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House of Representatives  
Utah State Capitol  
Salt Lake City, Utah 84114

**Re: House Bill 85 Abortion by a Minor, Parental Notification and Consent**

January 19, 2006

Dear Representative,

On behalf of the American Civil Liberties Union of Utah, I urge you to vote against House Bill 85, “Abortion by a Minor—Parental Notification and Consent,” because it is constitutionally infirm.

The ACLU opposes laws like HB 85, which prevent teens from obtaining an abortion without first notifying or obtaining consent from a parent, because they put teens’ health and safety at risk. Mandating parental notification and consent will not create good family communication where it does not already exist, and it could have dangerous consequences for a young woman already caught in a precarious family situation. It is the unfortunate fact that the teens who will be impacted by this law are those who are the most vulnerable because they lack family support.

HB 85 is constitutionally infirm because it fails to provide a bypass procedure for teens who can establish that notification is not in their best interest or that they are sufficiently mature to decide whether or not to continue a pregnancy. The rationale of the United States Supreme Court and myriad lower court decisions establish the unconstitutionality of a law that does not have an alternative to parental notification for these teens. This rationale was established in Bellotti v. Baird, 443 U.S. 622 (1979). In that case, the Court held that while a state may adopt a law requiring parental involvement, it may do so only if it provides a mechanism for the pregnant minor:

to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parent’s wishes, or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests.

Id. at 643-44. The Court emphasized that “[e]very minor must have the opportunity—if she so desires—to go directly to court *without first consulting or notifying her parents.*” Id. at 647 (emphasis added). Following this decision, no court, looking to the merits, has upheld a parental notice statute that lacks a bypass. See, e.g., Hodgson v. Minnesota, 497

U.S. 417, 460-61 (1990) (holding two-parent notification law unconstitutional without bypass); Planned Parenthood v. Miller, 63 F.3d 1452, 1460 (8th Cir. 1995) (holding one-parent notification law without bypass facially unconstitutional); Zbaraz v. Hartigan, 763 F.2d 1532, 1536, 1539-44 (7th Cir. 1985) (holding unconstitutional parental notice law whose bypass did not meet previously established requirements), aff'd by equally divided Court, 484 U.S. 171 (1987); Indiana Planned Parenthood v. Pearson, 716 F.2d 1127, 1132 (7th Cir. 1983) (same); Akron Ctr. For Reprod. Health v. Slaby, 854 F.2d 852, 861 (6th Cir. 1988) (same), rev'd on other grounds, Ohio v. Akron Ctr. For Reprod. Health, 497 U.S. 502 (1990).

Although HB 85 provides a judicial bypass for the consent provision, it does not do so for notification. Therefore, under HB 85 the situation could arise whereby a minor's parents may be notified (because the limited exceptions are not met), while at the same time, a court determines, through the consent bypass procedure, that it is not in the minor's best interests to obtain her parent's consent. This situation would not occur if there were a bypass requirement for the notice as well as the consent requirements.

As it is currently drafted, HB 85 is constitutionally deficient, and we therefore urge you to vote against it. If you have any questions about our position, you may call me at (801) 521-9862.

Yours,  
/s

Margaret Plane  
Legal Director