***Planned Parenthood v. Danforth* (1976) - Justice Blackmun -** 6/3 & 5/4.

The *Danforth* Court:
Since *Menillo*, Douglas is OUT and Stevens is IN.
Majority (6): Blackmun, Brennan, Stewart, Marshall, Powell & Stevens.
Minority (3): White, Burger & Rehnquist.

On other issues:
Majority (5): Blackmun, Brennan, Stewart, Marshall, & Powell.
Minority (4): White, Burger, Rehnquist & Stevens.

Issue: The Constitutionality of several provisions of Missouri's abortion statutes.

Held:
A. The definition of "viability" is fine.
B. The requirement of informed consent on the part of the woman is fine.
C. Spousal consent is unconstitutional.
D. This parental consent requirement is unconstitutional.
E. The prohibition of saline amniocentesis is unconstitutional.
F. The recordkeeping requirements are fine.
G. The standard of care/fetus provisions are unconstitutional.

Reasoning: Justice Blackmun...In *Roe* v. *Wade*[1] the Court...stressed the measure of the State's interest "**in light of present medical knowledge**" and concluded that the permissibility of state regulation was to be viewed in three stages. "For the stage prior to approximately the

[1]Case 9A-AP-4 on this website.

> end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician," without interference from the State. The participation by the attending physician in the abortion decision, and his responsibility in that decision, thus, were emphasized. After the first stage, the State may, if it chooses, reasonably regulate the abortion procedure to preserve and protect maternal health. Finally, **for the stage subsequent to viability, a point purposefully left flexible for professional determination, and dependent upon developing medical skill and technical ability**, the State may regulate an abortion to protect the life of the fetus **and even may proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother**.

A. Section 2(2) of Missouri's Act defines "viability" as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems." Planned Parenthood claims this definition violates *Roe* in that it fails to contain any reference to a gestational time period, etc. The definition of viability in the Act does not conflict with *Roe.* We recognized in *Roe* that viability was a matter of medical judgment, skill, and technical ability, and we preserved the flexibility of the term. Section 2(2) does the same. In any event, the time of viability may vary with each pregnancy and that determination is, and must be, **a matter for the judgment of the responsible attending physician**. The definition of viability in §2(2) merely reflects this fact. We thus do not accept Planned Parenthood's contention that a specified number of weeks in pregnancy must be fixed by statute as the point of viability.

If Planned Parenthood seeks the greatest amount of freedom to choose abortion, why would that organization want "viability" to be defined as a fixed number of weeks? The idea that this is a "judgment call" for the physician gives the physician all of the cards, does it not?

B. Under §3(2) of the Act, prior to submitting to an abortion during the first 12 weeks of pregnancy, a woman must certify in writing her consent to the procedure and "that her consent is informed and freely given and is not the result of coercion." PP argues that this requirement is violative of *Roe v. Wade* by imposing an extra layer and burden of regulation on the abortion decision and that the provision is overbroad and vague. We hold that the imposition of such a requirement even during the first trimester is not unconstitutional. The woman's awareness of the decision and its significance may be assured by the State to the extent of requiring her prior written consent.

C**.** Section 3(3) requires the prior written consent of the **spouse** of the woman seeking an abortion during the first 12 weeks of pregnancy unless "the abortion is certified by a licensed physician to be necessary in order to preserve the life of the mother." It is of some interest to note that the condition does not relate, as most statutory conditions in this area do, to the preservation of the life or ***health*** of the mother.

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Perhaps the Missouri legislature realized that an exception to preserve the "health" of the mother would defeat the purpose of the statute because such an "exception" would provide an open door around consent.

The State defends §3(3) on the ground that it was enacted in the light of the General Assembly's "perception of **marriage as an institution**" and that any major change in family status is a decision to be made jointly by the marriage partners. PP contends that this provision is designed to afford the husband the right unilaterally to veto an abortion, whether or not he is the father of the fetus, and that this violates *Roe* and *Doe*. **We hold that the State may not constitutionally require the consent of the spouse as a condition for abortion. Clearly, since the State cannot regulate or proscribe abortion during the first stage, when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during that same period**.

As for "**policy**," I do not necessarily agree that the husband should have a veto. But, the Court's analysis is outrageous because it is not based on any constitutional principles. The issue is not **who** should have a veto. The issue is, "where does this Court come up with a Constitutional principle that says it must be the wife and not the husband"? The State was arguing that the spouse has a "right" of consent, somewhat akin to the woman's recognized "right." The Court assumes it has the **sole authority** to "delegate" such power to a mere spouse.

We cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy, **when the State itself lacks that right**. See *Eisenstadt v. Baird.*

Again, this Court actually concludes that **before** a husband could ever have a right of veto, the State must have such a right and, since the State does not, then, **of course**, a husband could not possibly ever have more rights than the State (or even as much rights as the State) **in the marriage relationship!** Again, the arrogance of the Majority is exceedingly frightening.

As the Court recognized in *Eisenstadt* v. *Baird,* "the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the *individual,* married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."

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I'M NOT SURE WHY THE COURT CITES THE FOREGOING FLOWERY LANGUAGE, FOR IT APPEARS THEY DO NOT BELIEVE IT. ACCORDING TO THE COURT, IT IS NOT THE RIGHT OF THE *INDIVIDUAL* THAT IS IMPORTANT. FIRST, IT IS THE RIGHT OF THE WOMAN, THEN THE STATE AND, LASTLY, THE HUSBAND. Please understand, I am not in the least suggesting that it would be **wise** for a legislature to give a husband a veto. I merely question the Court acting as the legislature and pretending to "care" about the "individual's" (purportedly all individuals') fundamental right to decide "whether to bear or beget a child."

D. Section 3(4) requires, with respect to the first 12 weeks of pregnancy, where the woman is unmarried and under the age of 18 years, the written consent of one parent unless, again, "the abortion is certified by a licensed physician as necessary in order to preserve the life of the mother."

The State argues that the law properly may subject minors to more stringent limitations than are permissible with respect to adults. Missouri law, it is said, "is replete with provisions reflecting the interest of the state in assuring the welfare of minors," citing statutes relating to a guardian *ad litem* for a court proceeding, to the care of delinquent and neglected children, to child labor, and to compulsory education. Certain decisions are considered by the State to be outside the scope of a minor's ability to act in his own best interest or in the interest of the public, citing statutes proscribing the sale of firearms and deadly weapons to minors without parental consent, and other statutes relating to minors' exposure to certain types of literature, the purchase by pawnbrokers of property from minors, and the sale of cigarettes and alcoholic beverages to minors. It is pointed out that the record contains testimony to the effect that children of tender years (even ages 10 and 11) have sought abortions. Thus, a State's permitting a child to obtain an abortion without the counsel of an adult "who has responsibility or concern for the child would constitute an irresponsible abdication of the State's duty to protect the welfare of minors." Parental discretion, too, has been protected from unwarranted or unreasonable interference from the State, citing *Meyer v. Nebraska; Pierce v. Society of Sisters; Wisconsin v. Yoder.* Finally, it is said that §3(4) imposes no additional burden on the physician because even prior to the passage of the Act the physician would require parental consent before performing an abortion on a minor. Planned Parenthood emphasizes that no other Missouri statute specifically requires the additional consent of a minor's parent for medical or surgical treatment and that in Missouri a minor legally may consent to medical services for pregnancy (excluding abortion), venereal disease, and drug abuse. The result of §3(4), it is said, "is the ultimate supremacy of the parents' desires over those of the minor child, the pregnant patient." It is noted that in Missouri a woman under the age of 18 who marries with parental consent does not require parental consent to abort, and yet her contemporary who has chosen not to marry must obtain parental approval.

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Whether I like the Court's ultimate decision or not, I cannot stand condescension. Perhaps it is more fair to say a parent's voluntary consent to a minor's marriage all too obviously forever thereafter removes the parent from further parental decisions while still a minor. Additionally, perhaps an unmarried minor did not "choose" not to marry — perhaps her parent did not consent to her marriage for any number of reasons, one of which could be to continue parenting during her minority.

The District Court found "a compelling basis," however, in the State's interest "in safeguarding the authority of the family relationship." The dissenting judge observed that one could not seriously argue that a minor must submit to an abortion if her parents insist and he could not see "why she would not be entitled to the same right of self-determination now explicitly accorded to adult women, provided she is sufficiently mature to understand the procedure and to make an intelligent assessment of her circumstances with the advice of her physician." We agree with PP that the State may not impose a blanket provision requiring the consent of a parent as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy. Just as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent.

Remember, we are not talking here of a notification requirement. This is a "consent" requirement. I'm not convinced. Someone has to make the decision. Who should it be? The child? A doctor? A parent? Or a judge? On the other hand, when the parents are not in agreement, this takes on even another dimension, doesn't it? "Who should it be?" is a different question than "Who can it constitutionally be?"

Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Is there a significant state interest in conditioning an abortion on the consent of a parent that is not present in the case of an adult? **One suggested interest is the safeguarding of the family unit and of parental authority**. It is difficult, however, to conclude that providing a parent with absolute power to overrule a determination, made by the physician and his minor patient, to terminate the patient's pregnancy will serve to strengthen the family unit.

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The Court is playing parent to us all. It is **not at all difficult** to imagine that a parent's veto might bring the family unit together in rather miraculous ways. Again, it is not so much the conclusion I disagree with as the Court's attempt to "parent." They have given a physician who stands to make a buck more authority "as a parent" than "parents." Again, where is the legislature in all of this? Oh, I forgot. Five of these nine folks are far wiser than *"We, the People's"* elected representatives. I know I am getting carried away, here, but, irrespective of the issue at hand, it would seem only peculiarly "American" that where the Constitution is silent, our legislative bodies should have the last say. Then, if that does not prove popular, *We* can amend the Constitution.

Neither is it likely that such veto power will enhance parental authority or control where the minor and the nonconsenting parent are so fundamentally in conflict and the very existence of the pregnancy already has fractured the family structure. **Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant**.

How utterly ridiculous! The Majority actually believes that 12 year old children think seriously about becoming pregnant before "making the mature decision to jump into the back seat." Whatever one thinks about a constitutional "right to choose abortion," not many would use a minor's act of becoming pregnant as legal support for her "maturity."

The conclusion that the parents' interest "is no more weighty" than a 12 year old's decision to abort or not to abort is outrageous. I think Blackmun has lost his senses. This is just one more vicious attack on "the family unit."

We emphasize that holding this section invalid does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy. The fault with §3(4) is that it imposes a special-consent provision, exercisable by a person other than the woman and her physician, as a prerequisite to a minor's termination of her pregnancy and does so without a sufficient justification for the restriction and, thus, violates *Roe* and *Doe.*

E. Section 9 prohibits the use of saline amniocentesis as a method of abortion after the first 12 weeks of pregnancy on the ground that the technique "is deleterious to maternal health." PP challenges on the ground that it operates to preclude virtually all abortions after the first trimester. We held in *Roe* that after the first stage "the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health." The question is whether the flat prohibition of saline amniocentesis is a restriction which "reasonably relates to the preservation and protection of maternal health." The State urges

that what the Missouri General Assembly has done here is consistent with that guideline and is buttressed by substantial supporting medical evidence in the record to which this Court should defer.

We feel that the majority of the District Court, in reaching its conclusion, failed to appreciate and to consider several significant facts.

I haven't even reached what the Court believes to be ultimately wise. **All I know is that they are about to legislate by vetoing the Missouri legislature because <u>their</u> version of "reason" is different from that of the elected officials of an entire State**. Witness "judicial activism."

The District Court (1) did not recognize the prevalence of the use of saline amniocentesis as an accepted medical procedure and (2) failed to recognize that there were severe limitations on the availability of the prostaglandin technique, which, although promising, was used only on an experimental basis until less than two years before.

The outright legislative proscription of saline fails as a reasonable regulation for the protection of maternal health and is, instead, an unreasonable or arbitrary regulation designed to inhibit the vast majority of abortions after the first 12 weeks. As such, it does not withstand constitutional challenge.

F. Sections 10 and 11 of the Act impose recordkeeping requirements for health facilities and physicians concerned with abortions irrespective of the pregnancy stage. We conclude that these provisions are not constitutionally offensive.

G. The State appeals from the District Court's decision that §6(1) of the Act is unconstitutional. That section provides:

> "No person who performs or induces an abortion shall fail to exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Any physician or person assisting in the abortion who shall fail to take such measures to encourage or to sustain the life of the child, and the death of the child results, shall be deemed guilty of manslaughter...Further, such physician or other person shall be liable in an action for damages."

The District Court held that the first sentence was unconstitutionally overbroad because it failed to exclude from its reach the stage of pregnancy prior to viability.

The Attorney General argues that the District Court's interpretation is erroneous and unnecessary. He claims that the first sentence of §6(1) establishes only the general standard of care that applies to the person who performs the abortion, and that the second sentence describes the circumstances when that standard of care applies, namely, when a live child results from the procedure. Thus, the

first sentence, it is said, despite its reference to the fetus, has no application until a live birth results.

PP takes the position that §6(1) imposes its standard of care upon the person performing the abortion even though the procedure takes place before viability and argues that the statute on its face effectively precludes abortion and was meant to do just that.

Section 6(1) requires the physician to exercise the prescribed skill, care, and diligence to preserve the life and health of the *fetus.* It does not specify that such care need be taken only after the stage of viability has been reached. As the provision now reads, it impermissibly requires the physician to preserve the life and health of the fetus, whatever the stage of pregnancy. The fact that the second sentence of §6(1) refers to a criminal penalty where the physician fails "to take such measures to encourage or to sustain the life of the *child* and the death of the *child* results" (emphasis supplied), simply does not modify the duty imposed by the previous sentence or limit that duty to pregnancies that have reached the stage of viability.

The State finally argues that if the first sentence of §6(1) does not survive constitutional attack, the second sentence does, and, under the Act's severability provision, §B is severable from the first. We conclude that §6(1) must stand or fall as a unit. Its provisions are inextricably bound together. And a physician's or other person's criminal failure to protect a live born infant surely will be subject to prosecution in Missouri under the State's criminal statutes.

CONCURRENCE: Justice Stewart/Powell...With respect to the definition of viability, it seems to me that the critical consideration is that the statutory definition has almost no operative significance. The State has merely required physicians performing abortions to *certify* that the fetus to be aborted is not viable. While the physician may be punished for failing to issue a certification, he may not be punished for erroneously concluding that the fetus is not viable. There is thus little chance that a physician's professional decision to perform an abortion will be "chilled."

I rest my case that little is to be gained by a public debate. Why? It appears the “judgment” of a physician that a fetus is not viable protects him from criminal prosecution even if he is wrong. Therefore, what chance does the fetus have even where the Supreme Court says States may protect it after viability?

As to spousal consent, the primary issue that it raises is whether the State may constitutionally recognize and give effect to a right on his part to participate in the decision to abort a jointly conceived child.

Stewart reaches the same conclusion on this, but at least he recognizes that the issue is not whether the State can delegate a right it does not have to a husband, but, rather, whether the husband has a right in the first instance. Thank you, Justice Stewart, for recognizing the difference.

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With respect to the state law's requirement of parental consent, **I think it clear that its primary constitutional deficiency lies in its imposition of an absolute limitation on the minor's right to obtain an abortion**.

There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. **That is a grave decision and a girl of tender years under emotional stress may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.**

Again, thank you Justice Stewart. At least he does not believe in the Blackmun maxim: "If mature enough to copulate, mature enough to abort without even notifying parents."

The mode of operation of one such clinic is revealed by the record in another case:

> "The counseling...occurs entirely on the day the abortion is to be performed...It lasts for two hours and takes place in groups that include both minors and adults who are strangers to one another...The physician takes no part in this counseling process...Counseling is typically limited to a description of abortion procedures, possible complications, and birth control techniques...The abortion itself takes five to seven minutes...The physician has no prior contact with the minor, and on the days that abortions are being performed at the clinic, the physician may be performing abortions on many other adults and minors...On busy days patients are scheduled in separate groups, consisting usually of five patients...After the abortion, the physician spends a brief period with the minor and others in the group in the recovery room...."

DISSENT: Justice White/Burger/Rehnquist...*Roe* holds that until a fetus becomes viable, the interest of the State in the life or potential life it represents is outweighed by the interest of the mother in choosing "whether or not to terminate her pregnancy." This Act provides that a married woman may not obtain an abortion without her husband's consent. The Court strikes down this statute in one sentence. It says that "since the State cannot...proscribe abortion...the State cannot delegate authority to any particular person, even the spouse, to prevent abortion...." **But the State is not delegating to the husband the power to vindicate the *State's* interest in the future life of the fetus.**

Regardless of outcome, Justice White understands the proper role of the Court.

It is instead recognizing that the husband has an interest of his own in the life of the fetus which should not be extinguished by the unilateral decision of the wife. It by no means follows, from the fact that the mother's interest in deciding "whether or not to terminate her

pregnancy" outweighs the *State's* interest in the potential life of the fetus, that the husband's interest is also outweighed and may not be protected by the State. A father's interest in having a child – perhaps his only child – may be unmatched by any other interest in his life. It is truly surprising that the majority finds in the United States Constitution, as it must in order to justify the result it reaches, a rule that the State must assign a greater value to a mother's decision to cut off a potential human life by abortion than to a father's decision to let it mature into a live child. Such a rule cannot be found there, nor can it be found in *Roe v. Wade.* **These are matters which a State should be able to decide free from the suffocating power of the federal judge, purporting to act in the name of the Constitution**.

In describing the nature of a mother's interest in terminating a pregnancy, the Court in *Roe* v. *Wade* mentioned only the post-birth burdens of rearing a child and rejected a rule based on her interest in controlling her own body during pregnancy. Missouri has a law which prevents a woman from putting a child up for adoption over her husband's objection. This law represents a judgment by the State that the mother's interest in avoiding the burdens of child rearing do not outweigh or snuff out the father's interest in participating in bringing up his own child. That law is plainly valid, but no more so than §3(3) of the Act now before us, resting as it does on precisely the same judgment.

Section 3(4) requires that an unmarried woman under 18 years of age obtain the consent of a parent as a condition to an abortion. Once again the Court strikes the provision down in a sentence. **The Court rejects the notions that the *State* has an interest in strengthening the family unit**, or that the *parent* has an "independent interest" in the abortion decision, sufficient to justify §3(4) and apparently concludes that the provision is therefore unconstitutional. But the purpose of the parental-consent is to vindicate the very right created in *Roe v. Wade* -- the right of the pregnant woman to decide "whether ***or not*** to terminate her pregnancy." The abortion decision is unquestionably important and has irrevocable consequences whichever way it is made. **Missouri is entitled to protect the minor unmarried woman from making the decision in a way which is not in her own best interests, and it seeks to achieve this goal by requiring parental consultation and consent**. This is the traditional way by which States have sought to protect children from their own immature and improvident decisions; and there is absolutely no reason expressed by the majority why the State may not utilize that method here.

The Court strikes the provision prohibiting abortion by saline amniocentesis based on its factual finding that the prostaglandin method is unavailable to the women of Missouri, but such a finding **was not made either by the majority or by the dissenting judge below**. The majority's finding of fact that women in Missouri will be unable to obtain abortions after the first trimester if the saline method is banned is wholly unjustifiable. In any event, the point of §9 is to change the practice under which most abortions were performed under the saline amniocentesis method and to make the safer prostaglandin method generally available. It promises to achieve that result, if it remains operative, and the evidence discloses that the result is a desirable one or at least that the legislature could have so viewed it. **That should end our inquiry, unless we purport to be not only the country's continuous constitutional convention but also its *ex officio* medical board with powers to approve or disapprove medical and operative practices and standards throughout**

the United States.

Section 6(1) of the Act provides:

> "No person who performs or induces an abortion shall fail to exercise that degree of professional skill, care and diligence to preserve the life and health of the fetus which such person would be required to exercise in order to preserve the life and health of any fetus intended to be born and not aborted. Any physician or person assisting in the abortion who shall fail to take such measures to encourage or to sustain the life of the child, and the death of the child results, shall be deemed guilty of manslaughter...Further, such physician or other person shall be liable in an action for damages."

If this section is read in any way other than through a microscope, it is plainly intended to require that, where a "fetus may have the capability of meaningful life outside the mother's womb," *Roe v. Wade,* the abortion be handled in a way which is designed to preserve that life notwithstanding the mother's desire to terminate it. Indeed, even looked at through a microscope the statute seems to go no further. It requires a physician to exercise *"that* degree of professional skill...to preserve the... fetus," which he would be required to exercise if the mother wanted a live child. Plainly, if the pregnancy is to be terminated at a time when there is no chance of life outside the womb, a physician would not be required to exercise any care or skill to preserve the life of the fetus during abortion no matter what the mother's desires. The statute would appear then to operate only in the gray area after the fetus *might* be viable but while the physician is still able to certify "with reasonable medical certainty that the fetus is not viable." See §5 of the Act which flatly prohibits abortions absent such a certification. Since the State has a compelling interest, sufficient to outweigh the mother's desire to kill the fetus, when the "fetus...has the capability of meaningful life outside the mother's womb," *Roe v. Wade,* the statute is constitutional.

Incredibly, the Court reads the statute instead to require "the physician to preserve the life and health of the fetus, whatever the stage of pregnancy," thereby attributing to the Missouri Legislature the strange intention of passing a statute with absolutely no chance of surviving constitutional challenge under *Roe v. Wade.*

The Court compounds its error by also striking down as unseverable the wholly unobjectionable requirement in the second sentence of §6(1) that where an abortion produces a live child, steps must be taken to sustain its life. It explains its result in two sentences:

> "We conclude, as did the District Court, that §6(1) must stand or fall as a unit. Its provisions are inextricably bound together."

The question whether a constitutional provision of state law is severable from an unconstitutional provision is *entirely* a question of the intent of the state legislature. There is not the slightest reason to suppose that the Missouri Legislature would not require proper care for live babies just because

it cannot require physicians performing abortions to take care to preserve the life of fetuses. The Attorney General of Missouri has argued here that the *only* intent of §6(1) was to require physicians to support a live baby which resulted from an abortion.

CONCURRENCE/DISSENT: Justice Stevens...If two abortion procedures had been equally accessible to Missouri women, in my judgment the United States Constitution would not prevent the state legislature from outlawing the one it found to be less safe even though its conclusion might not reflect a unanimous consensus of informed medical opinion. However, the record indicates that when the Missouri statute was enacted, a prohibition of the saline amniocentesis procedure was almost tantamount to a prohibition of any abortion in the State after the first 12 weeks of pregnancy. Such a prohibition is inconsistent with the essential holding of *Roe* v. *Wade* and therefore cannot stand.

In my opinion, however, the parental-consent requirement is consistent with the holding in *Roe*. The State's interest in the welfare of its young citizens justifies a variety of protective measures. Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel where he pleases, or even attend exhibitions of constitutionally protected adult motion pictures. Persons below a certain age may not marry without parental consent. Indeed, such consent is essential even when the young woman is already pregnant. The State's interest in protecting a young person from harm justifies the imposition of restraints on his or her freedom even though comparable restraints on adults would be constitutionally impermissible. Therefore, the holding in *Roe* v. *Wade* that the abortion decision is entitled to constitutional protection merely emphasizes the importance of the decision; it does not lead to the conclusion that the state legislature has no power to enact legislation for the purpose of protecting a young pregnant woman from the consequences of an incorrect decision.

I have to admit I am pleasantly surprised with Justice Stevens, here. I would not have expected him to recognize a right of parental consent!

The Court recognizes that the State may insist that the decision not be made without the benefit of medical advice. But since **the most significant consequences of the decision are not medical in character, it would seem to me that the State may, with equal legitimacy, insist that the decision be made only after other appropriate counsel has been had as well**. Whatever choice a pregnant young woman makes -- to marry, to abort, to bear her child out of wedlock - the consequences of her decision may have a profound impact on her entire future life. **A legislative determination that such a choice will be made more wisely in most cases if the advice and moral support of a parent play a part in the decisionmaking process is surely not irrational**. Moreover, it is perfectly clear that the parental-consent requirement will necessarily involve a parent in the decisional process.

If there is no parental-consent requirement, many minors will submit to the abortion procedure without ever informing their parents. An assumption that the parental reaction will be hostile, disparaging, or violent no doubt persuades many children simply to bypass parental

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counsel which would in fact be loving, supportive, and, indeed, for some indispensable. It is unrealistic, in my judgment, to assume that every parent-child relationship is either (a) so perfect that communication and accord will take place routinely or (b) so imperfect that the absence of communication reflects the child's correct prediction that the parent will exercise his or her veto arbitrarily to further a selfish interest rather than the child's interest. A state legislature may conclude that most parents will be primarily interested in the welfare of their children and that the imposition of a parental-consent requirement is an appropriate method of giving the parents an opportunity to foster that welfare by helping a pregnant distressed child to make and to implement a correct decision.

The Court assumes that parental consent is an appropriate requirement if the minor is not capable of understanding the procedure and of appreciating its consequences and those of available alternatives. This assumption is, of course, correct and consistent with the predicate which underlies all state legislation seeking to protect minors from the consequences of decisions they are not yet prepared to make. In all such situations chronological age has been the basis for imposition of a restraint on the minor's freedom of choice even though it is perfectly obvious that such a yardstick is imprecise and perhaps even unjust in particular cases. **The Court seems to assume that the capacity to conceive a child and the judgment of the physician are the only constitutionally permissible yardsticks for determining whether a young woman can independently make the abortion decision. I doubt the accuracy of the Court's empirical judgment. Even if it were correct, however, as a matter of constitutional law I think a State has power to conclude otherwise and to select a chronological age as its standard.**

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