ARTICLE I, PARAGRAPH 1— EQUAL PROTECTION – ABORTION – NEW JERSEY PARENTAL NOTIFICATION FOR ABORTION ACT VIOLATES STATE CONSTITUTIONAL GUARANTEE OF FUNDAMENTAL RIGHT —*PLANNED PARENTHOOD OF CENTRAL NEW JERSEY V. FARMER*, 762 A.2d 620 (N.J. 2000).

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Because a minor's right to control her reproductive decisions is among the most fundamental of the rights she possesses, and because the State has failed to demonstrate a real and significant relationship between the statutory classification and the ends asserted, we hold that the statute violates the Constitution of the State of New Jersey.[1]

I. INTRODUCTION

The United States Constitution has long been recognized to protect the rights of citizens against arbitrary exercises of government power and as requiring even-handed treatment of citizens.[2] The Fifth Amendment's due process clause,[3] the Fourteenth Amendment's due process clause,[4] and the Fourteenth Amendment's equal protection clause[5] are the most commonly used textual provisions for supporting the notion that certain types of government action are impermissible.[6] The Supreme Court has found that in addition to the express provisions of

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[1] Planned Parenthood of Cent. N.J. v. Farmer, 762 A.2d 620, 622 (N.J. 2000).

[2] The Constitution expressly guarantees certain rights and forbids certain government action in the Bill of Rights. U.S. CONST. amend. I - X. The Supreme Court has also found implied fundamental rights embedded in the penumbras of liberty. *See* Skinner v. Oklahoma, 316 U.S. 535 (1942) (right to have offspring); Harper v. Va. State Bd. of Elections, 383 U.S. 663 (1966) (right to vote); Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel).

[3] "No person shall . . . be deprived of life, liberty, or property without due process of law." U.S. CONST. amend. V.

[4] "[N]or shall any State deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV, § 1.

[5] "No State shall. . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

[6] Henry J. Friendly, *Federalism: A Foreword*, 86 YALE L. J. 1019, 1021 (1977). Some forms of impermissible conduct include charging a poll tax to vote, *Harper*, 383 U.S. 663

the Bill of Rights, these clauses protect implied fundamental rights.[7] Historically, the Supreme Court has used the Federal Constitution as a means to compel the States to provide safeguards for rights.[8]

The Constitution establishes a federal system of government.[9] Federalism generally refers to the notion of dual sovereignty, with the federal government possessing enumerated powers and the states having general police power.[10] In areas where the federal government may act, its laws are supreme.[11] Therefore,

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(1966), banning the use of contraceptives by married adults, *Griswald v. Connecticut*, 381 U.S. 479 (1965), and implementing miscegenation statutes, *Loving v. Virginia*, 388 U.S. 1 (1967).

[7] Meyer v. Nebraska, 262 U.S. 390 (1923). Relying on substantive due process, the Court suggested that the liberty provision of the Fourteenth Amendment protected, among other things, the right to contract, marry, raise children, and to enjoy rights recognized by the common law "as essential to the ordered pursuit of happiness by free men." *Id.* at 399.

[8] Friendly, *supra* note 6, at 1021. The Court began to rein in the states following the Civil War and the passage of the Reconstruction Amendments. *Id.* The first method adopted by the Court was the selective incorporation of the Bill of Rights. *Id.* Whereas the Court had held in *Barron v. Mayor of Baltimore*, 32 U.S. 243 (1833), that the first eight amendments were inapplicable against the states, the Court began to apply them through the due process clause of the Fourteenth Amendment. *Id.* The second method was the growth of substantive due process, whereby the Court used the liberty provision of the Fourteenth Amendment to find certain state actions to be impermissible because it infringed on the rights implied by the Constitution. *Id.* at 1028.

[9] *Id.* at 1019. Federalism is largely based on the premise that the states and the United States existed prior to the ratification of the Constitution in 1787. *Id.* Since the Constitution did not destroy the independence of the states, both sovereigns retain their power. *Id.*

[10] *See* THE FEDERALIST No. 45 (James Madison). The Constitution lists the powers of Congress. *See* U.S. CONST. art. I, § 8. While the Necessary and Proper Clause greatly expands the potential scope of federal power, the national government is still limited in theory. *See* McCulloch v. Maryland, 17 U.S. 316 (1819). On the contrary, the Constitution carves out some attributes of sovereignty from the states. *See* U.S. CONST. art. I, § 10. Nevertheless, states still possess the general police power to regulate the health, safety and welfare of its citizens. *See* United States v. Lopez, 514 U.S. 549, 567 (1995).

[11] The Constitution provides in what is commonly referred to as the Supremacy Clause that,

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

the Constitution, and the Supreme Court's interpretation of it, provide a standard for the protection of individual rights that no state can go beneath without violating the principles of federalism.[12] This standard, however, is a floor, and there is nothing to prevent a state from providing more protection under its constitution than is given by the Federal Constitution.[13]

Many states have taken advantage of this principle of constitutional law to create charters that afford greater protection than the federal counterpart.[14] For example, while the Constitution has been interpreted to include an implied right of privacy,[15] the word "privacy" does not appear explicitly anywhere in the Constitution or any of its amendments.[16] Similarly, while the New Jersey Constitution begins with a statement of personal liberty, the text does not use the term "privacy."[17] Nevertheless, the New Jersey Supreme Court has found this right to be embedded in the text.[18] California, on the other hand, has an express provision in its constitution, which protects the privacy of its citizens.[19]

U.S. CONST. art. VI, para. 2.

[12] Angela C. Carmella, *State Constitutional Protection of Religious Exercise: An Emerging Post-Smith Jurisprudence*, 1993 BYU L. REV. 275, 285 (1993). Since state law cannot conflict with federal law, the states are obligated to provide at least the same level of protection as the Federal Constitution. *See id.*

[13] *Id.* States can provide for greater protection of individual or group liberties. *Id.* If a state constitution does provide greater freedom, then no conflict between the state and federal constitutions exists. *Id.* As sovereign entities, each state has a constitution of its own, which provides protection for individual rights as well. *Id.*

[14] *Id.* at 275. Professor Carmella's article focuses on the expansion of free exercise jurisprudence under state constitutions after the Court's holding in *Employment Division v. Smith*, 494 U.S. 872 (1990) (reducing the standard of review in federal free exercise cases to rational basis review). *Id.* at 888-89. The principles of state constitutional law that Professor Carmella addresses, though, are the same for a wide range of constitutional provisions. Carmella, *supra* note 12, at 285.

[15] Griswald v. Connecticut, 381 U.S. 479 (1965).

[16] *Id.* at 484.

[17] The New Jersey Constitution provides that, "[a]ll persons are by nature free and independent and have certain natural and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N.J. CONST. art. I, para. 1.

[18] Right to Choose v. Byrne, 450 A.2d 925, 933 (N.J. 1982).

[19] The California Constitution states, "[a]ll people are by nature free and independent and

When interpreting the scope of state constitutional provisions, state supreme courts are the final arbiters of the meaning of those constitutions.[20] Therefore, so long as the court's interpretation does not dictate less protection of individual rights than is provided by the Federal Constitution, the state may grant, either implicitly or explicitly, as much protection as it sees fit.[21] Further, deciding cases on state constitutional law grounds has the benefit of insulating the decision from Supreme Court review.[22]

The New Jersey Supreme Court applied these principles to the area of reproductive rights in *Planned Parenthood v. Farmer*.[23] The United States Supreme Court first recognized the right of a woman to seek an abortion in *Roe v. Wade*.[24] In a series of subsequent cases, the Court grappled with various state laws that attempted to impose restrictions on abortions, particularly those sought by minors, that would fit within the standards articulated by the Court.[25] Out of these cases, general principles arose. The first principle was that a state could require

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have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." CAL. CONST. art. I, § 1.

[20] Michigan v. Long, 463 U.S. 1032, 1041 (1977).

[21] Carmella, *supra* note 12, at 285.

[22] *Long*, 463 U.S. at 1041. The *Long* Court determined that it would presume state courts relied on federal law to decide constitutional cases. Carmella, *supra* note 12, at 286. However, state supreme courts could overcome this presumption by clearly stating that the decision rested solely on state law or the state constitution. *Id.* If the state court granted relief, and the court relied on the state constitution rather than the United States Constitution, Supreme Court review is unavailable. *Id.* However, if the state court denied relief, it will be reviewable, as there can never be an independent ground to deny a claim. *Id.*

[23] 762 A.2d 620, 626 (N.J. 2000).

[24] 410 U.S. 113, 153 (1973). Justice Blackmun, writing for a seven member majority, held that the Fourteenth Amendment protected a woman's right to seek an abortion. *Id.* The Justice explained that various provisions of the Constitution support the notion that there is a zone of privacy that is fundamental to citizens of a free society. *Id.* at 152. The right is part of the privacy interest found "in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action." *Id.* at 153. However, the opinion itself recognized that the right is not absolute and that the state has a legitimate interest in the unborn child. *Id.* at 153-54.

[25] *See, e.g.*, Planned Parenthood v. Danforth, 428 U.S. 52 (1976) (parental consent statute); Harris v. McRae, 448 U.S. 297 (1980) (Medicaid funding of abortions); Planned Parenthood v. Casey, 505 U.S. 833 (1992) (informed consent provision, parental notification).

that a minor obtain a parent's consent to have an abortion.[26] However, in order to prevent the parent from having an absolute veto over the minor's decision to exercise her fundamental right, or to give a minor the option of not telling the parents if informing them could lead to abuse, a judicial bypass procedure is required to accompany all consent statutes.[27]

A second principle that developed subsequent to *Roe v. Wade* is that a state law may entitle a parent to notification prior to an abortion.[28] These provisions must always have a judicial bypass provision similar to that of a consent statute.[29] However, the Court believed that consent was a greater restriction on the minor than a notice statute.[30] Therefore, if a judicial bypass procedure would satisfy the rigorous standards for a consent statute requirement, it would satisfy the Federal Constitution in a less burdensome notice procedure.[31]

Finally, the Court adopted an "undue burden" test to evaluate laws that infringed on a woman's right to seek an abortion.[32] This was a type of balancing test, which recognized that the right to seek an abortion without state interference is not absolute.[33] Acknowledging the state's substantial interest in the po-

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[26] Bellotti v. Baird, 443 U.S. 622, 630 (1979) (plurality opinion). This was the second time this case reached the Supreme Court. The previous case was *Bellotti v. Baird*, 428 U.S. 132 (1976) (remanding case to district court for the purpose of writing questions on the statute's interpretation for certification to the Supreme Judicial Court of Massachusetts).

[27] *Id.* at 643-44.

[28] Ohio v. Akron Cent. for Reprod. Health, 497 U.S. 502, 510-13 (1990).

[29] *Id.* at 507-08.

[30] *Id.* at 511. Consent statutes were greater intrusions because they allow others to veto a minor's decision to have an abortion. *Id.* (citing H. L. v. Matheson, 450 U.S. 398, 411, n.17 (1981).

[31] *Id.*

[32] Planned Parenthood v. Casey, 505 U.S. 833, 874 (1992). The *Casey* opinion was written by Justices O'Connor, Kennedy and Souter, who came together to modify, but not completely overrule, the essential holding of *Roe v. Wade*. EDWARD LAZARUS, CLOSED CHAMBERS 469-72 (Penguin Books 1999). This was a result of a very real possibility after the Court conference meeting that *Roe* would be overruled. *Id.* at 467.

[33] *Casey*, 505 U.S. at 875. The Court recognized that all abortion restrictions interfere with a woman's right to choose, but only those restrictions which are unwarranted are unconstitutional. *Id.* However, the cases applying the rigid trimester framework of *Roe*, "undervalue[d] the State's interest in the potential life within the woman." *Id.*

In the Court's understanding, an "undue burden" was one that placed a substantial obstacle

tential life, the *Casey* Court decided that not all burdens would be considered undue.[34]

Against this backdrop, the New Jersey Supreme Court considered the Parental Notification for Abortion Act ("Act").[35] Guided by federal court precedent, but mindful of New Jersey case law, the court considered the distinction the United States Supreme Court made between consent and notice statutory requirements.[36] The court then evaluated the burdens and obstacles that the Act placed on a minor's attempt to obtain an abortion.[37] Then, the New Jersey Supreme Court decided how much protection the New Jersey Constitution afforded to minors, as compared to the Federal Constitution, as well as which analytical framework should be applied to laws which purportedly indirectly impair a fundamental right.[38] The court reasoned that the notification requirement and the judicial bypass procedure imposed significant burdens on the minor's right to seek an abortion.[39] Rather than employing the *Casey* "undue burden" test, the court relied on its own balancing test.[40] In weighing the various interests, the

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before a woman seeking an abortion. *Id.* at 877. Of critical importance was whether the fetus has reached the stage of viability. *Id.* Statutory schemes intending to "express [the State's] profound respect for the life of the unborn" may be permitted so long as they do not create the substantial obstacle. *Id.* The undue burden test replaced Roe's strict scrutiny analysis for abortion cases. LAZARUS, *supra* note 32, at 472.

[34] *Casey*, 505 U.S. at 876. The *Casey* Court found that requiring a doctor to inform a woman twenty-four hours before the abortion of the nature of the procedure, the health risks associated with it, and the probable age of the fetus was not an undue burden. *Id.* at 882. However, requiring the woman to get the informed consent of her husband was an undue burden, since this may result in bodily injury. *Id.* at 887-95.

[35] Planned Parenthood of Cent. N.J. v. Farmer, 762 A.2d 620, 622 (N.J. 2000).

[36] *Id.* at 627-29.

[37] *Id.* at 633-35. Such burdens included obtaining a notarized notification form, mailing a notice to parents, and, if necessary, initiating the judicial bypass proceedings. *Id.* at 634-35.

[38] *Id.* at 633. The court acknowledged that there has been little hesitation to read Article I, Paragraph 1 of the New Jersey Constitution as encompassing greater protection than the Fourteenth Amendment. *Id.* Greater protection requires, "the most exacting scrutiny." *Id.*

[39] *Id.*

[40] *Id.* at 632. The *Farmer* court considered the balancing test to be a more appropriate form of analysis for laws that purportedly violate the New Jersey Constitution, which has a broader notion of privacy than the federal Constitution. *Id.* (citing Right to Choose v. Byrne, 450 A.2d 925 (N.J. 1982)).

court concluded that the Act violated the guarantee of equal protection of the law as expressed in the State's Constitution.[41]

II. STATEMENT OF THE CASE

In *Planned Parenthood of Central New Jersey v. Farmer*,[42] the New Jersey Supreme Court granted certification to determine whether the Parental Notification for Abortion Act violated a minor's right to privacy and equal protection of the law, as protected by the state constitution.[43] The court found that the State failed to provide an adequate justification for the legislation.[44] Therefore, the court concluded that the intrusions on a minor's right to seek an abortion violated state equal protection principles.[45]

On June 28, 1999, the New Jersey legislature enacted the Parental Notification for Abortion Act.[46] The law was to take effect ninety days from that date.[47] Before the Act could take effect, various medical associates and doctors filed for a declaratory judgment and a preliminary injunction in the chancery division of Bergen County to forbid the enforcement of the Act's provisions.[48] The basis for their claim was that the Act infringed on minors' rights to privacy and equal protection of the law under the New Jersey Constitution.[49] The plaintiffs also alleged that the judicial waiver procedure failed to provide a viable alternative for

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[41] *Farmer*, 762 A.2d at 638-39.

[42] 762 A.2d 620 (N.J. 2000).

[43] *Id.* at 625.

[44] *Id.* at 620.

[45] *Id.* at 621. The majority recognized the State's substantial interest in preserving the family unit and parental rights. *Id.* at 622. However, since the Act was too attenuated to the proffered interest, it was struck down. *Id.*

[46] *Id.* at 622 (citing N.J. STAT. ANN. § 9:17A-1.1 to 1.12 (West 1999)).

[47] *Id.*

[48] *Farmer*, 762 A.2d at 622. Other than John J. Farmer, the Attorney General of New Jersey, the Commissioner of the Department of Health and Senior Services and the Director of the Administrative Office of the Courts were named as defendants. *Id.* All were sued in their official capacities. *Id.*

[49] *Id.* at 625.

a minor seeking an abortion.[50]

The Legislature laid out its alleged compelling reasons for enacting the Act within the provisions of the statute.[51] The three primary justifications for the Act were to protect minors from their own immaturity, to foster and preserve the family as a viable social unit, and to protect the rights of parents to raise their children.[52] The State also proffered the inability of minors to make fully-informed decisions, the consequences of abortion, the fact that parents often possess vital information regarding the minor's overall health, and that parents should know that their daughter had just undergone a medical procedure as reasons why parental notification was in the best interest of the minor.[53]

A provision of the Act required physicians to wait at least forty-eight hours from the receipt of delivery of written notice to the parent that the minor was to have an abortion before performing the procedure.[54] The Act provided that notice could be achieved in two ways.[55] The physician could hand-deliver written notice to a parent.[56] Alternatively, notice could also be achieved by sending the notice in the mail to the last known address of the parent.[57] The letter was to be sent by certified mail, and return receipt was required.[58] Further, a doctor had the discretion to restrict delivery of the letter to an authorized addressee.[59] The notice was also to be sent by first class mail at the time the certified mail was sent.[60] The forty-eight hour period would commence at noon on the day follow-

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[50] *Id.*

[51] *Id.* at 622-23 (quoting N.J. STAT. ANN. § 9:17A-1.2 (West 1999)).

[52] *Id.* at 622. The court recognized that the professed State interests were indeed valid. *Id.*

[53] *Id.* at 622-23. The statute concluded with a general statement that notification was, "desirable and in the best interests of the minor." *Id.* at 623.

[54] *Farmer*, 762 A.2d at 623 (quoting N.J. STAT. ANN. § 9:17A-1.4(a) (West 1999)).

[55] *Id.*

[56] *Id.* (quoting N.J. STAT. ANN. § 9:17A-1.4(b) (West 1999)).

[57] *Id.* (quoting § 9:17A-1.4(c)).

[58] *Id.* at 626 (quoting § 9:17A-1.4(c)).

[59] *Id.* at 623.

[60] *Farmer*, 762 A.2d at 623.

ing the mailing of the letter.[61] The Act defined the term "parent" to include a parent with care and control over the minor, foster parents, guardians, or one who acts *in loco parentis*.[62] Parents who do not have custody rights over the minor were not considered "parents" for the purposes of the Act.[63] A physician who performed an abortion without complying with the statute could be civilly liable to a minor's parents and subject to penalties from $1,000 to $5,000.[64]

Under the Act there were three situations where a physician was not required to provide notice to parents.[65] The first situation arose in the event that one parent of a minor certified, and had notarized, that he or she was already aware of the minor's decision to seek an abortion.[66] The second situation was if the procedure was necessary due to a medical emergency.[67] The third situation in which a physician was not required to contact a minor's parent was addressed by the judicial bypass provision.[68]

The judicial bypass provision required a minor seeking a waiver of parental notification to file a petition or motion with a judge in superior court.[69] The minor had the right to court-appointed counsel[70] and a confidential hearing,[71] and

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[61] *Id.* This of course would mean that the actual time between a minor's consultation with a physician and the time when an abortion could be performed would be longer than forty-eight hours.

[62] *Id.* (quoting N.J. STAT. ANN. § 9:17A-1.3 (West 1999)). *In loco parentis* is defined by the Act as an adult who has an established parent-like relationship with the minor with the biological parent's consent, that the minor and the adult live in the same home, that the adult has to take on significant responsibility for the upbringing of the minor without expecting financial compensation, and that a length of time has transpired which would allow the development of a parent-child relationship. *Id.*

[63] *Id.*

[64] *Id.* at 624 (citing N.J. STAT. ANN. § 9:17A-1.10 (West 1999)).

[65] *Id.* at 623.

[66] *Farmer*, 762 A.2d at 623 (quoting N.J. STAT. ANN. § 9:17A-1.5 (West 1999)).

[67] *Id.* (quoting § 9:17A-1.6). The doctor would have to certify in the minor's medical records as to the necessity of the emergency action. *Id.*

[68] *Id.* (citing § 9:17A-1.7(a)).

[69] *Id.*

[70] *Id.* (citing § 9:17A-1.7(b)).

[71] *Id.* (quoting § 9:17A-1.7(c)).

once the petition was filed, it would supersede all other pending matters before the superior court.[72] Under the Act, the court was to make a decision within forty-eight hours of the motion's filing or the judicial waiver would be deemed to have been given.[73] Next, the waiver would be granted if the minor proved by "clear and convincing evidence" that the minor was sufficiently mature to make the decision,[74] that the minor was suffering from some form of abuse,[75] or that notification of the parent was not in the best interest of the child.[76] Despite the confidentiality requirement, the Division of Youth and Family Services would have to be informed if the court made a finding of abuse.[77] Finally, if the judge denied the motion, the physician had to comply with the notice provision.[78]

The Act further required the Department of Health and Senior Services ("DHSS") to prepare a fact sheet on the requirements of parental notification.[79] The DHSS fact sheet was required to explain the terms of the Act in such a manner that a teenager would understand.[80] Furthermore, all minors seeking an abortion would be furnished with a copy of the fact sheet.[81]

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[72] *Farmer*, 762 A.2d at 623.

[73] *Id* at 624.

[74] *Id.* (quoting N.J. STAT. ANN. § 9:17A-1.7(d)(1) (West 1999)).

[75] *Id.* (quoting § 9:17A-1.7(d)(2)). The statute specified physical, sexual, or psychological abuse. *Id.* Further, a pattern of abuse had to be proven. *Id.*

[76] *Id.* (quoting § 9:17A-1.7(d)(3)). No standard was announced as to what the "best interest" of the child would be.

[77] *Id.* (citing § 9:17A-1.7(d)(2)).

[78] *Farmer*, 762 A.2d at 624 (citing § 9:17A-1.7(e)). This meant that the certified letter would have to be mailed, and an additional forty-eight hours would go by.

[79] *Id.* (quoting § 9:17A-1.8).

[80] *Id.*

[81] *Id.* The court noted that the required DHSS fact sheet had been prepared in September 1999, before the Act took effect. *Id.* at 624 n.2. The Commissioner of Health and Senior Services was further required to draft rules for physicians to carry out the terms of the Act. *Id.* The regulations were completed on August 16, 1999 and filed with the Office of Administrative Law on September 24, 1999. *Id.*

The DHSS fact sheet was also to contain a form that a parent could fill out and have notarized indication that notice of the abortion had been given by the minor. *Id.* at 633.

The Administrative Office of the Courts ("AOC") promulgated rules for minors seeking a judicial waiver.[82] The motion for a waiver would be filed in the chancery division, family part, "in the county where [she] resides, in the county where the abortion is proposed to occur, or in the county where [she] is being sheltered."[83] A Judicial Bypass Team would then guide the minor through the procedures of obtaining a waiver, which would confidential.[84] A subsequent directive authorized appeals for waiver denials to be heard by two recalled judges from the appellate division.[85] The appeals court was required to hear oral argument no later than two business days after receiving the record.[86] Finally, the Act permitted a minor to file a notice of petition for certification or notice of appeal with the New Jersey Supreme Court within two days of an adverse ruling by the appellate division.[87] The Supreme Court then had two days after oral argument or receipt of the papers to make a decision.[88]

The New Jersey Superior Court, Chancery Division originally dismissed the case for failure to demonstrate a likelihood of success on the merits.[89] The New Jersey Supreme Court stayed implementation of the Act and ordered a disposition of the merits of the case.[90] On remand, the trial court found the Act to be constitutional.[91] The chancery division determined that the appropriate standard

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[82] *Id.* The AOC promulgated the directive on September 8, 1999. *Id.* A supplemental directive was issued on September 22, 1999. *Id.*

[83] *Id.* (quoting AOC Directive No. 10-99 § II(A) (Sept. 8, 1999)).

[84] *Farmer*, 762 A.2d at 624.

[85] *Id.* (citing Supplement to AOC Directive No. 10-99 (Sept. 22, 1999) at 1).

[86] *Id.* (citing Supplement to AOC Directive No. 10-99 (Sept. 22, 1999) at 3).

[87] *Id.* Under the New Jersey Court Rules, a party has the right to appeal if the case involves a substantial question of federal or state constitutional law, in cases where there is a dissent in the appellate division, in death penalty cases, and in such cases as are authorized by law. N.J. CT. R. 2:2-1(a). In all other cases, the appellant files for certification. N.J. CT. R. 2:2-1(b). Certification is only granted in cases presenting a question of general public importance. N.J. CT. R. 2:12-4.

[88] *Farmer*, 762 A.2d at 624 (citing Supplement to AOC Directive No. 10-99 (Sept. 22, 1999) at 4).

[89] *Id.* at 622. The chancery division proceeded on an order to show cause. *Id.*

[90] *Id.*

[91] *Id.* at 625. The New Jersey Supreme Court cited the lower court's decision as *Planned Parenthood v. Farmer*, No. BER-C-362-99, 1999 WL 1138605 (N.J. Super. Ct. Ch. Dec. 10,

of review for a facial challenge to a statute which purportedly interfered with a woman's right to seek an abortion was the "undue burden" test first articulated by the United States Supreme Court in *Planned Parenthood v. Casey*.[92] The trial court then turned to the plaintiffs' claims that the Act violated their rights to equal protection of the law and privacy.[93] The court concluded that to help guide the evaluation as to whether the scope of protection afforded by the New Jersey Constitution should exceed the United States Constitution, the court would look to other state courts' disposition of claims to laws regulating minors' access to abortions.[94] Since California, which has an expressed guarantee of privacy in its constitution, was the only state to strike down a parental consent statute based on its constitution, the court chose not to read the New Jersey Constitution as broadly.[95]

In addressing the equal protection claim, the chancery division acknowledged that minors are entitled to constitutional protection.[96] However, the trial court concluded that the differing treatment between minors who choose to seek an abortion and those who choose to carry a pregnancy to term was mitigated by the judicial bypass provision and the State's compelling interests in protecting the minor from her own immaturity.[97] Thus, in the judgment of the chancery division, the Act did not create an impermissible undue burden on a minor's ability to seek an abortion.[98]

The New Jersey Supreme Court directed certification by its own order pursu-

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1999). However, this case was not retrievable and the facts will be taken as reported in *Planned Parenthood of Central New Jersey v. Farmer*, 762 A.2d 620 (N.J. 2000).

[92] *Farmer*, 762 A.2d at 625 (citing Planned Parenthood v. Casey, 505 U.S. 833, 895 (1992)).

[93] *Id.*

[94] *Id.*

[95] *Id.* The California Supreme Court specifically relied on its privacy clause in making this determination. *Id.* The New Jersey chancery division decided that the State's implied guarantee of privacy had never been read so broadly. *Id.*

[96] *Id.* (quoting Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976)).

[97] *Id.* The trial court relied on United States Supreme Court case law, which upheld parental notification laws. *Id.* (citing Bellotti v. Baird, 443 U.S. 622, 625 (1979) (plurality opinion)).

[98] *Farmer*, 762 A.2d at 625.

ant to rule 2:12-1 of the New Jersey Court Rules.[99] The court examined the plaintiff's equal protection argument, noting that ordinarily legislative enactments are presumed to be valid.[100] However, the court noted that statutes which allegedly violate a person's rights are to be examined under more rigorous strictures.[101] Under New Jersey precedent, in situations where the law causes an indirect infringement on fundamental rights, the court employs a balancing test to determine whether the law is impermissible.[102] In this case, the court weighed the minor's "right to control her body and her future" against the State's interests enumerated in the statute.[103] The court determined that the many restrictions imposed by the Parental Notification for Abortion Act on a minor's rights did not justify creating a distinction between minors who choose to carry an unborn child to term and those who seek an abortion.[104] Therefore, the court concluded that the Act violated the state's equal protection clause.[105]

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[99] *Id.* The rule reads, "[t]he Supreme Court may on its own motion certify any action or class of actions for appeal." N.J. CT. R. 2:12-1.

[100] *Farmer*, 762 A.2d at 626 (quoting Bell v. Township of Stafford, 541 A.2d 692, 698 (N.J. 1988)).

[101] *Id.* (citing *Bell*, 541 A.2d at 699). In choosing a more stringent level of review, the court explained that the plaintiffs brought a facial challenge, rather than an as-applied challenge, to the law. *Id.* The limited period of pregnancy and the concern about a minor's confidentiality created special circumstances justifying heightened scrutiny for the facial challenge. *Id.*

[102] *Id.* at 632 (quoting Right to Choose v. Byrne, 450 A.2d 925, 936 (N.J. 1982)). The court viewed the traditional tiered framework as too rigid to permit a full inquiry into the issues raised by the plaintiffs' case. *Id.* The court balanced the nature of the affected right, the extent of the government restriction, and the public interest in the restriction. *Id.* (citing Greenberg v. Kimmelman, 494 A.2d 294 (N.J. 1985)).

[103] *Id.*

[104] *Id.* at 638. The court agreed with Justice Blackmun that such legislative schemes are typically, "poorly disguised elements of discouragement for the abortion decision." *Id.* (quoting City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 525-26 (1983) (Blackmun, J., dissenting)).

[105] *Id.* at 638-39.

III. PRIOR CASE HISTORY

In *Planned Parenthood v. Danforth*,[106] the United States Supreme Court considered a state statute requiring parental consent prior to an abortion.[107] The plaintiffs, which included operators of abortion clinics and physicians, sought a declaration that Missouri's abortion consent law was unconstitutional and appropriate injunctive relief.[108] Under the provisions of Missouri's law, an unmarried minor was required to obtain consent from one parent or a person acting *in loco parentis* before an abortion could be performed in the first twelve weeks of gestation.[109] The Court struck down the statute on the grounds that the consent provision gave parents an absolute veto over minors' decision whether to abort or carry to term.[110] In order for the state to mandate that a parent grant consent before a minor could seek an abortion, the Court held that there must be a significant state interest.[111] While the statute suggested that safeguarding the family unit was a significant state interest, the Court did not agree that mandating parental consent would satisfy that interest.[112] The Court did not believe that giving parents an absolute veto over a minor's desire to have an abortion would safeguard the family unit or preserve parental authority.[113] The Court asserted that a

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[106] 428 U.S. 52 (1976).

[107] *Id.* at 58. The subject at issue in *Danforth* was Missouri's abortion law. *Id.* at 56 (citing MO. REV. STAT. §§ 559.100, 542.380, 563.300 (1969).

[108] *Id.* at 60. The plaintiffs represented the class of physicians who wished to perform the abortion procedure and their patients who sought abortions. *Id.* at 57. The defendants were John C. Danforth, Attorney General for Missouri, and the Circuit Attorney for Saint Louis, representing all county prosecuting attorneys in Missouri. *Id.*

[109] *Id.* at 72. The statute permitted a waiver of consent if a physician certified that the abortion was necessary to save the life of the pregnant minor. *Id.* The Court made a special note of the fact that only one parent had to grant consent. *Id.* After twelve weeks, the abortion method known as saline amniocentesis was prohibited because the state decided it was dangerous to a woman's health. *Id.* at 58.

[110] *Id.* at 74.

[111] *Id.* at 74-75. The defendants contended that the protection of the welfare of minors was a permissible state objective, citing child labor laws and compulsory education laws as examples. *Id.* at 72. The plaintiffs responded by pointing out that no other law required consent for other forms of medical treatment. *Id.* at 73.

[112] *Danforth*, 428 U.S. at 75.

[113] *Id.* at 75. The Court noted that the fact that a minor is pregnant may shatter the family structure. *Id.*

competent and mature minor's right to privacy is at least as important as the interests of parents.[114]

The Supreme Court next examined the issue of parental consent in *Bellotti v. Baird*, where a Massachusetts statute required the consent of both parents before an unmarried woman under the age of eighteen could get an abortion.[115] The plaintiffs, including a doctor who performed abortions and a minor who sought an abortion without her parents' consent, challenged the constitutionality of the law.[116] However, in contrast to the statute addressed in *Danforth*, the Massachusetts statute provided that if one or both parents refused to give consent, the minor could seek consent from the court.[117] The statute provided a judge discretion to grant a waiver of parental consent for good cause shown.[118] The law mandated absolute anonymity for the minor and an expedient judicial process.[119]

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[114] *Id.* The Court acknowledged that while parents have certain rights in raising their children, minors do possess constitutional rights. *Id.* at 72-73.

[115] 443 U.S. 622, 625 (1979) (plurality opinion) (quoting MASS. GEN. LAWS ANN. ch. 112, § 12S (West Supp. 1979)). In answering the certified questions, the Supreme Judicial Court of Massachusetts said that parents' refusal to give consent was a general prerequisite before a minor sought judicial consent. *Id.* at 630 (citing Baird v. Attorney General, 360 N.E.2d 288, 294 (Mass. 1977)). This rule could be waived if a parent was unavailable or if "the need for the abortion constitutes 'an emergency requiring immediate action.'" *Id.* (quoting *Baird*, 360 N.E.2d at 294). If one parent had died or was otherwise unavailable, one parent's consent would be sufficient. *Id.* If both parents were deceased or had deserted the family, a minor's guardian could grant consent. *Id.*

[116] *Id.* at 626. Besides Gerald Zupnick, M.D., the other plaintiffs were William Baird, the founder and director of the Parents Aid Society, and "Mary Moe," any unmarried and pregnant minor who sought an abortion without telling her parents. *Id.* Mary Moe was allowed to represent the class of unmarried minors who sought abortions without their parents' consent and had adequate capacity to give informed consent to the procedure. *Id.* (quoting Baird v. Bellotti, 393 F.Supp. 847, 850 (D. Mass. 1975)). The defendants were Francis X. Bellotti, the Attorney General of Massachusetts, the District Attorneys of all of the counties in Massachusetts, and Jane Hunerwadel, who intervened to represent parents who had or may have pregnant unmarried minors. *Id.* at 627.

[117] *Id.* at 625. The judge was empowered to hold whatever hearing was deemed necessary, and a minor did not have to be granted a guardian for the hearing. *Id.* (quoting MASS. GEN. LAWS ANN. ch. 112, § 12S (West Supp. 1979)).

[118] *Id.* In the certified answers, the Supreme Judicial Court of Massachusetts defined the "good cause" for granting judicial consent to be if doing so would be in the best interest of the minor. *Id.* at 630 (quoting *Baird*, 360 N.E.2d at 293). Similarly, the judge, upon finding the minor capable of making an informed consent, could withhold judicial consent if doing so would be in the minor's best interest. *Id.*

[119] *Id.* at 644. The supreme judicial court and the superior courts were empowered to

However, parents were entitled to notice that their daughter had obtained judicial consent.[120] Nonetheless, a plurality of the Court found the statute to be unconstitutional.[121]

In so holding, the Court announced the rule that in order to pass constitutional muster, all consent statutes must have an alternative procedure to adequately insure that a parent did not possess the power to prevent the minor from exercising a fundamental right.[122] A minor had to be able to seek a judicial waiver of parental consent by proving either that she was sufficiently mature to give consent to the procedure without her parents involvement or that the abortion would be in their best interests.[123] Any proceeding had to guarantee a resolution of the issue and assure the anonymity of a the minor.[124] Furthermore, the Court warned that the process should proceed as quickly as possible so as to give the minor a sufficient opportunity to obtain the abortion.[125] The Court required that if a judge made a finding that a minor was sufficiently mature to give her own consent or that the abortion would be in the minor's best interest, the waiver must be granted.[126] The Court held that as long as these provisions were in place, a parental consent statute would satisfy the Constitution.[127] Since the Massachusetts statute permitted the judge to withhold judicial consent even if a minor demon-

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make rules to ensure that these provisions of the statute were effectuated. *Id.* at 631 (citing *Baird*, 360 N.E.2d at 297-98).

[120] *Id.* at 631. This requirement was read into the statute by the Supreme Judicial Court of Massachusetts. *Id.*

[121] *Bellotti*, 443 U.S. at 624. The plurality was written by Justice Powell, and was joined by Chief Justice Burger, Justice Stewart, and Justice Rehnquist. *Id.* Justice Stevens, joined by Justices Brennan, Marshall, and Blackmun, wrote a concurring opinion. *Id.* at 652. Justice Stevens wrote separately to express reservation with the potential burdens imposed by a judicial bypass procedure. *Id.* at 655-56.

[122] *Id.* at 643 n.22.

[123] *Id.* at 643-44.

[124] *Id.* at 644.

[125] *Id.* The supreme judicial court expected that a timely hearing under the statute would be achievable. *Id.* at 645 (quoting Baird v. Attorney General, 360 N.E.2d 288, 298 (Mass. 1977)).

[126] *Id.* at 643-44.

[127] *Bellotti*, 443 U.S. at 643-44.

strated her maturity and it required parental notification, the Court struck the law down as unconstitutional.[128]

The Court examined another consent statute in *City of Akron v. Akron Center for Reproductive Health*.[129] In *Akron*, a city ordinance required, among other provisions, the written consent of one parent before a minor under the age of fifteen could obtain an abortion.[130] The law permitted a waiver for minors over the age of fifteen who could not obtain the consent of a parent.[131] However, minors under the age of fifteen could not obtain a judicial waiver because the city determined that they could never be mature enough to give consent and an abortion would never be in their best interests.[132] Furthermore, physicians who disobeyed the ordinance could be found guilty of a criminal misdemeanor.[133] The Court invalidated the statute because by preventing a minor from being allowed to demonstrate maturity or that the abortion was in her best interests, the city ordinance effectively created a parental veto.[134] The Court reaffirmed its position that while parental consent statutes are constitutional, they must contain adequate mechanisms for the minor to seek a judicial waiver.[135]

The California Supreme Court invalidated a parental consent provision in

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[128] *Id.* at 651. In so holding, the Court recognized that a minor's freedom may yield to parental authority. *Id.* at 637. However, given that the choice to seek an abortion is a fundamental right, the Court said, "[t]he need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require[s] a State to act with particular sensitivity when it legislates to foster parental involvement in this manner." *Id.* at 642.

[129] 462 U.S. 416 (1983).

[130] *Id.* at 422.

[131] *Id.* at 422 n.4.

[132] *Id.*

[133] *Id.* at 425.

[134] *Id.* at 439. The district court found that the Akron ordinance required both the informed consent of the minor and either parental consent or a court order. *Id.* at 439 (quoting Akron Cent. for Reprod. Health, Inc. v. City of Akron, 479 F.Supp. 1172, 1201 (N.D. Ohio 1979)). Therefore, a parental veto exists due to the ordinance's determination that a minor under the age of fifteen can never informed consent. *Id.*

[135] *City of Akron*, 462 U.S. at 440. Since a minor was prevented from demonstrating her maturity, and the ordinance stated that an abortion was never in a minor's best interest without parental consent, the ordinance violated the principles established in earlier consent cases. *Id.*

American Academy of Pediatrics v. Lungren.[136] The *Lungren* case was the first time a consent statute was invalidated on state constitutional grounds.[137] Thus, it guided the New Jersey Supreme Court in evaluating the Parental Notification for Abortion Act under its state constitution.[138] The statute at issue was a traditional parental consent statute with a judicial bypass procedure.[139] Physicians who violated the statute would be guilty of a misdemeanor, punishable by a fine up to $1,000, a thirty-day jail term, or both.[140] Health care providers challenged the statute as a facial violation of the California Constitution's explicit privacy guarantee and its equal protection clause.[141] The challenged California law generally provided for parental consent as a prerequisite for obtaining medical treatment.[142] However, many exceptions were created, including procedures related to pregnancy that would not result in an abortion.[143]

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[136] 940 P.2d 797 (Cal. 1997).

[137] Planned Parenthood of Cent. N.J. v. Farmer, 762 A.2d 620, 625 (N.J. 2000).

[138] *Id.* at 630.

[139] *Lungren*, 940 P.2d at 804.

[140] *Id.* at 805 n.7.

[141] *Id.* at 806. The California Constitution contains equal protection principles in article I, section 7. *See supra* note 19.

[142] *Lungren*, 940 P.2d at 801.

[143] *Id.* at 827. The *Lungren* court explained two categories of medical emancipation statutes. *Id.* at 801. The first type allowed a minor to consent to any medical treatment if certain conditions were met. *Id.* A married minor, one in the United States armed services, or a minor over the age of fifteen who could demonstrate independence from parental control could consent to any medical procedure. *Id.*

There were also limited medical emancipation acts, covering specific procedures which a minor may be reluctant to inform parents about. *Id.* In the judgment of the state legislature, such reluctance may prevent a minor from seeking the appropriate medical treatment. *Id.* As a matter of public policy, a minor could give consent to these medical procedures. *Id.* (quoting Walter Wadlington, *Medical Decision Making for and by Children: Tensions Between Parent, State, and Child*, 1994 U. ILL. L. REV. 311, 324-25 (1994)).

Some of these limited exceptions allowed a minor to receive all medical treatment related to pregnancy, with the exception of the abortion procedure. *Id.* at 826. The court noted that some of these procedures pose far greater risk to the mother than an abortion. *Id.* A minor could also receive medical treatment for sexually transmitted diseases, rape, and sexual assault without parental consent. *Id.* at 827 (citing CAL. FAM. CODE. §§ 6926-6928 (West 1994)).

The California Supreme Court applied a strict scrutiny analysis to determine if there was a compelling state interest in the law and if the law utilized the least restrictive means of achieving the compelling goal.[144] The court found that the state failed to establish a compelling reason for infringing on a minor's privacy right.[145] The court relied on medical emancipation statutes and laws that permit a minor to decide on her own whether or not to give the child up for adoption to demonstrate a minor's freedom to make critical decisions in other areas.[146] Ultimately, the court held that the State's alleged interest in protecting a minor from physical or psychological harm could not be squared with the greater freedoms a minor possessed in these other areas.[147]

Although this statute met the requirements that the United States Supreme Court articulated in the many consent statute cases it handled, such as the judicial bypass procedure and the expediency of the proceedings, the California court noted that its constitution is a separate document, and its guarantees are not identical to the national Constitution.[148]

In *Right to Choose v. Byrne*,[149] the New Jersey Supreme Court considered a state statute that restricted Medicaid funding to abortions that were necessary to save the life of a mother.[150] The United States Supreme Court had considered a similar statute in *Harris v. McRae*.[151] The *Harris* Court held that such a provi-

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[144] *Id.* at 818-19.

[145] *Id.* at 829. The statute's goals were to protect the health of minors and to foster the parent-child relationship. *Id.*

[146] *Id.* at 827 (citing CAL. FAM. CODE. §§ 8700(b), 8814(d)).

[147] *Id.* The court noted that minors could seek medical treatment without parental notification in other areas, including treatment for sexually transmitted diseases. *Id.* at 827. A minor could also decide, without parental notice or consent, whether to give a child up for adoption. *Id.*

[148] *Lungren*, 940 P.2d at 808 (citing Raven v. Deukmejian, 801 P.2d 1077 (Cal. 1990).

[149] 450 A.2d 925 (N.J. 1982).

[150] *Id.* at 927 (citing N.J. STAT. ANN. § 30:4D-6.1 (West 1981)). The statute did not permit funding for therapeutic abortions where the health of the mother was at stake or for elective, non-therapeutic abortions. *Id.*

[151] 448 U.S. 297 (1980). The federal law was the original 1976 "Hyde Amendment," which also restricted Medicaid funding to abortions required to save the life of the mother. Right to Choose v. Byrne, 450 A.2d at 928 (citing Pub. L. No. 94-439, § 209, 90 Stat. 1434 (1976)). The Supreme Court upheld the restriction on funding for abortions to save the life of the mother. *Id.* at 930 (citing Harris v. McRae, 448 U.S. 297, 325 n.27 (1980)). A later version of the Hyde Amendment permitted Medicaid funding in cases of rape or incest, or where

sion did not violate the Equal Protection Clause and therefore a state could place such restrictions on funding.[152] Nonetheless, the New Jersey Supreme Court reached a different result in *Right to Choose*.[153]

Traditionally, equal protection challenges are considered using the tiered levels of review.[154] The law at issue in *Right to Choose* only indirectly affected a woman's right to seek an abortion.[155] The court decided that the tiered level approach would not offer a full understanding of the encroachment of the right.[156] Therefore, the New Jersey Supreme Court rejected the notion of varying levels of review in these types of cases.[157] Instead, the court engaged in a balancing test.[158] The court considered the nature of the affected right against the degree of infringement by the government, as well as society's interest in having the law.[159] In this situation, the health and privacy of the woman was weighed against the state's interest in the unborn life and the balancing test tipped in favor of the woman.[160] The court considered it to be unreasonable for the state to deny

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two physicians determined that carrying the pregnancy to term would result in serious injury. *Id.* at 928-29 (citing Pub. L. No. 95-205, 91 Stat. 1460 (1977)).

[152] *Farmer*, 762 A.2d at 631 (citing *Harris*, 448 U.S. at 326 (1980)).

[153] *Right to Choose*, 450 A.2d at 937.

[154] *Id.* at 934. The court explained the tiered level of review:

> Conventional equal protection analysis employs "two tiers" of judicial review. Briefly stated, if a fundamental right or suspect class is involved, the legislative classification is subject to strict scrutiny; the state must establish that a compelling state interest supports the classification and that no less restrictive alternative is available. With other rights and classes, however, the legislative classification need be only rationally related to a legitimate state interest.

Id. (citing United States Chamber of Commerce v. State, 445 A.2d 353 (N.J. 1982)).

[155] *Id.* at 936.

[156] *Id.* (quoting Taxpayers Ass'n of Weymouth Township v. Weymouth Township, 364 A.2d 1016 (N.J. 1976)).

[157] *Id.*

[158] *Id.*

[159] *Right to Choose*, 450 A.2d at 937.

[160] *Id.* "A woman's right to choose to protect her health by terminating her pregnancy

Medicaid funding to women who sought abortions.[161] The balancing test articulated in *Right to Choose* would become the standard framework for addressing indirect burdens on constitutional rights in the State of New Jersey.

IV. OPINION

The New Jersey Supreme Court, in an opinion by Chief Justice Poritz, considered the Parental Notification for Abortion Act.[162] The chief justice reasoned that although the Act did not outright prohibit minors from obtaining an abortion, the law did impose burdens on a fundamental right.[163] Therefore, the Court decided to employ the balancing test under the state's equal protection principles as expressed in *Right to Choose v. Byrne*.[164]

The first step in the inquiry, Chief Justice Poritz announced, was to examine the nature of the affected right.[165] The court stressed the importance of the fundamental right of a woman to control her body and her future, as this right protects the individual autonomy of a woman.[166] The chief justice repeated that while both the United States Constitution and the New Jersey Constitution protect this right, the New Jersey equal protection clause can provide additional protection for the fundamental interests in situations where the Federal Constitution does not.[167]

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outweighs the State's asserted interest in protecting a potential life at the expense of her health." *Id.*

[161] *Id.* While the court recognized that the State was under no obligation to provide Medicaid funding for pregnancy-related procedures, once it did so, it must act in a neutral manner. *Id.* at 935.

[162] Planned Parenthood of Cent. N.J. v. Farmer, 762 A.2d 620 (N.J. 2000). The chief justice was joined by Justices Stein, Coleman, and Long. *Id.* at 647. Only six justices heard the case. *Id.*

[163] *Id.* at 632. The court had to analyze the Act to determine if the restrictions placed on the class of minors seeking abortions were severe enough so as to be unconstitutional. *Id.*

[164] *Id.*

[165] *Id.* This is the first consideration in the *Right to Choose* balancing test. *See supra* note 159 and accompanying text.

[166] *Farmer*, 762 A.2d at 632. The court had acknowledged the recognition under the Federal Constitution of these interests as constitutionally protected rights. *Id.* at 626 (citing Roe v. Wade, 410 U.S. 113, 153 (1973)).

[167] *Id.* at 633. Chief Justice Poritz declared, "[o]ur precedents make clear that the classification created by the statute is deserving of the most exacting scrutiny." *Id.*

The court then turned to the extent the government restriction infringed on the fundamental right.[168] Chief Justice Poritz concluded that since a minor who chose to have an abortion must first notify her parents, and those who chose to carry to term have no state mandated duties, minors who want to terminate a pregnancy have a burden that other pregnant teenagers do not have.[169] The chief justice noted that the more significant the restriction, the more likely the law will be struck down as unconstitutional.[170]

In evaluating the requirements of the Act, the court first explored natural delays a minor faces before ultimately deciding whether to have an abortion.[171] The court recognized that minors often take longer to decide whether or not to seek an abortion than an adult woman due to the biological nature of teenagers.[172] The chief justice suggested that minors tend to take more time to realize they are pregnant than older women.[173] To add further delay, the court noted, minors are generally unfamiliar with the health care system, and they typically lack financial independence.[174] Therefore, the court concluded, the decision regarding how to proceed is already delayed.[175]

Chief Justice Poritz announced that the provisions of the Act did indeed pose significant burdens on minors compounding the problems associated with delays in making and executing a decision.[176] In the first instance, the court observed,

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[168] *Id.*

[169] *Id.* The disparity of treatment between the two categories of pregnant minors composed the essence of the equal protection argument. *Id.* at 632.

[170] *Id.* at 633. The Court explained that due to the lack of a record, the certifications of the parties would guide the dispensation of the case. *Id.* The plaintiffs' certifications were written by members of the medical community, including psychiatrists and gynecologists. *Id.* at 633 n.7. The State relied on the Act, legislative findings, the AOC procedures, the DHSS fact sheet, and federal case law. *Id.* at 633 n.8.

[171] *Id.* at 633.

[172] *Farmer*, 762 A.2d at 633.

[173] *Id.* Based on certifications, the extra time needed to determine pregnancy is attributable to a minor's frequently irregular menstrual cycles. *Id.*

[174] *Id.*

[175] *Id.*

[176] *Id.*

the Act required that a minor who chose to tell her parents on her own, must then wait for the notification form to be signed and notarized, and for the DHSS fact sheet to be completed.[177] However, the chief justice commented that if a minor chose not to tell her parents before going to the doctor, the notification letter would have to be sent to one or both parents before an abortion is performed.[178] The court asserted that although the doctor could personally give notice to the parents, this was not a viable option.[179]

The chief justice concluded that the Act served only as a means for delaying a minor from having an abortion.[180] Since the majority found that most physicians recommend to minors that they seek an adult's advice prior to having an abortion,[181] Chief Justice Poritz described the Act as adding nothing positive to the process, but merely serving as a functional bar to abortion.[182] The court feared that the Act would encourage minors to cross state lines to obtain abortions in neighboring states, or to get illegal, unsafe abortions.[183] Chief Justice Poritz further noted the increased costs and risks of abortion as a pregnancy progresses.[184] An abortion during the twelfth to fourteenth week LMP,[185] the court explained, could cost five hundred dollars, whereas the procedure could cost $1,395 by the twenty-second week LMP.[186] The majority went on to point out that the risks of

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[177] *Id.*

[178] *Farmer*, 762 A.2d at 633-34. The period to wait would be forty-eight hours. *See supra* text accompanying note 54.

[179] *Farmer*, 762 A.2d at 634. Chief Justice Poritz described this option as, "extremely onerous for the provider and may not be a real-world possibility." *Id.*

[180] *Id.*

[181] *Id.*

[182] *Id.* The court agreed with Justice Marshall's dissent in a notification case when he said that, "[m]any minor women will encounter interference from their parents after the state-imposed notification. In addition to parental disappointment and disapproval, the minor may confront physical or emotional abuse, withdrawal of financial support, or actual obstruction of the abortion decision." *Id.* (quoting H.L. v. Matheson, 450 U.S. 398, 438-39 (1981)).

[183] *Id.*

[184] *Id.*

[185] *Farmer*, 762 A.2d at 634. LPM is medical term meaning "last menstrual period". *Id.* at 634 n.9.

[186] *Id.* at 634.

injury or even death increase with time and therefore fewer facilities are capable of performing the abortion in later pregnancies.[187] In fact, the court commented, abortions performed in the second trimester often take place in a hospital.[188] Therefore, the court concluded that the notification requirement could act as an effective obstacle to young women in obtaining an abortion.[189]

The court turned to the State's response that the Act was an insignificant restriction on a fundamental right.[190] Chief Justice Poritz characterized the State's argument as saying that in cases where notice was a burden, the minor could seek a judicial waiver.[191] However, the court found that the waiver procedure itself was a far greater burden on the minor's right to seek an abortion.[192] The chief justice stated that a minor would have to find the time to place the call to the courthouse to commence the waiver procedure.[193] Then, the court explained, the minor would have to arrange to meet with one of the lawyers who volunteer to handle such cases.[194] The minor would then have to travel to the county courthouse, which Chief Justice Poritz described as a burdensome experience.[195] The court feared that the minor's anonymity may be compromised by appearing in the courthouse, where neighbors and other minors from the community seeking waivers may identify the teenager.[196] In addition, the chief justice noted that

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[187] *Id.*

[188] *Id.* Generally, the risk of death to the mother during an abortion procedure begins in the ninth week LMP and continues until the twentieth week LMP. *Id.*

[189] *Id.* The majority alleged that a notification statute may have the same practical effect as a consent statute, in terms of giving a parent the ability to block the abortion. *Id.* (quoting Ohio v. Akron Cent. for Reprod. Health, 497 U.S. 502, 526 (1990) (Blackmun, J., dissenting)).

[190] *Id.*

[191] *Farmer*, 762 A.2d at 634.

[192] *Id.* at 634-35. While there are natural and unavoidable delays in a minor's ability to decide how to proceed upon becoming pregnant, the court was only concerned with those delays created by state action. *Id.* at 636.

[193] *Id.* at 635.

[194] *Id.* The Chief Justice specified the difficulty of using the telephone with the potential presence of parents and siblings. *Id.*

[195] *Id.* Traveling to the courthouse would require time off from school, another means, the court asserted, for parents to discover their daughter's actions. *Id.*

[196] *Id.* The court described the details, as told by a Minnesota judge, of instances where a

in Massachusetts a notification waiver process for minors delayed the abortions for two to four weeks, which under many circumstances could be considered the functional equivalent to outright prevention of an abortion.[197] The Court indicated that any delay in the New Jersey judicial waiver process could result from the fact that the state constitution expressly granted a party the right of appeal from an adverse judgment in the trial court.[198] As an overall scheme, Chief Justice Poritz evaluated the existing AOC's procedures as being wholly inadequate in preserving the fundamental rights of minors.[199]

The court next assessed the three justifications for parental notification as explained in the Act.[200] The chief justice restated the State's first justification as the need to protect minors from their own immaturity.[201] However, the court observed that in other areas of New Jersey law, the maturity of minors is acknowledged.[202] Chief Justice Poritz characterized the State's argument as flawed based on the fact that a minor who undergoes other medical procedures associated with pregnancy is not required to give her parents notice.[203] Particularly, the court discussed that the underdeveloped skeletal structure of teenagers often

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minor's parents received an anonymous letter detailing the fact that the minor had been seen at a judicial bypass hearing. *Id.* A minor also runs the risk of being seen by other minors at their bypass hearings. *Id.*

[197] *Farmer*, 762 A.2d at 635.

[198] *Id.* at 636 (citing N.J. CONST. art. VI, § 5, para. 2). This section states that "[a]ppeals may be taken to the Appellate Division of the Superior Court from the law and chancery divisions of the Superior Court and in such other causes as may be provided by law." *See also supra* note 87.

[199] *Farmer*, 762 A.2d at 635. The court expressed the belief that attorneys taking these cases could not drop everything to guide a minor through the hearing and that legal representation takes time. *Id.* Further, the majority found suggestions made by Justice O'Hern in dissent, such as video-conferencing, or tele-conferencing, to be cost prohibitive and possible violations of due process. *Id*; *see infra* note 252 and accompanying text.

[200] *Farmer*, 762 A.2d at 636.

[201] *Id.*

[202] *Id.* The Court specifically addressed New Jersey statutes relating to a minor's ability to make decisions regarding "her sexuality, reproductive decisions, substance-abuse treatment, and placing her children up for adoption." *Id.* (citing N.J. STAT. ANN. § 9:17A-1 (West 1999); N.J. STAT. ANN. § 9:17A-4 (West 1999); N.J. STAT. ANN. § 9:2-16 (West 1999)).

[203] *Id.*

necessitated a cesarean section for delivery of a child.[204] The chief justice suggested that this procedure posed far greater risks to the minor, and that a parent's knowledge of the child's health would be particularly useful.[205] Yet, the court noted, a minor does not have to tell her parents if she is having a cesarean section.[206]

Chief Justice Poritz reported that the State's interest in protecting minors from their own immaturity was not supported by the experience of physicians.[207] The court pointed out that the American Academy of Pediatrics believed that minors were as equally equipped as adults to make informed decisions relating to their own health.[208] The chief justice reasoned that the minor's act of seeking the services of a family planning center was itself a sign of maturity.[209] The majority supported this point by observing that in Minnesota, of the 600 minors seeking judicial waiver, only one was found not to be mature enough to make the decision to have an abortion.[210] The court also cited the experience in Massachusetts, where of the more than 15,000 minors who asked for waivers, all but thirteen requests were granted by the trial court, of which eleven were reversed on appeal.[211] Again, the court concluded that since minors were sufficiently mature to make a decision, the Act served only as a delay.[212]

The chief justice reiterated the Act's second justification, which was to preserve the family structure.[213] The court noted that ninety percent of young

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[204] *Id.*

[205] *Id.* at 636.

[206] *Farmer*, 762 A.2d at 636.

[207] *Id.*

[208] *Id.* Studies done by the American Academy of Pediatrics indicated that most minors between the ages of fourteen and seventeen are just as capable as adults to give consent to medical treatment. *Id.* The court also noted that minors who seek an abortion are in no worse condition psychologically than minors who carry the unborn child to term. *Id.* One physician proposed that minors who are able to make decisions as to whom to tell about the abortion are in a better psychological state than a minor subject to state-mandated parental notification. *Id.*

[209] *Id.*

[210] *Id.* at 637.

[211] *Id.*

[212] *Farmer*, 762 A.2d at 637.

[213] *Id.*

women tell their parents ahead of time that they are pregnant and desire an abortion.[214] For the remaining minors, the chief justice observed that their home life likely consisted of physical or psychological abuse,[215] and suggested that these conditions led these minors to seek waivers.[216] The court doubted that the Act would mend pre-existing family turmoil.[217] Therefore, the court decided that the Act did nothing to enhance familial relations in the majority of homes because in most situations the parents were informed without the statute, and in the remaining instances, the Act did nothing to cure defective communication in troubled families.[218] The chief justice again noted that most abortion doctors recommended that their patients consult an adult before undertaking an abortion.[219] As a result, the court held the Act created a burden on minors while not achieving its stated legislative purpose.[220]

The State's final justification, the chief justice explained, was to protect the rights of parents.[221] The court acknowledged that parents have rights to control their children.[222] Notwithstanding that fact, Chief Justice Poritz asserted that children possess rights as well.[223] The court surmised that the Federal Constitution prevents the state from interfering with the parent-child relationship, though it does not address a parent's desire to abrogate a fundamental right of the child.[224] Thus, the chief justice ruled that the Act did not further its goal and

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[214] *Id.*

[215] *Id.*

[216] *Id.* at 637.

[217] *Id.*

[218] *Farmer*, 762 A.2d at 637.

[219] *Id.*

[220] *Id.* at 638.

[221] *Id.*

[222] *Id.* at 638 (citing Wisconsin v. Yoder, 406 U.S. 205, 219 (1972); Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-535 (1925); Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923)).

[223] *Id.*

[224] *Farmer*, 762 A.2d at 638 (quoting Catherine Grevers Schmidt, *Where Privacy Fails: Equal Protection and the Abortion Rights of Minors*, 68 N.Y.U. L. REV. 595, 630 (1993)). Chief Justice Poritz emphasized that a minor possesses the fundamental right to seek an abortion independent of parental rights. *Id.*

there was no justifiable reason for creating roadblocks for minors seeking abortions.[225]

The court concluded by asserting that the State cannot create unjustified burdens on the exercise of fundamental rights.[226] The chief justice found that the State had failed to prove that the Act's goals could be achieved by its enforcement or that the need to treat the two classes of minors was justified.[227] Rather, the majority agreed with the plaintiffs that there was no compelling State interest in the Act.[228] Therefore, since the State's interest in the Act failed to override a minor's interest in exercising her right to seek an abortion, the court declared the Act unconstitutional under the equal protection principles of the New Jersey Constitution.[229]

JUSTICE O'HERN DISSENTING

Justice O'Hern authored a dissenting opinion.[230] The justice began by explaining that the Act did not regulate or forbid abortion procedures.[231] The dissenting justice reminded the court that the power of judicial review is one which should be used with care.[232] Since the Act did not regulate or forbid abortion procedures, Justice O'Hern did not view the statute as being repugnant beyond a reasonable doubt.[233]

Justice O'Hern reviewed the federal case law defining the constitutional standards for parental consent and notification statutes, and the judicial bypass pro-

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[225] *Id.*

[226] *Id.* at 638.

[227] *Id.*

[228] *Id.* at 638.

[229] *Id.* at 638-39.

[230] *Farmer*, 762 A.2d at 638-39 (O'Hern, J., dissenting). Justice O'Hern was joined by Justice Verniero. *Id.*

[231] *Id.* at 639 (O'Hern, J., dissenting).

[232] *Id.* (citing Gangemi v. Berry, 134 A.2d 1 (N.J. 1957)). An act should only be struck down if its repugnancy is clear beyond a reasonable doubt. *Id.*

[233] *Id.*

ceedings.[234] The justice discussed *Lambert v. Wicklund,*[235] wherein the United States Supreme Court upheld a Minnesota parental notification statute which was virtually identical to the New Jersey Act.[236] Further, the justice noted that the judicial bypass procedure was similar to the one in New Jersey.[237]

Since the New Jersey Act would survive federal constitutional analysis, the dissent asserted that using the state constitution was the only way to invalidate the law.[238] The dissenting justice conceded that New Jersey employed a balancing test for equal protection challenges to laws indirectly burdening fundamental rights, whereas the federal courts used the tiered levels of review.[239] The justice observed that because Article I, Paragraph 1 of the New Jersey Constitution contained different text than the Fourteenth Amendment of the United States Constitution, the two provisions might have different meanings.[240] However, Justice O'Hern elaborated, the New Jersey provision did not contain the words "equal protection" or "due process" yet the court has previously interpreted it as preventing injustice and the unequal treatment of citizens.[241]

With the New Jersey constitutional framework in mind, the dissenting justice concluded that the Act did not violate Article I, Paragraph 1 of the New Jersey Constitution.[242] To bolster the Act's legality, Justice O'Hern observed that the State's rationale, as expressed in the Act, was supported by case law.[243] Justice

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[234] *Id.* at 639-41 (O'Hern, J., dissenting). For a discussion of these cases, *see supra* Part III Prior Case History.

[235] 520 U.S. 292 (1997).

[236] *Farmer*, 762 A.2d at 640 (O'Hern, J., dissenting).

[237] *Id.* (citing *Lambert*, 520 U.S. at 293-94).

[238] *Id.* at 641 (O'Hern, J., dissenting). Justice O'Hern articulated the difference between a due process challenge and an equal protection challenge. *Id.* Due process, the justice explained, prevents the state from using impermissible means to accomplish its goal, and equal protection requires a state to draft its legislation in an evenhanded manner. *Id.* (quoting Greenberg v. Kimmelman, 494 A.2d 294 (N.J. 1985)).

[239] *Id.* (citing Right to Choose v. Byrne, 450 A.2d 925 (N.J. 1982)).

[240] *Id.* at 642 (O'Hern, J., dissenting) (citing *Right to Choose*, 450 A.2d 925 (N.J. 1982)).

[241] *Id.*

[242] *Farmer*, 762 A.2d at 644 (O'Hern, J., dissenting).

[243] *Id.* at 643 (O'Hern, J., dissenting).

O'Hern cited *Right to Choose v. Byrne* for the proposition that the State was under no obligation to pay for non-therapeutic abortions, procedures covered by the Act.[244] Therefore, the justice said, the *Right to Choose* court had held that an equal protection challenge for a refusal to pay for non-therapeutic abortions should fail.[245]

The dissenting justice then attacked the conclusions of the court by analyzing the Act under the *Right to Choose* balancing test.[246] Justice O'Hern conceded the importance of the affected right to the minor.[247] The dissent then pointed out that the public need for the statute, namely protecting minors from their own immaturity, fostering the family unit, and protecting parental rights, has been affirmed in cases dealing with a range of other topics.[248] Finally, Justice O'Hern interpreted the majority's criticism of the Act to be that it simultaneously does both too much and too little.[249] On the one hand, the justice explained, since minors typically tell their parents about an abortion, the Act was ineffective and unnecessary and serves only as a roadblock to the abortion decision.[250] However, the dissent questioned the "undue burden" of the judicial bypass proceedings when ninety-eight percent of waiver requests are in fact granted.[251] To mitigate any potential burdens, the justice suggested that since a minor's presence at the hearing was not mandated, alternative bypass procedures, such as video-conferencing or after-school hours for hearings, could be implemented.[252]

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[244] *Id.* at 642 (O'Hern, J., dissenting) (citing *Right to Choose*, 450 A.2d at 925).

[245] *Id.*

[246] *Id.* at 642-44 (O'Hern, J., dissenting).

[247] *Id.* at 642-43 (O'Hern, J., dissenting).

[248] *Farmer*, 762 A.2d at 643 (O'Hern, J., dissenting). The Justice cited, as examples, *In re Grady*, 426 A.2d 467 (N.J. 1981) (advising child in decisions concerning reproduction), *In re Adoption of Children by L.A.S.*, 631 A.2d 928 (N.J. 1993) (describing parents' fundamental rights), *New Jersey Division of Youth and Family Services v. A.W.*, 512 A.2d 438 (N.J. 1986) (emphasizing "inviolability of the family unit"), and *In re Guardianship of J.C.*, 608 A.2d 1312 (N.J. 1992) (discussing law that favors keeping children with natural parents). *Id.*

[249] *Farmer*, 762 A.2d at 643 (O'Hern, J., dissenting).

[250] *Id.*

[251] *Id.*

[252] *Id.* Justice O'Hern downplayed the significance of the hearing requirements, since minors who seek abortions would have to make calls to a physician and travel to the clinic to confirm the pregnancy and to have the abortion. *Id.* at 643-44 (O'Hern, J., dissenting). These

Justice O'Hern argued that the majority's equal protection analysis was flawed.[253] The justice stated that this case did not deal with a suspect class.[254] Further, since the Act did not infringe on the essential right to choose to have an abortion, the dissent argued that the fundamental right was not infringed.[255] Therefore, the justice concluded, the court should have used rational basis review.[256] Justice O'Hern did not think it irrational that different medical procedures should be governed by different statutes.[257] The Justice suggested that most parents will know that their daughter is pregnant and planning to carry the child to term, whereas many will not know that their daughter is pregnant and planning to have an abortion.[258] Given the possibility for emotional harm associated with abortion, the dissent did not think the Act was irrational.[259]

Justice O'Hern concluded by addressing the majority's contention that the AOC procedures were an undue burden.[260] The dissent noted that, with the exception for waiving filing fees, the Legislature left it to the courts to devise the procedures for judicial bypass hearings.[261] If indeed the procedures posed a constitutional problem, the justice suggested that they be amended.[262] Otherwise, Justice O'Hern would have affirmed the chancery division's upholding of the Act.[263]

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burdens, the Justice opined, were no greater than burdens a minor already faces. *Id.* at 644 (O'Hern, J., dissenting).

[253] *Id.* at 644 (O'Hern, J., dissenting).

[254] *Id.* Justice O'Hern asserted that the majority conceded this point. *Id.*

[255] *Farmer*, 762 A.2d at 644 (O'Hern, J., dissenting).

[256] *Id.* For a discussion on rational basis review, *see supra* note 154.

[257] *Farmer*, 762 A.2d at 644 (O'Hern, J., dissenting).

[258] *Id.*

[259] *Id.* (quoting H.L. v. Matheson, 450 U.S. 398, 412-13 (1981)).

[260] *Id.* at 645 (O'Hern, J., dissenting).

[261] *Id.* (citing N.J. STAT. ANN. § 9:17A-1.7a (West 1999)).

[262] *Id.* at 646 (O'Hern, J., dissenting).

[263] *Farmer*, 762 A.2d at 646 (O'Hern, J., dissenting).

JUSTICE VERNIERO DISSENTING

Justice Verniero also wrote a dissenting opinion.[264] While the justice agreed with Justice O'Hern's dissent, Justice Verniero commented that the Act did not create a significant restriction on the minor's right to obtain an abortion.[265] The justice noted that this Act was not an obstacle to an abortion procedure, as the United States Court of Appeals for the Third Circuit found in a case concerning the State's partial birth abortion law.[266] In balancing the encumbrance the Act placed on the ability to get an abortion against the parents' right to know about their daughter's health, the Justice found the Act to be constitutional.[267] Justice Verniero recommended ordering the AOC to cure any insufficiencies in the judicial bypass procedure of the Act and remanding the case for a full development of the record.[268]

V. CONCLUSION

The issue of the right to abortion is a very sensitive matter. Courts have been quick to note that in deciding cases which prohibit or restrict abortions, they are to determine the matter based on legal principles, and not individual philosophy or morality.[269] Thus, no easy determination can be made on the wisdom of the New Jersey Supreme Court's holding, though legal analysis can lead to some conclusions.

The majority recognized that a minor finding herself pregnant will have to

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[264] *Id.* (Verniero, J., dissenting).

[265] *Id.*

[266] *Id.* Justice Verniero referred to *Planned Parenthood of Central New Jersey v. Verniero*, 220 F.3d 127 (3rd Cir. 2000). The case name was subsequently changed to *Planned Parenthood of Central New Jersey v. Farmer* pursuant to FED. R. APP. P. 43(c)(2). *Farmer*, 220 F.3d at 127. The Court of Appeals for the Third Circuit found that the New Jersey law at issue was void for vagueness and an undue burden on a woman's reproductive rights. *Id.* The Third Circuit also held that the law did not protect the health of the mother. *Id.*

[267] *Farmer*, 762 A.2d at 646 (Verniero, J., dissenting).

[268] *Id.* at 646-47 (O'Hern, J., dissenting). Justice Verniero did not believe that any procedural defects in the AOC guidelines were beyond cure. *Id.* at 647.

[269] *Id.* at 622. The majority began its decision by stating, "We also emphasize, once again, that our holding is not based on, nor do we 'presume to answer the profound questions about the moral, medical, and societal implications of abortion.'" *Id.* (quoting Right to Choose v. Byrne, 450 A.2d 925 (N.J. 1982)).

decide how to proceed.[270] There are naturally delays that any individual would face in having to make such a tremendous decision. The court was only concerned with those delays that are imposed by the State.[271] However, the court over-emphasized the burdens the Act placed on the minor's right to seek an abortion, and parts of the majority's own argument help illustrate this point. The court noted that an estimated ninety percent of minors tell their parents that they want an abortion.[272] The undue burden is therefore the duty of the parents to sign a notice form and get it notarized. Notaries are hardly few and far between, and while this requirement may cause a brief delay, it does not rise to the level of a significant obstacle to getting an abortion for this group of minors.

The judicial bypass provision is the solution for the remaining ten percent who, due to familial structure, cannot or should not notify their parents of the impending abortion.[273] Once again, the court's own evidence undermined the weight of the burden. The New Jersey Act required a judge to rule on the motion within forty-eight hours, the same time a physician had to wait after sending out the letter of notification.[274] Two additional days would probably not increase the risks of getting an abortion so much that the period created a roadblock to getting an abortion. Further, as the statistics from other states illustrate, the trial level grants most waivers.[275] It is only in the extraordinary case where appellate review is necessary. The dissenting justices correctly noted that if one of the fatal flaws to the Act's constitutionality is the judicial bypass procedure, it seems logical that rather than striking down the entire statute, the court could have ordered AOC to draft new procedures that would adequately insure the rights of minors.[276]

The court's analysis of the State's first two justifications for the Act is sound. However, the court seems rather dismissive of the rights of parents. The court's articulated grounds for throwing out the State's third justification is that while the State may not interfere with a parent's rights, it cannot help the parent from

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[270] *Id.* at 633-34.

[271] *Id.* at 636.

[272] *Id.* at 638.

[273] *Farmer*, 762 A.2d at 638.

[274] *Id.* at 623 (quoting N.J. STAT. ANN. § 9:17A-1.4(a) (West 1999)).

[275] *Id.* at 637.

[276] *Id.* at 645 (O'Hern, J., dissenting).

preventing a minor from exercising her rights.[277] This ignores the fact that most parents seek to protect their children. They often possess information that may be vital to the child's health. By not requiring notice, the State allows the minor to potentially place herself in grave risk.

Yet this requirement of notice to the parent of a minor seeking an abortion may be the fatal flaw in the Act's reasoning. The court correctly argued that there could be no justification for requiring notice for an abortion when notice is not needed for other medical procedures associated with pregnancy, including a cesarean section.[278] This fact may indicate that the Act was designed to be an obstacle for abortion rather than a means of protecting minors, fostering family communication, and protecting the rights of parents.

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[277] *Id.* at 638.

[278] The court's decision in *Planned Parenthood of Cent. New Jersey v. Farmer* sparked a response from the New Jersey Legislature. On September 21, 2000, a proposed amendment to the constitution was introduced in the Assembly. ACR2, 2000-2001 Sess. (N.J. 2000), *available at* http://www.njleg.state.nj. The proposal would add a twenty-third paragraph to Article I of the New Jersey Constitution, stating, "[t]he Legislature may provide that a parent or legal guardian shall receive notice before his or her minor or incompetent child undergoes any medical or surgical procedure or treatment, irrespective of any right or interest otherwise provided in this Constitution." *Id.* On November 20, 2000, the proposal received a majority vote in the Assembly by a count of 44-14-16. *Id.* However, this was not enough to receive the necessary three-fifths vote of the house in order to be submitted to the people for ratification. N.J. CONST. art. IX, para. 1. The constitution, though, provides that if a proposal receives a majority, it can be voted on in the next year, and if it again receives a majority, it can be submitted for ratification. *Id.* Thus, only time will tell if the New Jersey Supreme Court's expansive reading of the state constitution remains good law.