

No. _____

In the Supreme Court of the United States

STATE OF MONTANA, et al.,
Applicants,

v.

PLANNED PARENTHOOD OF MONTANA, et al.,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR
A WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT**

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APPLICATION

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

In accordance with Supreme Court Rules 13.5, 30.1, and 28 U.S.C. §2101(c), Applicants State of Montana and Austin Knudsen respectfully request a 60-day extension of time, to and including January 13, 2025, within which to file a petition for writ of certiorari to review the judgment of the Montana Supreme Court in this case. Because the 60-day period provided by Supreme Court Rule 13.5 lands on Saturday, January 11, 2025, it extends until Monday, January 13, 2025. *See* Sup Ct. R. 30.1 (“[T]he period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.”).

1. The Montana Supreme Court entered judgment on August 14, 2024. *Planned Parenthood of Mont., et al. v. Montana*, 2024 MT 178, 417 Mont. 457, 554 P.3d 153. App.1a-2a. Unless extended, the deadline to file a petition for writ of certiorari will be November 12, 2024. Applicant has not sought or received an extension, and this application is being filed more than ten days before the petition is due. Sup. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. §1257(a).

2. This case involves a critical question concerning the scope of parents’ “fundamental right ... to make decisions concerning the care, custody, and control of their children.” *Troxel v. Granville*, 520 U.S. 57, 66 (2000) (plurality op.). That right,

secured by the Fourteenth Amendment’s Due Process Clause, “provides heightened protection against government interference with certain fundamental rights and liberty interests,” *see Troxel*, 530 U.S. at 65 (citation omitted)—including parents’ right to make decisions concerning their minor child’s healthcare, *see Parham v. J.R.*, 442 U.S. 584, 603 (1979); *see also H.L. v. Matheson*, 450 U.S. 398, 410-11 (1981) (fundamental right to participate in minor child’s abortion decision).

3. Our constitutional system has “historically ... recognized that the natural bonds of affection lead parents to act in the best interests of their children.” *Parham*, 442 U.S. at 602. So without a reason to believe a parent is unfit, courts presume that states should not “that parent[s ability] to make the best decisions concerning the rearing of [their] children.” *Troxel*, 530 U.S. at 68-69 (2000). That presumption isn’t overcome because a parent’s decision about a child’s medical care “is not agreeable to [the] child or because it involves risks.” *Parham*, 442 U.S. at 603-04 (“[Parents] retain a substantial ... role in the decision, absent a finding of neglect or abuse, and the traditional presumption that the parents act in the best interests of their child should apply.”). Yet that presumption can be overcome on a showing of abuse or neglect, and some parental decisions about a child’s medical care may be “subject to a physician’s independent examination and medical judgment.” *Id.* at 604.

4. Before *Dobbs*, this Court held that states could not condition an unmarried minor patient’s access to an abortion—grounded then on *Roe*’s fundamental right

to privacy—on third-party consent. See *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74-75 (1976); *Bellotti v. Baird*, 443 U.S. 622, 643 (1979). After *Dobbs*, an individual’s right to an abortion is no longer grounded in federal law. But the Montana Supreme Court held that “minors, like adults, have a fundamental right to privacy, which includes procreative autonomy.” App.17a. It also concluded that conditioning a minor’s access to an “abortion on parental consent or obtaining a judicial waiver” infringes “a minor’s fundamental right to privacy.” App.18a. But this Court has explained that states “further[] a constitutionally permissible end by encouraging ... pregnant minor[s] to seek the help and advice of [their] parents in making the very important decision whether ... to bear a child.” *Bellotti*, 443 U.S. at 640-41.

5. In 2013, the Montana Legislature passed the Consent Act. It prevents a physician from performing an abortion on a minor unless a parent gives notarized consent. MCA §50-20-404(1). The consent form—which the parents sign—provides several disclosures, including what procedures may be performed on the minor and the potential risks. MCA §50-20-505. Consent may be waived if a provider certifies the minor is facing a medical emergency and there is no time to obtain notarized consent. MCA §50-20-507. Consent may also be waived by a judge if the minor can demonstrate (1) parental abuse, or (2) that parental consent isn’t in the minor’s best interest. MCA §50-20-509. The district court found the law unconstitutional, App.4a-5a, and the Montana Supreme Court affirmed, App.35a-36a.

6. The decision below is egregiously wrong, and it highlights the need for this Court’s guidance on the scope of a parent’s right to direct their child’s healthcare decisions. That is, whether parents’ fundamental right, secured by the Fourteenth Amendment’s Due Process Clause, to direct their child’s medical care prohibits a state from presumptively excluding parents from an unmarried minor’s abortion decision.

7. The court flipped the presumption that parents act in the best interest of their minor children on its head and instead presumed that requiring minors to seek parental consent would lead to family conflict. App.30a-32a. That is, because the Consent Act confers a “unilateral veto power” over the minor’s exercise of their fundamental right, any time the parent exercises their right, the family is in conflict. App.31a. So the parents’ fundamental right is no more than a right to validate a minor child’s decision to have an abortion. *But see Parham*, 442 U.S. at 603 (courts presume “that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions”). And the court ignores the Consent Act’s bypass procedure that allows the minor to get an abortion if the parents are either abusive or if their denial of consent isn’t in the minor’s best interest.

8. Given the nationwide focus on state abortion rights after *Dobbs*, similar conflicts between minors’ fundamental right to privacy under state law and parents’ fundamental right to direct their minor child’s healthcare are bound to recur with greater frequency. For example, the Fifth Circuit recently explained that the

Fourteenth Amendment generally secures a right to “consent to his children[] receiving contraceptives.” *Deanda v. Becerra*, 96 F.4th 750, 757 (5th Cir. 2024); *see also id.* at 758 (collecting cases establishing the “Fourteenth Amendment [parental] rights [the] courts have traditionally protected” as “part of our ‘enduring American tradition’” (citation omitted)). And some states expressly exclude parents from their child’s abortion decisionmaking process. *See, e.g.*, Cal. Const. art. I, §1.1. This Court’s guidance is needed to police the boundaries of these conflicts, and this case provides an opportunity to address the scope of parents’ fundamental rights.

9. Between now and the current due date of the petition, counsel has substantial obligations in other pending cases, including drafting a responsive pleading and preparing a joint discovery plan in *Free Speech Coalition, Inc., et al. v. Knudsen*, No. 9:24-cv-00067-DWM (D. Mont.); drafting an amicus brief supporting the appellees in *National Association for Gun Rights, et al., v. Garland, et al.*, No. 24-10707 (5th Cir.), and drafting an amicus brief in support of the petitioners in *Smith & Wesson Brands, Inc., et al., v. Estados Unidos Mexicanos*, No. 23-1141 (U.S.).

10. Applicants request an extension to decide whether to file a petition for certiorari and to prepare a petition that fully addresses the important issues raised by the decision below. Applicants respectfully requests that their time to file a petition for writ of certiorari be extended to and including January 13, 2025.

DATED: October 29, 2024

/s/ Peter M. Torstensen, Jr. _____

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