



## California: A Minor's Right to Confidential Abortion

California minors have a constitutionally protected right to consent to abortion and to keep their reproductive information confidential. The California legislature first authorized minors to consent to pregnancy-related care, including abortion, in 1953. In 1987, this right was challenged. The state legislature passed a law that would have required a minor to get consent from a parent or guardian before terminating a pregnancy, absent a medical emergency.<sup>1</sup> The law provided for judicial bypass, an alternative whereby minors could petition the juvenile court to determine whether the minor was mature enough to consent to an abortion, or, alternatively, that the abortion was in the minor's best interest.

Shortly before the parental consent statute was to go into effect, several provider groups challenged the law in court.<sup>2</sup> The plaintiffs in the case, *American Academy of Pediatrics v. Lungren*, argued that the law violated a girl's right to privacy under the California Constitution. The California Supreme Court agreed.<sup>3</sup> The court made several important findings in reaching this conclusion. The court first held that minors' privacy rights under the California Constitution are protected to the same extent as those of adults and that the right to privacy includes the right to decide whether to continue or terminate a pregnancy.<sup>4</sup>

The court then looked at whether the state's intrusion on the minors' privacy rights was justified. Because the law affected a constitutional right, the intrusion would be lawful only if it served important government interests. Because of the nature of the right involved, the government had to establish that the law would serve "compelling" interests – the highest standard the government can be asked to meet.<sup>5</sup> The state argued that the law served to promote two compelling state interests: protecting the physical, emotional and psychological health of minors, and promoting the parent-child relationship. The court agreed that these were compelling state interests, but, significantly, rejected the argument that mandating parental consent would further those

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<sup>1</sup> Cal. Health & Safety Code § 25958, renumbered in 1995 as Cal. Health & Safety Code § 123450.

<sup>2</sup> The plaintiffs included the American Academy of Pediatrics, (California District IX), the California Medical Association, the American College of Obstetricians and Gynecologists (District IX), Planned Parenthood Golden Gate, and Dr. Philip Darney.

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

<sup>4</sup> *Id.* at 226-227.

<sup>5</sup> *Id.* at 232.

interests. In fact, the California Supreme Court stated that “[t]he evidence [is] nothing less than overwhelming that the legislation would not protect these interests, and would in fact *injure* the asserted interests of the health of minors and the parent-child relationship.”<sup>6</sup> The court thus concluded that Health and Safety Code section 25958 (renumbered as section 123450 in 1995), mandating parental consent for adolescent abortion, violated a minor’s right to privacy under the California constitution.<sup>7</sup>

Despite the Supreme Court’s ruling, the California legislature still has not removed California Health & Safety Code, Section 123450 from the state code book. Even though the law remains in print, the law is not in effect.

The California Supreme Court holding that a minor’s right to choose derives from her rights guaranteed under the state constitution makes it much more difficult to limit that right. For example, the legislature can no longer attempt to mandate parental consent or notification by passing a new law. Parental consent or notification can only be mandated if the state constitution is first amended to restrict the right to privacy guaranteed to citizens of California.

The state constitution can be amended in one of two ways: 1) by a proposal approved by a two-thirds vote of both houses of the state legislature and a majority of voters in the general election, or 2) by ballot initiative. In 2005 and again in 2006, initiatives were placed on the California ballot that would have amended the right to privacy under the California Constitution to explicitly require minors to notify their parents before terminating a pregnancy. Both initiatives were defeated. Thus, minors in California still have a constitutionally protected right to consent on their own to pregnancy-related care, including abortion, and a right to privacy in their reproductive decisions.

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<sup>6</sup> *Id.* at 241 (quoting *A.A.P. v. Lungren*, 32 Cal. Rptr. 2d 546, 550 (C.A. Dist. 1 1994)).

<sup>7</sup> *Id.* at 244.