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North Florida Women's Health & Counseling Services, Inc. v. State of Florida

WOMEN'S HEALTH AND COUNSELING SERVICES VERSUS STATE. MS. ANDERSON.

MAY IT PLEASE THE COURT. BEBE ANDERSON FOR PLAINTIFF'S PETITIONERS. YOUR HONORS, THE RIGHT TO MAKE THE DEEPLY PERSONAL DECISION AS TO WHETHER OR NOT TO BEAR A CHILD IS PART OF THE FUNDAMENTAL RIGHT TO PRIVACY UNDER THE FLORIDA CONSTITUTION, FOR MINORS AS WELL AS ADULTS, AS THIS COURT FOUND IN THE TW CASE. BY MANDATING THAT A YOUNG WOMAN OR HER PHYSICIAN MUST NOTIFY A PARENT BEFORE A MINOR IS ABLE TO HE HAVE HE CAN WAIT THAT CHOICE -- TO EFFECTUATE THAT CHOICE IS A FUNDAMENTAL INTRUSION OF PRIVACY. THERE ARE THREE CASES I WOULD LIKE TO CITE TO THE COURT TODAY. FIRST, IN THE TW CASE, THIS COURT SET DOWN THE LEGAL ANALYSIS TO APPLY IN THIS CASE AND THE DECISION IN THIS CASE. TWO, THE DECISION IN THIS CASE AND THE TW CASE, IN THAT CASE THE CONSENT STATUTE AND HERE WE HAVE A NOTICE STATUTE, IS NOT A SIGNIFICANT DIFFERENCE AS A MATTER OF FACT OR LAW, AND THREE --.

SIGNIFICANT RELATIVE TO A COMPELLING STATE INTEREST, WOULD YOU NEED A DIFFERENT COMPELLING STATE INTEREST IN A CONSENT STATUTE, AS OPPOSED TO A NOTICE STATUTE?

THE WAY THIS COURT HAS LAID OUT THE COMPELLING STATE INTEREST TEST, WHEN IT HAS FOUND FUNDAMENTAL RIGHT TO PRIVACY IMPLICATED, THE TEST IS THE SAME. THE FIRST QUESTION, OF COURSE, IS THE RIGHT TO PRIVACY INTRUDED UPON BY THE STATE, AND AS THE DISTRICT COURT OF APPEAL FOUND, THAT RIGHT IS INTRUDED UPON BY THE STATUTE. ONCE THAT IS ESTABLISHED BY THE PLAINTIFFS, THE BURDEN SHIFTS TO THE STATE TO ESTABLISH THAT A COMPELLING STATE INTEREST IS FURTHERED BY THE LEAST INTRUSIVE MEANS, SO THE TEST REALLY IS THE SAME, AND IN THE TW CASE, THIS COURT, IN ANALYZING WHETHER THAT VERY STRINGENT TEST HAD BEEN SATISFIED BY THE STATE, LOOKED TO SEE WHETHER THERE WAS CONSISTENCY IN THE WAY THE STATE HAS TRIED TO FURTHER THE INTEREST THAT IT WAS ASSERTING AS A BASIS FOR THAT CONSENT STATUTE.

TO BE SURE YOU UNDERSTAND WHAT I AM ASKING, YOU HAVE THE SAME COMPELLING STATE INTEREST IN TW THAT YOU HAVE NOW. IS THAT WHAT YOU ARE AGREE SOMETHING.

YOUR HONOR, I DO AGREE THE STATE HAS ASSERTED THE SAME INTERESTS, AND FOR THE SAME REASONS, THOSE INTERESTS DO NOT SAT I I -- DO NOT SATISFY. THE STATE HAS NOT SATISFIED ITS COMPELLING INTEREST. THE CORRECTNESS OF THE TW DECISION, NOT ONLY DO WE HAVE THE LEGISLATIVE INCONSISTENCY OF THE TREATMENT OF ALL OTHER RELATED PREGNANCY CARE, BUT WE HAVE THE VERY STRONG FACTUAL RECORD HERE THAT SHOWED INDEED THE DECISIONS THAT A MINOR MAKES --

DO YOU RECOGNIZE THAT THERE ARE ANY DIFFERENCES BETWEEN THESE TWO STATUTES, THE STATUTE THAT WAS UNDER CONSIDERATION IN TR AND THE STATUTE WHICH IS NOW -- TW, AND THE STATUTE WHICH IS NOW UNDER CONSIDERATION?

THERE ARE DIFFERENCES, YOUR HONOR. ALTHOUGH THOSE DIFFERENCES, IN TERMS OF THE END RESULT, ARE NOT SIGNIFICANT.

WHAT ARE THE DIFFERENCES THAT YOU WOULD RECOGNIZE?

ONE DIFFERENCE CERTAINLY IS THAT THIS IS A NOTICE STATUTE, AND IT IS CLEAR ON THE FACE THAT A CONSENT STATUTE INTRUDES INTO A MINOR'S RIGHT TO EXERCISE HER CHOICE, BUT I THINK THAT IT IS CLEAR, BOTH FROM THE FACE OF THE STATUTE THAT A NOTICE REQUIREMENT IS, ALSO, INTRUDING INTO THAT RIGHT AND IN ADDITION HERE WE HAVE A STRONG FACTUAL RECORD THAT SHOWS THE HARM THAT COMES FROM THE STATUTE AND SHOWS INDEED THAT IT DOES INTRUDE ON THE RIGHT OF THOSE MINORS WHO WOULD NOT INVOLVE A PARENT. THE OTHER DIFFERENCE IS THAT THE LEGISLATURE DID CORRECT SOME OF THE DUE PROCESS PROBLEMS IDENTIFIED BY THIS COURT IN TW, HOWEVER, EVEN WITH AN IMPROVED JUDICIAL BYPASS PROCEEDING, EVEN IF THE STATE HAD MET ITS BURDEN OF SHOWING A COMPELLING STATE INTEREST IS FURTHERED, IT WOULD STILL FAIL THE INTRUSIVE MEANS TEST, BECAUSE THE FACTS HERE SHOW THE PROBLEMS THAT COME FROM THE BYPASS AND THE HARMS THAT COME THAT ARE ASSOCIATED WITH THE JUDICIAL BYPASS, EVIDENCED BY THE COURT IN TW, SO THOSE TWO ARE DIFFERENT. HOWEVER, AS I SAY, GIVEN THE FACT RECORD AND THE CONTINUING LEGISLATIVE INCONSISTENCY, IT IS CLEAR THAT THOSE DIFFERENCES AREN'T DIFFERENCES THAT CAUSE A DIFFERENCE IN THE RESULT.

SO IS IT YOUR POSITION THAT THE ANALYSIS CONCERNING NOTIFICATION AND THE ANALYSIS CONCERNING CONSENT ARE THE SAME?

YES, YOUR HONOR. THE COURT, IN THIS CASE IN TW AND, ALSO, IN THE CASES INVOLVING SEXUAL EXPLOITATION STATUTES, LOOSE TO SEE IS THERE INTRUSION INTO THE RIGHT TO PRIVACY. ONCE THAT HAS BEEN SHOWN, AS IT HAS BEEN SHOWN HERE, THE TEST IS THE SAME. IT S THE SAME VERY STRINGENT TEST IMPOSED UPON THE STATE, TO SHOW THAT THERE IS A COMPELLING STATE INTEREST. IN FACT --.

HOW DO YOU AVOID THE VERY FACIAL DISTINCTION BETWEEN NOTICE AND CONCEPT? OBVIOUSLY THE RIGHT TO VETO IS AN ENORMOUS INTRUSION, AND THAT SEEMS TO BE IN A CATEGORY ALMOST BY ITSELF. BUT ISN'T THERE SIMPLY, ON ITS FACE, AND QUALITATIVELY, A SUBSTANTIAL DIFFERENCE BETWEEN SOMEBODY HAVING THE RIGHT TO KNOW AND SOMEBODY HAVING BEEN VESTED WITH THE AUTHORITY TO HAVE A VETO OF AN IMPORTANT DECISION LIKE THIS? IN OTHER WORDS HOW, I AM HAVING DIFFICULTY WITH THE QUICK EQUATION, TRANSFER IN THE PRACTICAL WAY THAT YOU ARE ARGUING HERE. THAT JUST AVOIDS THE FACT THAT THERE IS A SUBSTANTIAL DIFFERENCE BETWEEN THE AUTHORITY TO VETO AND JUST RIGHT TO GET TO KNOW. SO HELP ME WITH THAT, THE APPARENT QUALITATIVE DIFFERENCE ON ITS FACE.

YOUR HONOR, I THINK THE QUALITATIVE DIFFERENCE THAT YOU ARE MENTIONING, THE CLEAR VETO SIGNIFICANCE OF THE CONSENT STATUTE IS WHY THIS COURT SAID, WITH REGARD TO DISCUSSION UPON THAT, THE INTRUSION STATUTE, BECAUSE ONE SENTENCE WAS SO CLEAR, THIS COURT, THOUGH, IN LOOKING TO SEE WHETHER THERE HAS BEEN AN INTRUSION ON THE RIGHT TO PRIVACY HAS NOT DECIDED ON THE COMPELLING STATE INTEREST TRIGGERED, BASED ON HOW SIGNIFICANT THE INTRUSION IS. THEY HAVE LOOKED TO SEE HOW IS THE RIGHT TO PRIVACY IMPLICATED, IN SOME CASES, BUT CERTAINLY IS THE RIGHT TO PRIVACY INTRUDED UPON, AND HERE EVEN ON ITS FACE, THERE IS INTRUSION ON A MINOR'S ABILITY TO MAKE HER DECISION AND EFFECTUATE THAT DECISION, BECAUSE CLEARLY FOR OVER 26 YEARS, MINORS IN FLORIDA HAVE BEEN ABLE TO OBTAIN AN ABORTION WITHOUT PARENTAL NOTIFICATION. THIS IS A MAJOR CHANGE FOR THE SUBSET OF MINORS THAT DON'T VOLUNTARILY INVOLVE THEIR PARENT. MOREOVER WE DO HAVE A FULL FACTUAL RECORD. THERE WAS A FULL TRIAL HERE TO GIVE THE STATE AMPLE OPPORTUNITY TO SATISFY ITS BURDEN BUT ALSO TO ALLOW THE PLAINTIFFS TO SHOW THAT IT DOES INTRUDE UPON THE RIGHT TO PRIVACY AND ALL OF THE FACTUAL FINDINGS OF THE TRIAL COURT AND WHAT THE TRIAL COURT FOUND ARE SUPPORTED PIE SUBSTANTIAL EVIDENCE.

WHAT DO YOU SEE AS THE DIFFERENCE THAT THIS COURT WOULD APPLY THE ANALYSIS AND THE ANALYSIS THAT THE U.S. SUPREME COURT HAS APPLIED IN APPROVING NOTICE STATUTES LIKE

THIS?

THERE IS A VERY KEY DIFFERENCE. AS THIS COURT EXPLAINED IN THE TW CASE, UNDER THE FEDERAL CONTEXT, THE FEDERAL COURT HAS NOT APPLIED THE COMPELLING STATE INTEREST TEST. HE SUPREME COURT HAS LOOKED TO SEE WHETHER THERE IS A SIGNIFICANT STATE INTEREST BUT NOT WHETHER THERE IS A COMPELLING STATE INTEREST, AND IN TW, THIS COURT ANALYZED THE CONSENT STATUTE AND SAID THE VARIOUS RECORDS BY THE SUPREME COURT IS SUFFICIENT BUT NOT SUFFICIENT, GIVEN THE FLORIDA RIGHT TO PRIVACY, IS CLEARLY A MUCH STRONGER AND PROTECTED RIGHT OF PRIVACY THAN THE IMPLICIT PRIVACY FOUND BY THE U.S. SUPREME COURT AND THE FEDERAL CONSTITUTION.

DO YOU THINK OR HOW WOULD YOU DESCRIBE THE, WE HAVE HELD THAT THERE IS A PRIVACY INTEREST IN PARENTS RAISING THEIR CHILDREN AND NOT BEING, HAVING ANY INTRUSION FROM THE OUTSIDE IN THAT. WE HAVE A PRIVACY ISSUE HERE. HOW WOULD YOU BALANCE THOSE TWO OR WOULD YOU? OR DOES THIS PREEMPT OR TRUMP THE PARENTAL RIGHT OF PRIVACY?

WELL, HERE, YOUR HONOR, THE PARENTAL RIGHT TO PRIVACY IS NOT IN FACT, IMPLICATED, BECAUSE THE WAY THIS COURT HAS VIEWED THAT PARENTAL RIGHT TO PRIVACY, UNDER THE STATE CONSTITUTION, IS THAT IT IS A RIGHT TO BE FREE FROM STATE INTERFERENCE INTO FAMILY MATTERS. IT NOT A RIGHT TO HAVE THE STATE INTERJECT ITSELF INTO FAMILY MATTERS AND HAVE THE STATE MAKE EFFORTS TO ENHANCE FAMILY COMMUNICATION, AS THE STATE IS CLAIMING IT IS DOING HERE. RATHER, THAT PARENTAL RIGHT, THE RIGHT TO HAVE YOUR FAMILY INTERACT AMONG ITSELF, TAKE ACTIONS AMONG ITSELF WITHOUT STATE INTERFERENCE. THEREFORE THAT RIGHT HAS BEEN RECOGNIZED AS BEING VIOLATED, WHEN THE STATE HAS INTERSECRETARYED ITSELF AND INSISTED THAT GRANDPARENTS COULD HAVE VISITATION RIGHTS, AGAINST THE OBJECTIONS OF PARENTS OR WHERE THE STATE HAS INTERJECTED ITSELF TO TERMINATE PARENTAL RIGHTS. THOSE ARE THE INSTANCES WHERE THAT RIGHT HAS BEEN IMPLICATED.

IS THERE ANY SIGNIFICANCE THAT YOU ARE AWARE OF, IF WE WERE TO STRIKE DOWN THIS STATUTE WHERE THERE WOULD BE A COMPELLING STATE INTEREST FOR THE LEGISLATURE TO INTERJECT ITSELF IN ANY RELATIONSHIP BETWEEN THE PARENT AND THE CHILD?

CERTAINLY THE LEGISLATURE IS ALLOWED TO INTERJECT ITSELF, WHEN THERE HAS BEEN A SHOWING THAT THERE HAS BEEN ABUSE, FOR EXAMPLE, IN THE FAMILY SITUATION AND THERE ARE STATUTES THAT, AND CONSISTENTLY THE LEGISLATURE HAS SAID THAT, WHEN THERE IS EVIDENCE OF ABUSE, THE STATE MAY STEP IN TO PROTECT THE CHILD, SO THERE ARE SITUATIONS IN WHICH THE LEGISLATURE HAS CONSISTENTLY ACTED TO PROTECT INTERESTS OF THE CHILD BY INTERJECTING ITSELF IN A FAMILY SITUATION.

THE CHOICE OF A CHILD TO MAKE DECISIONS, IN REFERENCE TO HOE THAT CHILD WANTS TO BE WITH OR WHERE THAT CHILD WANTS TO GO.

WELL, YOUR HONOR, A MAJOR DIFFERENCE BETWEEN SOME OF THE TYPES OF DECISIONS THAT TOMLEY MAKES AND THIS DECISION HERE AND THE DECISION WHETHER TO CARRY ON A PREGNANCY AND LIFE TO TERM IS ESSENTIALLY VERY PRIVATE AND TIME-SENSITIVE. THAT MAKES IT VERY DIFFERENT FROM ANY OF THE OTHER DECISIONS THAT MINORS MAY TRY TO MAKE AND THAT THE STATE MAY STEP IN, WHERE THE RIGHT TO PRIVACY IS NOT CLEARLY IMPLICATED. THIS COURT HAS CLEARLY STATED THAT, WHEN YOU ARE TALKING ABOUT THE DECISION OF A MINOR WHETHER OR NOT TO CARRY A PREGNANCY TO TERM AND BECOME A TEEN MOTHER OR TO TERMINATE THAT PREGNANCY, THAT IS PART OF THE FUNDAMENTAL RIGHT TO PRIVACY, AND THAT INTRUSION TRIGGERS THE COMPELLING STATE INTEREST TEST, SO IT IS VERY DIFFERENT FROM OTHER DECISIONS A MINOR MAY MAKE AND SITUATIONS WHERE THE LEGISLATURE HAS RESTRICTED THE ABILITY OF A MINOR TO MAKE DECISIONS.

IN THIS CASE, THERE HAS BEEN GREAT EMPHASIS ON THE FACT THAT THERE IS NO SIMILAR REQUIREMENT FOR NOTIFICATION OF PARENTS CONCERNING SOME OF WHAT COULD BE THE MAJOR RISKS INVOLVING PREGNANCY DECISION, WHETHER THERE IS GOING TO BE A CAESAREAN SECTION OR SOME OF THE COMPLICATION THAT IS COULD OCCUR IN EARLIER STAGES OF PREGNANCY THAT CAN RESULT IN FAR GREATER RISK TO THE CHILD THAN AN ABORTION DECISION. IF THE STATE REQUIRES NOTIFICATION FOR ALL OF THOSE HEALTHCARE DECISIONS. IN OTHER WORDS WAS NEUTRAL IN SAYING IF IT IS ANYTHING TO DO WITH THE CARE OF A CHILD, WOULD THAT RENDER THIS STATUTE THAT, ALSO, REQUIRES NOTIFICATION FOR ABORTION, CONSTITUTIONAL? IN OTHER WORDS HOW WOULD THAT AFFECT THE COMPELLING THE STATE INTEREST ANALYSIS?

YOUR HONOR, THE COMPELLING STATE INTEREST ANALYSIS WOULD STILL BE TRIGGERED, BECAUSE YOU WOULD STILL HAVE THE STATE INTRUDING INTO A MINOR'S ABILITY BOTH WAYS NOW, WHETHER TO CARRY THE PREGNANCY TO TERM OR END THE PREGNANCY, AND YOU WOULD STILL HAVE THE HYPOTHETICAL, HOWEVER, THAT THE STATE WAS TRIGGERED BY THE COMPELLING INTEREST OF TEENS AND GIVEN THE FACT OF STD'S, THE RECORD SHOWS THAT, BY REQUIRING NOTIFICATION, YOU PREVENT MINORS FROM SEEKING CARE. GIVEN THE NEED FOR MINORS TO SEEK PRENATAL CARE AND GIVEN THE NEED OF MINORS TO SEEK NEED, SHOWING COMPELLING STATE INTEREST IS THE LEAST INTEREST OF NEED.

WHAT IS THE RELEVANT ROLE OF CONSISTENCY OF THE STATE, IN ONLY REQUIRING NOTIFICATION IF THE CHILD IS DECIDING TO HAVE AN ABORTION AND NOT IF THE CHILD IS DECIDING THAT THEY ARE GOING TO CARRY THE UNBORN TO TERM? WHAT IS THE ROLE OF THE, IN OUR EVALUATING COMPELLING STATE INTEREST, OF THE INCONSISTENCY?

AS THIS COURT DECIDED IN TW AND ALSO IN JONES AND JAF, BY LOOKING TO THE INCONSISTENCY, YOU ARE SEEING HOW IMPORTANT, REALLY, THIS INTEREST TO THE STATE, AND HOW, TO WHAT EXTENT IS THIS INTEREST REALLY SERVED BY WHAT YOU ARE DOING, AND IN FACT, THE NEW JERSEY SUPREME COURT FOUND HERE THAT THERE IS AN UNSUBSTANTIAL CONNECTION BETWEEN THE INTEREST THE STATE IS ASSERTING AND THE REQUIREMENT OF NOTIFICATION FOR ABORTION, BECAUSE IF, INDEED, THE STATE WAS CONCERNED ABOUT MINORS, FOR EXAMPLE, NOT FOLLOWING AFTER-CARE INSTRUCTIONS THAT, SAME CONCERN IS TRIGGERED WHEN A MINOR HAS A MISCARRIAGE OR TRIGGERED FOR A HE CAN TOPIC PREGNANCY AND MUST -- ECTOPIC PREGNANCY AND MUST TAKE FOLLOW-UP STEPS TO PROTECT THEIR HEALTH AND IT IS CERTAINLY TRIGGERED BY A MINOR WHO NEEDS PRENATAL CARE AND DOES NOT SEEK THAT PRENATAL CARE AND IS TRIGGERED BY A MINOR WHO NEEDS TO FOLLOW STRICT INSTRUCTIONS BUT FAILS TO FOLLOW INSTRUCTIONS INSTRUCTIONS.

WHEN YOU GET DOWN TO THE ANALYSIS, AREN'T THOSE KINDS OF ANALYSIS AND DECISIONS BETTER LEFT TO A LEGISLATIVE BODY THAN TO THE COURS? THAT IS, GIVEN THE FACTS, LET ME TRY TO ASK THIS IN SORT OF A BROADWAY, WOULD YOU AGREE THAT IN GENERAL TERMS, A BRIGHT LINE HAS BEEN DRAWN IN THE WAY THAT WE TREAT CHILDREN, AS OPPOSED TO ADULTS? AND THAT IS THAT CLEARLY IN LEGISLATIVE DECISION AFTER LEGISLATIVE DECISION, AND IN COURT DECISION AFTER COURT DECISION, WE HAVE RECOGNIZED THE RIGHT TO TREAT CHILDREN DIFFERENTLY. THERE IS SORT OF A BRIGHT LINE, IN A GENERAL WAY. WOULD YOU AGREE WITH THAT?

I WOULD AGO KBLEE -- I WOULD AGREE WITH THAT WITH THE CAVEAT, ALSO, THAT IN CONTEXT WITH A MINOR'S REPRODUCTIVE MATTERS, THIS COURT HAS RECOGNIZED THAT THOSE ARE MATTERS SO INTENSELY PRIVATE THAT THEY ARE TREATED DIFFERENT THAN OTHER MATTERS RELATED TO MINORS.

WITH DEFERENCE TO THE CHIEF BEFORE YOU SIT DOWN, WOULD YOU, WHY SHOULD WE, WHY SHOULD THE COURTS SUPERVISE THE LEGISLATURE IN SUCH A STRINGENT WAY, AND WHY CAN'T

THE LEGISLATURE, IN A SENSE, BE INCONSISTENT? THAT IS ISN'T THAT A CHOICE FOR THE LEGISLATURE TO MAKE, ONCE WE HAVE A BRIGHT LINE THAT I REFER TO, IN THE RIGHT TO TREAT CHILDREN DIFFERENTLY?

YOUR HONOR, WHEN IT COMES TO INTRUDING ON THE FUNDAMENTAL RIGHT TO PRIVACY, THIS COURT HAS NOT ALLOWED THE LEGISLATURE TO SIMPLY HAVE ITS OWN -- IT HASN'T JUST GRANTED DEFERENCE TO THE LEGISLATURE. WHEN THAT FUNDAMENTAL RIGHT IS AT STAKE, AND THIS COURT HAS ANALYZED WHAT THE LEGISLATURE HAS DONE. IT HAS DONE IT IN THE TW CASE T HAS DONE IT IN THE CASES INVOLVING SEXUAL EXPLOITATION STATUTES, AND THAT IS BECAUSE, WHEN YOU HAVE A CONSTITUTIONAL RIGHT AT ISSUE, THE LEGISLATURE IS NOT GIVEN THE SAME DEFERENCE BY THE COURT THAN IT WOULD IN OTHER AREAS WHICH DOES RELATE TO MINORS.

BEFORE YOU SIT DOWN, I WOULD LIKE TO ASK ONE QUESTION HERE. WE HAVE RECOGNIZED, AND THE COURTS HAVE RECOGNIZED THAT THERE IS A DIFFERENT STATE INTEREST INVOLVED, DEPENDING ON THE STAGE THAT A PREGNANCY IS IN WHETHER IT IS THE FIRST TRIMESTER OR THE SECOND OR THE THIRD. CORRECT?

YES, YOUR HONOR. TW.

AND SO, UNDER THIS KIND OF NOTIFICATION STATUTE, IS THE PROBLEM HERE, THAT THE NOTIFICATION STATUTE COVERS ALL STAGES OF THE PREGNANCY? WOULD WE HAVE A DIFFERENT ARGUMENT, HERE, IF THIS STATUTE TALKED ABOUT, SAY, THE SECOND TRIMESTER OF PREGNANCY?

I THINK, ON THIS FACTUAL RECORD, THE STATE WOULD HAVE THE SAME PROBLEM AND FAIL TO MEET ITS BURDEN, BECAUSE THE FACTUAL RECORDS HERE DOES NOT INDICATE THAT THERE IS A NEED FOR PARENTAL NOTIFICATION IN THE SECOND TRIMESTER THAT IS NOT COMPARABLE TO THE NEED FOR PARENTAL NOTIFICATION IN TERMS OF A MINOR BEING PREGNANT AND MINOR SEEKING TO CARRY HER PREGNANCY TO TERM, A MINOR GETTING TO THE POINT WHERE ABORTION IS NO LONGER AN OPTION AND THEREFORE SHE IS FACING ALL THE RISKS OF CARRYING A PREGNANCY TO TERM.

SO THE INCREASED RISK OF ABORTION DURING THE OTHER TRIMESTERS WOULD NOT MAKE THIS A COMPELLING STATE INTEREST?

NOT UNLESS FACTUAL RECORDS AND CERTAINLY AS PART OF THIS FACTUAL RECORD, IT IS FOR TO NOTE THE DETERRENCE EFFECT OF A MINOR, IF NOTIFICATION IS REQUIRED. I WOULD LIKE TO RESERVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU.

MAY IT PLEASE THE COURT. I AM JOHN RYAN AT THE OFFICE OF THE ATTORNEY GENERAL, REPRESENTING THE STATE DEFENDANT. I WOULD LIKE TO TAKE OFF, IF I MAY, ON THE QUESTION THAT JUSTICE ANSTEAD DISCUSSED. THIS IS, IN FACT, A CASE WHERE THE PETITIONERS ARE ASKING THIS COURT TO, IN THE CONTEXT OF ABORTION, TO MICROMANAGE, AND THAT IS NOT WHAT THIS COURT'S HOLDINGS HAVE BEEN, EVEN IN THAT VERY IMPORTANT, VERY PRIVATE CONTEXT. THIS COURT HAS LOOKED TO SEE WHETHER THE LEGISLATURE, WHEN IT ACT INGD, ACTED IN A REASONABLE MANNER IN ACTING ONE PLACE AND NOT IN ANOTHER, AND HERE WHAT WE HAVE IS A FACTUAL RECORD, THINKING THAT CLEARLY THIS COURT WILL RECOGNIZE THIS COURT'S DETERMINATION IN TW, THAT THERE WAS NO LOGICAL REASON IN THE CONTEXT OF DECISION-MAKING, TO SAY THAT MINORS COULD MAKE DECISION INS VERY SIMILAR AREAS BUT CANNOT MAKE DECISION TO SAY HAVE AN ABORTION.

WHILE WELL ARE TALKING ABOUT THAT, AND THAT IS -- WHILE WE ARE TALKING ABOUT THAT,

AND THAT IS TO THE EXTENT THAT WE HAVE A LEGISLATIVE HISTORY HERE, IT SEEMS LIKE STAFF REPORT AFTER STAFF REPORT IS WARNING THE LEGISLATURE THAT THIS STATUTE IS GOING TO RUN AFOUL OF THE COURT COURT'S ANALYSIS IN READING TW. THAT IS THAT, IF WE ACCEPT THAT JUSTICE SHAW'S OPINION WAS THE COURT'S ANALYSIS, REALIZING THAT THERE IS A DISPUTE ABOUT THE MAJORITY MIGHT NOT OPINION HERE, BUT ISN'T THERE JUST RED FLAG AFTER RED FLAG IN THE STAFF ANALYSIS, SAYING THAT THIS IS PROBABLY GOING TO RUN AFOUL OF THE FLORIDA SUPREME COURT'S DECISION IN RE TW? THAT IT IS NOT GOING TO BE ABLE TO PASS THAT TEST THAT THE COURT SET OUT INJUSTICE SHAW'S OPINION? -- IN JUSTICE SHAW'S OPINION? ISN'T THAT ESSENTIALLY WHAT THE TRIAL COURT DID HERE? THAT IS THE TRIAL COURT ENDS UP HOLDING UP THE STATUTE, NEXT TO THE ANALYSIS, IN RE TW, AND FINDS, AS THE STAFF COMMENTS WARNED, THAT IT DOESN'T MEET THE STRICT REQUIREMENT SET OUT IN OUR, IN RE TW?

I DON'T WANT TO SPEAK FOR LEGISLATIVE STAFF. THEY ARE ANALYZING COURT DECISIONS. BUT I THINK IT IS RATHER CLEAR THAT JUDGE LEWIS FELT THAT THE COURT'S ANALYSIS, QUOTE CONSISTENCY ANALYSIS, IN TW, MADE HIM GO WHERE HE HAD TO GO IN HIS DETERMINATION IN THE CIRCUIT COURT. THE PROBLEM WITH JUSTICE LEWIS'S ANALYSIS, WHILE I AM SURE IT WAS FULLY THOUGHT THROUGH BY HIM, IT DOES NOT APPEAR TO BE REFLECTIVE OF EXACTLY WHAT THIS COURT DID IN TW. IF I MAY NOTE, AS JUSTICE SHAW WELL KNOWS, WHEN HE EXPLAINED THE CONSISTENCY ANALYSIS, THE PART OF THE COMPELLING STATE INTEREST THAT INVOLVES THE ANALYSIS OF LEGISLATIVE CONSISTENCY, HE CITED TO A CASE WHICH WE HAVE NOTED TO YOU IN OUR BRIEFS, THAT SAYS THAT, WHEN WE ARE LOOK ING AT THE LEGISLATIVE DETERMINATIONS, WE LOOK TO SEE WHETHER OR NOT AND WHEN THEY HAVE MADE CLASSIFICATIONS AND AS TO WHETHER OR NOT THOSE CLASSIFICATIONS ARE REASONABLE OR ARE SUPPORTED RATIONALLY BY THE FACTS, AND THAT IS A DIFFERENT TYPE OF ANALYSIS THAN JUDGE LEWIS THOUGHT HE HAD TO ENGAGE IN AND IS, IN FACT, IN CONTRADICTION TO WHAT THE FIRST DISTRICT DID, WHICH I THINK IS AN APPROPRIATE ANALYSIS UNDER THIS COURT'S DETERMINATION IN TW. IT IS NOT A SITUATION WHERE THE LEGISLATURE MUST BE STERILELY EVENHANDED OVERALL THINGS, SIMPLY BECAUSE WE ARE TALKING ABOUT A MATTER WHERE THE PVAY AMENDMENT IS INVOLVED. THE LEGISLATURE HAS TO HAVE SOME REASON FOR DOING WHAT IT IS DOING. IN THE COLD RECORD THAT THE COURT HAD IN FRONT OF IT IN TW, AND GIVEN THE FACT THERE WERE STATE STATUTES OUT THERE THAT SAY THAT MINORS CAN MAKE THE CHOICE ON THEIR OWN, IN VERY CLOSELY-RELATED AREAS, IT IS VERY DIFFICULT TO SEE WHY THE COURT WOULD NOT COME TO THE CONCLUSION IT CAME TO IN TW. HERE, THOUGH, WE HAVE A MUCH LESS INTRUSIVE DETERMINATION. THE MINOR STILL HAS THE CHOICE, THE ULTIMATE CHOICE UNDER ALL CIRCUMSTANCES, TO DECIDE WHETHER THEY ARE GOING TO HAVE AN ABORTION OR NOT.

LET ME ASK YOU TWO QUESTIONS. ONE, HAVING TO DO WITH THE STANDARD OF REVIEW USEED BY THE DISTRICT COURT. JUDGE LEWIS MADE SOME SUBSTANTIAL FINDINGS OF FACT. THE DISTRICT COURT SEEMS TO HAVE GONE RIGHT TO THE CONSTITUTIONALITY OF IT, AND DID THE DISTRICT COU HAVE TO ACCEPT THE FINDINGS OF FACT? WAS THIS A NIX MIXED QUESTION OF LAW -- WAS THIS A MIXED QUESTION OF LAW AND FACTOR STRICTLY A QUESTION OF LAW, IN YOUR OPINION?

I THINK THAT THE DIFFICULTY WITH VIEWING JUDGE LEWIS'S FINDINGS OF FACT IS SIMPLY FINDINGS OF FACT AND NOT AS TO -- YOU CAN'T RELATE THEM, WITHOUT LOOKING THROUGH THE PRISM OF WHAT LEGAL STANDARD IS BEING USED TO DETERMINE WHETHER THE ULTIMATE DETERMINATION, WHICH IS IN HIS MIND AND I THINK ULTIMATELY THE SAME MIND OF THE DISTRICT COURT, WHETHER THE LAW WAS CONSISTENT, IS WHAT THE STANDARD THIS COURT HAS USED TO DECIDE WHETHER THAT IS, WHETHER YOU PASS THE MUSTER OR DON'T PASS THE MUSTER BURKES IF WE LOOK AT WHAT JUDGE LEWIS FOUND AS FINDINGS OF FACT, WHAT WE FIND IS THAT HE MADE CERTAIN OBSERVATIONS RELATING TO THE DEPARTMENT OF THE INTRUSION, I GUESS TO ANALYZE AND DETERMINE WHETHER OR NOT WE WERE GOING THROUGH

A COMPELLING INTEREST OF MEANS TEST, WHICH THE STATE SAID AND WE AGREE THAT IS A APPROPRIATE TEST, ANYWAY, AND SECONDLY, THE REMAINING FACTUAL FINDINGS HE MAKES, BASICALLY SEEM TO BE MORE TAILORED TOWARD THE QUESTION OF WHETHER THE STATE'S ACTS ARE CONSISTENT OR NOT IN HIS FRAMEWORK OF WHAT HE IS DETERMINING THE CONSISTENCY ANALYSIS OF YOUR COMPELLING INTEREST TEST MEANS, AND SINCE WE DON'T REALLY HAVE MUCH DISPUTE WITH HIS FINDINGS OF FACT NOR DID THE DISTRICT COURT, I THINK, HAVE MUCH DISPUTE WITH HIS FINDINGS OF FACT. THE DIFFICULTY IS THAT THEY HAVE BECOME RELATIVELY UNIMPORTANT IN THE CONTEXT OF DETERMINING WHAT STANDARD WE ARE APPLYING AND HOW WE ARE ACTUALLY GOING THROUGH THE ANALYSIS.

IF IT IS A MIXED QUESTION, YOU AGREE THAT THE DISTRICT COURT SHOULD HAVE SEND THE FINDINGS OF FACT.

YES. JUSTICE SHAW, I THINK THAT THIS COURT, I THINK IT IN FACT DID ACCEPT THOSE FINDINGS.

AND MY NEXT QUESTION WOULD BE RELATIVE TO WHAT COMPELLING STATE INTEREST EXISTS HERE THAT DID NOT EXIST IN TW? THE LEGISLATURE ATTEMPTS TO SET OUT THESE COMPELLING STATE INTEES, UT IT SEEMS TO ME THAT YOU CAN ALMOST GO DOWN AMEN EW THAT YOU HAD IN TW -- GO DOWN A MENU THAT YOU HAD IN TW. YOU HAVE THE SAME COMPELLING STATE INTEREST HERE.

BASICALLY THE COURT IS DEFENDING THE STATUTE AT THIS LEVEL, BUT UNDER THOSE CIRCUMSTANCES, IT STILL SEEMED THAT WHAT THE STATE PROFFERED AS ITS ARGUMENT, WAS THE GENERAL CONCEPT THAT MINORS ARE INCAPABLE OF MAKING THE DECISION WITHOUT, IN GENERAL, THE HELP OF THE DECISION BEING MADE BY THE PARENTS. MINORS ARE CAPABLE OF MAKING THE DECISION, WHICH IS ESSENTIALLY A GENERAL MATURITY CONCERN. HERE, THOUGH, THE LEISLTURE IS DETERMINING, WITH RESPECT TO THIS COURT'S DETERMINATION AND WITH THE FACTS THAT IT HAS SEEN OVER THE PAST, THAT MINORS ARE CAPABLE OF MAKING THE DECISION AND UNDER PRIVACY RIGHTS AND PERSONAL AUTONOMY CONCERNS, REPRODUCTIVE RIGHTS, SHOULD BE ABLE TO MAKE THAT DECISION, SO THEN WE GET INTO A REPRESSED, A MORE FOCUSED CONCEPT FROM THE LEGISLATURE AS TO WHAT THEIR CONCERNS WERE, AND THE CONCERN HERE SEEMS TO BE DIRECTLY RELATED TO THE POTENTIAL HARM THAT OCCURS TO CHILDREN.

BUT DIDN'T WE, IN TW, ALSO ADDRESS WHERE THE HARM TO THE MOTHER AND THE CONTEXT OF THE COURT LOOKED AT WHETHER OR NOT THERE WAS A COMPELLING STATE INTEREST, CONCERNING THE HEALTH OF THE MOTHER, AND THE OPINION GOES ON AND TALKS ABOUT THERE NOT BEING A COMPELLING STATE INTEREST DURING THAT FIRST TRIMESTER. HOW IS THE FINDING BY, WELL, THE DETERMINATION BY THE DISTRICT COURT THAT THE COMPELLING INTEREST HERE IS TO FACILITATE PARENTAL DUTY OF PROVIDING APPROPRIATE MEDICAL CARE, DIFFERENT FROM THAT SAME HEALTH OF THE MOTHER THAT WE SAID WAS NOT COMPELLING IN TW?

WE HAVE TO REMEMBER TWO THINGS. FIRST THAT THAT DECISION WAS IN THE CONTEXT OF WHO CAN MAKE THE DECISION. AND THE SECOND THING IS, IF WE LOOK THROUGH THE VARIOUS OPINIONS IN TW, THE CONCURING AND THE PLURALITY OPINION, IT IS VERY CLEAR THAT THE COURT RECOGNIZED A DIFFERENCE BETWEEN MINORS AND ADULTS, AND RECOGNIZE THAT PARENTS DO HAVE A COMPELLING CONCERN ABOUT PROTECTING THEIR CHILDREN.

IS THE STATE'S COMPELLING INTEREST THE SAME AS THE PARENT'S INTEREST?

THE STATE'S COMPELLING INTEREST HERE IS TO MAKE SURE THAT THE, TO THE EXTENT POSSIBLE RESPECTING THE LIMITATIONS THAT ARE INVOLVED IN THIS PARTICULAR AREA OF THE LAW, THAT CHILDREN GET THE BEST HELP FROM THEIR PARENTS THAT THEY CAN AND THE RESULT, THEIR HEALTH IS PROTECTED, AS WELL AS IT CAN BE.

HOW IS THAT DIFFERENT FROM WHEN THE CHILD DECIDES TO, IN FACT, CONTINUE WITH THE PREGNANCY? YOU STILL HAVE NO NOTIFICATION UNDER THOSE CIRCUMSTANCES, SO WHY THE DIFFERENCE IN THIS SITUATION? YOU HAVE THE SAME INTEREST IN THOSE TWO SITUATIONS.

IT IS CLEAR THAT THE STATE ALWAYS HAS AN INTEREST IN ENDEAVORING TO PROTECT CHILDREN FROM HARM, AND TO THE EXTENT THAT PARENTS CAN BE INVOLVED IN DOING THAT, THAT IS AN IMPORTANT THAT IS A MASSIVELY IMPORTANT COMPONENT IN THAT CIRCUMSTANCE, BUT THE LEGISLATURE HAS TO MAKE SOME CHOICES, AND IN CARRYING TO TERM, THE LEGISLATURE HAS MADE SOME CHOICES. ONE, THE LEGISLATURE HAS, AS OPPOSED TO THE CONTEXT OF DETERMINING TO MAKE, TO HAV AN ABORTION, WHICH, A DECISION WITH WHICH THE STATE NEITHER HAS A POSITIVE OR A NEGATIVE POSITION. IN THE CONTEXT OF DETERMINING TO CARRY TO TERM, THE STATE HAS A WELL-SET-FORT AND CONSISTENT POLICY POSITION, SET FORTH IN FLORIDA STATUTES, TO ENDEAVOUR TO GET CHILDREN TO DOCTORS AND MEDICAL CARE PROVIDERS, AS EARLY AS POSSIBLE, SO THAT THEY CAN CARRY TO TERM AS SAFELY AS POSSIBLE. TO THE EXTENT THAT THE LEGISLATURE HAS DETERMINED THAT POSITIVE GOOD MAY, IN SOME WAY, HAVE A PROBLEM WITH REGARD TO WHEN PARENTAL NOTIFICATION OCCURS, AS IRRATIONAL AS IT MAY BE, THE STATE HAS DETERMINED THAT THERE IS A LINE THAT NEEDS TO BE DRAWN. MOREOVER, THE STATE HAS TO ALSO RECOGNIZE THAT THERE IS A DIFFERENCE BETWEEN THE DISCREET IMMEDIATE CIRCUMSTANCE OF HAVING AN ABORTION, A MATTER WHICH TAKES TWO TO THREE DAYS, IN THE SENSE OF GOING IN, AT THE MOST, GOING IN AND MEETING THE DOCTOR AND HAVING THE ABORTION, AND THE LENGTHY PERIOD OF TIME THAT OCCURS WHEN YOU ARE, WHEN THE CHILD IS DETERMINED TO CARRY TO TERM.

YOU ARE TALKING ABOUT OVERCOMING A PRIVACY INTEREST. DOESN'T THE STATE HAVE TO HAVE A CONSISTENT INTEREST? CAN IT BE INCONSISTENT IN TS STATE INTEREST? YOU SEEM TO AGREE WITH JUSTICE ANSTEAD THAT THE STATE, LEGISLATIVELY, COULD HAVE THE SAME CONSISTENCY. WHEN -- BUT CAN IT REALLY HAVE AN INCONSISTENCY, IF IT IS TRYING TO OVERCOME A PRIVACY INTEREST?

WELL, FIRST OF ALL, I THINK WE HAVE TO RECOGNIZE THAT THE STATE'S GENERAL POLICY IS, IN FACT, UNDER ALL CIRCUMSTANCES, EXCEPT FOR THESE VERY NARROW CIRCUMSTANCES WHERE WE DON'T REQUIRE, WE DO REQUIRE THAT, BEFORE A MINOR HAS ANY KIND OF MEDICAL HELP OR CIRCUMSTANCE, THE PARENT HAS TO CONSENT. THAT IS A DEFAULT POSITION IN THE STATE OF FLORIDA. THE COMMON LAW REQUIRES THAT AND THE STATUTORY LAW REQUIRES THAT.

BUT IN THE CLEAREST SENSE THAT, IS WHAT SHE IS ASKING. YOU ARE SAYING THAT THE STATE'S POSITION, OTHER THAN TH ABORTION, IT ALLOWS THE MINOR FEMALE TO DO ALL THESE OTHER THINGS THAT WOULD JEOPARDIZE HER HEALTH, JEOPARDIZE HER EMOTIONAL STABILITY AND SO FORTH, AND IT DOESN'T SAY THAT YOU CAN'T DO THESE, BUT THEN WHEN IT COMES TO ABORTION, IT TAKES A DIFFERENT TACT.

ACTUALLY, JUSTICE SHAW, I THINK THAT IS THAT THE DIFFERENCE IS THAT PARENTS HAVE TO BE INVOLVED IN A CHILD'S DETERMINATION WHETHER TO HAVE MEDICAL TREATMENT. IT IS, IN FACT, THE EXCEPTION, WHERE WE ALLOW THE CHILDREN TO MAKE DECISIONS ABOUT THEIR VARIOUS, AND VERY SPECIFIC CIRCUMSTANCES WHERE THE LEGISLATURE HAS FOUND THAT IT IS APPROPRIATE TO DO SO. THAT IS THE ONLY CIRCUMSTANCES WE ALLOW CHILDREN TO MAKE DECISIONS AND TO BE, AND TO NOT INVOLVE THEIR PARENTS IN THOSE DECISIONS. AND FOR GOOD REASONS. AS THE DISTRICT COURT NOTED AND AS I THINK COMMON LOGIC WOULD RESOLVE, THAT IN THE NATURE, IN THE CIRCUMSTANCE OF DECIDING WHETHER TO TREAT FOR SEXUALLY-TRANSMITTED DISEASE, THE IMPORTANT THING IS TO GET TREATMENT, AND TE LEGISLATURE FOUNTHAT THERE IS A POTENTIAL EPIDEMIC THAT EXISTS, AS A RESULT OF THE FACT THAT PEOPLE ARE NOT SEEKING TREATMENT. THE LEGISLATURE HAS MADE A CALL, AND THE CALL IS, EVEN THOUGH, TO BE SURE, IN MANY CIRCUMSTANCES THE PARENTS COULD AID IN

THE TREATMENT, IT IS BETTER TO GET TREATMENT. THE SHORT ANSWER TO YOUR QUESTION IS THAT, YES, THE LEGISLATURE CAN MAKE, DRAW LINES AND THOSE LINES HAVE TO BE REASONABLE. THEY CAN'T CAN'T BE AS OCCURRED IN TW. THEY CAN'T BE SIMPLY LINES THAT, ON THEIR FACE MAKE NO SENSE.

BUT ISN'T THIS EXACTLY A PROBLEM WITH THE STATE NOT BEING NEUTRAL, THAT THE MESSAGE THAT IS SENT BY THE PARENTAL NOTIFICATION IS THAT THE STATE IS NOT GOING TO DO ANYTHING, IF A YOUNG CHILD, 15, 16, 14, 17, DECIDES IN THE FIRST TRIMESTER THAT THEY ARE GOING TO CARRY THAT CHILD TO TERM, GOES TO A DOCTOR. THE DOCTOR DOESN'T KNOW THE MEDICAL HISTORY, OTHER THAN WHAT THE CHILD HAS, IS GOING TO RELATE, AND THAT, IF THEY GO AND MAKE THAT DECISION, THAT THERE WILL BE NO PARENTAL INVOLVEMENT, NO NOTIFICATION, BUT IF THEY MAKE THE DECISION, BASED ON THEIR OWN PERSONAL REASONS, THAT THEY CANNOT CARRY THIS CHILD TO TERM, AT THAT POINT THE STATE WILL REQUIRE NOTIFICATION, SO IT IS NOT A NEUTRAL DECISION THAT THE STATE IS MAKING IN THIS STATUTE. ISN'T THAT REALLY THE PROBLEM THAT IS ADDRESSED BY JUDGE LEWIS'S FINDING THAT ABORTION IS ONE OF THE SAFER SURGICAL PROCEDURES THAT CAN OCCUR, AND WE KNOW THAT THE EARLIER AN ABORTION IS ADMINISTERED, THERE IS EVEN, THAT THE RISK INCREASES OF THE TIME GOING ON, SO WHAT ABOUT THAT ASPECT OF THE STATE, IN THIS CHILD BEARING ISSUE, REALLY ACTING INCONSISTENTLY AND THERE FOR NOT BEING NEUTRAL IN THIS IMPORTANT AREA?

I THINK THERE ARE TWO ANSWERS THERE. THE FIRST AND PERHAPS MOST IMPORTANT ONE IS THAT ABORTION ALWAYS INVOLVES SURGERY. IT ALWAYS INVOLVES INVASIVE ACT ON THE PART OF A SURGEON, AND IT INVOLVES AN INVASIVE ACT IN A CIRCUMSTANCE WHERE, WHICH IS THE PART OF THE SECOND PART OF THE ANSWER, IN A CIRCUMSTANCE WHERE THE MINOR HAS VERY LITTLE CONTACT, BEFORE OR AFTER, WITH THE PROVIDER. IN THE CONTEXT OF CARRYING TO TERM, SURGERY CAN OCCUR, BUT IF IT OCCURS AS THE FIRST DISTRICT NOTED AND AS THE RECORD FULLY REFLECTS, IT OCCURS USUALLY AT THE END, AND IT OCCURS AT A TIME WHEN A PARENT WHO IS INVOLVED IN ANY WAY REASONABLY WITH THE CHILD, IS GOING TO ALREADY KNOW THE CHILD IS CARRYING TO TERM FCHT IT OCCURS IN THE MEANTIME, DURING THE CONTINUUM, BUT AND THE TIME OF SURGERY IS AN EMERGENCY, AND IN WHICHCASE NOTIFICATION IS NEVER REQUIRED BECAUSE OF PARENTAL INVOLVEMENT NOTIFICATION, OR IT CAN PPEN N N OCCASION WERE SOMETHG HAS GOE AWRY BUT THERE IS A CHOICE A TO WHAT IS TO BE DONE THERE. IS A BIG DIFFERENCE IN HOW THE STATE, IN THAT INVASIVE PROCEDURE UNDER THOSE CIRCUMSTANCES, WHICH MAY OCCUR OCCASIONALLY, AS OPPOSED TO THE CIRCUMSTANCE IN ABORTION, WHERE, IT OCCURS ALL THE TIME, AND WHERE CLEARLY THE EVIDENCE SHOWS MINORS IN LARGE NUMBERS ARE SIMPLY NOT INVOLVING THEIR PARENTS AT ALL.

WELL, NOW, AS FAR AS, FIRST OF ALL, I THOUGHT THE STUDIES SHOWED THAT MOST MINORS VOLUNTARILY WILL HAVE THEIR PARENTS INVOLVED AND THAT THE OLDER THE MINOR, THE MORE LIKELY THAT MAYBE THEY WON'T, BUT THE YOUNGER THE MINOR, THAT THEY WILL, BUT WHAT YOU SAID IS THAT THIS NOTIFICATION STATUTE IS AN ACKNOWLEDGMENT THAT MINORS CAN MAKE THEIR OWN DECISION. NOW, THAT BEING THE DECISION AS TO WHETHER THOUGH HAVE THE ABORTION OR -- WHETHER TO HAVE THE ABORTION OR WHETHER TO HAVE THE BABY, GIVEN THAT AND GIVEN THE STATE'S NARROW INTEREST IS THAT WE WANT TO MAKE SURE THAT THE CHILD RECEIVES ADEQUATE MEDICAL CARE, WHY IS THE JUDICIAL BYPASS PROCEDURE DIRECTED TOWARDS WHETHER THE CHILD IS MATURE ENOUGH, AS OPPOSEED TO AN INQUIRY AS TO WHAT HER HEALTH ISSUES ARE? I MEAN, ISN'T THAT, SHOULDN'T THAT BE THE STANDARD, THEN, FOR JUDICIAL BYPASS, WHETHER THERE ARE MEDICAL RISKS INVOLVED AND THEREFORE THE PARENTS NEED TO BE INVOLVED, OR RATHER THAN WHETHER THE CHILD IS MATURE ENOUGH TO MAKE THIS DECISION?

I THINK THERE ARE TWO PARTS TO THE BYPASS. ONE IS THE QUESTION OF THE CHILD'S MATURITY

AND THE ABILITY TO NOT INVOLVE THE PARENT. THE OTHER IS THE BEST INTEREST OF THE CHILD, AND I THINK IT IS CLEAR, AS JUDGE BENTON NOTED BELOW, THAT ONE OF THOSE BEST INTERESTS WOULD BE A CIRCUMSTANCE WHERE THE PARENTS, THE CHILD MIGHT FEEL THE PARENTS ARE GOING TO, IN SOME WAY, KEEP THEM FROM MAKING THE CHOICE THAT THIS COURT HAS DETERMINED THAT THEY, AND THAT THE LAW DETERMINES THAT THEY CAN MAKE, AND AS A RESULT, THAT BYPASS WOULD LOOK TO THAT DETERMINATION. CLEARLY THE BEST INTEREST WOULD ALSO INVOLVE THE CHILD'S HEALTH. IF FOR SOME REASON THERE WAS SOME CON SEPTEMBER OR RELY BE -- CONCEPT OR REAL BELIEVE THAT THE JUDGE WOULD ACT INAPPROPRIATELY, THAT IS THE REAL BYPASS OR THE SECOND PART OF THE TEST. IT IS NOT A MATURITY TEST BUT ALSO THE BEST RINTS -- THE BEST INTEREST. IT DOES SEEM APPARENT TO US THAT THE REASONABLE BASIS OF WHAT THE LEGISLATURE IS TRYING TO DETERMINE, GIVEN THE CONTEXT OF CARRYING TO TERM, WHERE THERE IS NO REASON THAT, A, MINORS ARE NOT TELLING THEIR PARENTS, AND, B, THAT THERE ARE A LARGE NUMBER OF MINORS THAT ARE HAVING SURGERY THAT PARENTS ARE NOT ADEQUATELY AWARE OF SO THAT THEY CAN'T ADEQUATELY HELP THEIR CHILDREN GET OVER THAT SURGERY THAT, THAT IS AN APPROPRIATE LINE FOR THE LEGISLATURE TO DRAW. ALSO WHILE I AGREE WITH YOU THAT SOME OF THE STUDIES TENDED TO SHOW THAT MINORS, THAT THE PARENTS WERE AWARE, THAT THE NUMBER IS 50-TO-45 PERCENT WHERE MINORS HAD ACTUALLY TOLD THEIR PARENTS BEFORE THEY HAD AN ABORTION. SOMEHOW THE PARENTS MIGHT HAVE FOUND OUT AT SOME SUBSEQUENT TIME IN SOME DIFFERENT WAY AND WE GET UP TO 55-TO-60 PERCENT, BUT A LARGE NUMBER, SEVERAL THOUSANDS PER YEAR IN FLORIDA, ARE MINORS WITHIN THAT CONSTRUCT MINORS THAT ARE 13, 14, 15 YEARS OLD ARE HAVING SURGERY WITH PARENTS NOT KNOWING, AND THE EVIDENCE IN THIS CASE IS CRYSTAL CLEAR THAT, WHILE ABORTION IS GENERALLY SPEAKING, ONE OF THE MORE SAFER PROCEEDINGS, IT IS SURGERY. THERE ARE IMPACTS TO THE BODY OF A YOUNG WOMAN.

CAN I ASK ONE LAST QUESTION BEFORE? MR. CHIEF JUSTICE

ALL RIGHT.

WOULD YOU, ONE OF THE ARGUMENTS THAT IS MADE HERE, IS THAT, AS A PRACTICAL MATTER, THAT A NOTIFICATION STATUTE IS REALLY THE EQUIVALENT OF A CONSENT STATUTE. CAN YOU TELL ME WHAT THE RECORD INFORMS US OR ANY FINDINGS THAT JUDGE LEWIS MADE THAT WOULD INFORM US ABOUT THAT ISSUE? YOU UNDERSTAND MY QUESTION?

YES, SIR. YES. JUSTICE ANSTEAD, I DOFT. JUDGE LEWIS NOTED THAT SOME YOUNG WOMEN WILL FEEL THAT THAT IS THE CASE. ALTHOUGH THAT -- JUSTICE ANSTEAD I DO. JUDGETIS LEWIS NOTED THAT SOME YOUNG WOMEN WILL FEEL THAT THAT IS THE CASE, ALTHOUGH THERE ARE SOME STATUTES -- THERE ARE SOME FACTS OUT THERE THAT, INVOLVE LIVE BIRTH ABORTION, AND THERE ARE SOME STATES THAT HAVE PARENTAL NOTIFICATION STATUTES THAT, THAT HAS IMPACTED UPON THE RELATIVE RELATIONSHIP BETWEEN ABORTIONS AND LIVE BIRTH, SO TO THE EXTENT THAT YOU WOULD EXPECT THAT A NOTIFICATION BECAME A VETO, YOU WOULD EXPECT THAT THERE WOULD BE A RESPONSE TO THAT, AND IT JUST HASN'T HAPPENED. THE OTHER THING WE WOULD NOTE, AS I HAVE DISCUSSED WITH JUSTICE ANSTEAD, THAT THE BYPASS EXISTS FOR PRECISELY THAT REASON. WHAT WE WOULD ESSENTIALLY BE SAYING -- MR.CHIEUSTICE

I THINK YOU HAVE USED UP YOUR TIME. THANK YOU VERY MUCH.

THANK YOU.

YOUR HONOR, FIRST OF ALL, YOUR HONORS, IF I COULD TURN TO THE ISSUE OF THE FACT THAT ABORTION IS SURGERY. THE RELEVANCE OF WHETHER OR NOT IT IS SURGERY REALLY WOULD BE THE ISSUE OF WHETHER OR NOT THERE ARE RISKS TO THE MINOR IN HAVING THAT PROCEDURE. AND IN FACT, THE RECORD HERE CLEARLY SHOWS, AND THE FACT FINDINGS CLEARLY ESTABLISH

THAT, THERE IS, ASSOCIATED WITH ABORTION, LESS RISKS THAN CARRYING TO TERM AND NO GREATER RISKS THAN OTHER TREATMENTS THAT A MINOR CAN OBTAIN WITHOUT HER PARENTS BEING YOIFD.

IS THERE ANY -- BEING NOTIFIED.

IS THERE ANY EVIDENCE IN THIS RECORD CONCERNING WHETHER OR NOT THERE ARE SIGNIFICANT NUMBERS OF MINORS HAVING PROBLEMS AFTER ABORTIONS?

YOUR HONOR, I WOULD LIKE TO ADDRESS. THAT THE STATE SAYS THAT THERE ARE THOUSANDS OF ABORTIONS PER YEAR WITHOUT PARENTS BEING NOTIFIED. THIS HAS BEEN GOING ON FOR OVER TWENTY YEARS IN FLORIDA. THE COMPELLING INTEREST TEST, THE EVIDENCE THEY PUT FORWARD CONSISTED OF DR. MOOREHEAD HAVING ONE PATIENT SHE HAD WHO SO MUCH WANTED HER PARENTS NOT TO KNOW THAT SHE HAD HAD AN ABORTION THAT SHE DIDN'T TELL DOCTORS IN THE EMERGENCY ROOM. DR. MOOREHEAD TESTIFIED THAT SHE SAW PHYSICIANS IN THE EMERGENCY ROOM. IT HAD NOTHING TO DO WITH THE AGE OF THE PATIENT OR WITH MINORS, WHETHER THE PARENTS HAD NOTIFICATION. THERE WAS ONE WOMAN WHO TESTIFIED THAT IN 1973 SHE HAD AN ABORTION AT THE AGE OF 16 WITHOUT NOTIFYING HER PARENTS AND SHE FELT THAT SHE SUFFERED PSYCHOLOGICAL IMPACT LATER. THAT IS THE EVIDENCE RELATED TO FLORIDA MINORS OVER ALL OF THESE YEARS, IN TERMS OF HEALTH PROBLEMS ACTUALLY BEING SHOWN BY THE STATE.

BUT DO WE HAVTO ACCEPT, THAT IS MY INITIAL QUESTION, DON'T WE HAVE TO ACCEPT THE FINDING OF FACTS BY THE TRIAL JUDGE THAT, ONE, THE RISKS OF MORTALITY OR COMPLICATIONS FROM ABORTION ARE VERY LOW. AND I FIND, FROM THE EVIDENCE, THAT ABORTION IS ONE OF THE SAFER SURGICAL PROCEDURES. ISN'T THAT A FACTUAL FINDING THAT, UNLESS WE ARE REVIEWING THIS, DE NOVO, UNLESS THE DISTRICT COURT IS REVIEWING IT DE NOVO, THAT IS A FINDING OF FACT, ISN'T IT?

ABSOLUTELY, YOUR HONOR, IN ALL OF THE FINDINGS OF FACT BY THE TRIAL COURT, THERE HAS BEEN NO EFFORT BY THE STATE TO SHOW THAT ANY OF THEM ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND IN FT THEY ARE, INDEED, SUPPORTED BY SUBSTANTIAL EVIDENCE, AND THIS COURT IS BOUND BY THOSE FACT FINDINGS AND THE DISTRICT COURT OF APPEAL IS BOUND BY THOSE FACT FINDINGS, BUT IT IS APPARENT FROM READING ITS DECISION THAT IT IGNORED THOSE FACT FINDINGS AND FOUND ITS OWN FACT FINDING. THE MINOR CONSENT IS IRRELEVANT. CLEARLY UNDER THE TW ANALYSIS, THOSE ARE ACTUALLY IRRELEVANT FACTUAL FINDINGS. THANK YOU, YOUR HONORS. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS DAYS CASE.