

April 6, 2019

DELIVERED VIA EMAIL

Health Policy Committee  
Florida Senate  
The Capitol  
400 S. Monroe Street  
Tallahassee, FL 32399

Re: Opposition to SB 1774, Mandating Parental Consent

Dear Chair Harrell and Health Policy Committee Members:



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Staff Attorney

On behalf of more than 130,000 members and supporters statewide, the American Civil Liberties Union of Florida opposes SB 1774 and respectfully requests that you vote “No” on this unpopular, unconstitutional, unnecessary, and ultimately unwise bill. We respectfully request that this testimony be included in the record of the meeting and made available to the public in the committee packet/record meeting notes.

#### Mandating Parental Consent is Unpopular

Legislation requiring minor women to obtain parental consent to terminate their pregnancy is unpopular. In 1980, Florida voters amended our constitution to provide a greater privacy right than provided in the Federal Constitution. Fla. Const., Art. 1, § 23. Florida’s constitution, unlike the federal Constitution, contains an explicit and express right to privacy this is broader and more expansive than the federal Constitution.

Florida’s Constitution, Art. 1, Sec. 23, explicitly provides:

Right of privacy. -Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life....

In 2004, Florida voters approved a constitutional amendment that would permit legislation requiring *parental notification*—not parental consent—before a minor could terminate her pregnancy. Fla. Const., Art. 10, § 22. In 2005, the Florida legislature followed the will of the people and enacted § 390.01114, Fla. Stat., requiring parent notification—not parental consent.

Moreover, in 2012, the majority of Floridians once again rejected restrictions on the right to privacy when they rejected Amendment 6, an anti-abortion amendment that would have weakened privacy protections for women regarding terminating their pregnancy, and possibly paved the way for a legislative parental consent requirement for minors to obtain an abortion. Specifically, Amendment 6, which was rejected by 55% of Floridians in 2012 provided, among other things:

This proposed amendment provides that the State Constitution may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution. With respect to abortion, this proposed

amendment overrules court decisions which conclude that the right of privacy under Article I, Section 23 of the State Constitution is broader in scope than that of the United States Constitution. (Amendment 6, 2012)

By rejecting this anti-abortion amendment that would have narrowed the scope of Florida's constitutional right to privacy as applied to abortion rights, Floridians reaffirmed Florida's greater right to privacy specifically in the area of reproductive health care.

### Mandating Parental Consent is Unconstitutional

We have been down this path before. In 1988, the legislature passed a parental consent statute that was struck down as unconstitutional. Recognizing the robust privacy interest guaranteed by the Florida Constitution, the Florida Supreme Court struck down the parental consent requirement. *In re T.W.*, 551 So. 2d 1186, 1195 (Fla. 1989). Nothing has changed to suggest that a parental consent requirement today would be constitutional.



Florida

The Florida Supreme Court in *In re T.W.* specifically stated that “[u]nlike the federal Constitution ... which allows intrusions based on a “significant” state interest, the Florida Constitution requires a “compelling” state interest in all cases where the right to privacy is implicated.” In order for a statute to be held constitutional, it must pass muster under both the federal and state constitutions. Florida’s Constitution is unique in that it has its own express constitutional provision guaranteeing an independent right to privacy. This right to privacy is greater and more expansive than the federal privacy right. The Court provided: “[w]e can conceive of few more personal and private decisions concerning one’s body that one can make in the course of a lifetime...” and reiterated the principle that “[f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman’s decision...whether to end her pregnancy. A woman’s right to make that choice freely is fundamental.” *Id.* at 1193.

Next, the Court specifically addressed the question of whether the fundamental freedom to make such a personal decision extends to minors, and the Court answered in the affirmative:

We conclude that it does, based on the unambiguous language of the amendment: The right to privacy extends to “[e]very natural person.” Minors are natural persons in the eyes of the law and “[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority.” *Id.*

The Court held that given Florida’s greater constitutional right of privacy, that the state “must prove that the statute furthers a compelling state interest through the least intrusive means,” and that it failed to do so.

Mandating Parental Consent is Unnecessary

Parental consent is unnecessary to ensure a parent's involvement in a decision to terminate a pregnancy. Pursuant to § 390.01114(3), Fla. Stat., a physician currently must notify a minor's parents of any planned abortion. Thus, the law already ensures parents can support and guide a minor-child's deliberation and decision to terminate her pregnancy. Adding extra paperwork, notarized signatures, collection and submission of identity papers, and criminal penalties for physicians providing abortion care, will needlessly complicate parental involvement and delay and restrict access to care.

Mandating Parental Consent is Unwise



Lastly, mandatory parental consent is unwise. Unfortunately, not all children in Florida have supportive, nurturing parents. I have represented numerous young women seeking a judicial waiver of parental notice. *See* § 390.01114(4), Fla. Stat. Each time these women have expressed to me and explained to the court about the severe, adverse impact that notifying their parents would cause. They credibly feared being beaten, kicked-out of their home, abandoned financially, alienated from affection, or a combination of the above. For these reasons, parental consent laws are opposed by leading healthcare professionals, including the American Medical Association, the Society for Adolescent Medicine, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics.

SB 1774 is contrary to the will of Floridians, contrary to established precedent, contrary to the medical opinion of leading healthcare professions, and dangerous to minors. For all of the above, we respectfully urge you to oppose this bill.

Sincerely,

*Benjamin Stevenson*

Benjamin Stevenson

Cc: Kara Gross, Legislative Director, ACLU FL  
Kirk Bailey, Political Director, ACLU FL