

CALIFORNIA INITIATIVE REVIEW

Proposition 4:

Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Initiative Constitutional Amendment.

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I. Executive Summary

Proposition 4, the Child and Teen Safety and Stop Predators Act: Sarah's Law, creates a parental notification requirement before a minor can obtain an abortion. It is an amendment to the California Constitution. It requires abortion providers to notify at least one parent or legal guardian prior to performing an abortion on a minor under the age of eighteen. If a minor reports that she is the victim of child abuse, the physician can notify another adult family member, rather than the parent. Notification is not required in cases of medical emergency or if a parent waives notification. A court can also waive the notification requirement if it decides that the minor is mature enough to make her own decisions or if notification is not in her best interests. Once notification is made, the physician must wait forty-eight hours before performing the abortion.

Proponents of Proposition 4 argue that parents should be notified of their daughter's pregnancy to ensure she understands her options and receives proper medical care. They also believe that many older men are responsible for getting teens pregnant and they use secret abortions to hide the evidence of their crimes. Opponents argue that parental notification laws put teens in danger. While most girls do inform their parents that they are pregnant, many others have good reasons for keeping their pregnancy a secret. Opponents believe that a parental notification law will force teens to take desperate measures, such as crossing state lines to receive an abortion or obtaining illegal abortions.

II. The Law

A. Existing Law

Since the 1950's, minors have had increasing access to medical care without the need for parental consent. *Am. Acad. Pediatrics v. Lungren*, 16 Cal. 4th 307, 317 (1997). Minors over the age of twelve do not need parental consent for medical services related to pregnancy, sexually transmitted diseases, rape, sexual assault, and drug or alcohol treatment. *Id.* at 316. According to the California Supreme Court, medical emancipation statutes may best serve the health of minors who are afraid or embarrassed to tell their parents about sexual conduct. *Id.* at 317. Such statutes allow minors to seek medical treatment immediately, rather than postponing or avoiding treatment out of fear of getting their parents involved. *Id.*

The statute allowing minors to get treatment for prenatal care without parental consent includes the ability to obtain an abortion. *Id.* at 319. This right was solidified after *Roe v. Wade*, 410 U.S. 113 (1973), and the adoption of an explicit right to privacy in the California Constitution. *Am. Acad. Pediatrics*, 16 Cal. 4th at 319. In 1987, the Legislature passed Assembly Bill 2274, which required minors to get parental consent before obtaining an abortion. *Id.* at 320. The bill was challenged and the California Supreme Court struck down AB 2274 as unconstitutional. *Id.* at 359. In doing so, the Court noted that the California Constitution is broader than the federal Constitution in its protection of privacy and of decisions regarding procreation. *Id.* at 327. The Court recognized that parents have the authority to make most medical decisions on behalf of their children. *Id.* at 336-337. However, "because the decision whether to continue or

terminate [a minor's] pregnancy has such a substantial effect on a pregnant minor's control over her personal bodily integrity, [and] has such serious long-term consequences in determining her life choices," abortion is given special protection under the right to privacy. *Id.* The Court found that the statute would not protect the health of minors or foster better parent-child relationships, and that those interests did not justify the intrusion on the minor's privacy right. *Id.* at 354-355. Thus, under current California law, a minor has the same access to abortion services as an adult and can obtain an abortion without the consent or notification of her parents. Legislative Analyst's Office, *Proposition 4: Waiting Period and Parental Notification Before Termination of Minor's Pregnancy. Constitutional Amendment. 1*, http://www.lao.ca.gov/ballot/2008/4_11_2008.pdf (July 1, 2008).

B. Proposed Change

Proposition 4 would amend the California Constitution and create a parental notification requirement for a minor seeking an abortion. Proposition 4, §§ 1-3 (2008), http://ag.ca.gov/cms_pdfs/initiatives/i722_07-0053_A1S_Initiative.pdf. If enacted, the parental notification requirement would apply to females under the age of eighteen who are not married, members of the armed services, or legally emancipated under state law. *Id.* at § 3(a)(6). Under Proposition 4, when a minor seeks an abortion, a physician will be required to send a notice to the minor's parent or legal guardian. *Id.* at § 3(b)(1). The notice will be a form created by the Department of Health Services and must be delivered personally or sent by certified mail. *Id.* at § 3(c). The physician must then wait forty-eight hours after notification before performing the abortion. *Id.* at § 3(b). Proposition 4 does not require parental consent.

There are four exceptions to the parental notification requirement. First, notification is not required if there is a medical emergency. *Id.* at § 3(f). Second, Proposition 4 contains a judicial bypass provision, which allows a court to waive the notification requirement. *Id.* at § 3(g). In order to use this, the minor must file a petition with the juvenile court. *Id.* The court must assist the minor in preparing the documents and must provide a court-appointed attorney on request. *Id.* A hearing must then be held within two days of the petition. *Id.* The court can grant the petition if it finds by clear and convincing evidence that the minor is mature and well-informed enough to make the decision herself, or if notifying a parent is not in the minor's best interest. *Id.* at § 3(h)(1)-(h)(2). The court has one day to make its decision. *Id.* § 3(g). If the court fails to rule within one day, the petition will be deemed granted. *Id.* at § 3(i). If the judge denies the petition, the minor has a right to an appeal. *Id.* at § 3(j). The appeal must be heard within three days of filing the notice of appeal, and a decision must be made within one day of the hearing. *Id.* Filing fees are not required for either the initial petition or the appeal. *Id.* at § 3(g), (j). If a minor obtains a judicial bypass, she does not need to wait forty-eight hours before having the abortion. *Id.* at § 3(b).

The third exception allows a minor to notify a different adult family member, rather than a parent. *Id.* at § 3(e). The adult family member must be at least 21 years of age and can be a grandparent, stepparent, foster parent, aunt, uncle, sibling, half-sibling, or first cousin. *Id.* at § 3(a)(4). In order to take advantage of this provision, the minor must make a written statement to a physician "that she fears physical, sexual, or severe

emotional abuse from a parent who would otherwise be notified and that her fear is based on a pattern of physical, sexual, or severe emotional abuse of her exhibited by a parent.” *Id.* at § 3(e). The physician must then make a report to law enforcement or a child protective agency, and inform the other adult relative that the report was made. *Id.*

Finally, there is a parental waiver provision. *Id.* at § 3(d). A parent can waive their right to be notified if they sign and notarize a form waiver or personally deliver the waiver to the physician. *Id.* A parent can utilize the waiver provision by giving his or her daughter the waiver before she has a need for an abortion. Telephone Interview with Katie Short, Attorney/Spokesperson for Yeson4 campaign (Sept. 4, 2008). Parents can put conditions on the waiver by telling the physician that in some instances they do not need to be notified but in other instances they do. *Id.* The waiver provision is designed to address the argument that if the minor does not feel she can go to her parents, her parents at least want her to be safe. *Id.*

Proposition 4 provides for civil penalties against a physician who does not give parental notice. A suit can be brought up to four years after the minor turns eighteen, or four years after the parent discovers he or she was denied notification, whichever is later. *Id.* at § 3(o). The provision provides a statutory damage award of \$10,000 and entitles the plaintiff to recover reasonable attorney’s fees. *Id.* Additionally, anyone other than the minor who provides false information to the physician regarding notification is guilty of a misdemeanor and can be fined up to \$2,000. *Id.* at § 3(p).

Proposition 4 also has a reporting provision, which requires the Department of Health Services to compile statistics on the number and types of abortions performed. *Id.* at § 3(n). Further, Proposition 4 states that it cannot be construed to affect any other rights relating to abortion. *Id.* at § 3(u).

III. Drafting Issues

A. Previous Propositions

Proposition 4 is a revision of Proposition 85, which was rejected by voters in 2006. David O. Weber, *Proposition 4, Waiting Period & Parental Notification*, <http://www.healthvote.org/index.php/history/C41/> (accessed Sept. 15, 2008). Proposition 85 was nearly identical to Proposition 73, which failed in 2005. *Id.*

The major difference between Proposition 85 and Proposition 4 is the provision allowing for notification of an adult family member other than a parent. *Id.* The provision was added to address the argument that Proposition 85 would put a girl in danger if she had to notify an abusive or violent parent. *Id.*

Proposition 4 also differs from Proposition 85 in that it doubles the penalty for providing false information to a physician, from \$1,000 to \$2,000. *Id.* Further, it provides for a statute of limitations for bringing suit against a physician who fails to comply with the notification requirements, which was absent in Proposition 85. *Id.*

B. Pre-Election Challenges

Proposition 4 is titled the Child and Teen Safety and Stop Predators Act: Sarah’s Law. Proposition 4 at § 1. The ballot argument in favor of Proposition 4 tells the story of

Sarah, a fifteen year-old girl who had a secret abortion. She became seriously ill and died from complications from the abortion. The story argues that if Sarah's family had known about the abortion, her life could have been saved. California Secretary of State, *Voter Information Guide*, <http://www.voterguide.sos.ca.gov/argu-rebut/argu-rebutt4.htm> (Aug. 11, 2008).

"Sarah" is a pseudonym for Jammie Garcia Ynez-Villegas, a girl in Texas who died in 1994 from complications from an abortion. Peter Hecht, "*Sarah's*" *Abortion Story Can Stay on Ballot, Judge Rules in Proposition 4 Case*, Sacramento Bee A3 (Aug. 9, 2008). Opponents of Proposition 4 challenged the inclusion of Sarah's story on the ballot. Bill Ainsworth, *Prop. 4 Backers Admit Girl's Death is Not Applicable, Law Couldn't Have Halted Botched Abortion*, San Diego Union-Trib. A4 (Aug. 2, 2008). According to opponents, Sarah was in a common law marriage at the time of her abortion and would not have been covered under Proposition 4. *Id.* Opponents brought a lawsuit, claiming that Sarah's story was unrelated to Proposition 4 and was "a salacious attempt to falsely mislead voters." *Id.*

A Sacramento Superior Court ruled that Sarah's story could remain on the ballot. Hecht, Sacramento Bee at A3. The court was "troubled by the Proposition 4 proponents' artful characterization of Sarah's story" but found that the story did not mislead voters into believing the initiative could have saved Sarah's life. *Id.* The court also noted that ballot arguments can contain hyperbole. *Id.*

IV. Constitutional Issues

A. United States Constitution

If there is a challenge under the United States Constitution, Proposition 4 will likely be upheld. The Supreme Court has previously upheld parental notification laws in other states. *See Hodgson v. Minn.*, 497 U.S. 417 (1990) (upholding parental notification law where there was a judicial bypass procedure for minors who could make an informed decision); *H.L. v. Matheson*, 450 U.S. 398 (1981) (upholding parental notification law for dependent minors). The Court has found that parental notification laws promote family interests and protect adolescents faced with a difficult decision. *Matheson*, 450 U.S. at 411-412. Likewise, a forty-eight hour waiting period has not been found unreasonable and unduly burdensome on a minor. *Hodgson*, 497 U.S. at 449. While the Court has some concerns about parental consent requirements, there is no such requirement in Proposition 4. *See Bellotti v. Baird*, 443 U.S. 622 (1979) (striking down a parental consent law).

In *Lambert v. Wicklund*, 520 U.S. 292 (1997), the Court addressed a Montana statute which had similar language to Proposition 4. The Montana statute provided for parental notification and a forty-eight hour waiting period. *Id.* at 293-294. It also had a medical emergency exception and a judicial bypass provision, which allowed a court to determine that notification was not required if it was not in the minor's best interests. *Id.* The Court found the Montana statute constitutional. *Id.* at 298-299. Given the similarities between Proposition 4 and the Montana statute, Proposition 4 is likely constitutional under the federal Constitution.

B. State Constitution

1. Conflicting Amendment

One argument that could be raised under the California Constitution is that Proposition 4 conflicts with the already-existing right of privacy. When examining potentially conflicting provisions, a court must try to harmonize the provisions to avoid the conflict. *Serrano v. Priest*, 5 Cal. 3d 584, 596 (1971). If there is no way to harmonize the provisions, then the more specific and more recent provision prevails. *Id.*

The California Constitution states, “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.” Cal. Const. art. 1, § 1.

In *Am. Acad. Pediatrics*, the California Supreme Court struck down a parental consent statute because it violated the constitutional right to privacy. 16 Cal. 4th 307. The challenge to Proposition 4 would have to be phrased differently because Proposition 4 is a constitutional amendment, rather than a statute. Opponents to Proposition 4 could therefore argue that the constitutional provisions conflict because, in essence, Proposition 4 carves out an exception to the right to privacy in certain circumstances. However, since Proposition 4 is very specific to the issue of minors’ abortions, and is more recent, it would likely be upheld. See Tina E. Poley, Student Author, *Proposition 85: Waiting Period and Parental Notification Before Termination of Minor's Pregnancy*, California Initiative Review, <http://www.mcgeorge.edu/x1448.xml> (accessed Sept. 15, 2008) (analyzing potential constitutional issues of Proposition 85 in 2006).

2. Constitutional Revision

Another constitutional argument that could be raised is that Proposition 4 is a revision, rather than an amendment of the constitution. A constitutional revision occurs when there are substantial changes to the constitution. *Raven v. Deukmejian*, 52 Cal.3d 336, 349-350 (1990). The people of the state of California do not have the authority, through the initiative process, to revise the state constitution. *Id.* A revision can only be accomplished through a constitutional convention or through the Legislature submitting the measure to the voters. Cal. Const. art. 18, §§ 1-2. In order to determine if an initiative is a revision, a court will examine the qualitative and quantitative effects of the amendment. *Raven*, 52 Cal. 3d at 351.

The quantitative test looks at the actual changes being made to the wording of the Constitution to determine if it substantially alters the Constitution. *Id.* In *Raven*, the California Supreme Court struck down a portion of Proposition 115 as an invalid constitutional revision. *Id.* at 355. Proposition 115 was an initiative designed to limit the rights of criminal defendants to the rights provided for in the federal Constitution. *Id.* at 350-352. The Court found that quantitatively, Proposition 115 did not substantially alter the constitution because it only added three sections and amended a fourth section of

Article 1. *Id.* at 351. The Court noted that it did not delete any existing language and only affected one article of the Constitution. *Id.* at 351.

Here, Proposition 4 adds section 32 to Article 1 of the California Constitution. It is a lengthy amendment with 31 sections and subsections. However, it does not delete any words in the existing text and it affects only one article. Thus, Proposition 4 is not likely to be deemed a substantial change under the quantitative analysis.

The qualitative test examines whether the amendment changes the nature of California's basic governmental plan. *Id.* at 351-352. In *Raven*, the Court found that Proposition 115 removed the power of judicial interpretation from state courts and vested it solely in the United States Supreme Court. *Id.* at 352. Further, the Court noted that the California Constitution had been interpreted to be more protective of criminal defendants' rights than the federal Constitution. *Id.* at 352-353. This would no longer be possible under Proposition 115. *Id.* Thus, the Court found that Proposition 115 would severely limit the independent force and effect of the California Constitution. *Id.*

In the realm of abortion, California has been more protective of abortion rights than the United States Supreme Court. *Am. Acad. Pediatrics*, 16 Cal. 4th at 327. Opponents could argue that Proposition 4 reduces the state right of privacy to that of the federal right, and it removes the ability of state judges to interpret abortion-related privacy rights. However, Proposition 4 does not seem to go as far in its changes to the Constitution as did Proposition 115. While Proposition 4 limits the rights of minors seeking an abortion, it does not limit the ability of judges to interpret the California Constitution. Thus, it appears unlikely that Proposition 4 would be deemed a constitutional revision.

V. Public Policy

A. Proponents' Arguments

Proponents of Proposition 4 want to protect young girls from the dangers of secret abortions. Yeson4.net, *Sarah's Law Yes on 4 Stop Child Predators*, <http://www.yeson4.net/> (accessed Sept. 15, 2008). They argue that parents are required to be notified if their daughter wants to go to a tanning salon, get a cavity filled, or get an aspirin at school. *Id.* Yet parents do not need to be notified when their daughter is making a significant life decision. *Id.* Proponents argue that a young girl is safer when her family members are aware of her medical situation and can help her understand her options and ensure she receives competent medical care. *Id.*

Proponents also believe that Proposition 4 will protect girls from child predators. *Id.* Proponents argue that child predators are often responsible for teen pregnancies, and can force a girl to have an abortion without anyone knowing. *Id.* In a recent California Supreme Court case, a thirteen-year-old girl was molested and impregnated by her stepfather. *People v. Cross*, 45 Cal. 4th 58 (2008). She told him of the pregnancy and he took her to get an abortion. *Id.* at 376. After the abortion, the defendant continued having sex with the minor. *Id.* at 376. It was not until seven months later that the girl's mother saw the hospital bill with the charges for the abortion procedure. *Id.* After the girl's mother found out, the defendant was finally reported to police. *Id.* Arguably, under

Proposition 4, the girl's mother would have been notified prior to the abortion and could have ended the abuse sooner.

Proponents also point out that many other states have parental notification laws. Yeson4.net, *supra*. Currently, thirty-four states have some form of parental involvement law, either in the form of a parental notification or parental consent law. Guttmacher Institute, *State Policies in Brief, Parental Involvement in Minors' Abortions*, http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf (updated Oct. 14, 2008) [hereinafter Guttmacher, Parental Involvement]. Proponents of Proposition 4 argue that parental notification laws reduce pregnancy, abortion and sexually transmitted disease rates among teens. Yeson4.net, *supra*. In contrast, a study of teenage pregnancy rates from 1986-2002 showed that California had the fifth highest abortion rate among fifteen to nineteen year olds. Guttmacher Institute, *U.S. Teenage Pregnancy Statistics, National and State Trends and Trends by Race and Ethnicity*, <http://www.guttmacher.org/pubs/2006/09/12/USTPstats.pdf> (updated Sept. 2006).

Although this is the third parental notification initiative in recent years, proponents believe that this version has a better chance of passing than Proposition 85 and Proposition 73. Weber, *supra*, <http://www.healthvote.org/index.php/history/C41/>. The reason is the provision in Proposition 4 that enables a physician to notify another adult family member, rather than a parent, if a girl is being abused. *Id.* This addresses the argument made by opponents during the Proposition 85 campaign that girls who have abusive parents will be put in danger by a notification requirement. *Id.* Proponents of Proposition 4 believe that was the strongest argument against Proposition 85. *Id.* The additional provision in Proposition 4 allows a minor to avoid having her parent notified, but ensures that the child abuse is reported to the proper authorities. The other adult relative will be aware that a child abuse report was made and ideally can follow up to ensure the abusive situation is dealt with. Interview with Katie Short.

B. Opponents' Arguments

Opponents argue that Proposition 4 will put teenage girls in danger. NoonProp4.org, *No on Prop. 4, Protect Teen Safety*, <http://www.noonprop4.org/> (accessed Sept. 15, 2008). Most girls already tell their parents when they are pregnant. *Id.* at <http://www.noonprop4.org/about/>. Further, one physician reports that parents typically accompany their daughter to the abortion procedure. Radha Lewis, *Prop. 4 Would Take Away Options*, L.A. Times, Letter to the Editor (Sept. 18, 2008).

On the other hand, the girls who do not tell their parents have good reasons, such as fear of abuse or being kicked out of their homes. Editorial, *Don't be Fooled by Deceptive "Sarah's Law,"* San Jose Mercury News (Aug. 10, 2008). In Texas, which has a parental consent law, statistics from a legal counseling hotline for pregnant minors reported that thirty-eight percent of hotline callers had been kicked out of their homes for being pregnant. Sheila Cheaney & Laura Smith (Student), *Staying Open: How Restricting Venue in Texas's Judicial Bypass Cases Would Hurt Minors and Violate the Constitution*, 9 Scholar 45, 47 (2006). Under Proposition 4, girls who fear being kicked out of their homes will have the option of utilizing the judicial bypass procedure, which may or may not be effective. Unless these girls are also being abused by their parent, they will not be eligible for the alternate family member provision of Proposition 4. Statistics in Texas

also showed that twenty percent of callers reported a likelihood of being forced to continue an unwanted pregnancy. *Id.* Under Proposition 4, a parent cannot prevent the minor from having an abortion. But if the minor and her parents disagree about how to handle the pregnancy, family relations at home could be considerably strained. Some of the danger of Proposition 4 stems from the lengths teens will go to in order to avoid the family notification requirement, such as crossing state lines to obtain abortions or resorting to self-induced or illegal abortions. NoonProp4.org, *supra*; Editorial, San Jose Mercury News.

One critic called Proposition 4 “the most deceptive measure on the California ballot this fall.” Editorial, San Jose Mercury News. The deception originates with the use of Sarah’s story, which occurred fourteen years ago in a different state. *Id.* Critics further argue that the need for this law is exaggerated because “[a]bortion is one of the safest surgical procedures for women in the United States. Fewer than 0.5% of women obtaining abortions experience a complication, and the risk of death associated with abortion is about one-tenth that associated with childbirth.” Guttmacher Institute, *State Facts About Abortion: California*, <http://www.guttmacher.org/pubs/sfaa/pdf/california.pdf> (Jan. 11, 2008).

Opponents are not impressed with the alternate family member provision in Proposition 4. They argue that now a girl can go to a trusted aunt or older sister if she does not want to tell her parents. However, under Proposition 4, in order to go to another family member the girl must report her parents to authorities. NoonProp4.org, *supra*, <http://www.noonprop4.org/about/>. Opponents argue that a scared pregnant teen may avoid seeking help altogether, rather than going to her doctor, claiming mistreatment, and standing by as law enforcement comes to the door. *Id.* at <http://www.noonprop4.org/about/safety/>.

Opponents also argue that the judicial bypass provision will not work because teens will be too scared and confused to navigate the court system and tell personal information to a judge. *Id.* at <http://www.noonprop4.org/about>. There is some evidence that courts have not been adept at handling judicial bypass cases. Helena Silverstein & Leanne Speitel, “*Honey, I Have No Idea*”: *Court Readiness to Handle Petitions to Waive Parental Consent for Abortion*, 88 Iowa L. Rev. 75 (2002); Helena Silverstein, *Road Closed*” *Evaluating the Judicial Bypass Provision of the Pennsylvania Abortion Control Act*, 24 Law & Soc. Inq. 73; Cheney & Smith, 9 Scholar at 53. All of the states that have parental involvement laws have judicial bypass provisions. Guttmacher, *Parental Involvement*, *supra*, http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf. However, studies of the judicial bypass procedures in Alabama, Texas, and Pennsylvania found that courts were not adequately prepared to implement those procedures. Silverstein & Speitel, 88 Iowa L. Rev. 75; Silverstein, 24 Law & Soc. Inq. 73; Cheney & Smith, 9 Scholar 45. In these studies, researchers called the courts to ask how the judicial bypass procedures worked. At least half of the courts in those states could not give adequate information about what steps a minor needed to take in order to exercise her judicial bypass rights. Silverstein & Speitel, 88 Iowa L. Rev. 75; Silverstein, 24 Law & Soc. Inq. 73; Cheney & Smith, 9 Scholar 45. One law clerk in Texas concluded that “the judicial bypass waiver exists on paper, not in practice.” Melissa Jacobs, *Are Courts Prepared to Handle Judicial Bypass Proceedings?*, 32 Human Rights 4 (Winter 2005).

Further, although judicial bypass provisions are required to provide for timely action, there are often delays associated with bypass procedures. Paul Danielson, Student Author, *Judicial Recusal and a Minor's Right to an Abortion*, 2 NW. J. L. & Soc. Policy 125, 132-133 (2007). It takes time for a minor to learn what steps she needs to take to use the judicial bypass procedure, physically get to court (which may entail leaving school) and then file the paperwork and wait for the hearing. *Id.* Abortion is obviously a time-sensitive issue and delays increase the medical risks associated with abortions. *Id.* There are also reports that some judges in Alabama, Pennsylvania, and Tennessee are recusing themselves altogether from abortion cases. Adam Liptak, *On Moral Grounds, Some Judges are Opting Out of Abortion Cases*, N.Y. Times (Sept. 4, 2005). Recusals can lead to further delays if it takes time to appoint a new judge to hear the case. Danielson, 2 NW. J. L. & Soc. Policy at 132-133.

Opponents also argue that parental notification laws do not reduce teen pregnancy rates. NoonProp4.org, *supra*, <http://www.noonprop4.org/about/health/>. On the other hand, teen pregnancy rates have been reduced by over forty percent in the last ten years without a parental notification law. *Id.* Opponents believe that public policy should focus on prevention of teen pregnancy through sex education, rather than new laws. *Id.*

C. Other Policy Considerations

Nationwide, the abortion rate has fallen to the lowest level since 1974. Rob Stein, *Abortion Demographics Changing*, Wash. Post (Sept. 22, 2008). Minors account for less than seven percent of all abortions. Stanley K. Henshaw & Kathryn Kost, Guttmacher Institute, *Trends in the Characteristics of Women Obtaining Abortions, 1974 to 2004*, <http://www.guttmacher.org/pubs/2008/09/23/TrendsWomenAbortions-wTables.pdf> at 1 (Aug. 2008). Among women under the age of twenty, the abortion rate fell from thirty-three percent in 1974 to seventeen percent in 2004. *Id.* at 7-9. In contrast, the rate of teenagers aged fifteen to seventeen giving birth rose in 2006 for the first time since 1991. ChildStats.gov, *America's Children in Brief: Key National Indicators of Well-Being, 2008*, http://www.childstats.gov/pdf/ac2008/ac_08.pdf at 5 (2008). It is unclear whether the increase in the birth rate is connected to the abortion rate. *Teen Births Up For First Time in 15 Years*, Fort Worth Star-Telegram A9 (July 12, 2008).

It is also unclear whether any decreases in teen abortion rates are connected to parental consent or notification laws. Weber, *supra*, <http://www.healthvote.org/index.php/history/C41/>. One study done by a conservative evangelical group shows that abortion rates dropped about thirteen percent in states with parental consent or notification laws. Liz Halloran, *New Abortion Study Fuels Criticism of Obama and Praise of Palin*, U.S. News & World Report (Sept. 19, 2008). For example, the teen abortion rate is down in Nebraska, which has a parental notification law, and Michigan, which has a parental consent law. Michael O'Connor & Rick Ruggles, *Abortions at Lowest Level in Nebraska Since 1974*, Omaha World-Herald (Aug. 31, 2008); Dawson Bell, *Brief: Mich. Abortions Plummet to Lowest Level Since '79*, Detroit Free Press (May 22, 2008). On the other hand, a New York Times study in 2006 showed that parental notification laws did not significantly reduce abortion rates. Andrew Lehren & John Leland, *Scant Drop Seen in Abortions if Parents are Told*, N.Y. Times A1 (Mar. 6, 2008). In Minnesota, a state with a parental notification law, the teen abortion rate has

stalled since 2003. Josephine Marcotty, *Abortions are Down; Why Not for Teens?: The Teen Abortion Rate, Once on Decline, Remains Flat – And Rose Among 18- and 19- Year Olds*, Star Tribune (Minneapolis, MN) 1A (July 2, 2008). Further, Minnesota's rates of pregnancy, births, and sexually transmitted diseases for girls aged fifteen to nineteen actually increased. *Id.* Additionally, there is also the possibility that some states' abortion rates decline after a parental involvement law because minors go out of state to procure the abortion. Lehran & Leland, N.Y. Times.

Overall, the drop in teen abortion rates has been attributed to multiple factors ranging from comprehensive sex education and greater access to contraception, including emergency contraception, to society being more accepting of single mothers. Steven Reinberg, *U.S. Abortion Rate at 30-Year-Low*, Healthday, (Sept. 23, 2008); O'Connor & Ruggles, Omaha World-Herald.

D. Financial Support

The largest contributors in support of Proposition 4 are: James Holman, owner of the San Diego Reader, \$1.5 million; Don Sebastini, a California winery owner, \$530,000; and the Knights of Columbus of New Haven, CT, \$200,000. California Secretary of State, *Campaign Finance: Proposition 4, Supporters*, <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1298466&session=2007&view=late1> (accessed Sept. 29, 2008).

The largest contributors in opposition of Proposition 4 are: Planned Parenthood affiliates, \$3.3 million; the California Teacher's Association, \$450,000, and Andrew Grove, former CEO of Intel Corporation, and his wife Eva Grove, \$202,000. California Secretary of State, *Campaign Finance: Proposition 4, Opponents*, <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1276142&session=2007&view=late1> (accessed Sept. 29, 2008).

VI. Conclusion

If enacted, Proposition 4 will add section 32 to Article 1 of the California Constitution. It will require physicians to notify a parent or guardian if a minor seeks an abortion and then wait forty-eight hours before performing the procedure. There are several exceptions by which a minor can avoid parental notification, most notably by judicial bypass or by notifying another adult family member if the minor is being abused by her parent. Supporters believe that parents have the right to know about their daughters' pregnancy to ensure that they keep their daughters safe. They also argue that parental notification will prevent child predators from being able to hide the evidence of their crimes. Opponents believe that teens are safer when they are not subject to mandated reporting laws. They argue that most teens already tell their parents when they become pregnant. However, those minors who do not tell their parents have good reasons for that decision. Opponents fear that a notification requirement may cause girls to do something desperate and dangerous in order to obtain an abortion. If challenged in the courts, Proposition 4 would likely be upheld under both the United States Constitution and the California Constitution.