

## CA Voters Again Asked to Decide Adolescent Right to Privacy

### *Group Makes Third Attempt to Force Teens to Notify Parents Before Abortion*

In both 2005 and 2006, Californians voted on measures that would have restricted a minor's right to choose by requiring that she notify a parent 48 hours before getting an abortion.<sup>1</sup> While both ballot measures were soundly defeated—Proposition 85 (2006) was defeated by an even greater margin than Proposition 73 (2005)<sup>2</sup>—the supporters of the two failed measures are trying again. They have proposed a new, nearly identical initiative – Proposition 4 – that will appear on the November 2008 California ballot.

Like those that preceded it, the new proposition is an attempt to amend the California Constitution to remove rights currently guaranteed adolescents. In *American Academy of Pediatrics v. Lungren*, a case co-counseled by NCYL, the California Supreme Court recognized that minors have a right to privacy under the State Constitution and that this right includes the freedom to continue or terminate a pregnancy.<sup>3</sup>

Once the California Supreme Court held that a minor's right to choose derives from her rights under Article I of the State Constitution,<sup>4</sup> it became much more difficult to limit that right. Parental consent or notification can only be mandated if the State Constitution is amended, and one of the few ways to amend the constitution is by ballot initiative.

The proposed law would amend the California Constitution to require notification and a waiting period before unemancipated pregnant minors could obtain an abortion.

Specifically, the law would require a doctor to notify a teen's parents of her intended abortion by delivering a state-scripted form in person or by mail. (The initiative contains no provisions for counseling to accompany the government notice). After the completion of the notification process—which takes 2 full days in the case of mailed notification—the teen would have to wait an additional 2 days before obtaining an abortion.

Alternatively, she could arrange for her parents to receive a government form to waive notification, which they would subsequently need to complete, have notarized, and deliver to the doctor before the procedure could take place.

Like its predecessors, Proposition 4 includes a “judicial bypass” alternative. Under this alternative, a pregnant teen who did not feel safe or comfortable notifying her parents would need to file forms with the court, schedule a hearing, appear before a judge, and petition for a court order waiving notification. The court could only grant the petition if

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<sup>1</sup> Gudeman, Macfarlane, “The Abortion Issue in November's Election,” *Youth Law News* Oct-Dec 2006.

<sup>2</sup> See National Abortion Federation, *Election Results Signal Victory for Reproductive Freedom*, Nov. 9, 2006, at [www.prochoice.org/news/releases/20061109.html](http://www.prochoice.org/news/releases/20061109.html).

<sup>3</sup> *A.A.P. v. Lungren*, 66 Cal. Rptr. 2d 210, 226-7 (1997).

<sup>4</sup> Cal. Const. Art. I, § 1 (“All people are by nature free and independent and 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”).

the minor could prove by clear and convincing evidence that she was sufficiently mature to make her own decisions or that abortion without notification was in her best interest.

### **How Proposition 4 is Different**

Unlike the two previous ballot measures, Proposition 4 provides a third alternative to parental notification. If a teen believes she cannot notify her parents, she may allege parental mistreatment in order to request that notification be sent to an alternative family member. To invoke alternative notification, she must write out a history of charges against her parents and provide the document to the physician. The doctor must send the teen's written statement to law enforcement. At that point, the physician may send the notification form to a designated substitute relative. The same waiting period would then apply. In other words, under this option, the teen must effectively report her parents to law enforcement authorities in order to terminate her pregnancy.

Proposition 4 also would amend the California Constitution more dramatically than its predecessors by allowing parents to bring lawsuits against their daughters' doctors decades after an abortion is performed.

### **What the Experts Say**

Opposition to Proposition 4 is widespread among experts on teen health and safety throughout the state. Opponents include the American Academy of Pediatrics, California District; the California Medical Association; the California School Counselors' Association; the California Association of Family Physicians; the American College of Obstetricians and Gynecologists; the California Association of Family Physicians; the American College of Obstetricians and Gynecologists; and the California Teachers Association.

Today, the majority of adolescents (and the vast majority of 14- and 15-year olds) seeking an abortion involve their parents—even without a mandate.<sup>5</sup> Moreover, one study comparing states with a parental notification mandate and those without found a marginal difference in the rate of parental involvement in their daughters' abortion decisions.<sup>6</sup>

Experts say, however, that mandating notification could potentially endanger teens who cannot safely involve a parent. Instead of linking these youth to the medical and counseling services they need, they say Proposition 4 could lead teens to take desperate measures, like crossing state lines,<sup>7</sup> obtaining self-induced or illegal abortions, delaying medical care, or contemplating suicide.

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<sup>5</sup> Bixby Center for Reproductive Health Research & Policy, *Adolescents & Parental Notification for Abortion: What can California Learn from the Experience of Other States?* at [http://bixbycenter.ucsf.edu/publications/files/ParentalNotification\\_2006Aug.pdf](http://bixbycenter.ucsf.edu/publications/files/ParentalNotification_2006Aug.pdf)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

A wealth of research corroborates these experts' concerns. For example, in one survey, more than 30 percent of adolescents who chose not to involve their parents in their abortion attributed this decision, at least in part, to fears of physical harm, being thrown out of the house, or other abuse.<sup>8</sup> Many others pointed to difficult family situations, such as drug dependency, job loss, health problems, and marital issues.<sup>9</sup>

The consequences of parental notification mandates are well-documented. In 2006, the *New England Journal of Medicine* reported that the percentage of second-trimester abortions rose dramatically for some teens upon the enforcement of a parental notification initiative. This spike was likely due to an increase in pregnant 17-year olds who waited until their 18<sup>th</sup> birthdays to obtain abortions in order to avoid parental notification.<sup>10</sup>

More broadly, studies show that when confidentiality is not guaranteed, teens are reluctant to obtain reproductive health services but continue having sex.<sup>11</sup> When teens fear that their confidentiality will not be protected, they are more likely to withhold pertinent information from their medical provider and less likely to return for follow-up visits.<sup>12</sup>

Finally, a series of recent studies casts doubt on the efficacy of judicial bypass procedures in mitigating the risks associated with parental notification. Pregnant teens are often unaware of this alternative in states where it exists, and even when they do go to court, they often face judges who deny their petitions on arbitrary or ideological grounds.<sup>13</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Joyce T, Kaestner R, Colman S., *Changes in Abortion and Births and the Texas Parental Notification Law*, 354 NEW ENG. J. MED. 1031-8 (2006).

<sup>11</sup> Bixby Center for Reproductive Health Research & Policy.

<sup>12</sup> *Id.*

<sup>13</sup> 32-WTR HUM. RTS. 4.