06-0708-cv

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PORT WASHINGTON TEACHERS' ASSOCIATION, *et. al*,
Plaintiffs-Appellants

v.

BOARD OF EDUCATION OF THE PORT WASHINGTON UNION FREE SCHOOL DISTRICT, ***et. al***
Defendants-Appellees

On Appeal from the United States District Court
For The Eastern District Of New York

BRIEF *AMICUS CURIAE* OF THE NATIONAL LEGAL FOUNDATION,
in support of Defendants-Appellees
Supporting affirmance

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INTEREST OF *AMICUS CURIAE*

The National Legal Foundation (NLF) is 501c (3) public interest law firm. Our donors and supporters have a vital interest in issues pertaining to the sanctity of life and the family. They believe that states maintain the right to exercise the police power in support of protecting children and families and that the Port Washington School District has reasonably done so. This brief is filed pursuant to consent from Counsel of Record for the Appellee and pursuant to a Motion for Leave to File a Brief *Amicus Curiae*.

ARGUMENT

I. THE DISTRICT COURT'S HOLDING THAT THE SCHOOL BOARD'S POLICY IS CONSTITUTIONAL SHOULD BE AFFIRMED BECAUSE IT COMPORTS WITH WELL-ESTABLISHED SUPREME COURT PRINCIPLES PERTAINING TO STATES' INTERESTS IN PROTECTING MINORS AND THEIR FAMILIES.

The District Court correctly rejected Appellants' contention that Port Washington School District's policy mandating that school officials notify parents upon learning that their minor child is pregnant violates the child's right to privacy. *Port Wash. Teachers' Ass'n v. Bd. of Educ.*, 2006 U.S. Dist. LEXIS 1904, *22 (E.D.N.Y. Jan. 4, 2006). Appellants argued below that minors have a right to privacy concerning pregnancy notification. The District Court corrected Appellants' inaccurate assertions and clarified that the right to privacy only protects a woman's "decision to conceive or bear a child," and that this privacy

right is not tantamount to a right to have the fact that one is pregnant kept confidential. *Id*. The District Court further declared that Appellants' "unblinking and steadfast reliance on the consent to abortion line of cases" to support their argument that the school board's policy violates students' privacy rights is "misplaced." *Id.* The District Court explicitly stated that parental notification of pregnancy and parental consent to abortion are two separate and distinct issues. *Id.*

However, even were this Court to consider the abortion consent line of cases in determining whether the school district's policy is constitutional, the school board's policy must still be upheld. The Supreme Court has consistently and unequivocally declared that states have a compelling interest in encouraging parental involvement in decisions related to pregnancy except in those extreme cases in which such involvement would be detrimental to the child. *Ayotte v. Planned Parenthood of New England,* 126 S. Ct. 961 (2006); *Lambert v. Wicklund*, 520 U.S. 292 (1997); *Planned Parenthood v. Casey*, 505 U.S. 833 (U.S. 1992); *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1990); *H. L. v. Matheson*, 450 U.S. 398 (1981); *Bellotti v. Baird*, 443 U.S. 622 (1979); *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52 (1976); *Planned Parenthood Assn. of Kansas City, Mo., Inc.* v. *Ashcroft*, 462 U.S. 476 (1976).

As recently as January of this year, the Supreme Court reiterated its position on the states' right to involve parents when a minor considers terminating her

pregnancy in *Ayotte v. Planned Parenthood of New England,* 126 S. Ct. 961 (2006). The Court declared that states "unquestionably" had such a right, "because of their 'strong and legitimate interest in the welfare of [their] young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.'" *Id.* at 966 (quoting *Hodgson v. Minnesota,* 497 U.S. 417, 444-45 (1990)).

Appellants have framed the school board policy as an attack against students' privacy rights. Such framing misses the larger context and distorts the truth. In fact, the school board's policy protects students and their families, which the Supreme Court has declared are objectives that surmount children's privacy rights.

Further, even in *Bellotti v. Baird*, 443 U.S. 622, 634 (1979), in which the Supreme Court invalidated a Massachusetts abortion statute because it did not provide sufficient judicial remedies to a minor seeking an abortion, the Supreme Court declared that as applied to abortion, the constitutional rights of children could "not be equated with those of adults." The Court explained the necessity of emphasizing protecting children over protecting their rights in this context because of "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding role of parents in the upbringing of their children." *Id*.

In *Hodgson*, the Supreme Court appeared to embrace three interests relevant to its constitutional analysis of Minnesota's two-parent consent requirement (along with a forty-eight hour waiting period which is not relevant to the analysis in this case): "the interest in the welfare of the pregnant minor, the interest of the parents, and the interest of the family unit." 497 U.S. 417, 444.[1]

A. The State has a strong and legitimate interest in the welfare of the pregnant minor.

Throughout its jurisprudence on this issue, the Supreme Court has often reiterated the seemingly obvious point that because pregnancy and abortion involve such intense, potentially traumatic issues, it generally serves a minor's best interest to have parental guidance and consent when making decisions pertaining to pregnancy. As the Court explicitly articulated in *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 505 (1990):

> A free and enlightened society may decide that each of its members should attain a clearer, more tolerant understanding of the profound philosophic choices confronting a woman considering an abortion, which decisions will affect her own destiny and dignity and the origins of the other human life within

[1] While much of Justice Stevens opinion was a majority opinion in *Hodgson*, only Justice O'Connor concurred in, section V of the opinion where these three interests are delineated. However, in Justice Marshall's concurrence, in which Justice Brennan and Justice Blackmun joined, he noted that while he did not "believe the Constitution permits a State to require a minor to notify or consult with a parent before obtaining an abortion," he was "in substantial agreement with the remainder of the reasoning in Part V of Justice Stevens' opinion." 497 U.S. at 462 (Marshall, J., concurring in part, concurring in the judgment in part, and dissenting in part). Thus, almost certainly, five Justices believed that these three interests are relevant.

> the embryo. It is both rational and fair for the State to conclude that, in most instances, the beginnings of that understanding will be within the family, which will strive to give a lonely or even terrified minor advice that is both compassionate and mature.

Additionally, as will be discussed further in Section II, the Court has recognized the invaluableness of parental involvement in securing medical treatment for pregnant minors. In *H.L. v. Matheson,* 450 U.S. 398, 411 (1980), the Court held that a Utah abortion consent statute served, "a significant state interest by providing an opportunity for parents to supply essential medical and other information to a physician," and noted that "[t]he medical, emotional and psychological consequences of an abortion are serious and can be lasting," particularly where the patient is immature.

Because "immaturity, inexperience, and lack of judgment may sometimes impair" the minor's "ability to exercise their rights wisely," the State has a strong interest in involving the parents in this significant decision. *Hodgson*, 497 U.S. at 444.

B. <u>The interests of the parents are relevant to the constitutionality of the statute.</u>

The Court stated in *Matheson* that "'constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.'" 450 U.S. 398, 410 (quoting *Ginsberg v. New York*, 390 U.S. 629, 639 (1968)). The

Court went on to note that by the time of *Quilloin v. Walcott*, 434 U.S. 246 (1978), it had already "recognized on numerous occasions that the relationship between parent and child is constitutionally protected against state interference. *See*, *e. g., Wisconsin v. Yoder*, 406 U.S. 205, 231-33 (1972); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923)." *Id.* at 410. The Court also noted that it "recognized that parents have an important "guiding role" to play in the upbringing of their children, which presumptively includes counseling them on important decisions." *Id*. (quoting *Bellotti v. Baird*, 443 U.S. 622, 633-39 (1979)).

C. The family unit has a privacy interest that also needs to be considered and protected.

"While the State has a legitimate interest in the creation and dissolution of the marriage contract, the family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference." *Hodgson*, 497 U.S. at 446.

In *Stanley v. Illinois*, 405 U.S. 645, 651 (1972), Justice White noted in his opinion for the Court:

> The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," *Meyer v. Nebraska*, 262 U.S. 390, 399, 67 L. Ed. 1042, 43 S. Ct. 625 (1923), "basic civil rights of man," *Skinner v. Oklahoma*, 316

> U.S. 535, 541, 86 L. Ed. 1655, 62 S. Ct. 1110 (1942), and "rights far more precious . . . than property rights," *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S. Ct. 840 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166, 88 L. Ed. 645, 64 S. Ct. 438 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer v. Nebraska, supra*, at 399, the Equal Protection Clause of the Fourteenth Amendment, *Skinner v. Oklahoma, supra*, at 541, and the Ninth Amendment, *Griswold v. Connecticut,* 381 U.S. 479, 496, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) (Goldberg, J., concurring).

Although parental consent to abortion and parental notification of pregnancy are distinct issues that require unique treatment from the courts, the overarching principles the Supreme Court has articulated with respect to parental consent to abortion—seeking to uphold the best interests of the child, maintaining parents' rights, and preserving the family unit—all apply equally to parental notification of pregnancy. Thus, even should this Court apply the abortion consent line of cases, the School Board's policy serves all three of the crucial interests discussed above. Therefore, the court below was correct to find it constitutional.

II. THE SCHOOL BOARD'S POLICY SHOULD BE UPHELD BECAUSE IT IS ESSENTIAL NOT ONLY TO PARENTS' AUTHORITY OVER THEIR CHILDREN BUT TO THEIR ABILITY TO CARRY OUT THEIR LEGAL RESPONSIBILTY TO PROTECT AND PROVIDE MEDICAL CARE FOR THEIR CHILDREN.

The school district's notification policy should be upheld because parents not only have a right as parents to be informed that their child is pregnant; they

also have a legal duty to protect and provide medical care for their children. Failing to inform parents of a child's pregnancy will materially inhibit their ability to carry out this duty. The District Court recognized this fact when it accepted the Appellees' assertion that if the policy were to be overturned, the school district's failure to inform parents upon learning of a child's pregnancy could potentially subject the district to criminal liability. 2006 U.S. Dist. LEXIS at *25. Failure to notify parents of a child's pregnancy not only violates the Supreme Court's consistent holding that states must protect and not interfere with parents' authority over their children, as discussed *supra*, but it also precludes parents from being able to fulfill their legal responsibility to provide medical care for their children.

New York courts have held that parents are liable for their children's support, including medical care, *People v. Pierson*, 176 N.Y. 201 (1903), and that the state may not interfere with parents' decisions regarding such care absent a compelling state interest. *Alfonso v. Fernandez*, 606 N.Y.S.2d 259 (N.Y. App. Div. 1994).

Pregnancy is a serious condition that requires medical attention to avoid dangers to and maintain the health of both the fetus and the mother, especially when the mother is a teenager. Studies indicate that teenaged mothers are more likely than their counterparts over age twenty to give birth prematurely (before thirty-seven completed weeks of pregnancy). National Center for Health Statistics.

Births: Final Data for 2002. National Vital Statistics Reports 12/17/03, *available at* http://www.marchofdimes.com/professionals/14332_1159.asp. In 2002, the 7,315 girls under age fifteen who gave birth were more than twice as likely to deliver prematurely than women ages thirty to thirty-four (twenty-one vs. nine percent). *Id*.

A 1998 Ohio State University Human Development and Family Life Bulletin reported a series of major health risks facing pregnant teens. It declared that adolescent mothers, especially those under age fifteen have higher rates of birth complications, including toxemia, anemia, hypertension, eclampsia, prolonged or premature labor, uterine dysfunction, pregnancy-related infections, postpartum hemorrhaging and abnormal bleeding. Laura R. Meschke & Suzanne Bartholomae, *Examining Adolescent Pregnancy*, Ohio St. U. Human Development and Family Life Bulletin, Winter 1998 at 1-3, *available at* http://www.parenting.cit.cornell.edu/teen%20pregnancy.pdf. The article went on to note that maternal death rate for mothers age fifteen and below is 2.5 times the rate of women aged twenty to twenty-four. *Id.* In addition to the increased physical risks to pregnant teenagers, they also face higher levels of stress, despair, depression, suicide, and suicide attempts than their older counterparts. *Id.*

Pregnancy can involve significant physical, emotional, and psychological dangers and complications, especially in minors. The school district's policy of

informing the parents of pregnant minors takes the best interests of the minor into account and provides parents the ability to carry out their legal duty to secure medical advice and care regarding this life-changing, and potentially life-threatening, condition.

CONCLUSION

For the foregoing reasons, this Court should affirm the Judgment of the District Court.

Respectfully Submitted,
this 12th day of September, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have duly served the attached Brief *Amicus Curiae* of the National Legal Foundation in the case of *Port Washington Teachers Association, et. al. v. Board of Education of the Port Washington Union Free School District*, *et. al.*, No. 06-0708 on all required parties by depositing the required number of paper copies in the United States mail, first class postage, prepaid on September 12, 2006, addressed as listed below. I also served a digital copy of the brief via e-mail as required by local rule 32. The required number of paper and digital copies were filed in the same manner on the same date.

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