In the

Supreme Court of the United States

FRANCIS X. BELLOTTI, Attorney General of Massachusetts, et al., Appellants,	:	
v.	:	No. 75-73
WILLIAM BAIRD, et al., Appellees.	:	
- - - and - - -		
JANE HUNERWADEL, etc., Appellants,	:	
v.	:	No. 75-109
WILLIAM BAIRD, et al., Appellees.	:	

Washington, D. C.
March 23, 1976

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--- and --- JANE HUNERWADEL, etc., Appellants v. WILLIAM BAIRD, et al., Appellees.	No. 75-109

Washington, D. C.,

Tuesday, March 23, 1976.

The above-entitled matter came on for argument at 11:11 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

S. STEPHEN ROSENFELD, ESQ., Assistant Attorney General of Massachusetts, 373 State House, Boston, Massachusetts 02133; on behalf of Bellotti, et al.

BRIAN A. RILEY, ESQ., Suite 524, 40 Court Street, Boston, Massachusetts 02108; on behalf of the Intervenor.

ROY LUCAS, ESQ., Lucas & Stoltz, Suite 250, Federal Bar Building West, 1819 H Street, N. W., Washington, D. C. 20006; on behalf of the Appellees.

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C O N T E N T S

[Afternoon Session - pg. 42]

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in 75-73, Bellotti, the Attorney General of Massachusetts, against Baird; and 75-109, Hunerwadel against Baird.

Mr. Rosenfeld, you may proceed whenever you're ready.

ORAL ARGUMENT OF S. STEPHEN ROSENFELD, ESQ.,

ON BEHALF OF BELLOTTI, ET AL.

MR. ROSENFELD: Mr. Chief Justice, and may it please the Court:

This is an appeal from the order of a three-judge court in the District of Massachusetts.

The majority of that court enjoined the defendants from enforcing Mass. General Laws, Chapter 112, Section 12P and related sections.

The majority also declared that Section 12P was unconstitutional on its face.

This statute was originally enacted on August 2nd, 1974, and it provides that before an unmarried minor -- in this case a child under eighteen -- may obtain an abortion. The physician involved must obtain both her consent and the consent of her parents.

Importantly, if either parent refuses, a State court judge is explicitly authorized by the statute to give his consent for good cause shown.

The action was brought by the plaintiffs on October

30th, 1974, the day before Section 12P was to go into effect, and the principal plaintiffs were Gerald Zupnick, a physician performing abortions; and two pregnant minors who were seeking abortions with the knowledge of their parents.

A single judge entered a temporary order restraining the enforcement of 12P, convened a three-judge court, and subsequently granted intervention to parents of unmarried minor daughters in Massachusetts; and those intervenors are represented today by Mr. Brian Riley, whose argument will follow mine.

The three-judge court, after four days of hearing, issued its opinion on April 28th, 1975. And the majority found the section unconstitutional on its face, because it invaded fundamental privacy interests of minors.

The court acknowledged that all the experts, both the plaintiffs' experts and the defendants' experts, believed that parental involvement was very important and helpful to the child at this crucial time.

The court, however, construed the statute on its own, and found that in its view the statute created parental rights that were independent of the interest of the child. Therefore, asserted the court, the parents would be authorized under the statute to refuse consent in order to punish the child or for other misguided reasons.

QUESTION: Did the three-judge district court have the benefit of any State court construction in reaching that

interpretation of the statute?

MR. ROSENFELD: No, it did not, Your Honor, because the statute in fact had never been allowed to go into effect and no case had therefore come up to the State court.

QUESTION: Did the three-judge court give any consideration, or was it asked to give any consideration to abstaining in order to permit the Massachusetts courts to interpret the meaning of the statute?

MR. ROSENFELD: It was asked to abstain, Your Honor, and it decided that such abstention was unnecessary, without giving reasons therefor.

It would be our view that, quite apart from abstention, the existence of the judicial review provision provides the opportunity for a narrowing construction in the State court, and therefore justifies a finding that at least on its face the statute is not invalid, because of this opportunity for a narrowing construction.

QUESTION: Well, then, you say, in effect, that even though the three-judge court had not abstained, the -- it was obligated to construe the State statute more narrowly than it did?

MR. ROSENFELD: I'm suggesting that there were alternatives, Your Honor; it could have abstained, but even if it decided this was the kind of case that it should decide on the merits, since the only attack was a facial attack, the

existence of a good cause provision for the State court to grant consent was sufficient basis for finding that, at least on its face, the statute was valid because a State court utilizing common-law principles well established in Massachusetts might narrow the statute to come within constitutional limits.

QUESTION: So you say the three-judge district court should have left the statute standing and in particular cases perhaps there might have been an unconstitutional application, but it would be sufficient for that evil for the day, so to speak?

MR. ROSENFELD: That's right, Your Honor.

On this very point, the district court found that the provision in the statute for consent to the abortion by a State court judge would not protect the child's privacy interest because, again in the district court's view, it was part of a statute enacted for the benefit of parents and not for children.

QUESTION: Could the parents of a twelve or 13-year-old girl compel the child to have an abortion? Under the Massachusetts statute.

MR. ROSENFELD: I would say, Your Honor, that that would be -- that would certainly be consent and that, therefore, the abortion --

QUESTION: Well, doesn't the statute contemplate

that the child is first seeking the procedure, --

MR. ROSENFELD: Yes, that's right.

QUESTION: -- and the parents are second.

Now, suppose a situation where the child takes no position at all, perhaps is not capable of making any; may the parents go to the doctor, and the child has nothing to say about it?

MR. ROSENFELD: Not on the face of the statute, Your Honor, because on -- the statute requires that the physician obtain the consent of both the minor and her parents. So it contemplates that, at least in the first instance, the judgment of the child will be taken into account.

But, in addition, the judgment of the parents will also be given the opportunity to participate in the decision for the minor's abortion.

QUESTION: In what other areas under Massachusetts law is the consent, the affirmative consent of a minor required to be given?

MR. ROSENFELD: Your Honor, there are a number of provisions -- in fact they are set out in our dissent to the district court's opinion, in a footnote. They deal in areas of adoption and various kinds of licenses, the consent of a -- the consent of parents is required.

Specifically, Your Honor, as an example, no child -- in the adoption of a minor child, the consent of both that

minor child and the natural parents is required before the adoption can be approved by a State court.

The final point I wanted to make about the district court's opinion is that the district court found that parental consent was unnecessary; because, in the Court's own words, a substantial number of minor females on their own were capable of informed consent about whether or not to have an abortion.

Today, in our argument, the State will focus briefly on three issues.

First, the rights and interests of parents and child under the Fourteenth Amendment and Section 12P;

Second, the State's interest in enacting 12P; and

Finally, the important role that the statute gives to the State court to authorize the consent or to authorize an abortion for good cause shown, where individual circumstances so suggest.

The State's view of the daughter's rights and the parents' interest are decidedly different from either the plaintiffs or the intervenors or the district court.

With regard to parents, contrary to the district court and to intervenors, the State does not believe that this statute or any other source in law gives parents the right to refuse consent for reasons other than the child's well-being.

We do believe that parents have an interest, the interest in assessing what will best serve the child's needs.

The parents' interest, we believe, is a derivative one, and is entirely a function of their greater relative capacity for judgment.

Thus, we believe it was wrong for the district court to separate out and exalt what it labeled as parental rights.

With regard to minors, we believe that minors have a constitutionally protected interest in privacy, and it includes the abortion decision.

However, in legislation affecting minors, the State may take account of differences in capacity between minors and adults, and enact broader legislation for minors.

In other words, it is the State's position that adults and children both have rights of privacy protected by the Constitution; but the State may pursue different and important interests when legislating specifically for minors.

Turning to the interests of the State which justify the requirement of parental consent, they are as follows:

First, the statute seeks to support the role of the family in a situation where the need for family and family support is plainly called into play. It assumes not that parents will be punitive, but that they will be supportive and assist.

QUESTION: That goes to the fact even if the girl is living away from home, on the other side of town, and hasn't seen her parents for the last three years?

MR. ROSENFELD: Your Honor, in Massachusetts --

QUESTION: You want to preserve that?

MR. ROSENFELD: No, this statute will not, Your Honor, because -- because of the provision for consent by a State court for good cause shown, we believe that the common law principle of the freedom or emancipation of the minor would be affected.

QUESTION: Well, I'm only talking about this. Your idea is you want to keep the family together.

MR. ROSENFELD: Where it is together --

QUESTION: Well, this applies to all, whether they're together or not.

MR. ROSENFELD: It applies, in the first instance, to all, Your Honor.

QUESTION: That's right.

MR. ROSENFELD: Yes, that's right.

We believe that nothing in the record establishes the contrary proposition, to the fact that parents will be supportive where the family unit exists.

The second --

QUESTION: But the plaintiff in this case was alleged to be residing with her parents, though.

MR. ROSENFELD: That's quite right, Your Honor; she was residing with her parents.

The second State interest is its health and welfare

interest, in insuring participation in decisions about a minor's abortion by those who know best from medical and emotional history. It's an effort to guarantee that this history will be brought to bear on the abortion decision.

Some parents may object, not to the abortion itself but to the conditions under which it is performed.

For example, taking from the record, there may be instances, indeed are instances, where abortions are performed on minors with little or no counseling; or where that counseling goes on, it goes on in groups, with no opportunity for individual understanding of the plight of the particular minor.

Often it may happen, and does happen, that physicians will perform abortions with no prior knowledge of the child and possibly an inadequate knowledge of her prior medical or emotional history.

QUESTION: Well, at page A-23 of the Jurisdictional Statement, the dissenting opinion in the footnote, the doctor's response was that usually it's the first time he's met the person when he walked into the room to perform, as he said, I guess it was an average of half a dozen or more abortions at one session.

MR. ROSENFELD: Usually --

QUESTION: Now, is there some -- with a minor, is there some consultation by some other counseling person that

precedes that?

MR. ROSENFELD: Your Honor, in all cases there is a -- as the record shows, an hour of prior conversation with adults and minors mixed together in --

QUESTION: But not with the -- not with the physician.

MR. ROSENFELD: Not with the physician. Although the record suggests that on occasion the physician may participate to some degree, but the usual situation is that the physician sees the child for the first time when she comes in to actually have the surgery done.

QUESTION: Well, one way for the State to attack that problem would be to require that a physician consult with the patent, is it not?

Rather than to go about the way they've done it.

MR. ROSENFELD: That is one method, Your Honor, assuming that the patient would be in the position to be able to appreciate and make a judgment with regard to the abortion decision.

And, as we say, this interest is one of a number of interests that we think that -- that the State is pursuing in enacting Section 12P.

We believe that the parents might fairly condition an abortion on having that abortion done not under the circumstances that I've just described, but under the circumstances

that exist and are available in the City of Boston; for example, at the Beth Israel Hospital, as is also reflected in the record.

We believe that the health and welfare interest of the State here goes beyond its support of the family unit. This interest I am now speaking of is usually characterized as parens patriae. It's the State's own independent concern for protecting the minor.

Now, the State recognizes that neither this concern nor its concern for family would justify an outright prohibition of abortion, as was the case with the Texas statute in Roe v. Wade. Such a --

QUESTION: Am I correct in understanding this case, for your Massachusetts statute, is different from the Missouri one, and that it requires the consent of both parents -- not just one.

MR. ROSENFELD: It does, Your Honor, that is a difference.

QUESTION: So that here, then, one parent has absolute veto power?

MR. ROSENFELD: Well, we disagree that the veto power is absolute, but both parents do have the power over the consent --

QUESTION: Even though they were separated?

MR. ROSENFELD: No, Your Honor. If they were -- if they were separated but not divorced, the statute is unclear

as to what the situation would be in that instance, but the statute makes plain that, where required, or in appropriate circumstances, one guardian, if you will, will do.

And again we underscore the importance of the State court good-cause provision, to deal with the individual circumstances, such as you have suggested. We feel that in this area, individual circumstances are the norm and not the exception, and that a statute must take account of that -- any statute must take account of that by giving some flexibility and an opportunity for construction consistent with the Constitution, the State's interest and the interest of the child.

QUESTION: Mr. Rosenfeld, --

QUESTION: Let me see if I have this straight. You say if parents are separated, that the consent of only one is necessary?

MR. ROSENFELD: I'm saying that on its face the consent of both would be necessary, because you've used the word "separated" rather than "divorced". But that if the -- I believe that if the separation were, if you will, a divorce in fact, this certainly would be -- I believe it would be sufficient, given the statute for the consent of one parent to suffice; and the provision for State court involvement is there on the face of Section 12P.

QUESTION: I thought the phrasing was "if the parent

were deceased or has deserted his or her family, that then only the consent of one would be sufficient".

MR. ROSENFELD: That's right, yes.

QUESTION: But if they are merely separated, it doesn't seem to me to tie into your statute very --

MR. ROSENFELD: Well, it certainly fit, the word "deserted", on its face. And I'm not suggesting that the statute as written would guarantee that the consent of only one parent would suffice in that instance.

I believe, Your Honor, that the Legislature, in enacting any statute, can only deal specifically with so many situations, and the responsibility beyond that is to provide a process whereby additional individual circumstances can be dealt with to avoid the rigidity and overbreadth that would otherwise be the case.

It's important, in our view, to note, Your Honor, that this is the only statute of all the parental consent provisions dealt with by lower courts that provides explicitly for the involvement of the State court, and provides that the State court, quite apart from what the parents have done, may provide consent.

And I want to turn now, Your Honor, to that judicial review provision. We believe that in the end the State recognizes that there has to be a process to focus directly on the child's interest and privacy. And by giving

the State court a role, the State believes that Section 12P provides the kind of flexibility and satisfies this need to take account of individual circumstances.

There are specifically two common-law principles that the State court is likely to use in applying 12P's good-cause standard.

First is the mature minor rule. It's a well-established common law rule in Massachusetts that when the minor shows the capacity for informed judgment, the rationale for parental consent ceases, and the court should authorize an abortion. It's important to point out that with this common law rule, Your Honor, this is not a conclusive or irrebutable presumption that the statute sets up, it's a rebutable presumption, and the process is provided whereby that presumption can be rebutted.

The second common-law principle is the court's independent responsibility to act in the child's best interest. Even if the mature minor rule does not apply, the common law compels in Massachusetts that the consent be given if the court, making its own independent assessment, finds that abortion would be in the child's best interest.

We believe, in light of these principles, that there is good reason to believe that the statute will be applied faithful to the Constitution.

The State submits that it should be given the

opportunity to exercise its police power within these self-imposed limits. That these --

QUESTION: Mr. Rosenfeld, does the statute tell us anything about the procedure to be followed at such a hearing? For example, are the parents of the mother entitled to notice and to participate?

MR. ROSENFELD: The statute does not speak specifically to those items. It does suggest that no guardian ad litem need be appointed --

QUESTION: For the mother.

MR. ROSENFELD: -- for the pregnant minor to have the process that the statute provides.

QUESTION: Well, would you construe the statute as permitting the pregnant minor to go before the court without giving notice to her parents, and thereby --

MR. ROSENFELD: Yes, we would, Your Honor; and we speak to this in our brief specifically. We believe that since the statute says that common-law rights are preserved, and since the common law provides this opportunity for the minor child in consent situations, that the minor could attempt to go into court; and it would be up to the court, as part of its good-cause decision, to decide whether or not the parents need be consulted in the first instance.

And of course there is also provision for anonymity in the State courts.

QUESTION: But you're then suggesting that that decision can be made without the benefit of the family history, which you suggested was the reason for the parental consent.

MR. ROSENFELD: Well, only, Your Honor, only if a State court judge, familiar with these kinds of cases, were to exercise his judgment in that regard. And I don't believe that any general rule, any inflexible rule can be stated that -- that would dictate an outcome in one direction or the other.

What I do believe is that the difficulty of these questions does not compel a conclusion that the State has no role in the area of protecting minors and protecting the minor's best interest. And we believe that's what the State has done in this statute.

QUESTION: But it is the view of the State, if I understand you correctly, then, that the interests of the pregnant minor's parents is insufficient to entitle them to notice in a hearing of this kind?

MR. ROSENFELD: No -- excuse me, Your Honor. What I suggested is that if a child went into State court saying that in this instance the individual circumstances were such that it would be damaging to notify the parents, because of some individual circumstance, the State court would have to decide, first, the threshold question. It would have to decide, before deciding whether or not to consent to the abortion, would have to decide whether or not the parents

should be notified, and whether or not the hearing should be held.

We believe that the statute must say, suggest that in most instances the parents should be notified. Indeed, that is the policy of the statute. I'm saying there may be that rare occasion where it would be -- the State court judge might decide it is unnecessary or in fact harmful to inform the parents; and in that case, the State court might proceed to the next question. That is, whether or not to grant its consent to the child's abortion.

QUESTION: Mr. Rosenfeld, how does this statute change the common law of Massachusetts, if at all?

MR. ROSENFELD: Well, Your Honor, this statute, we believe, codifies the common law. We believe, for example, that the two parent requirement is one of long existence in Massachusetts. We believe it is a codification --

QUESTION: In other words, your answer is that it doesn't change the common law?

MR. ROSENFELD: It doesn't. But I have an additional point, Your Honor. Of course it provides for a fine, a criminal fine, and there was no provision for a fine at common law. It does not provide for any jail sentence, I might add.

One additional point, if I may, Your Honor: There was a statute passed in the last six months which deals with consent, and it's raised in the plaintiffs' submission to the

Court.

QUESTION: Which does change the common law --

MR. ROSENFELD: That does change the common law.

QUESTION: -- as to other surgical procedures for a minor.

MR. ROSENFELD: It does, Your Honor. I frankly -- I think the record is inadequate to deal with that statute here, and I think the statute that has been passed is an ambiguous one, and I believe that this Court should deal with the constitutionality of one statute at a time.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Mr. Riley.

ORAL ARGUMENT OF BRIAN A. RILEY, ESQ.,

ON BEHALF OF HUNERWADEL, ETC.

MR. RILEY: Mr. Chief Justice, members of the Court:

At the outset we wish to make it clear that this is not an abortion case in our mind, but, rather, deals with the issues of medical treatment of minors and informed consent.

The fundamental issue raised by this appeal is whether parents would be given the opportunity to exercise their right and duty, to guide and protect their children in medical decisions.

This includes abortions as well as all other medical decisions.

The Intervenors submit that Roe vs. Wade and Doe vs.

Bolton lend no support to the plaintiffs' contentions. Wade and Bolton involved an adult woman's right to effectuate a reasoned and informed decision to terminate a pregnancy. These cases concerned adult women, who have always been considered capable of giving a valid and informed consent to medical treatment.

In the present case, however, we are concerned with minors. Minors have always been deemed incapable, as a class, of giving an informed consent to medical treatment.

The Court in Bolton held that an abortion is merely a medical procedure and should not be differentiated from other medical procedures. The same is true of minors who seek medical treatment. They should not be treated differently than minors who seek other forms of medical treatment.

The lower court acknowledged this fact when it held that Dr. Zupnick could not legally perform abortions on minors that were incapable of giving an informed consent.

The lower court found, however, that it was -- that it's significant that there were a certain number of minors who were capable of in fact giving an informed consent.

The court, nevertheless, found that in determining whether a particular minor is or is not capable of giving an informed consent, that there would be factual questions to weigh in each case.

The essence of this appeal is: Who should weigh these

factual questions? Who should determine whether a particular girl is capable of giving an informed consent? Who should assist her in this decision-making process? Should it be the doctor? Should it be her parents? Or should it be a judge of the Superior Court?

The Intervenors submit that the parents, at least in the first instance, should aid her in this decision. This is in accord with a long line of decisions which hold that the care, custody and nurture of children reside first in parents and in no one else.

The Intervenors submit that parents, at least in this first instance, should be given the opportunity to guide their children in this decision. This is not only their right, but it is also their duty and obligation to do so.

All of the experts in this case agree that an unplanned pregnancy for a minor girl is accompanied by a great period of stress. These girls are typically scared, frightened, they're desperate children.

One expert described these girls as upset, withdrawn, non-communicative, and anxious.

Expert testimony reveals that such an adolescent is often compelled to seek an immediate solution to the problem. They want instant relief.

It is crucial at this point that this decision to abort be the product of an informed and reasoned consent, and

not merely a desire for instant relief for the crisis she faces at the moment.

The minor girl is entitled to and must obtain proper guidance in assessing the risks, the complications, and the alternatives to the abortion procedure.

This guidance is generally supplied to her in discussing the alternative procedures.

It's important that the girl resolve in her mind that whatever choice she makes, it is the product of reflection and not a reaction to the crisis that she is in.

All of the experts agree that parental support and guidance is extremely necessary to help the child through this difficult period in her life.

It is submitted that the great majority of parents will provide their children with the proper guidance and support that they are entitled to.

Parents are the ones who are most interested in assuring that their daughter receives proper medical care and guidance. Parents are best suited to aid her in choosing a doctor and a medical facility which offers the quality of interest and sensitivity that can deal with this delicate problem for the child.

Finally, parental concern and involvement will insure that there is proper follow-up medical care for the child if it is necessary, whether it be medical or psychiatric.

or both.

Although the great majority of parents would act in the best interest of the minor children, the Intervenors acknowledge that some may not. The question, then, is who should fill this void?

Should it be the doctor, or should it be the State?

The Intervenors submit that it should be a judge of the Superior Court rather than a doctor.

Judges have always been resorted to when a conflict develops over whether a parent is acting in the best interest of their child's health and well-being. Judges have always been resorted to to determine whether or not a particular child is in need of a particular medical procedure.

QUESTION: Mr. Riley, on the Massachusetts situation, how available is a procedure of this kind, timewise, in the Superior Court in Massachusetts?

MR. RILEY: It's a --

QUESTION: Is there a three-year waiting period?

MR. RILEY: It's a very informal procedure, in my mind. The --

QUESTION: Well, I'm not asking about formality or informality, I'm asking about time.

MR. RILEY: I would say that a child could go into the court and have a hearing in -- within the day that she goes in, and there's a daily motion session in most of the

courts of the Commonwealth of Massachusetts, where --

QUESTION: There isn't a backlog that would delay this for weeks?

MR. RILEY: No. I would imagine that a matter of this nature would take precedence on the calendar, and that the --

QUESTION: Well, does your statute so provide?

MR. RILEY: Ah, --

QUESTION: The answer is no. And I'm merely asking -- we hear here constantly about the delay in courts. We're aware of it pretty well on the federal side. I'm merely asking what Massachusetts' situation is. If someone wanted relief by way of a court hearing, whether she'd have to wait for one month or three years. This is a time-imperative situation, is it not?

MR. RILEY: Well, in other situations where medical treatment is necessary, for example a blood transfusion or other medical treatment that is very -- that's necessary and has to be performed with a particular period of time, the State court systems have been able to adjust and adopt themselves to deal with that, that problem, and provide the necessary hearing and make the necessary determination as to whether or not --

QUESTION: Some have, and some have not. And I'm asking what the Massachusetts situation is.

Apparently you do not know.

MR. RILEY: Well, as far as I -- the Superior Court judge may have a hearing, the statute provides a hearing as he deems necessary; there need be no guardian appointed for the child. It is my opinion that the rules of court have been developed -- this statute has never gone into effect. The courts themselves, in the Superior Court, have their own rules of court to deal with particular procedures. They do this with criminal matters and with civil matters.

They could create an expeditious procedure to deal with the problem.

QUESTION: Do you have a temporary restraining order procedure in your equity side of the courts of Massachusetts?

MR. RILEY: We have a temporary restraining order --

QUESTION: You get in there on immediate application, I take it?

MR. RILEY: Yes. That's daily in most courts.

MR. CHIEF JUSTICE BURGER: Very well. Your time has expired, Mr. Riley.

MR. RILEY: Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Lucas.

ORAL ARGUMENT OF ROY LUCAS, ESQ.,

ON BEHALF OF THE APPELLEES

MR. LUCAS: Mr. Chief Justice, may it please the Court:

The three-judge court below and many other courts facing these issues across the United States have viewed these issues in a fundamentally different way from that suggested by the Commonwealth and by the Intervenors.

It has generally been presumed that statutes of these kind mean what they say; namely, that in the first instance one or both parents have a right to veto the exercise of access to abortion on behalf of a minor, regardless of the health condition or the circumstances of the minor.

The statutes on their face and as they're written expressly place a medical decision in the unfettered discretion of two persons other than the patient and persons other than the physician.

There's not even an express exception in this statute to protect the life of the young woman or to protect the health of the young woman. There's not even any mention of her health, solely that of the power of the parents to veto and consent. And indeed there is no exception made in the statute in the case of rape or statutory rape. And nowhere is there any mention of the possibility of the physician's judgment in an exceptional case, allowing an abortion --

QUESTION: Well, isn't for good cause shown an exception, Mr. Lucas?

MR. LUCAS: Excuse me, Your Honor?

QUESTION: I say you've spoken of unfettered control, isn't the Massachusetts "for good cause shown" provision an exception?

MR. LUCAS: That is one potential exception, but it is totally undefined, and there are an infinite number of circumstances in which there could be good cause according to the patient, but not according to the Superior Court.

The problem with the good-cause clause is that it, in effect, sets up an obstacle course which is designed to defeat the exercise of a constitutional right by a minor. There is no other statute in the Commonwealth which requires a person to go to court to be able to exercise a fundamental right.

It's our position that the good-cause clause is even worse than the multiple-physician-consultation requirement in Doe v. Bolton. It's even worse than the requirement of a hospital committee in Doe v. Bolton. At least those requirements had physicians reviewing the matter; here you have parents and you have the Superior Court judge without any provision whatsoever, for example, for an expedited hearing. There's no provision for the patient having access to legal counsel and --

QUESTION: Well, are you suggesting that the Massachusetts courts would not, either on their probate side or on their equity side, make some provision for expedited hearing if they thought there was an emergency, even though the statute doesn't in so many words say they should?

MR. LUCAS: We are suggesting that, Mr. Justice Rehnquist.

QUESTION: And what's the basis for that suggestion?

MR. LUCAS: Well, in view of the statute -- the statute could have provided for an expedited --

QUESTION: Well, I take it when you say that you are suggesting that, you're relying on some provision of Massachusetts law, or some custom or practice in Massachusetts that you know of. Now, what is it?

MR. LUCAS: No, I'm not. There's no provision one way or another, and --

QUESTION: Well -- correct. But certainly -- I don't know whether you've practiced in Massachusetts or not; but I would gather that in most States there are any number of court rules or customs that are made to accommodate to situations, where the statute is completely silent on the point.

MR. LUCAS: That's true. It's theoretically possible that the minor could obtain some relief immediately in the State court --

QUESTION: Well, Mr. Lucas, you don't know what the Supreme Court of Massachusetts might set up as rules, do you?

MR. LUCAS: We have no idea what they might do.

QUESTION: And you made no effort to find out.

MR. LUCAS: Well, we have certainly ascertained that there's no law on the subject, because the --

QUESTION: Well, you didn't give them a chance, you ran into federal court before they even got a chance to look at it.

MR. LUCAS: That's correct, we did. And so --

QUESTION: How do we know what will done in the STate court? We don't know. And you don't know. And nobody knows.

MR. LUCAS: I presume --

QUESTION: Until the Supreme Court of Massachusetts speaks; is that right?

MR. LUCAS: That's correct. And the State has not suggested any reasonable ways in which it would be likely under traditional abstention principles enunciated by the court --

QUESTION: I thought the State did ask the court to abstain.

MR. LUCAS: The State asked the court to abstain, yes, and the court refused --

QUESTION: And the court did not, and didn't give any reason for it.

MR. LUCAS: That's true. They regarded the good-cause clause as something which was not substantial enough to justify extended discussion, and --

QUESTION: Well, suppose the Supreme Court of Massachusetts would say that this statute requires that the judge get the best medical assistance he can get, the best medical advice he can get, and that it be expeditiously held within 24 hours. That would take care of that point, wouldn't it?

MR. LUCAS: We would still assert that the minor cannot be burdened to go before --

QUESTION: Well, I'm sure of that.

QUESTION: Do you have any special statutes about expediting applications for temporary restraining orders, or is that a matter of practice and local rules of court?

MR. LUCAS: I do not know in Massachusetts law. I would presume that there would be expedited --

QUESTION: Well, in most States a temporary restraining order can be obtained without notice to anyone, by walking in and finding the judge and presenting the matter to him. Is that not so?

MR. LUCAS: That's true. I can't imagine a judge granting an ex parte temporary restraining order without notice to the parents here.

And it has been our position consistently, that

requiring the patient to even notify the parents could be seriously disruptive of the patient's life and disruptive of the family, to the extent that a notification requirement would be something we'd be opposed to.

And, in particular, the abstention cases in this Court have tended to indicate that there should be some reasonable basis to believe that a State court construction would avoid the constitutional questions. And --

QUESTION: Suppose a 12-year-old or a 13-year-old girl had inherited a very substantial amount of money, real estate, securities, and she undertook to transfer them. Laying aside for the moment that no person in his right mind would accept a transfer or pay anything for it, from a 12-year-old or a 13-year-old; how do you distinguish the right of a 12-year-old or a 13-year-old girl to give away a home worth $500,000 and a million dollars' worth of securities without the consent of her parents or her guardian or anyone else, and the situation confronting us here?

MR. LUCAS: We would do that on the grounds that that was primarily economic and social welfare legislation under the distinction the Court adopted in Dandridge v. Williams and cases of that nature.

QUESTION: And you think that the Court can control -- that the State can control the child's dealing with her property; --

MR. LUCAS: Yes, we would think that --

QUESTION: -- but you can't control in the health area?

MR. LUCAS: Yes, we would think that is true. There's certainly no emergency in the property area either, and that was testimony in the record here that delay could cause the possibility of the minors seeking out illegal non-medical abortions; and that would be one of the main problems. And the delay here could take the minor over into the second trimester of pregnancy, where the procedure would be more complicated --

QUESTION: Well, the assumption in each case is that there would be an undue delay. But you haven't -- at least for me -- satisfied me that the courts in Massachusetts would not give -- looking at this whole statutory structure, would not give the highest priority to a swift determination of these questions.

MR. LUCAS: Even if they did, though, even if we assumed that the State courts could reach the issue within one week or two, there'd be some medical cases where that would be hazardous. And, on top of that, the State court has no guidelines whatsoever, on which to know what factors to look into. That's our chief problem with it, is that the Roe v. Wade indicated --

QUESTION: But equity judges have managed to get

along pretty well for a couple of hundred years on general equity principles, have they not?

MR. LUCAS: That's true. But in this particular case, there is no guidance whatsoever for what factors they should take into account.

That is the principal problem with the good cause.

QUESTION: Well, couldn't the Supreme judicial court of Massachusetts at least have gone part way towards curing that if it had had a chance?

MR. LUCAS: It could have gone some of the distance, yes, it could have -- there are so many different types of problems that could come up, though, there -- it seems to me that --

QUESTION: Well, but, it seems to me that the more different the problems and the more diverse the problems are, the more you make out a classical case where the district court should have abstained. Here the constitutional question of the necessity of the parents' consent is one that is reserved in Roe, and the district court had an opportunity with this consent provision to say, Let the State court put it in a different posture and come back and tell -- then we'll decide the constitutional question.

It seems to me hard to justify their failure to abstain.

MR. LUCAS: Yes. Well, we would disagree with that

strongly, because the State court would have to litigate -- the burden would be put on the courts to take into account all the different ages, all the different health conditions, the rape situation, the incest situation, the different reasons the parents might have for withholding consent; it would impose a tremendous burden on the State courts, if not on the federal courts, when people would go in in 1983 actions.

QUESTION: Well, presumably the Massachusetts Legislature was willing to have that burden placed on the State courts when it enacted the statute.

MR. LUCAS: Presumably they were, yes. But, presumably -- certainly there's no indication of what the legislative motive would have been, which is not relevant here, but the effect, the impact of the statute is to put a tremendous burden on the minor. A tremendous burden that the minor would not have in any other circumstance.

One of the equal protection issues in this case is the fact that the statute -- the new statute that was passed last summer -- allows a pregnant minor to consent to any other procedure except abortion or sterilization. And if the State interests are so strong in the abortion area, then why are they not strong for every other form of treatment?

A minor can consent to all forms of prenatal care and surgery under that statute. A minor could consent even to a major operation, such as a Caesarean section, under the new

statute, without having to go to court. A minor has to go to court for no other type of procedure which is accepted under the medical rights statute that was passed last summer.

QUESTION: Do you think the plaintiff in this case would have had standing to attack the statute if, in fact, her parents had consented or would have consented if she asked them?

MR. LUCAS: I would not -- if her parents had consented, I would think she had no standing.

QUESTION: Well, then, don't you think the State has quite a legitimate objection to the district court's refusal to divulge to the State, which was defending the action, the names of the parents? Because, really, all we have is the assertion of the plaintiff that her parents didn't consent. The State never had an opportunity to examine the parents and see whether perhaps they might have consented.

MR. LUCAS: Well, our position was that disclosure of the patient's name and bringing the parents into the case would have been unecessary because of other parties with standing in the case, and it would have been destructive and damaging to the patient.

QUESTION: And yet you said a moment ago that if her parents had in fact consented, she wouldn't have standing to bring the case.

MR. LUCAS: That's true, she would not have been

harmed by the statute at all.

QUESTION: And the State was never able to find out, in effect, whether she had standing; because they weren't permitted to examine her parents as to whther they would have consented.

MR. LUCAS: If her parents had been willing to consent, then there would have been no reason for her to become involved in the litigation, and to have taken such care to avoid exposure of her name.

QUESTION: Well, all we have is her sayso, though; ordinarily in a lawsuit you're entitled to examine -- all she did was make representations as to what her parents would have done. Ordinarily in a lawsuit you're entitled to examine the people about whom the representations are made, to see if they are proved out.

MR. LUCAS: That would be true ordinarily, but in this case I don't think it was essential. In this case the three-judge court did have the opportunity to observe her demeanor and question here in camera for at least, probably a two-hour hearing that we had. And it would be against the -- against common sense to think that there would be any reason why she would lie about that. Why she would say her parents had --

QUESTION: Well, on the contrary, 25 reasons could occur to me in less than that many seconds, why a girl --

you've already made in all of these briefs a strong case, and I think accurately, that this is a period of great stress; she's afraid to tell her parents.

It also strikes me, so that I can take it as common knowledge, that frequently adolescent people feel that way; but when they do in fact consult their parents, they find much more rapport than they anticipated.

MR. LUCAS: In many cases that would be true. We have a great deal --

QUESTION: So how can you generalize, as you were, saying that the court could decide, in talking with her, whether in fact her parents were likely to consent?

MR. LUCAS: Perhaps I misunderstood Mr. Justice Rehnquist's question. I thought his question was whether the parents may have in fact already consented. And if the parents had already consented or would have been willing to consent --

QUESTION: I think what he was probing at and what I'm concerned about is how do we know that the parents would not have consented, and that there would have been no case here at all?

MR. LUCAS: We simply do not -- we do not know that.

QUESTION: Well, isn't that the business of the courts, to find out before they bring a matter to this stage of litigation?

MR. LUCAS: Well, with other parties who had standing in the litigation, it was not really necessary. I think the district court determined that her right not to have her parents notified was of sufficient privacy and constitutional dimension to justify the limited inquiry in her particular case. And that --

QUESTION: Well, the standing of these other parties is not yet resolved, of course, with finality.

MR. LUCAS: That's true. Well, the physician in particular, we feel that his standing was recognized in Doe v. Bolton, and that that would be clear on that particular issue.

And the court did make a rule allowing intervenors to participate in the case. The intervenors ostensibly represented the parents of minors who could become pregnant, who might become pregnant, and want to obtain abortions in Massachusetts.

So there were two sets of attorneys on the other side to protect any possible interest. I don't see how another third set of attorneys for the parents could have affected the presentation of the litigation or the outcome, in view of the standing of the other parties.

QUESTION: Well, we'll never know that, will we?

MR. LUCAS: That's true. Also the court addressed the case in terms of the statute on its face, rather than as applied to this particular minor.

And the court made an express determination that this minor was fully competent to bring the action, and that she was competent to give an informed consent; and that was another reason for dispensing with notifying her parents.

QUESTION: How old was this girl again? I don't --

MR. LUCAS: She was sixteen.

QUESTION: Sixteen.

MR. LUCAS: Yes, Your Honor.

QUESTION: You'd have a stronger case for that kind of statement in your case, with a 16-year-old girl than with a 12, of course; I am sure you're aware of that.

MR. LUCAS: That is certainly true.

We had a great deal of testimony concerning the problem of 12, 13, 14-year-olds, and the testimony from Dr. Jane Hodgson and Dr. Carol Nadelson indicated that certainly maturity decreases with age, but there would be instances where some 12 and 13 and 14-year-olds could give an informed consent equal to or better than that of an 18 or 19-year-old; that it was an individualized case. And this is where the opinion in Roe v. Wade, expressing the need for physician's discretion, comes in very strongly; that a physician and the counselors in a facility would have to more carefully talk with and more carefully obtain consent from a minor who was 13 or 14, in order to make sure that this minor had a full understanding.

Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

You have a little time left, do you? Yes.

So it's not submitted.

[Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.]

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AFTERNOON SESSION

[1:00 p.m.]

MR. CHIEF JUSTICE BURGER: Mr. Lucas, you will be glad to know that you have 14 minutes left.

ORAL ARGUMENT OF ROY LUCAS, ESQ.,

ON BEHALF OF THE APPELLEES

MR. LUCAS: Thank you, Your Honor.

Earlier in the day, the question was raised whether there were pending any malpractice battery cases on the subject of abortion for minors; and we would call the Court's attention to Footnote 5 of the Motion to Affirm and Brief filed by the Appellees in this case, which cites a case pending in Vermont. It's the only one we know of. We have looked to see if there were any others.

The case was pending in the Superior Court and is being certified to the Supreme Court of Vermont for argument in May by mutual stipulation of the parties.

QUESTION: You refer to 5 on page --

MR. LUCAS: Footnote 5 on page 4 of the green pamphlet. Bogart vs. Vermont Women's Health Center.

Vermont has no statute requiring parently consent. In this case the uncontested stipulation shows that the minor changed her mind after her parents found out about her having an abortion, and that the parents have sued for battery.

We were discussing the abstention doctrine. The

Appellees were particularly concerned with the cases of Lake Carriers' Association and Harris County Commissioners; the latter being from the last term. And we would refer the Court to the language in Lake Carriers about abstention being invoked only in very special circumstances, which justify the delay and the expense. And to Harris County, which indicated that if the State courts would be likely to construe the statute to avoid the constitutional question, it has been our feeling that there is insufficient evidence to indicate that the State courts would be able to resolve the constitutional questions in this particular instance.

The idea of a 14 or 15 or 16-year-old being able to make her way through the maze of State or federal courts is -- particularly with her parents on the other side, and her not even being able to have access to legal service's representation, since the Federal Legal Services Corporation Act bans the use of those funds in representing anyone to help obtain an abortion. I think, from a very practical standpoint, it would be an insuperable burden for most minors, and a burden which is not imposed on any other form of medical care or any other constitutional right.

There were four days of testimony in this case, in an effort to sift out, with numerous experts, the underlying factual issues which are so sensitive and so important in the case.

Mary Moe testified in camera, before the three-judge federal court. They made an express finding that she had made a considered decision to have an abortion. She had had two hours of counseling from the registered nurse at the clinic. She had received materials from a county health clinic, perhaps over forty days before. There was a period in the record of 43 days which passed before her pregnancy test could be positive, before it could be determined, in which she had an opportunity to give thought and give consideration to the subject.

The Intervenors had a child psychiatrist sit in on her testimony, and it is perhaps significant that the child psychiatrist, when he testified at the trial, did not in even one sentence question her competency and her ability to consent to the procedure.

QUESTION: Do you think a minor girl would have a cause of action against a doctor who, either because of the statute or independent of any statute, refused to perform the procedure without the consent of the parents?

MR. LUCAS: No, Your Honor, I do not think -- I do not think that she would unless, in a very rare set of circumstances -- I think the physician would have an obligation to refer her somewhere else if possible, and if that place were known, and he may be liable for not referring.

But a physician has his own individual right.

QUESTION: But a doctor who is concerned about the malpractice aspect, and the problem of taking on the burden of proving later that a 12-year-old girl gave an informed consent, could simply say: Without the consent of the parents, I won't have anything to do with it.

MR. LUCAS: I think a doctor could do that. And I think some doctors do and some doctors will, even in -- in jurisdictions where the question is up in the air, I think that has often been the case. And in many hospitals, that has often been the case.

I think a great many people are awaiting the outcome of this litigation from the Court, because of the very important problems that have come up with teenagers wanting access to abortion and access to contraception, and physicians being concerned as to whether they can legally, without risk of litigation, provide them with that. While the issue of civil remedies is not specifically raised in the case, I think a great many people will be looking to this decision to see whether a physician could recognize a minor's constitutional right and perform an abortion on a minor, or provide a minor with contraceptives who did not have parental consent.

It's fairly clear in federal family planning programs because they provide that in family planning services -- at least in so far as contraception is concerned, will be provided without regard to age.

QUESTION: Mr. Lucas, could I ask you a question that's run through my mind as I've listened to the argument?

Do you suppose a statute would be constitutional that required the consent of both parents before a child could obtain a tattoo?

MR. LUCAS: That's a very interesting question.

I would think that it would -- the child's right in this particular case would not nearly rise to the stature that the right of access to abortion rises, it would be -- a tattoo would be something more of a whimsical nature; but, on the other hand, there are a lot of constitutional protections extended to --

QUESTION: Well, you know, we don't always think, for example, growing long hair is whimsical in nature; that's been given constitutional protection, at least in some circuits.

I wonder if the right to affect one's appearance by having some kind of a special emblem on an arm or something like that might be somewhere.

MR. LUCAS: I think that's really the kind of case that could go either way, and it could -- it's the kind of case that would go depending on what rights were eventually recognized to things such as hair and personal appearance. And I'm aware of Your Honor's position in the Seventh Circuit on the hair question.

And it would be our position that if the right of

personal appearance were recognized as a fundamental right, then the minor would be able to do this without parental consent.

QUESTION: Without parental consent, yes.

MR. LUCAS: It may be, on the other hand, that there's no substantial reason for forbidding her or him to have a tattoo or something of that nature.

QUESTION: What if it's a peace symbol or an anti-war symbol? Would it get the First Amendment involved in the tattoo then?

MR. LUCAS: That could be -- that could come up in something very similar to the Tinker context. It would be our feeling that while the plaintiffs in the Tinker case were on the same side as their parents, that the parents could not have eradicated the impact of this Court's decision in Tinker, by saying that they would not consent to their children engaging in those activities; particularly with the State backing them up with criminal sanction.

I don't think the school could have said that only those minors whose parents will give them written permission to demonstrate or wear armbands will be permitted to do so.

I think this would apply in the In re Gault area, too, that parents could not conduct and control and waive constitutional rights of a minor in a juvenile offender proceeding.

QUESTION: Well, what if -- to follow up on Justice Stevens' question -- instead of just wanting to wear an armband, they wanted to have an armband tattooed in such a way that there was medical evidence to suggest there was some danger attached. Now, would your answer still be the same?

MR. LUCAS: I think my answer would be different in a case like that, that the State itself could theoretically ban tattooing if there were evidence of hepatitis outbreaks and things of that nature.

If there were no evidence whatsoever of it being harmful to the minor, that would be a whole different story.

QUESTION: Let me make it a little easier or harder, then. What about the girls having their ears pierced for earrings?

MR. LUCAS: That again gets in the same area as the personal appearance and the hair area. I don't know what the outcome of that would be in this Court, but it's a right that is not as important to minors as the right of control over their reproductive freedom, their right of access to abortion. The thing said in this Court's opinion about the dangers to --

QUESTION: Well, there is danger of infection in ear piercing, as you know.

MR. LUCAS: Yes. And I'm not so sure --

QUESTION: Sometimes less so when a nurse does it than when a physician does it.

MR. LUCAS: I wouldn't be surprised at that.

QUESTION: Just to follow up with one other thing: How critical to your argument is the fact that both parents' consent is required? Do you rely heavily on that or do you just say the consent entirely is --

MR. LUCAS: We're not -- we clearly feel that the consent of one parent is just as unconstitutional as requiring the consent of both. That with the both you have the problem of arbitrary reasons or no reasons or unreasonable reasons from two different people. It comes to --

QUESTION: But you don't think the two consent requirement really changes the constitutional issue?

MR. LUCAS: No, I don't.

QUESTION: Okay. I just wanted to be sure.

QUESTION: Mr. Lucas, before you go on, I suppose Massachusetts has a customary law requiring parental consent for a minor to marry?

MR. LUCAS: Yes, Your Honor, that's true.

QUESTION: What I wanted to ask your opinion about, it was addressed in the case that preceded yours, is whether you think the reasoning, the rationale of a three-judge court in your case, if adopted by us, would necessitate the invalidating of the Massachusetts consent to marriage statute?

MR. LUCAS: I do not think it would. I agree precisely with what Mr. Susman said, that this right is a more

important, a more fundamental lasting right, and that the State interest in preventing young marriages are much more compelling. In fact, they are on the other side. Here I don't think the State has any substantial interest in preventing a minor from having access to an abortion when she can give an informed consent, and there's no danger of medical problems.

But the State can offer a lot of compelling reasons for postponing the age of marriage, and it's just a brief postponement. The same would apply to the right to vote.

QUESTION: The State reasons suggested have included the parental interest in the child's welfare.

MR. LUCAS: That would not be --

QUESTION: It would be true in both instances, I take it, consent to marriage and consent to abortion.

MR. LUCAS: Yes, Justice Powell, we would -- we realize that's one that has been offered, but we don't think that that interest independently would support the restriction on the right to marriage; that that interest is one of many interests. And that in this particular case the parents' interest does not outweigh the minor's interest; in that case the parents' interest and a lot of other interests outweigh the minor's interest in becoming married.

There are a great many reasons. The impact on education and the economic condition of minors for getting married when they're very young; the high divorce rate. And

there are a lot of those factors which could be used to justify the age.

We've located in the record the testimony on the subject of minors that were 12, 13, 14 and 15, and there were statements from two of our very experienced experts to the effect that -- for example, Dr. Hodgson, at page 79, stated that some 12-year-olds will be more mature than 18-year-olds. And at page 176, Dr. Carol Nadelson, who was a psychiatrist in the field, stated that "one can find a 13-year-old who is better able to make a decision than a 17-year-old."

And Dr. Somers Sturgis, who has been active in the adolescent medicine field for a long time, testified at the very outset of his testimony that age was simply no criterion, no conclusive criterion of maturity.

QUESTION: Well, isn't it true that some 18-year-olds and 17-year-olds know more than 21-year-olds? If so, why can't they get married without consent?

MR. LUCAS: Because of the other State interest that justifies drawing some line at some point in --

QUESTION: Well, I don't see any difference in the State interest on this point, where you say that the 12-year-olds have got more sense than some 17-year-olds.

What you mean is some exceptionally intelligent 12-year-olds have more sense than some stupid 17-year-olds. You don't mean an average.

MR. LUCAS: That's perfectly correct, Your Honor.

QUESTION: So what good is it to this argument?

MR. LUCAS: It's just to illustrate that if you ban abortions to someone under age 14, there are going to be a few who have -- whose rights are very important to them. They may be members of a class that 90 percent of them can't consent, but those other ten percent have important rights that justify being recognized. And it's --

QUESTION: Well, isn't that true in every line-drawing area, that Legislatures must deal with?

MR. LUCAS: It does come up in the line-drawing area situations that we've discussed in the brief. There are just different issues and different factors in different cases.

Here we're dealing with a right that's been recognized as fundamental for all persons in Roe v. Wade, and we're simply asserting that --

QUESTION: Well, is not the right to marry a fundamental right?

MR. LUCAS: Yes, it is, Your Honor. Certainly the Loving case in the --

QUESTION: But the State can regulate it.

MR. LUCAS: We would agree with that. The State has much more compelling reasons for regulating in that particular context.

And in Massachusetts, for example, while a marriage is voidable for someone very young, a marriage of a 12-year-old woman and a 14-year-old young man is not void, under statute. Eighteen may be the general age, but if someone manages to get married at age 12 or age 14, it's valid. It's not -- it's voidable, but, until annulled, it's not invalid.

There was also some testimony as to the practical issues in the case, of what if a minor could not obtain parental consent, and we refer the Court to page 76 of the Appendix. One of the witnesses indicated there was reason to believe that minors would be seeking illegal abortions. I suppose that minors that are financially well off in Massachusetts could cross over into Vermot, where Vermont does not require parental consent expressly.

Referring to prior decisions of this Court on the rights of minors, there are certain general principles that we've been able to suggest. There's no case we've encountered which upholds the rights of parents over the rights of minors, when they both are asserting rights of constitutional dimension; -- and I believe my time is up.

Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 1:14 o'clock, p.m., the case in the above-entitled matter was submitted.]