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Scheinberg v. Smith: Toward Recognition of Minors' Constitutional Right to Privacy in Abortion Decisions

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Abstract

On October 1, 1981, the United States Court of Appeals for the Fifth Circuit affirmed the decision of the district court in *Scheinberg v. Smith*,¹ that the parental consent provisions of the *Florida Medical Practice Act* regarding abortion, unconstitutionally invaded a woman's right to privacy.

KEYWORDS: abortin, minors, right

Scheinberg v. Smith: Toward Recognition of Minors' Constitutional Right to Privacy in Abortion Decisions

On October 1, 1981, the United States Court of Appeals for the Fifth Circuit affirmed the decision of the district court in *Scheinberg v. Smith*,¹ that the parental consent provisions of the *Florida Medical Practice Act*² regarding abortion, unconstitutionally invaded a woman's right to privacy.³ The judicial precedent leading the court to recognize this right to privacy for minors was first enunciated by the fifth circuit in *Poe v. Gerstein*.⁴ The *Scheinberg* majority found unconstitutional the *Florida Therapeutic Abortion Act's*⁵ requirement that parental consent must be given children seeking abortion. The requirement violated young women's fundamental right to privacy in contravention of the United States Supreme Court's clear pronouncements in *Griswold v. Connecticut*⁶ and *Roe v. Wade*.⁷

The parental notice and consent cases which led the court to reject the contested statutory provisions in *Scheinberg* are the subject of this comment. Additionally, this comment will briefly examine the history of privacy afforded children in relation to parental control. The interplay of children's abortion rights with the various waiting period provisions of abortion statutes will also be discussed.

I. Children as Chattels

The emerging field of children's rights litigation is a direct result

1. 482 F. Supp. 529 (S.D. Fla. 1979).

2. FLA. STAT. § 390.001 (4)(a) (1981).

3. *Scheinberg v. Smith*, 659 F.2d 476, (5th Cir. 1981).

4. 517 F.2d 787 (5th Cir. 1975).

5. The applicable part of Florida's Statutes section 458.22(3) (1976) reads: "If the pregnant woman is under eighteen years of age and unmarried, in addition to her request, the written consent of her parents, custodian, or legal guardian must be obtained."

6. 381 U.S. 479 (1965).

7. 410 U.S. 113 (1973).

of, and in sharp contrast to, the iniquities to which children were subjected through the centuries. Historically, the law treated minors as chattels, unable to legally act for themselves.⁸ In biblical times, as in the days of the Roman Empire, parental control of an unmarried female included complete determination of her future. A father had the right both to sell his daughter in marriage, and to annul her marriage vows if he chose.⁹ Though it is true that children's status improved with the centuries, minors remained charges of their parents.¹⁰ There was no distinction made between the rights or treatment of small children and of teenagers on the brink of legal or emotional maturity. All were considered the property of their parents.¹¹

II. Setting the Stage for *Scheinberg*

The historical treatment of minors would seem to suggest that the state, in deference to parents' traditional powers, may condition a pregnant minor's right to abortion on parental consent. However, in light of *Roe*, which established a woman's right to privacy in her abortion decision, the fifth circuit in *Poe v. Gerstein* concluded that these privacy rights must also apply to an unwed, pregnant Florida teenager.

In *Roe*, the Court held the decision to terminate a pregnancy is encompassed both in the fourteenth amendment's concept of personal liberty and the ninth amendment's reservation of rights to the people.¹² Thus the right to a "zone of privacy"¹³ was found to be constitutionally guaranteed. In *Gerstein* the appellate court extended *Roe's* analysis and held the "fundamental right to an abortion applies to minors as well as to adults."¹⁴ The appellate court reasoned that the criteria enunciated in *Roe* applied even more forcefully to the pregnant teenager, who could suffer physical and emotional infirmities as a result of an unwanted pregnancy. Additionally, the pregnant teenager may be subjected to social condemnation resulting from the abrupt termination

8. *In re Gault*, 387 U.S. 1 (1967).

9. 6 ENCYCLOPEDIA JUDAICA 1167 (1973).

10. 387 U.S. 1.

11. 517 F.2d at 789.

12. 410 U.S. at 153.

13. *Id.* at 152.

14. 517 F.2d at 791.

of her education.¹⁵

Because a fundamental right was involved in *Gerstein*, the fifth circuit panel strictly scrutinized the Florida statute in order to ascertain whether a compelling state interest justified requiring parental consent to the minor's abortion. The court found four interests that could be invoked in defense of the statute: "(a) preventing illicit sexual conduct among minors; (b) protecting minors from their own improvidence; (c) fostering parental control; (d) supporting the family as a social unit."¹⁶ None of these interests however, were found sufficiently compelling to overcome the minor's fundamental right to an abortion.

In *Carey v. Population Services International*,¹⁷ the Supreme Court asserted "it would be plainly unreasonable to assume that [the state] has prescribed pregnancy and the birth of an unwanted child . . . as punishment for fornication."¹⁸ The *Gerstein* court observed that parents do not always act in their child's best interests, and may sometimes act nonsensically or punitively when they learn of their daughter's pregnancy.¹⁹ Ironically, while the statute considered in *Gerstein* authorized parents to make the critical decision in permitting or denying their daughter's abortion, the *Gerstein* court made clear that it was the minor daughter alone who would bear financial and legal responsibility for the coming child.²⁰

The fifth circuit pointed out in *Gerstein* that the statute requiring a minor to notify her parents of her pregnancy, effectively impeded the teenager from procuring an abortion. Certainly the potential for trauma arises when an unwed teenager must face her parents and tell them she is pregnant. This can be physically and emotionally detrimental.²¹

15. *Id.*

16. *Id.* at 792.

17. 431 U.S. 678 (1977).

18. *Id.* at 695 (citing *Eisenstat v. Baird*, 405 U.S. 438, 448 (1972)).

19. *See e.g.*, *Baird v. Bellotti*, 393 F. Supp. 847 (D.C. Mass. 1975) (In order to punish their daughter for her pregnancy, the court found that some parents would not allow the abortion); *In re Rotkowitz*, 175 Misc. 948, 949, 25 N.Y.S.D.2d 624, 626 (Dom. Rel. Ct. 1941) stating: "There are parents . . . who will by act do that which is harmful to the child and sometimes will fail to do that which is necessary to permit a child to . . . lead a normal life in the community." *Id.*

20. 517 F.2d at 793. *See* FLA. STAT. §§ 744.13 & 827.06 (1976).

21. 517 F.2d at 793 n.11.

One year after the fifth circuit decided *Gerstein*, the United States Supreme Court in *Planned Parenthood of Missouri v. Danforth*²² invalidated a state requirement that unmarried minors obtain parental approval before terminating pregnancies. Relying upon its decision in *Roe v. Wade*, the Court held a state cannot proscribe abortion during the first trimester of pregnancy.²³ The Court reasoned that the state could not endow a third party with the “absolute and possibly arbitrary power to prohibit an abortion.”²⁴ Nor could the state “delegate . . . a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy.”²⁵ The abortion decision is so important that not only adults, but unmarried pregnant minors as well, are protected by the constitution against state intrusion.²⁶

Supreme Court precedent has established that from the start of the second trimester of pregnancy, through its duration, the state has a compelling interest in both the mother’s safety and the potentiality of human life.²⁷ States may, therefore, limit the availability of abortions in the later trimesters and impose place, time and other conditions on abortion procedures and availability.²⁸ However, abortions performed within the first trimester fall outside this significant state interest, even though “power of the state to control the conduct of children reaches beyond the scope of its authority over adults.”²⁹ Minors are different from adults, but are not so different that their most fundamental rights may be unduly impinged upon. The state’s interest in prohibiting minor’s first trimester right to abortion is not compelling enough to with-

22. 428 U.S. 52 (1976).

23. 410 U.S. at 163.

24. 428 U.S. 52.

25. *Id.* at 74.

26. Note, *Developments in the Law: The Constitution and the Family*, 93 HARV. L. REV. 1156 (1980). *But see* Miami Herald, Jan. 31, 1982, at 4A, col. 1 which states that a thirteen year old who “fought her parents all the way to the State Supreme Court for the right to have an abortion, had changed her mind. Her announcement came after the Alabama Supreme Court temporarily blocked the operation. . . . The girl’s decision made the case moot and left unanswered the legal question of whether a minor can have an abortion without parental approval in Alabama.”

27. 410 U.S. 113.

28. 410 U.S. 113.

29. *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

stand strict scrutiny when balanced against the interference this state prohibition exerts on a minor's fundamental privacy right. Moreover, while parents' power over their children is great, it is not absolute. "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children."³⁰

III. Notification Provisions in Abortion Control Statutes

In addition to parental consent requirements, parental notification requirements have been subjected to constitutional challenges. In *Wynn v. Carey*³¹ the Seventh Circuit Court of Appeals found provisions of the Illinois Abortion Parental Consent Act of 1977³² unconstitutional. The statute required that an unmarried minor under the age of eighteen attempt to obtain consent from both her parents prior to obtaining an abortion. If one or both parents refused consent, the minor was required to petition for court authorization of the abortion. In addition, upon the minor's application for judicial relief the court was required to notify her parents. Thus, whenever a pregnant teenager sought an abortion, her parents were *always* notified.³³

The seventh circuit struck these consent and notification provisions as both over and underinclusive. The act was underinclusive because married minors who remained married, or who were divorced or widowed were not included. These minors were not required to consult with or obtain the consent of their parents. Since the ostensible purpose of the act was to afford *minors* some measure of parental guidance in the decision to undergo abortion, there was no apparent reason for distinguishing between single minors and minors who were, or had been, married.³⁴ The act was overinclusive because there was no statutory exception for single minors who were emancipated or mature enough to make the decision for themselves.

30. *Id.* at 170.

31. 582 F.2d 1375 (7th Cir. 1978).

32. ILL. REV. STAT. ch. 38 § 81-23(4): "If . . . consent is refused . . . [it] may be obtained by order of a judge of the circuit court . . . after such hearing as the judge deems necessary. . . . Notice of such a hearing shall be sent to the parents."

33. *Id.*

34. 582 F.2d at 1387.

The appellate court also found the act constitutionally deficient in failing to provide for minors who did *not* understand what an abortion entails and what its physical or psychological consequences may be.³⁵ If the parents of an immature, unknowledgeable girl were notified by the court that their daughter was attempting to circumvent, by judicial intervention, their refusal to allow her abortion, the parents' negative decision would prevail under the statute despite the best interests of the child. Since the statute did not allow judicial inquiry beyond whether the girl understood the consequences of an abortion, if the girl was unable to understand, then the court's hands were tied because it was not authorized under the statute to take any further action. The immature minor's fate was back in the hands of both of her parents. Even if *one* parent consented to the abortion, and the court agreed it would be best to terminate the pregnancy, the abortion would still be barred by the other parent's veto.³⁶ For these reasons the statute failed to meet the minimum standards set by the United States Supreme Court in *Bellotti v. Baird*,³⁷ "that the statute must be 'speedy,' 'nonburdensome' and preserve the minor's anonymity when she seeks judicial authorization for an abortion."³⁸ It is well recognized that the "abortion decision is one that simply cannot be postponed, or it will be made by default with far reaching consequences."³⁹

While in some familial relationships parental notification can result in the minor's psychological sustenance and produce beneficial advice, where poor intra-familial relations exist the results of notification can be devastating. Two recent federal district court decisions have held that an unqualified statutory requirement of parental notification is an unconstitutionally weighty burden on the fundamental right of a minor to have an abortion.⁴⁰

35. *Id.* at 1390. While not enumerated by the court, some consequences, in addition to the death of the fetus, may be physical discomfort to the mother, grief or guilt.

36. *Id.*

37. 428 U.S. 132 (1976).

38. *Id.* at 144-45.

39. 443 U.S. at 643.

40. Akron Center for Reproductive Health, Inc. v. City of Akron, 479 F. Supp. 1172, 1202 (N.D. Ohio 1979); Women's Community Health Center Inc. v. Cohen, 477 F. Supp. 542, 546-48 (D. Me. 1979). See also Planned Parenthood Assoc. of Kansas City, Missouri Inc. v. Ashcroft, 655 F.2d 848 (8th Cir. 1981) which held unconstitu-

A parent infuriated by the illicit pregnancy may abuse the minor daughter. Additionally, physical harm caused the minor by parental footdragging and delay is foreseeable, especially in the abortion context which mandates time is of the essence. Some of those possibilities were described by the mother of a girl waiting for an abortion in a Minnesota abortion clinic.⁴¹ The Minnesota abortion law requires that a minor under 18 years 1) notify both her parents; 2) offer the clinic *proof* that both parents have been notified, and 3) wait for a 48 hour waiting period before the abortion can be performed. The necessity of securing a waiver of parental notification is a chilling and frustrating experience.

[F]or many, the abortion itself is preceded by a harrowing day in court trying to secure a waiver from a judge against having to tell parents. Not uncommonly, mother and daughter are thrown into a conspiracy against a wrathful father who they fear will never be able to understand how his daughter came to such a sorry pass. Legal maneuvering can delay the abortion, sometimes dangerously. One mother nods toward her teenage daughter, now 20 weeks pregnant: 'Her boyfriend is black,' says the woman who joined with her daughter in the fight for the waiver. 'My husband told her if he ever saw her with a black man, he'd kill her.'⁴²

The United States Supreme Court in *H. L. v. Matheson*⁴³ did not agree that parental notification as a prerequisite unduly burdens a minor's right to an abortion. The minor in question there was unmarried, 15 years of age; living at home and supported by her parents. She became pregnant and, after consulting with a social worker and a physician, decided to obtain an abortion. The physician, however, recognized he would be subject to criminal penalties for noncompliance,⁴⁴ and would not perform the abortion without notifying his patient's parents.

The pertinent part of the Utah statute considered in *H. L.* provides: "To enable a physician to exercise his best *medical judgement*

tional a statute requiring notice to parents of *all* minors seeking abortions because it required notice to parents of mature minors and those for whom it was not in their best interests to give notice.

41. *Abortion: Women Speak Out*, Life, Nov. 1978, at 45-54.

42. *Id.* at 48, cols. 1 & 2.

43. 450 U.S. 398 (1981).

44. *Id.* §§ 76-7-314(3), 76-3-204 & 76-3-301(3) (1953).

[in considering whether to perform an abortion] he shall: . . . (2) Notify if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor. . . .”⁴⁵ While it was urged that *Bellotti*, decided prior to *H. L.*, had settled the question of parental consent, Chief Justice Burger’s majority decision in *H. L.* contrasted the classes of plaintiffs. In *Bellotti* the principal class consisted of “unmarried [pregnant] minors in Massachusetts who have adequate capacity to give a valid and informed consent [to abortion], and who do not wish to involve their parents.”⁴⁶ In *H. L.* the class was comprised of *unemancipated* minor girls who were living at home, supported by their parents; they made no claim of maturity. The *H. L.* majority concluded the appellant lacked standing to enlarge its challenge to encompass the statute’s effects on all unmarried minor girls, which included those mature and emancipated. The Court decided the issue within narrow parameters, holding that a statute delineating a “mere requirement of parental notice”⁴⁷ does not violate the constitutional rights of an immature, dependent minor living at home. The statute in question did not grant parental or judicial power to *totally* proscribe the abortion procedure. It did necessitate that the physician notify parents, if possible, if an abortion was to be performed. The Chief Justice opined the statute promoted family unity and served a “significant state interest by providing an opportunity for parents to supply essential medical and other information to a physician.”⁴⁸ However, parents were not statutorily obligated to fill out medical forms.

In his dissenting opinion, Justice Marshall thought it clear that the parental notice requirement “burdens the minor’s privacy right.”⁴⁹ Although earlier decisions had safeguarded family privacy from invasive governmental interference, Justice Marshall felt the majority distorted those decisions to achieve an opposite result, thereby excusing an inexcusable incursion into the privacy of families. He noted it was unlikely the state’s statutory notice prerequisite would “resurrect parental authority that the parents themselves [were] unable to preserve.”⁵⁰ Be-

45. UTAH CODE ANN. § 76-7-304(2) (1974). (emphasis added).

46. 450 U.S. at 406 n.12, (citing 443 U.S. at 626) (emphasis added).

47. 450 U.S. at 409.

48. *Id.* at 411.

49. *Id.* at 441.

50. *Id.* at 448.

sides attempting to alter familial interaction, the statute may also be too great an intrusion into the family since it mandates lines of communication which are not there.⁵¹ Justice Marshall accurately pointed out that “[r]ather than respecting the private realm of family life, the statute invokes the criminal machinery of the state in an attempt to influence the interactions within the family.”⁵² When lines of family communication break down, it should be outside the scope of state interest to *force* speech among family members. This result is consistent with *Wooley v. Maynard*⁵³ where the Court suggested the first and fourteenth amendments protect the individual’s freedom of thought, which includes the right to *refrain* from speaking. The Utah statute in *H. L.* required physicians subject to state regulation and licensing to notify their minor patients’ parents. The state has the right to mandate a doctor comply with its notification requirement; this does not infringe upon the doctor’s constitutional rights. However, in Justice Marshall’s view, the constitution protects a child — as a *private* person — from being forced to communicate to her parents something she believes will be detrimental to her well being.

The Utah statute was found constitutional because it was narrowly drawn and required notification only to parents of an *immature, dependent* minor. It would seem that states wishing to structure a constitutional notification provision could do so by following the narrow parameters of the Utah statute.

51. See also Miami Herald, Jan. 27, 1982, at 15A, cols. 4-6: “If the draft of the regulation (now in committee) is finalized HHS [Department of Health and Human Services] will be able to force any family planning clinic to send a notice to the parents of a minor seeking prescription birth control. In effect parents would be getting a report . . . that their children are sexually active. [W]ould the threat of clinic-as-informer result in more teenage pregnancies? Teenagers who don’t talk with their parents can either avoid the clinic or lie about their identity. [Parents] . . . want to be advised [but] whatever our anxieties, the Federal Government cannot mandate family communication.” *Id.*

52. 450 U.S. at 454.

53. 430 U.S. 705, 714 (1977). See also, Note, *The Spousal Notice and Consultation Requirement: A New Approach to State Regulation of Abortion*, 6 NOVA L.J. 457 (1982).

IV. How Long Do Ladies in Waiting Have to Wait?

The question of waiting periods as constituting an undue burden on the right to an abortion, for both adults and minors, has left the courts divided. In a recent case, *Planned Parenthood of Kansas City v. Ashcroft*,⁵⁴ the United States Court of Appeals for the Eighth Circuit found a forty-eight hour waiting period unconstitutionally long. The court based its decision on the fact that the waiting period necessitated two separate visits to the clinic or physician with concomitant additional time and expense. In addition, the court stated waiting periods increase “delay, and delay increases the risk to the woman.”⁵⁵

In contrast, in *Akron Center for Reproductive Health v. City of Akron*,⁵⁶ the district court found that even though a twenty-four hour waiting period made the abortion decision more expensive, the increased cost was not so great that it would burden a woman's *decision* to have an abortion. As a result, the court did not invoke strict scrutiny, nor require a compelling state interest. The waiting period requirement in *Akron*, for example, heavily burdens those girls who cannot afford two trips to a physician or to a clinic which may be far from home, and who can ill afford to lose time from school or their job. Additionally, there is a burdensome physical and emotional cost to the patient who must wait those twenty-four hours after consulting with her physician.⁵⁷ Other courts have suggested that these burdens do require strict scrutiny.⁵⁸

V. *Scheinberg v. Smith*

The effect of many of these precedential decisions was weighed

54. 655 F.2d 848 (8th Cir. 1981).

55. *Id.* at 866. *See also* *Women's Medical Center of Providence Inc. v. Robert*, 50 U.S.L.W. 2483 (Jan. 15, 1982). (Twenty-four hour waiting period held invalid).

56. 479 F. Supp. 1172 (N.D. Ohio 1979).

57. 627 F.2d 785.

58. *See also* *Wolfe v. Schroering*, 541 F.2d 523, 526 (6th Cir. 1976). Similar waiting periods occurred in *Charles v. Carey*, 627 F.2d 772 (7th Cir. 1980), wherein the court stated that “these women will be subject to . . . inconvenience, expense, and additional anguish attending this rigid requirement.” *Id.* at 785. As a result, the twenty-four hour waiting period was stricken.

heavily in the fifth circuit's construction of the *Medical Practice Act*,⁵⁹ as enacted by the Florida legislature in 1979. The act included several subsections regulating abortion conditions for both married and unmarried women. Subsection (4)(a) delineated state requirements for notification to and consent of parents of minors who wished to obtain abortions.⁶⁰ The statute provided that in order for an unmarried minor to be permitted an abortion, she must have "either the written informed consent of a parent, custodian, or legal guardian or an order from the Circuit Court."⁶¹ Failure to comply with these provisions exposed physicians performing abortions to state criminal penalties: "any person who willfully performs, or participates in, the termination of a pregnancy in violation of the requirements of this section is guilty of a felony. . . ."⁶²

Although the constitutionality of notice and consent requirements had been addressed by the United States Supreme Court in *Bellotti v. Baird*,⁶³ the Florida court had not addressed the constitutionality of its statute until subsection (4)(a) was challenged by Dr. Mark D.

59. FLA. STAT. § 390.001(4) (1981).

60. *Id.* This section reads:

(4) Prior to terminating a pregnancy, the physician shall obtain the written informed consent of the pregnant woman or, in the case of a mental incompetent, the written consent of her court-appointed guardian.

(a) If the pregnant woman is under 18 years of age and unmarried, in addition to her written request, the physician shall obtain the written informed consent of a parent, custodian, or legal guardian of such unmarried minor, or the physician may rely on an order of the circuit court, on petition of the pregnant unmarried minor or another person on her behalf, authorizing, for good cause shown, such termination of pregnancy without the written consent of her parent, custodian, or legal guardian. The cause may be based on a showing that the minor is sufficiently mature to give an informed consent to the procedure, or based on the fact that a parent unreasonably withheld consent by her parent, custodian, or legal guardian, or based on the minor's fear of physical or emotional abuse if her parent, custodian, or legal guardian were requested to consent, or based upon any other good cause shown. At its discretion, the court may enter its order ex parte. The court shall determine the best interest of the minor and enter its order in accordance with such determination.

61. 482 F. Supp. at 532.

62. FLA. STAT. § 390.001(10) (1981).

63. 443 U.S. 622.

Scheinberg in a class action suit on behalf of “all unmarried minor pregnant women desiring to terminate their pregnancies,”⁶⁴ and on behalf of their physicians. The United States District Court for the Southern District of Florida found that subsection (4)(a) unconstitutionally infringed upon a minor’s right to privacy in her abortion decision.⁶⁵

The Fifth Circuit Court of Appeals affirmed the district court in striking down subsection (4)(a). The appellate court found the issue had been resolved by *Bellotti* and held that although judicial authorization or parental consent *may be required* by a state before it permits an unmarried minor to obtain an abortion, a judge *must* allow the abortion if the minor “satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own.”⁶⁶ Even if the minor fails to demonstrate this maturity, the court *must* permit the abortion if it decides this measure would be in the best interests of the minor.⁶⁷ The appellate court found subsection (4)(a) “mandates that a Florida court base its authorization of a minor’s abortion on what it finds to be the best interests of the minor, without regard to the minor’s maturity. Thus the provision runs directly afoul of *Bellotti*. . . .”⁶⁸ The unconstitutional section, which placed the entire decision upon the judge where parental consent was not obtained, ignored the emancipation, intelligence or ability of the minor to understand and cope with the consequences of her situation. Because the language of the subsection was deemed mandatory (“the court *shall* determine the best interest of the minor and enter its order in accordance with such determination”)⁶⁹ the subsection failed. Had the statute required judicial determination of the minor’s best interests only in cases of immature, unemancipated minors, the statute may have escaped the fatal flaw of being overinclusive.

64. 482 F. Supp. at 532 n.7.

65. *Id.* at 540.

66. 443 U.S. at 647.

67. *Id.* at 647-48.

68. 482 F. Supp. at 532.

69. FLA. STAT. § 390.001(4)(a) (1981).

Conclusion

The abortion cases demonstrate the still evolving constitutionally recognized right of privacy. The middle line drawn by courts protects certain values considered basic to constitutional rights. Within this framework, judicial decisions have recognized that unwanted teenage pregnancies threaten family and social stability.

Since the decision to have an abortion is primarily one of medical concern⁷⁰ and personal morality, the courts and legislatures should refrain from imposing moral judgments on, and impediments to, the exercise of this private, personal decision. The state's deference to familial privacy is a consideration weighty enough to overcome any interest the state might have in trying to enforce a parental veto over the minor's abortion decision. Minors, as well as adults, should have the right to control the reproductive processes of their own bodies. If a minor, in consultation with a physician, makes the decision to abort within the "safe" first trimester, the state should not interfere.

Judith L. Weinstein

70. *Colautti v. Franklin*, 439 U.S. 379, 387 (1979).