication that the minor's circumstances were about to change in any way. In all three of the cases cited, a party requested an emergency ruling; here, no one did. In none of these cases did any JUSTICE dissent from the procedure.

The other two cases the Court cites,<sup>34</sup> and three cases it does not cite,<sup>35</sup> were all election cases, and the two most recent were nearly ten years ago. Lately, in election cases, rather than issue

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<sup>32</sup> 5 TEX. SUP. CT. J. 170 (cause submitted Dec. 3, 1991).

<sup>33</sup> 837 S.W.2d 73 (Tex. 1992).

<sup>34</sup> *Painter v. Shaner*, 667 S.W.2d 123, 124 (Tex. 1984); *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980).

<sup>35</sup> *Correa v. First Court of Appeals*, 795 S.W.2d 704, 705 (Tex. 1990); *Brown v. Meyer*, 787 S.W.2d 42, 43 (Tex. 1990); *State Democratic Executive Comm. v. Rains*, 758 S.W.2d 227, 228 (Tex. 1988).

a judgment without an opinion, we have directed that the printing of ballots be delayed so that an opinion can be completed.<sup>36</sup>

In sum, the Court's action in the present case has no precedent except in election cases ten years old and older. More recently, the Court has refused to issue judgment without an opinion even in election cases. The Court's inability to explain its hasty departure from well-established procedures over the dissents of four JUSTICES casts doubt on its assertion that it is merely following the law and that it has no personal predilections in these cases.

## II

The Court states that "Senate Bill 30's author and sponsor have filed an amicus brief, joined by other legislators . . . ." <sup>37</sup> Nine senators and forty-seven representatives joined in the brief. I do not recall another case in which the Court received an amicus brief on behalf of so many legislators attempting to assist the Court in analyzing the legislative history of a statute, yet the Court dismisses the amici as being less than a third of the Members of the Legislature.

The Court notes that "courts construing statutory language should give little weight to post-enactment statements by legislators," citing my concurring and dissenting opinion in *C & H Nationwide, Inc. v. Thompson*.<sup>38</sup> I am heartened that the Court has come round to my viewpoint, even if its motive is to contrive some reason to ignore what fifty-six legislators think they just passed in the last session. But the Court's about-face on this issue of statutory construction provides no

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<sup>36</sup> *Davis v. Taylor*, 930 S.W.2d 581, 582 (Tex. 1996); *Bird v. Rothstein*, 930 S.W.2d 586, 587 (Tex. 1996).

<sup>37</sup> *Ante* at \_\_\_\_.

<sup>38</sup> 903 S.W.2d 315, 328-329 (Tex. 1994) (Hecht, J., concurring and dissenting).

excuse for *ignoring the record cited by the legislators*. In other words, even if it is dangerous to put too much stock in post-enactment statements about what was intended, citations to the legislative history showing what was said and done during passage of the bill cannot be discounted merely because the information is provided by legislators. If anything, the Court ought to be grateful to amici for helping to summarize the voluminous legislative record.

While issuance of our opinions in this case has been pending, the Court has obtained the materials reflecting the hearings and debates on the Parental Notification Act during the last session. Most of these materials are audiotapes, and the Court has had them transcribed at its own expense. Having had ample opportunity to review all these materials and check the citations provided us by amici, the Court does not criticize these citations; it simply disagrees with the conclusions to be drawn. That, of course, is the Court's prerogative, but while the Court may disagree with these arguments, is not entitled to ignore them.

The Court cites to the legislative record eight times. Three citations have nothing to do with any issue in dispute. Of the other five, the Court says that two show that there was some anticipation that judicial bypass applications would be rare,<sup>39</sup> and two show that most applications in Nebraska are granted.<sup>40</sup> The Court cites one supporter of the statute who said in a floor debate that "obtaining a bypass in not going to be a problem."<sup>41</sup> Based on nothing other than these snippets of the record, and contrary to the bill's fiscal note that anticipated that half the applications would be denied, the

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<sup>39</sup> *Ante* at \_\_\_\_.

<sup>40</sup> *Ante* at \_\_\_\_.

<sup>41</sup> *Ante* at \_\_\_\_.

Court concludes that “a number of statements by the bill’s authors, sponsors, and sponsors of companion legislation, including some of the amici, strongly suggest that the Legislature did not contemplate a strenuous statutory burden for the minor.”<sup>42</sup> Even if this were a fair summation, and it certainly is not — by “a number of statements” the Court means *three*, two of them about Nebraska — the Court simply ignores contrary statements in the record. For example, the amici note that Senator Bernsen referred to cases suitable for bypass procedure as “small exceptions”;<sup>43</sup> Representative Delisi said that it was “certainly right” that judges would have to grant bypasses only “in rare cases when it is not appropriate to tell the girl’s parents”;<sup>44</sup> Representative Gray referred to bypass cases as “exceptional”;<sup>45</sup> and Representative King stated that parental involvement would be required in the “vast, vast, vast majority of cases”.<sup>46</sup>

That the legislative history contains statements like those to which the amici point should come as no surprise. If the Legislature really thought what the Court says it did — that virtually every minor’s application should be granted — then why did it bother to pass the statute, and why did it agonize so in the process? If there is one thing that may be said with certainty concerning the parental notification legislation, it is that every participant in the long, difficult, and emotional process thought that the statute would have significant consequences. This was not a bill making

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<sup>42</sup> *Ante* at \_\_\_\_.

<sup>43</sup> *Hearings on S.B. 30 Before the Senate Human Services Comm.*, 76th Leg., R.S., tape 3, at 4 (Mar. 10, 1999).

<sup>44</sup> *Hearings on S.B. 30 Before the House State Affairs Comm.*, 76th Leg., R.S., tape 1, side A (Apr. 19, 1999).

<sup>45</sup> *Hearings on S.B. 30 Before the House State Affairs Comm.*, 76th Leg., R.S., tape 3, side B (Apr. 19, 1999).

<sup>46</sup> *Hearings on S.B. 30 Before the House State Affairs Comm.*, 76th Leg., R.S., tape 3, side B (Apr. 19, 1999).

technical corrections to part seven of the Uniform Commercial Code; this was a major piece of legislation that this Court has neutered.

It is extremely unfair for the Court to single out phrases and comments by supporters and sponsors of the legislation, as if to embarrass them with apparent inconsistencies, while ignoring the multitude of statements that support their view of the intent of the legislation. I cannot conceive that most MEMBERS of today's majority would ever show such thorough disdain for the expressions of legislative will and purpose in any other context. I do not know what plausible conclusion can be drawn other than that the JUSTICES in the majority are determined to construe the Parental Notification Act as they personally believe it *should* be construed and not as the Legislature intended.

### III

I described the circumstances of this case in my dissenting opinion in *Doe I(I)*,<sup>47</sup> to which I refer today's reader. Prior to the hearing on remand, Doe returned to Planned Parenthood and spoke with an unlicensed counselor for about one-and-one-half hours and with a physician for about fifteen minutes. She also looked at pamphlets concerning abortion and alternatives to it. The only other person she talked with after the first hearing was a teacher at school who counsels pregnant students. After a lengthy hearing, Doe's attorney stated to the trial court that the only ground on which Doe sought approval of her application was that she was "mature and sufficiently well informed" to have an abortion without telling her parents. The trial court again denied her application, finding as follows:

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<sup>47</sup> *Doe I(I)*, \_\_\_ S.W.3d \_\_\_ (Hecht, J., dissenting).

Jane Doe has failed to prove by a preponderance of the evidence that she is sufficiently well informed to have an abortion without notification to either of her parents. While she has been well apprised of the risks attendant to abortion and childbirth, she has received inadequate counseling, and has shown no understanding, of the benefits and consequences of the alternatives to abortion. She admits that she does not know the benefits of keeping the child, and she presented no testimony that she has been counseled or understands the benefits of adoption. Thus, she has not demonstrated that she has given thoughtful consideration to her alternatives, including adoption and keeping the child. Additionally, and not in issue, she has not sufficiently proved that notifying the parents is not in her best interest, or that notifying her parents will lead to abuse.

The trial court did not find whether Doe was mature. The court of appeals affirmed the trial court's ruling and stated that it would issue an opinion as permitted by Rule 3.3(e)(2)(A) of the Parental Notification Rules.

This Court cites evidence contrary to the trial court's decision, but such evidence is, of course, irrelevant to this Court's review. The issue is not whether there was evidence to support a grant of Doe's application; there was. Rather, the issue is whether there is any evidence to support the trial court's denial of the application. There was, and thus the trial court's decision must be affirmed. This Court cannot grant Doe's application merely because it disagrees with the trial court on a judgment call, nor can it do so merely because it thinks the evidence was overwhelmingly contrary to the trial court's ruling. This Court can reverse and render, as it does, only if no evidence supports the trial court's ruling — that is, only if no reasonable person could have reached the conclusion the trial court did.

The evidence that supports the trial court's ruling is this:

First: Doe admitted that she is inexperienced, even for her age, and that is evidence that she should discuss her situation with her parents. Concerning her understanding of the alternatives to abortion, Doe testified as follows in answer to questions by her attorney:

Q You also indicated that the counselor at Planned Parenthood talked to you about the alternatives of abortion. What did she say?

A Well, I have several pamphlets there, also; but she talked to me. You can choose parenthood, also adoption, and there is the abortion there, and there are agencies where you can do adoption. Planned Parenthood is one of the locations they do perform abortion if I do choose to go, if that comes up. And the effects of what happens if you actually decide to have the child, the parenthood, child.

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Q I would like, for the Court, to go over the three alternatives and essentially describe for the Court your thought processes. Let's start with the alternative of keeping your child and becoming a parent.

A Okay. Well, if I were to keep this child I feel that it would be very difficult for me being at a very young age and wanting to further my education. I would like to go to college. I don't want to have to immediately join a minimum wage job because since I am so young and inexperienced that is what I would have to do to support my child. I am saying I would like to go to college and have a career. And personally I would like to be married and settled down before I have a child. I want to be financially stable. I want to be responsible enough. I want to be older. And that's why I am not ready for the parenthood factor.

Q Okay. Let's talk about, then, the adoption alternative, carrying the child to term, having the child and giving it up for adoption.

A Okay. Well, personally, I feel if I were to carry this child for nine months that I would grow emotionally attached to this child. And to give it away to another family would not feel right to me after all those nine months. Plus, I don't know if it would be put in a worse lifestyle than what I could give it or if the parents would care for it and love it actually as their own. So, I am just not against — I am not for adoption.

Q Okay. Let's talk about the abortion alternative here, your thought process in choosing that alternative.

A Okay. Well, I mean my situation, again, I feel abortion is the best decision for me. It would help me further my education, that I would like to do. I mean, right now it is the best way that I can go through this.

Although Doe's answers show some understanding of her alternatives, they also reflect, as she freely acknowledged, that she is young and inexperienced.

Second: Doe has never had to make a decision approaching the seriousness of having an abortion. She described her most significant financial decision as helping her parents to pay for her vehicle, which she does intermittently, and her most significant life decision as deciding to go to college.

Third: Doe admitted that she had not "sought counseling from anyone that had a view that abortion either would not be good for you emotionally, spiritually or physically." In the first hearing Doe described briefly her discussions with three teenage friends, her boy friend, and an older relative.<sup>48</sup> Since then she has talked only with a teacher at school and a counselor at Planned Parenthood. No mature and well informed person would make any serious decision without considering the pros and cons. There is a large amount of information both for and against abortion, and while the Court held in *Doe I(I)* that Doe need not obtain information from any specific source,<sup>49</sup> a minor cannot be well informed if the only information she has is from people who favor abortion. As the United States Supreme Court has observed, "It seems unlikely that [a woman] will obtain

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<sup>48</sup> *Doe I(I)*, \_\_\_ S.W.3d at \_\_\_ (Hecht, J., dissenting).

<sup>49</sup> *Doe I(I)*, \_\_\_ S.W.3d at \_\_\_.

adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.”<sup>50</sup>

Fourth: Doe testified that her parents have strong views against abortion and that she does not want to tell them of her decision because they would disapprove. The trial court could have found that her unwillingness to understand and consider views in opposition to her desire to have an abortion, especially the views of her family, showed that she was not sufficiently well informed to make the decision.

The court of appeals’ opinion, to which the Court briefly refers, undertakes a traditional assessment of the sufficiency of the evidence, the point of which is to see whether there is any material evidence to support the trial court’s decision, not to see how much evidence there is to the contrary. The court of appeals did a creditable job of reviewing the record and setting out the evidence in support of the trial court’s decision, yet the Court simply ignores its opinion.

In sum, there is evidence to support the trial court’s denial of Doe’s application. This Court simply usurps the trial court’s fact-finding authority, which it would not do in any other case, and ignores the limitations on appellate review. The Court offers no justification of its actions, and the only apparent explanation is its complete disregard of the lower courts’ authority and its antagonism to the Legislature’s purposes in the Parental Notification Act.

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<sup>50</sup> *H. L. v. Matheson*, 450 U.S. 398, 410 (1981).

## IV

One must ask why the Court is so determined to grant parental bypass applications so handily, why the Court has acted in such haste, and why the Court has such disregard for the lower courts' rulings. In this case, the Court made no effort to determine when the court of appeals might issue an opinion or whether it could expedite the process. The Court does not care what the court of appeals thinks.

The rationale for the Court's rulings, I think, is that the Court does not regard the decision to have an abortion as being a very important one. Minors should generally be allowed to make that decision by themselves, the Court thinks, even though the law does not allow them to decide whether to have a tonsillectomy. A tonsillectomy is serious surgery; an abortion, the Court thinks, is not. Also, the Court believes that minors need not know much more about the process than what they can find out in a short visit to Planned Parenthood. If their parents are opposed to abortion, that is reason enough to avoid telling them. And most importantly, according to the Court, minors need not give much consideration to their parents' rights to guide their lives, or their own need for parental involvement in their major, life-changing decisions. The MEMBERS of the Court are certainly entitled to their views on all these issues, but those views must yield to the legislative will expressed in the Parental Notification Act. The plain fact is that that statute was enacted to protect parents' rights to involve themselves in their children's decisions and to encourage that involvement, as well as to discourage teenage pregnancy and abortion. The Court not only ignores those purposes, it has done what it can to defeat them.

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The trial court acted reasonably in denying Doe's application for authority to have an abortion without telling her parents. This Court's reversal of that ruling thwarts the Legislature's purposes in the Parental Notification Act, violates parents' fundamental, constitutional rights to raise their children, usurps the trial court's authority to find facts, and trivializes the decision to have an abortion. I dissent.

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Nathan L. Hecht  
Justice

Opinion delivered: June 22, 2000