

No. 20-1375

IN THE
Supreme Court of the United States

KRISTINA BOX, COMMISSIONER, INDIANA
DEPARTMENT OF HEALTH, *et al.*,

Petitioners,

v.

PLANNED PARENTHOOD
OF INDIANA AND KENTUCKY, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**BRIEF FOR *AMICI CURIAE*, EIGHTY-EIGHT
WOMEN WHO UNDERWENT ABORTIONS
AS MINORS AND SUFFERED HARM,
IN SUPPORT OF PETITIONERS**

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INTERESTS OF AMICI CURIAE¹

This brief is filed on behalf of amici curiae Lisa S., Rochelle B., Nona E., Dr. Dianne H., Donna J., Lisa W., Joan S., Mary Anne S., Helen, Charlene H., Bonnie L., D.L., Paula P., Heather S., Nancy, Heather R., Victoria, D.R., Naomi K., L.H., Holly, P.R., Christine W., G.N., Jenny, Lucinda F., Simone T., Winnifred B., M., Z.R., Angela W., Donna, Virginia, Kim B., Phyllis, Marcia, J.O., Lisa, Susan, Christin R., A.D., Deann O., Christine P., Erika, C.S., Stephanie A., Teresa, Selena, B.L., Tammy L., Laurie, Shelly R., Karen, Michele B., Theresa C., Annette, P.S.J.M., Tammy J., K.J., Vickie E., Renee, Kristal T., Patricia L., M.H., C.H., Janet, Monica, Beverly S., S.D., Stephanie L., Christi D., Stacey, J.W., Marsha H., Betsy D., Julie E., Adrienne, Dion R., Becki, T.W., Linda H., D.C., S.B., Sharon F., Linda J., K.D., Melinda Z., B.H. and Lyssa K.

As discussed in greater detail *infra*, amici are eighty-eight (88) women who underwent abortions as minors who subsequently experienced a litany of human suffering arising from their abortions, including profound physical, mental and emotional harms.² Many of them were

1. Pursuant to Rule 37.6, counsel for amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), the parties were timely notified that amici intended to file this brief and have consented to its filing.

2. The affidavits of Lisa S., Rochelle B., Nona E., Dr. Dianne H. and Donna J. can be found here: https://www.dropbox.com/sh/9pdkabde6huqkqj/AACdQvIOGweQB6DKRYo5_PR1a?dl=0 The affidavits of all other amici can be found here: <https://www.dropbox.com>.

pressured into the abortions by people in their lives as to whom there is no basis for believing they were acting in the best interests of amici, rather than serving their own conflicting self-interests. People who influenced amici's abortion decisions included, among others, their boyfriends, their boyfriends' parents, their rapists, and abortion clinic workers.³

Amici include Lisa S., who was sixteen when she became pregnant. Her boyfriend's mother, who was also a teacher at Lisa S.'s school, took her to Planned Parenthood. There, a "counselor" told Lisa S. that her parents did not need to know about her pregnancy, encouraged her to abort and discouraged her from putting the baby up for adoption. Lisa S.'s boyfriend and boyfriend's mother agreed with the Planned Parenthood "counselor" that she should lie to her parents. Lisa S. resisted getting an abortion, but the boyfriend and his mother pressured her. The boyfriend's mother even pulled Lisa S. out of class one day, cried and told Lisa S. "[the boyfriend's mother] was worried about what it would do to her son's football career." Lisa S. gave in to the pressure from her boyfriend and the boyfriend's mother and went forward with the abortion.

She regrets her decision and supports parental notification of abortion. If such a requirement had been

[com/sh/21wzrjtsee2ad30/AAD-btx-xqCXZlgjA0bmfm-Ka?dl=0](https://www.dropbox.com/sh/21wzrjtsee2ad30/AAD-btx-xqCXZlgjA0bmfm-Ka?dl=0) The affidavits detail amici's individual experiences of the harms caused by abortion.

3. The affidavits of amici who reported being pressured into their abortions by persons who were not their parents can be found here: <https://www.dropbox.com/sh/6guvumgdwhv2bqk/AAAX6dWCWPthabW9a2t-JTyga?dl=0>

in place at the time of her pregnancy, there would not have been a question of whether she would have told her parents and it would have been harder for her boyfriend and boyfriend's mother to "railroad" and "manipulate" her into doing something she wasn't comfortable with and which she regrets.

Rochelle B., another of the amici on whose behalf this brief is filed, underwent an abortion at age 17 without her parents' knowledge or consent. Although she acknowledged that if her parents knew of her pregnancy she might still have had an abortion, if they had known, she would have had the benefit of their advice and perspectives to help her in her decision-making. If they been notified before her abortion, things might have turned out differently in her life. As it is, she underwent her first abortion at age 17 and a second at age 19, but was subsequently unable to successfully carry a baby to term.

Amicus, Nona E., became pregnant at age 15 when her boyfriend coerced her into sexual intercourse. Nona E.'s mother and sister took her for the abortion, but Nona E.'s mother was not allowed into the "counseling" session that preceded her surgical abortion. Because of that, her mother was not present when Nona E. was told that, due to her small stature, she might not be able to have children after the abortion. As Nona E. was being given a sedative, her mother tried to enter the room, Nona E. believes to try to stop the abortion, but Nona E.'s mother was told she had to leave. Among numerous other negative repercussions arising from her abortion, because of damage caused during the abortion, Nona E. suffered five (5) miscarriages, three (3) of which involved ectopic pregnancies. Her last pregnancy ended in a tubal

rupture that almost killed her. She has lived with, *inter alia*, a life-time of regret and depression and attempted on multiple occasions to take her own life. Nona E. was never able to have children, to her great sorrow today.

Nona E. supports parental notification as a safeguard against decisions by adolescents who are subject to peer pressure from friends and boyfriends and who fail to understand the life-long implications of abortion. She believes if her mother had not been excluded from the session at which it was disclosed that infertility might be a consequence of Nona E.'s abortion, the abortion would not have proceeded.

When amicus, Dr. Dianne H., was 16, she became pregnant. After discussing the situation with a friend their age, but without discussing the pregnancy with either her parents or her boyfriend's parents, she and her boyfriend decided to abort the baby. At the abortion clinic, she was told the baby was "a blob of tissue." At the abortion clinic, there was neither discussion of other options nor an explanation of what the abortion procedure "really entailed."

Dr. Dianne H.'s decision to abort haunts her to this day. She has experienced, among other problems, anxiety, depression and the symptoms of Post-Traumatic Stress Disorder ("PTSD"). She supports parental notification because, based on her training and qualifications, including her status as a licensed professional mental health counselor and certified clinical trauma professional, she knows that at 16 she lacked sufficient cognitive development to make the decision to abort her baby.

Donna J., another of the amici submitting this brief, became pregnant when she was 16 and decided to keep the baby. However, because she was a ward of the state of Tennessee, her choice was disregarded. The state sent her for a visit with her mother, who had lost custody of her years prior due to the mother's lack of fitness. On the trip, her mother took her for an abortion, without any notification to Donna J.'s father, to whom the mother had previously lost custody. Donna J. subsequently suffered depression, multiple suicide attempts, and drug and alcohol abuse. She supports parental notification because, if the state had notified her "fit" parent (her father), or even the parents of the father of the baby, there would have been a different outcome for Donna J., her baby and the father of the baby.

SUMMARY OF ARGUMENT

Amici submit this brief to urge the Court to grant the petition for certiorari. In support thereof, they seek to present the Court with their personal experiences and other information establishing the significant benefits the enjoined statutory parental notification provision provides to unemancipated minors for whom the court has authorized an abortion via a "judicial bypass." At issue is the validity of a statute requiring parental notification before an abortion, when a court has already authorized an abortion for an unemancipated minor without parental consent (either because the minor has been found mature enough to make the abortion decision or the court has made a determination that an abortion is in her best interests.) *See* Ind. Code §16-34-2-4. Under the terms of the statute, notification is excused if the court has made a finding that such notice would contravene the minor's

best interests. *Id.* While preserving the minor's decision to undergo an abortion, the notification requirement furthers important rights and interests of the minor and the minor's parents.

Given the exclusion from the notification requirement of parents as to whom the court determines such notification would not be in the minor's best interests, presumptively the response to notification will come from parents acting in the best interests of their child. Notification allows parents to ensure that their daughters' decisions to undergo abortion have been made freely and without the pressure of boyfriends, boyfriends' parents and others motivated by their own interests rather than the interests of the pregnant minor. It will also allow parents to protect their daughters when the pregnancy is the result of rape, sex trafficking or other criminal wrongdoing. Further, notification will provide parents with the opportunity to help their daughters select competent medical providers and provide the parents with critical medical information regarding their daughters in the event of subsequent physical complications or mental or emotional impacts.

ARGUMENT

A. Parental Notification Provides Protection For Children Pressured Into Abortion By Others Whose Interests Conflict With Those Of The Child, As Well As Protection For Those Children Who Are Abused, Raped Or Trafficked.

In situations in which parents support a child's abortion decision, the requirement at issue in this case, parental

notification of a court’s authorization of an abortion via a bypass procedure, would not impact a minor’s abortion decision (the court already having approved a decision that the parents would have approved of in any event). However, such notification would insure parents are aware their daughters are sexually active, allow parents to take steps to ensure that their daughters have access to relevant information and permit parents to determine that their daughters’ sexual activity is consensual and not the result of rape or trafficking.⁴ Additionally, notification would provide important information to parents regarding their daughters’ medical histories, particularly in the event of any subsequent physical complications or mental or emotional impacts, which this Court has acknowledged are common as a result of abortion. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 882 (1992) (acknowledging “devastating psychological consequences”); *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) (acknowledging “severe depression and loss of self-esteem”).

With respect to other parents, in addition to the foregoing benefits, the notification provides them the opportunity to discuss an already-approved abortion determination with their daughters. As discussed *infra*,

4. There is evidence that a significant proportion of women who are trafficked become pregnant as a result of the trafficking. One study conducted in the U.K. indicated that 29% of the trafficked women who participated in the study reported one or more pregnancies as a result. D. Bick, et al., *Maternity Care for Trafficked Women: Survivor Experiences and Clinicians’ Perspectives in the United Kingdom’s National Health Service*, PLoS ONE 12(11): e0187856, available here: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0187856> (last visited 5/1/2021).

adolescents are physiologically incapable of adult decision-making, and are particularly susceptible to peer pressure, irrespective of how mature they may be. Notification allows parents to confirm that their daughters have not been pressured into making abortion-decisions by boyfriends, boyfriends' parents, friends, and others who their daughters may trust, without an understanding or recognition that the interests of those individuals are conflicting with those of the minor, or any evaluation of the ability of those individuals to make a mature decision.⁵ Numerous amici experienced pressure from, among others, boyfriends or the fathers of their babies, boyfriends' parents, friends and abortion clinic workers. Two amici were pressured into getting an abortion by the men who raped them, and another was coerced by the father of the baby who was abusive. Another was pressured into getting an abortion by a nurse at the clinic that prescribed both birth control pills and an antibiotic for her. See <https://www.dropbox.com/sh/6guvumgdwhv2bqk/AAAX6dWCWPthabW9a2t-JTyga?dl=0>

5. "A significantly larger percentage of minors than adults indicated that they had sought abortion care mostly because someone else wanted them to (10% vs. 3%; $p < .05$). When asked specifically who had pressured them into seeking an abortion, most indicated their mother (57%), followed by male partners (32%), 'everybody' (7%), or another family member (*e.g.*, father, aunt, grandmother) (6%) (data not shown). Seven percent of minors were classified as having felt pushed into the abortion; this figure was significantly higher among minors than adult women (7% vs. 2%; $p < .05$)." [Citations to Table 1 of article omitted.] L. Ralph, *et al.*, *The Role of Parents and Partners in Minor's Decisions to Have an Abortion and Anticipated Coping After an Abortion*, 54 *Journal Of Adolescent Health*, 430-431 (2013).

Moreover, parental notification allows parents an opportunity to participate in ensuring that their abortions are, at the very least, performed by competent doctors. *See Bellotti v. Baird*, 443 U.S. 622, fn. 1 (1979).

B. Parental Notification Furthers The Parent’s And The Child’s Interests In Obtaining Appropriate Medical Care For The Child.

Recognized complications of abortions include “minor” (according to researchers who had not experienced them) complications, “such as pain, bleeding, infection, and post-anesthesia complications” as well as “major” complications, such as “uterine atony and subsequent hemorrhage, uterine perforation, injuries to adjacent organs (bladder or bowels), cervical laceration, failed abortion, septic abortion, and disseminated intravascular coagulation (DIC).” See K. Sajadi-Emazarova, *Abortion Complications*, National Center For Biotechnology Information (last updated 11/18/2020), available at <https://www.ncbi.nlm.nih.gov/books/NBK430793/>.⁶

The personal experience of amici confirm the wide range of physical and mental suffering women experience as a consequence of abortions performed when they were minors. Almost universally, amici experience regret, a sense of loss and guilt. Amici have also suffered from,

6. Citing: I. Carlsson, *et al.*, *Complications Related to Induced Abortion: a Combined Retrospective and Longitudinal Follow-up Study*, *BMC Women’s Health*, 18(1):158 (Sept. 25, 2018); C. Shannon, *et al.*, *Infection After Medical Abortion: a Review of the Literature*, *Contraception*, 70(3):183-90 (Sept. 2004); M. Paul, *et al.*, *Early Surgical Abortion: Efficacy and Safety*, *Am J Obstet Gynecol.*, 187(2):407-11 (Aug. 2002).

among other consequences, anxiety, depression, suicidal ideation and suicide attempts, low self-esteem, feelings of self-loathing and worthlessness, nightmares, blocked memories, flashbacks, alcohol and drug addiction, fertility problems and relationship and intimacy problems. This Court has recognized some of the devastating consequences of abortion upon women. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 882 (1992); *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007).

Moreover, there is evidence that the very concealment of the fact of an abortion may have significant negative psychological consequences. One study “found a positive association between feeling stigmatized by abortion and feeling a need to keep it a secret,” “a positive relationship between secrecy and attempts to suppress thoughts of the abortion,” with “[i]ncreased attempts at thought suppression ... in turn, positively associated with greater reports of intrusive thoughts of the abortion.” B. Major, *et al.*, *Abortion as Stigma: Cognitive and Emotional Implications of Concealment*, 77 *Journal of Personality and Social Psychology*, 735-745, 741-742 (1999). The study determined, “Both suppression and intrusion were positively associated with postabortion psychological distress, controlling for preabortion distress and for chronic predispositions to experience positive affect and negative affect.” *Id.* at 742.

This Court has acknowledged, “[T]he interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). [Citation omitted.]. The Court reaffirmed,

“It 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.” *Id.* at 65-66. [Citation omitted.] If ostensibly-protected constitutional parental rights to the “custody, care and nurture of the child” are to have any meaning, this Court should affirm that loving parents, who hold the best interests of their daughters paramount, should be permitted the opportunity to discuss abortion with their daughters, and should not be deprived of their rights to care and nurture their children simply because parental reaction upon learning of a teen pregnancy may not be an immediate trip to the nearest Planned Parenthood for an abortion.

C. Because Children Are Physiologically Incapable Of Adult Decision-making, Notification Affords An Opportunity For Discussion With Parents Who Hold Their Children’s Best Interests Paramount.

Additionally, the notification requirement will allow parents to discuss with their daughters their decisions, already approved by the Court, to abort. This is particularly appropriate and valuable in view of teens’ inability to engage in adult decision-making, no matter how mature they may be.

Doctors inform parents that, no matter how smart their teenagers may be, “Good judgment isn’t something they can excel in, at least not yet.” See <https://www.stanfordchildrens.org/en/topic/default?id=understanding-the-teen-brain-1-3051> (last visited 5/1/21). In layman’s terms, this is because, “The rational part of a teen’s brain isn’t fully developed and won’t be until age 25 or

so. In fact, recent research has found that adult and teen brains work differently. Adults think with the prefrontal cortex, the brain’s rational part. This is the part of the brain that responds to situations with good judgment and an awareness of long-term consequences. Teens process information with the amygdala. This is the emotional part.” *Id*

Scientific research confirms this to be the case. Scientists have endeavored to understand how and why adolescent⁷ decision-making is different from adult decision-making, with studies indicating adolescent decision-making is “unique.” C. Hartley, et al., *The Neuroscience of Adolescent Decision-Making*, 5 *Current Opinions In Behavioral Sciences*, 108-115, 112-113 (2015). Adolescent decision-making is different in a variety of ways from adult-decision-making. *Id*. Its uniqueness “can be partially attributed to normative maturational changes in brain function.” It is also dramatically subject to peer attitudes.⁸ *Id*. The ability of adolescents to engage in “future-oriented cognitive processes such [as] planning, or anticipating the consequences of actions continues to increase throughout adolescence.” *Id*. at 112. Quite simply, adolescents are physiologically

7. The referenced study defines “adolescence” as “begin[ning] around the time of physical puberty and end[ing] with the assumption of adult-like levels of autonomy.”

8. “[A] dolescent attunement to the social environment is perhaps even more subtle than originally thought — merely being looked at by a peer is sufficient to induce uniquely high levels of physiological arousal in adolescents and modulation of corticostriatal valuation systems.” *Id*. at 112.

incapable of “adult-like” decision-making ability. *See id.* at 113.

This Court has itself recognized, “As compared to adults, juveniles have a “lack of maturity and an underdeveloped sense of responsibility”; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.” *Graham v. Florida*, 560 U.S. 48, 68 (2010), citing *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005). This Court has also acknowledged, “[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.” *Graham*, 560 U.S. at 68. [Citations to briefs of *amici* omitted.]

Given the fundamental differences between adult and adolescent decision-making, pregnant adolescents can only benefit from discussions with their parents regarding abortion decisions previously approved by the court. This is particularly appropriate and valuable in view of the minors’ physiological inability to engage in adult decision-making, no matter how mature a court may determine they are.

CONCLUSION

For the foregoing reasons, amici urge the Court to grant the petition for certiorari.

Respectfully Submitted,

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