

IN THE SUPREME COURT OF OHIO

JOHN AND JUNE ROE , individually and as parents and next friend of JANE ROE, a minor,	:	CASE NO. 07-1832
	:	
Plaintiffs-Appellants,	:	On appeal from the Hamilton County Court of Appeals, First Appellate District
	:	
v.	:	
	:	APPEAL NO. C060557
PLANNED PARENTHOOD SOUTHWEST OHIO REGION , <i>et al.</i> ,	:	TRIAL NO. A0502691
	:	
Defendants-Appellees.	:	

**BRIEF OF *AMICI CURIAE* MEMBERS OF THE U.S. CONGRESS
FROM THE STATE OF OHIO IN SUPPORT OF PLAINTIFFS-APPELLANTS
AND REVERSAL OF THE HAMILTON COUNTY COURT OF APPEALS**

<p>Crabbe Brown & James LLP Brian E. Hurley (0007827) Robert J. Gehring (0019329) 30 Garfield Place, Suite 740 Cincinnati, OH 45202 513.784.1525 (t) 513.784.1250 (f)</p> <p>Keating Muething & Klekamp PPL Richard L. Creighton, Jr. (0021806) William A. Posey (0021821) 1 E. Fourth St., Suite 1400 Cincinnati, OH 45202</p> <p>White Getgey & Meyer Co. LPA Nicholas E. Bunch (0015008) Fourth & Vine Tower 1 W. Fourth St., Suite 1700 Cincinnati, OH 45202</p> <p><i>Counsel for Plaintiffs-Appellants</i></p>	<p>Vorys, Sater, Seymour & Pease LLP Daniel J. Buckley (0003772) Barbara Bison Jacobson (0014190) Suite 2000, Atrium Two 221 E. Fourth St. Cincinnati, OH 34201 513.723.4002 (t) 513.852.7819 (f)</p> <p><i>Counsel for Defendants-Appellees</i></p> <p>Kirkpatrick Law Offices PC Joel J. Kirkpatrick (0071924) Counsel of Record 31800 Northwestern Highway, Suite 350 Farmington Hills, MI 48334 248.855.6010 (t) 866.241.4152 (f)</p> <p>Americans United for Life Mailee R. Smith, Of Counsel 310 S. Peoria St., Suite 500 Chicago, IL 60607 312.492.7234 (t) 312.492.7235 (f)</p> <p><i>Counsel for Amici Curiae</i></p>
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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Representatives John Boehner (OH-8, House Minority Leader), Steve Chabot (OH-01), Jim Jordan (OH-04), Bob Latta (OH-05) and Jean Schmidt (OH-02) are Members of the United States Congress from Ohio. As legislators, *Amici* assert their compelling interest in protecting minors within the state and support the passage of constitutional laws regulating parental involvement before abortion, as well as laws mandating sexual abuse reporting by physicians. *Amici* maintain that such laws constitute a valid extension of the State’s compelling interest in protecting minors from the harms of sexual abuse and abortion.

Amici also have a compelling interest in ensuring that Ohio’s laws are enforced—including OHIO REV. CODE §§ 2919.12 (parental notice), 2919.121 (parental consent), 2317.56 (informed consent), and 2151.421 (child abuse reporting). Prohibiting the discovery of redacted information devastates the State’s compelling interests by rendering constitutional laws useless. Without evidence, these laws cannot be enforced.

With the best interest and protection of minors in mind, *Amici* urge this Court to reverse the judgment of the Hamilton County Court of Appeals.

STATEMENT OF FACTS

Amici adopt the Statement of Facts as presented in the Merits Brief of Plaintiffs-Appellants John and June Roe and Jane Roe. In summary, Plaintiff Jane Roe was impregnated by her 21-year-old soccer coach. After being pressured by the perpetrator to have an abortion, Jane called Defendant Planned Parenthood. Defendant performed the abortion, which was paid for by the perpetrator. Defendant did not notify or receive consent from Jane's parents, nor did it ensure that the phone number Jane provided was truly her father's number.

ARGUMENT

The U.S. Supreme Court differentiates minors from adults when determining Constitutional rights. Moreover, states have a compelling interest in protecting minors from sexual abuse and abortion, as well as the harm that accompanies such occurrences. Mandatory sexual abuse reporting laws and laws requiring parental involvement before abortion—which have been upheld and affirmed by the U.S. Supreme Court—are constitutional extensions of the states' compelling interest in protecting minors. However, without documentation demonstrating a failure to abide by these laws, the state and private plaintiffs¹ are powerless in ensuring that such laws are upheld and enforced. The appellate court's decision undermines statutory rape laws across the nation, as well as other areas of law aimed at protecting minors from manipulative adults and also from themselves.

Because most minors do not report sexual abuse, the pressure, manipulation, and coercion inherent in sexual exploitation of minors will be exacerbated if Defendants' have their way. Contrary to Defendants' claims, the provision of redacted documents will not infringe on

¹ OHIO REV. CODE §§ 2919.12, 2919.121, and 2317.56 provide civil causes of action. Section 2151.421 also references civil actions.

the privacy and/or safety concerns of minors. Instead, it is Defendants' withholding of documents necessary to upholding the law that will foster the harmful consequences of sexual abuse and secretive abortions.

According to U.S. Supreme Court precedent, minors do not have a broad informational privacy right. Failing to compel the requested documents allows Defendants to undermine existing state law, which leads to legal and social ramifications devastating to the State's compelling interests.

I. MINORS DO NOT POSSESS A BROAD INFORMATIONAL PRIVACY RIGHT

The appellate court concluded that “[t]he potential invasion of privacy rights trumps the probative value of the records in this case.” Decision of the Court of Appeals, First Appellate District of Ohio, Hamilton County, Case No. C-060557 at ¶ 44. This conclusion is totally inaccurate. Not only did the court ignore the necessity of the records in enforcing constitutional, compelling state interests, but it also granted a broader informational privacy right than is currently available to minors. In fact, the appellate court completely ignored in its analysis the fact that the requested documents pertain to minors.

The U.S. Supreme Court has held that, while minors are protected by the Constitution and possess constitutional rights, “the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.” *Carey v. Population Serv. Int’l*, 431 U.S. 678, 692 (1977) (quoting *Prince v. Mass.*, 321 U.S. 158, 170 (1944)). The Court has acknowledged that the peculiar vulnerability of minors, their inability to make critical decisions in an informed, mature manner, and the importance of parents in child-rearing justify the

conclusion that minors’ constitutional rights are not equal to those of adults. *Bellotti v. Baird*, 443 U.S. 622, 634 (1979).²

While the right to privacy “in connection with decisions affecting procreation extends to minors,” states may restrict the privacy rights of minors when such restrictions “serve ‘any significant state interest ... that is not present in the case of an adult.’” *Carey*, 431 U.S. at 693 (quoting *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 75 (1976)).

Importantly, this test is “less rigorous” than the compelling interest test, because the states have greater latitude in regulating the conduct of children. *Carey*, 431 U.S. at 693n.15 (citing *Prince*, 321 U.S. 158; *Ginsberg v. New York*, 390 U.S. 629 (1968)). When a minor’s privacy interest relates to “independence in making certain kinds of important decisions”—such as the decision to be sexually active—“the law has generally regarded minors as having a lesser capability for making important decisions.” *Id.* No Supreme Court decisions have extended informational privacy rights of minors to equal those rights of adults.

Clearly, the interests of the State of Ohio in protecting minors against the harms of sexual abuse and abortion, as well as the interests of private plaintiffs in protecting their minor children, constitute significant interests not present in the case of an adult. Yet finding an informational privacy right in the sexual activity of minors drastically inhibits the State and private plaintiffs from advancing these significant—indeed, compelling³—interests in protecting minors.

² “[O]ur cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children’s vulnerability and their needs for ‘concern, ... sympathy, and ... parental attention.’” *Bellotti*, 443 U.S. at 635 (quoting *McKeiver v. Penn.*, 403 U.S. 528, 550 (1971)).

³ See *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (citing *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607 (1982); *Prince*, 321 U.S. at 168), where the Court stated the following:

The legal and social ramifications of finding such a broad privacy right for minors would undermine the State's compelling interests and its efforts in protecting minors, curbing sexual abuse, and diminishing the number of abortions in the state.⁴

II. DEFENDANTS' STANCE UNDERMINES EXISTING STATE LAW, LEADING TO LEGAL RAMIFICATIONS DEVASTATING TO THE ADVANCEMENT OF THE STATE'S COMPELLING INTERESTS

Mandatory reporting of sexual abuse laws and laws requiring parental involvement (either consent or notice) before abortion are a constitutional extension of states' compelling interests. Such laws have been affirmed time and time again by the U.S. Supreme Court, lower federal courts, and state courts across the nation. However, Defendants' refusal to comply with proper discovery requests leaves these laws without the teeth of enforceability, rendering them useless.

A. Defendants' Stance Undermines Constitutional Statutory Rape and Mandatory Reporting Laws

Statutory rape laws—which originated as early as the 13th century⁵—are designed to protect minors from sexual exploitation and are based upon the theory that *all* sexual activities

It is evident beyond the need for elaboration that a State's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling." "A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens." Accordingly, we have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights.

⁴ Interestingly, these are all efforts supposedly supported by the Defendants' national organization. *See, e.g.*, Planned Parenthood, *Abortion Issues & Action* (Mar. 7, 2008), available at <http://www.plannedparenthood.org/issues-action/abortion-5946.htm> (last visited May 5, 2008) (pushing contraceptives and sex education as means of reducing abortions). Yet Defendants' line of argument will do nothing to protect minors or prevent sexual abuse and/or unnecessary abortions. Instead, Defendants' practice will insulate child predators from prosecution and perpetuate the abuse of the children Defendants' have already "treated." *See* Parts II and III, *infra*.

involving minors below a certain age *are coercive*.⁶ Below that designated age,⁷ individuals are incapable of providing consent to sexual activities.⁸

This is analogous to other areas of law, which deem allegedly voluntary acts unenforceable because minors lack the decision-making capacity to protect themselves from coercion. The U.S. Supreme Court has held that minors are impaired in their decision-making ability by their “immaturity, inexperience, and lack of judgment.” *Hodgson v. Minn.*, 497 U.S. 417, 444 (1990). This impaired decision-making ability is the basis of numerous areas of law focused on protecting minors from others and from themselves. Allowing informational privacy in illegal sexual activity inhibits enforcement of laws protecting minors—not only laws aimed at sexual abuse, but also those laws aimed at protecting minors against erroneous decision-making in other areas of life—because such a right elevates a minor’s decision-making capacity to that of an adult’s, contrary to long-standing jurisprudence.

⁵ Some sources date statutory rape laws “at least as ancient as the 4000-year-old Code of Hammurabi.” M. Oberman [Oberman I], *Turning Girls Into Women: Re-Evaluating Modern Statutory Rape Law*, 8 DEPAUL J. HEALTH CARE L. 109, 119 (2004) (citing R. Eidson, *The Constitutionality of Statutory Rape Laws*, 27 U.C.L.A. L. REV. 757, 762 (1980)). While the reasoning behind statutory rape laws has fluctuated over the centuries, for more than 100 years the laws have been “predicated upon the premise that girls need and deserve the chance to grow into women free from coercion and exploitation.” M. Oberman [Oberman II], *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFFALO L. REV. 703, 757 (2000).

⁶ Lewin Group, *Statutory Rape: A Guide to State Laws and Reporting Requirements ES-1, 2* (2004), available at <http://www.lewin.com/NewsEvents/Publications/default.aspx> (last visited May 2, 2008). The report was researched and published for the Office of the Assistant Secretary for Planning and Evaluation in the U.S. Department of Health and Human Services.

⁷ The age designation varies among the 50 states.

⁸ Lewin Group, *supra*, at ES-1, 2.

For example, the common law rules governing contracts protect minors by not allowing them to enter into contracts and by allowing them to void or disaffirm contracts. Due to their decisional immaturity, minors are considered “incapacitated” under the law.⁹ Similarly, the “general principal” in tort law is “that the law limits the autonomy of young people, barring them from making medical decisions without adult guidance.”¹⁰

It lacks reason to allow minors an informational privacy right in illegal sexual activity while simultaneously holding that minors lack the decision-making capacity to participate in that illegal sexual activity. If a minor is free to hide illegal sexual activity behind a privacy curtain, then there is no reason to prohibit minors from engaging in other life-affecting decisions.

Mandatory reporting laws go hand-in-hand with statutory rape laws. In fact, reporting laws have been recognized as “one of the most significant measures ever taken to protect abused and neglected children,” “the underpinnings of our child protection system,” and “a critical part of discovering and responding to child abuse.”¹¹

Even if both parties to a sexual act believe they are voluntarily participating, statutory rape laws deem that act illegal.¹² Statutory rape laws are aimed at protecting minors both from

⁹ M. Oberman [Oberman III], *Girls in the Master’s House: Of Protection, Patriarchy and the Potential for Using the Master’s Tools to Reconfigure Statutory Rape Law*, 50 DEPAUL L. REV. 799, 801 (2001).

¹⁰ *Id.* at 802. The very *narrow* exception to this rule is that minors may seek care for pregnancy, mental health, or sexually transmitted diseases in a number of states.

¹¹ National Association of Counsel for Children [NACC], *Child Maltreatment* (2006); NACC, *Reporting Child Abuse* (2006), both available at <http://www.naccchildlaw.org/childrenlaw/childrenlaw.html> (last visited May 2, 2008).

¹² Lewin Group, *supra*, at ES-1.

“those who would prey upon their vulnerability” as well as from themselves.¹³ Modern statutory rape laws are based upon the nationwide belief that minors are “so vulnerable to sexual exploitation that they are incapable of consenting to sex.”¹⁴

There are two primary objectives in enforcing statutory rape laws: 1) ensuring the health, safety, and well-being of the minor in question and taking the necessary steps to prevent further harm, and 2) conducting an investigation to determine if the reported abuse constitutes a criminal act and prosecuting offenders.¹⁵ Yet both of these objectives are thwarted by granting an informational right of privacy in illegal sexual activity. Such a right removes the teeth from statutory rape laws, making them unenforceable for all intents and purposes. Without evidence and proper investigation, the state simply cannot prosecute sexual predators. Thus, granting an informational privacy right in illegal sexual activity will hamper proper investigation and therefore undermine statutory rape laws nationwide.¹⁶

All 50 states maintain statutory rape laws, making sexual activity with a minor criminal behavior. The “overwhelming majority” of states bar sexual contact with minors under the age of 16.¹⁷ In two-thirds of the states, statutory rape is a reportable offence regardless of the

¹³ Oberman II, *supra*, at 710.

¹⁴ *Id.* at 737.

¹⁵ Lewin Group, *supra*, at 14.

¹⁶ “[T]he problem with statutory rape laws has never been too much enforcement, but too little....” Oberman III, *supra*, at 826. Indeed, statutory rape laws are “notorious” for being an area of law where “the law on the books ... differs markedly from the law in action.” Oberman I, *supra*, at 132 (citing M. Chamallas, *Consent, Equality, and the Legal Control of Sexual Conduct*, 61 S. CAL. L. REV. 777, 778 (1988)).

¹⁷ Oberman III, *supra*, at 809 (citing R.J.R. Levesque, *ADOLESCENTS, SEX, AND THE LAW: PREPARING ADOLESCENTS FOR RESPONSIBLE CITIZENSHIP* 232-33 (2000)).

relationship between the victim and the defendant.¹⁸ In Ohio, “unlawful sexual conduct” with a minor occurs when a person 18 years of age or older engages in sexual conduct with a child aged 13 to 15. OHIO REV. CODE § 2907.04.¹⁹ Also applicable here is OHIO REV. CODE § 2907.03, which criminalizes sexual conduct with anyone under the age of 18 when the perpetrator is in a position of authority over the child—such as a soccer coach.

Nationwide, healthcare providers are required to report instances of suspected child sexual abuse.²⁰ Almost half of the states hold that minors under a certain age cannot consent to certain sexual activity and/or that certain activity with a minor is illegal, regardless of the defendant’s age.²¹ Thus, absent a regulation or court order to the contrary, such activities must be reported.

¹⁸ Lewin Group, *supra*, at ES-3.

¹⁹ The sexual conduct is termed “rape” when a person of any age has sexual contact with a child under the age of 13. OHIO REV. CODE § 2907.02. *See also id.* at §§ 2907.05, 2907.06, and 2907.07, which apply degrees of punishment to sexual acts with varying ages of children.

²⁰ Lewin Group, *supra*, at 18-126 (detailing every state law for the 50 states and the District of Columbia).

²¹ *See, e.g.*, Delaware (DEL. CODE ANN. tit. 11, § 770); Hawaii (HAW. REV. STAT. § 707-730); Idaho (IDAHO CODE § 18-6101); Illinois (720 ILL. COMP. STAT. 5/12-16); Indiana (IND. CODE § 35-42-4-3); Iowa (IOWA CODE § 709.4); Kansas (KAN. STAT. ANN. §§ 21-3502, 21-3504); Kentucky (KY. REV. STAT. ANN. §§ 510.020, 510.140); Maine (ME. REV. STAT. ANN. tit. 17-A, § 253); Massachusetts (MASS. GEN. LAWS ch. 265, § 23); Michigan (MICH. COMP. LAWS § 750.520d); Missouri (MO. REV. STAT. §§ 566.032, 566.068); Montana (MONT. CODE ANN. §§ 45-5-501, 45-5-503); New Hampshire (N.H. REV. STAT. ANN. § 632-A:3); New York (N.Y. PENAL LAW §§ 130.05, 130.20); North Dakota (N.D. CENT. CODE § 12.1-20-03); Oklahoma (OKLA. STAT. tit. 21, § 1111); Rhode Island (R.I. GEN. LAWS §§ 11-37-8.1, 11-37-8.3); South Carolina (S.C. CODE ANN. § 16-3-655); Texas (TEX. PENAL CODE ANN. § 22.021); Utah (UTAH CODE ANN. §§ 76-5-401, 76-5-402.1); Virginia (VA. CODE ANN. § 18.2-63); *see also* Lewin Group, *supra*, at 33, 41, 43, 45, 48, 50, 52, 54, 59, 64, 65, 71, 73, 79, 85, 90, 94, 101, 103, 110, 112, 117. The age under which sexual activity is prohibited with a minor ranges from state to state. For example, children under 14 years of age cannot consent to sexual activities under any circumstances in Hawaii, while in Idaho intercourse with a female under 18 years of age is

Importantly, “*few* states allow mandated reporters to exercise discretion in deciding which cases to report.”²² It is significant here that Ohio is not one of those states.

In light of the estimate that *at least* 7.5 million incidents of statutory rape occur per year, drastically hampered investigation leaves minors unprotected and endangered.²³ Moreover, statutory rape laws are currently enforced “at the margins,” meaning only in those cases where drastic coercion and age differences exist.²⁴ Yet this practice “undermine[s] the intentions of legislatures to treat girls differently from adult women for purposes of consenting to sexual activity.”²⁵ The State of Ohio, however, has enacted laws seeking to protect young women from the harms of sexual abuse. Failing to allow private plaintiffs to properly litigate under such laws devastates the aim of the State.

B. Defendants’ Stance Undermines Constitutional Parental Involvement Laws

Thirty-six states maintain laws that require parental involvement before a minor obtains an abortion. Twenty-five states²⁶ require parental consent before abortion, and eleven states²⁷

considered rape, regardless of the age of the defendant. *See* HAW. REV. STAT. § 707-730; IDAHO CODE § 18-6101.

²² Lewin Group, *supra*, at 13 (emphasis added). These states are Florida, Tennessee, and Wisconsin. *Id.*

²³ Oberman II, *supra*, at 704; *see also* U.S. Dep’t of Justice, *Statutory Rape Known to Law Enforcement*, JUVENILE JUSTICE BULLETIN 1 (Aug. 2005) (stating that three out of every five rape victims is 14 or 15 years of age).

²⁴ Oberman II, *supra*, at 751.

²⁵ *Id.* at 751-52; *see also* S. Lamb, THE SECRET LIVES OF GIRLS: WHAT GOOD GIRLS REALLY DO – SEX PLAY, AGGRESSION, AND THEIR GUILT 116-33 (2001). Such a privacy right also runs contrary to the strong public outcry and growing demand for stronger enforcement against child predators.

²⁶ These states are Alabama, Arizona, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, North Dakota, Ohio,

require parental notice before abortion. While the parties debate whether OHIO REV. CODE § 2919.12 (parental notice) or § 2919.121 (parental consent) was in place at the time of Plaintiff's abortion, the fact of the matter is that Defendants' stance undermines both laws, regardless of which law was in place.

Both parental notice and parental consent laws have been affirmed time and time again by the U.S. Supreme Court as manifestations of the states' compelling interest in protecting the health and wellbeing of minors. *Bellotti v. Baird* is generally seen as the case which set the stage for parental involvement laws. In determining that parental involvement laws with judicial bypass procedures are constitutionally sound and supportive of the states' interest in protecting children, the Court set forth several important principles. *See generally Bellotti*, 443 U.S. 622.

Specifically, the Court found that 1) states validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences; 2) the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors; 3) the state commonly protects its youth from their own immaturity by requiring parental consent to or involvement in important decisions by minors; 4) the custody, care, and nurture of the child reside first with the parents; 5) deeply rooted in our Nation's history and tradition is the belief that the parental role implies a substantial measure of authority over one's children; and 6) constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society. *Id.* at 635, 637-38 (citations omitted).

Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

²⁷ These states are Colorado, Delaware, Florida, Georgia, Iowa, Kansas, Maryland, Minnesota, Nebraska, South Dakota, and West Virginia.

This emphasis on parental rights and the protection of minors has been applied favorably in Supreme Court jurisprudence upholding state laws requiring parental involvement before minors obtain abortions. In *H.L. v. Matheson*, the Court upheld a Utah law requiring parental notice before an immature, dependant minor can obtain an abortion. 450 U.S. 398 (1981). The Court emphasized that there is no logical relationship between the capacity to become pregnant, and the capacity for mature judgment in the abortion decision. *Id.* at 408.

The Court also affirmed a prior holding that “[t]here 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 abortion decision. *Id.* at 409-10 (quoting *Bellotti*, 443 U.S. at 640-41). The Court went on to conclude that parental involvement laws constitutionally serve the states’ significant interests by providing an opportunity for parents to supply necessary medical information to a physician. *Id.* at 411.

Moreover, the Court rejected the plaintiff’s claim that parental involvement laws will discourage minors from seeking abortion. *Id.* at 413. The Court held that states are not required to fine-tune their statutes to encourage or facilitate abortions. *Id.* This holding is directly applicable here, where Defendants claim that providing redacted, unidentifiable medical information will have a “chilling effect,” dissuading some minors from seeking abortions. Redacted, unidentifiable medical records clearly do not rise to the level of actual parental notice. If the Court rejected a claim that fear that *open parental involvement* will have a chilling effect, the Defendants’ lesser claim that redacted, unidentifiable information will hypothetically have a chilling effect must also be rejected.

The Court has also upheld other state notice requirements. In *Ohio v. Akron Center for Reproductive Health*, the Court upheld Ohio’s parental notice requirement. 497 U.S. 502 (1990).

The Court held that “[i]t would deny all dignity to the family to say that the State cannot take this reasonable step in regulating its health professions to ensure that, in most cases, a young woman will receive guidance and understanding from a parent.” *Id.* at 520. Likewise, in upholding a section of Minnesota law requiring parental notice or judicial bypass, the Court in *Hodgson v. Minnesota* again emphasized the states’ “strong and legitimate” interest in the welfare of its young citizens—an interest which “justifies state-imposed requirements” of parental involvement statutes. *Hodgson*, 497 U.S. at 444-45. In fact, the Court stated that there can be little doubt that a state furthers a constitutionally permissible end by encouraging a minor to seek the help and advice of a parent in making the abortion decision. *Id.* at 445.²⁸

The Court has also repeatedly upheld parental consent statutes. In *Planned Parenthood Association of Kansas City, Missouri v. Ashcroft*, the Court held that the State’s interest in protecting immature minors sustains a consent requirement, either parental or judicial. 462 U.S. 476, 490-91 (1983). Pennsylvania’s consent requirement was upheld in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. 505 U.S. 833 (1992). After an exhaustive discussion supporting informed consent requirements, the Court held that parental informed consent statutes have particular force with respect to minors—including the opportunity for parents to consult with the minor and discuss the physical and moral consequences of her decision. *Id.* at 899-900.

In the Court’s most recent opinion addressing a parental involvement statute, it stated the following:

States unquestionably have the right to require parental involvement when a minor considers terminating her pregnancy, because of their “strong and legitimate interest in the welfare of [their] young citizens, whose immaturity,

²⁸ See also *Lambert v. Wicklund*, 520 U.S. 292 (1997) (upholding a parental notice statute in Montana).

inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.”

Ayotte v. Planned Parenthood of Northern New England, 546 U.S. 320, 326 (2006) (quoting *Hodgson*, 497 U.S. at 444-45 (opinion of Stevens, J.)) (emphasis added).

The bottom line is that the U.S. Supreme Court—both historically and currently²⁹—supports parental involvement laws, including OHIO REV. CODE §§2919.12 and 2919.121. The Court views such laws as protecting minors not only from child predators, but also from their own immaturity. Yet without access to records that demonstrate a business pattern and practice, these Court-affirmed laws are left without teeth, and states and private plaintiffs are left with unenforceable laws. Defendants’ stance of secrecy renders lawsuits brought by minors and their parents without the protection of those very laws aiming to protect minors and uphold parental rights.

That was not the intention of the U.S. Supreme Court. The Court does not affirm strong state interests in laws that cannot be enforced—and obviously, insulating Defendants’ redacted records from discovery insulates Defendants from full liability. This Court must not allow Defendants to render constitutional Ohio laws useless by undermining the very purpose and enforcement actions of those laws.

III. DEFENDANTS’ STANCE LEADS TO SOCIAL RAMIFICATIONS DEVASTATING TO THE ADVANCEMENT OF THE STATE’S COMPELLING INTERESTS

In addition to undermining state law, Defendants’ failure to abide by proper discovery requests leads to social ramifications that are also devastating to the state’s compelling interests.

²⁹ “[W]e have long upheld state parental involvement statutes....” *Ayotte*, 546 U.S. at 326-27.

These social ramifications include the harmful consequences of sexual abuse and abortion, as well as the continued exploitation of a vulnerable population group.

A. Defendants' Stance Fosters The Harmful Consequences Of Sexual Abuse

Defendants' silence regarding the illegal sexual activity of minors will foster the devastating consequences of sexual abuse. Vast numbers of minors endure these consequences: studies have revealed that *at least* one in five girls is sexually abused before the age of 18.³⁰ Some researchers estimate even higher numbers.³¹

Numerous studies document the consequences of sexual abuse, ranging from psychological to physical to behavioral effects. Psychologically, sexual assault leads to severe emotional and traumatic reactions.³² Such effects include post-traumatic stress disorder; difficulty regulating reactions to disturbing events; a detrimental effect on “adolescent intrapsychic development and interpersonal relationships”; a poorly-developed sense of self; an inability to trust that directly impacts the potential for intimate relationships; eating and sleep disorders; intense, negative self-evaluations; depression; and increased incidences or attempts of suicide.³³

³⁰ National Association of Children's Hospitals and Related Institutions [NACHRI], *Child Sexual Abuse Fact Sheet* (2004).

³¹ G. Murphy, *BEYOND SURVIVING: TOWARD A MOVEMENT TO PREVENT CHILD SEXUAL ABUSE* 3 (2002).

³² P.T. Clements et al., *Issues and Dynamics of Sexually Assaulted Adolescents and Their Families*, 13 J. MENTAL HEALTH NURSING 267, 273 (2004).

³³ *Id.* at 267, 271, 273; J.L. Stock et al., *Adolescent Pregnancy and Sexual Risk-Taking Among Sexually Abused Girls*, 29[5] FAM. PLAN. PERSP. 200, 201 (Sept./Oct. 1997); V.I. Rickert et al., *Disclosure of Date/Acquaintance Rape: Who Reports and When*, 18 J. PED. ADOLES. GYN. 17, 23 (2005); Murphy, *supra*, at 3.

From a physical standpoint, minors enduring sexual abuse have an increased incidence of soft tissue injury, pelvic pain syndromes, and gastrointestinal illness.³⁴ Some of the most drastic physical consequences occur as a result of the behavioral effects common in sexual abuse victims. Evidence demonstrates a strong correlation between sexual abuse and compulsive, addictive, high-risk behavior.³⁵

For example, sexually abused minors are more likely not to use contraception and to have multiple partners.³⁶ One study found that minors who have been sexually abused are twice as likely not to use birth control and are more likely to have had more than one sexual partner.³⁷ Another study found that previously abused minors were three times more likely to have had three or more partners in the last year, with currently abused minors seven times more likely than never-abused minors to have had three or more partners in the last year.³⁸

³⁴ Clements et al., *supra*, at 217.

³⁵ J.L. Stock et al., *supra*, at 202; Oberman II, *supra*, at 729-30; E.M. Saewyc et al., *Teenage Pregnancy and Associated Risk Behaviors Among Sexually Abused Adolescents*, 36[3] PERSP. ON SEXUAL & REPROD. HEALTH 98, 102 (May/June 2004).

³⁶ *See, e.g.*, Saewyc et al., *supra*, at 98; Clements et al., *supra*, at 271.

³⁷ J.L. Stock et al., *supra*, at 202; *see also* Saewyc et al., *supra* (reporting that sexually abused adolescents are less likely than their non-abused peers to use condoms or other birth control methods).

³⁸ T. Luster & S.A. Small, *Sexual Abuse History and Number of Sex Partners Among Female Adolescents*, 29[5] FAM. PLAN. PERSP. 204, 207 (Sept./Oct. 1997).

These actions bring higher rates of pregnancy and sexually transmitted diseases, as well as an increased risk of sexual violence in relationships.³⁹ One study found that sexually abused teens are three times more likely to become pregnant before the age of 18.⁴⁰

In addition, sexually abused minors have higher rates of substance abuse and addictions, including the use of alcohol, cigarettes, and illegal substances.⁴¹ Often these substances are used as coping devices.⁴²

On an economic level, minors who are victimized before the age of 18 earn, on average, one dollar less per hour than adults who were not victims.⁴³

Finally, revictimization is a major concern. Studies show a link between sexual abuse and the repetition of assaults and prostitution.⁴⁴ In fact, one study claims that previous victimization is the “most highly correlated predictor of subsequent victimization.”⁴⁵ Forty-four percent of women who were sexually abused before the age of 18 are revictimized at least once

³⁹ J.L. Stock et al., *supra*, at 202; National Campaign to Prevent Teen Pregnancy [NCPTP], *14 and Younger: The Sexual Behavior of Young Adolescents* 18 (Summary 2003); Clements et al., *supra*, at 267, 271; Saewyc et al., *supra*, at 98, 102.

⁴⁰ J.L. Stock et al., *supra*, at 200.

⁴¹ NCPTP, *supra*, at 13; Clements et al., *supra*, at 267; K. Moore & J. Manlove, *A Demographic Portrait of Statutory Rape*, presentation to *Conference on Sexual Exploitation of Teens* (2005), available at http://www.childtrends.org/Files//Child_Trends-2005_03_23_SP_StatRapePres.pdf (last visited May 2, 2008).

⁴² See Saewyc et al., *supra*, at 98.

⁴³ R. MacMillan, *Adolescent Victimization and Income Deficits in Early Adulthood: Rethinking the Cost of Criminal Violence from a Life Course Perspective*, 31 *CRIMINOLOGY* 553-87 (2000).

⁴⁴ Clements et al., *supra*, at 267, 271.

⁴⁵ *Id.*

later in life.⁴⁶ Between 38 and 48 percent of survivors later have physically abusive husbands.⁴⁷ One report documented that 65 percent of prostitutes were forced into sexual activity before the age of 16.⁴⁸ Another study revealed that more than 75 percent of teenage prostitutes had been sexually abused.⁴⁹

Allowing Defendants to remain silent on sexual abuse, hiding behind a false claim of privacy, perpetuates this abuse. By failing to hand over important documentation, Defendants are acting to protect no one but themselves.

B. Defendants' Stance Fosters The Harmful Consequences Of Abortion

As acknowledged in *Bellotti*, the “abortion decision has implications far broader than those associated with most other kinds of medical treatment.” *Bellotti*, 443 U.S. at 649. The Court recognized that immature minors often lack the ability to make fully-informed choices that take account of both immediate and long-range consequences. *Id.* at 640. In *Matheson*, the Court again related that abortion carries medical, emotional, and psychological consequences that can be lasting—particularly when a patient is immature. *Matheson*, 450 U.S. at 411. Specifically, the Court cited that abortion is associated with an increased risk of complications in subsequent pregnancies, and that the emotional and psychological effects of abortion are markedly more severe for girls under the age of 18. *Id.* at 411 n.20. Medical studies indeed

⁴⁶ *Oberman II*, *supra*, at 730.

⁴⁷ *Id.* at 729.

⁴⁸ *Id.* at 730.

⁴⁹ *Darkness to Light, Statistics Surrounding Child Sex Abuse* (2008), available at http://www.darkness2light.org/KnowAbout/statistics_2.asp (last visited May 2, 2008).

demonstrate that abortion carries immediate, long-term, and psychological consequences harmful to women's health, and that minors are particularly susceptible to these risks.

i. Short-term Risks of Abortion

The undisputed⁵⁰ short-term risks of abortion include blood clots; incomplete abortions, which occur when part of the unborn child or other products of pregnancy are not completely emptied from the uterus; infection, including pelvic inflammatory disease and infection caused by incomplete abortion; and injury to the cervix and other organs, including cervical lacerations and incompetent cervix—a condition that affects subsequent pregnancies. In addition, at least one out of every 500 abortions in the United States results in a perforated uterus.⁵¹

Minors are even more susceptible to these risks than are older women. For example, minors are up to twice as likely to experience cervical lacerations during abortion.⁵² Minors are also at greater risk for post-abortion infections, such as pelvic inflammatory disease and

⁵⁰ These risks are acknowledged by Planned Parenthood. See Planned Parenthood, *Abortion Procedures* (Feb. 8, 2008), available at <http://www.plannedparenthood.org/health-topics/abortion/abortion-procedures-4359.htm> (last visited May 2, 2008).

⁵¹ These short term risks are commonly cited in state informed consent materials. See, e.g., Georgia Department of Human Resources, *Medical Risks of Abortion* (2006), available at <http://health.state.ga.us/wrtk/patienteducation.asp#medicalrisks> (last visited May 5, 2008); Louisiana Department of Health and Hospitals, *Abortion: Making a Decision* (1995), available at <http://dev2.dhh.state.la.us/PDF/Abortion-MakingaDecision.pdf> (last visited May 5, 2008); Michigan Department of Community Health, *Abortion Procedures* (2007), available at http://michigan.gov/mdch/0,1607,7-132-2940_4909_6437_19077-46328--,00.html (last visited May 5, 2008).

⁵² Researchers believe that smaller cervixes make it more difficult to dilate or grasp with instruments. See, e.g., K.F. Schultz et al., *Measures to Prevent Cervical Injury During Suction Curettage Abortion*, 1[8335] LANCET 1182-84 (May 28, 1993); R.T. Burkman et al., *Morbidity Risk Among Young Adolescents Undergoing Elective Abortion*, 30[2] CONTRACEPTION 99-105 (1984).

endometritis.⁵³ Minors who abort in the second and third trimesters face a greater risk of physical complications, including higher rates of endometritis, intrauterine adhesions, pelvic inflammatory disease, cervical incompetence, ectopic pregnancies, and rupture of the uterus.⁵⁴

ii. Long-term Risks of Abortion

Minors are also more susceptible to the long-term risks of abortion. In fact, the Guttmacher Institute—Planned Parenthood’s own research wing—has acknowledged that because minors are less likely than adults to take prescribed antibiotics or follow other regimens of treatment, they are at greater risk for subsequent miscarriage, infertility, hysterectomy, and other serious complications.⁵⁵

Included in these long-term risks are the harmful effects on future pregnancies. Many minors who have abortions desire to be pregnant sometime in the future. However, induced abortion increases the risk of pre-term birth (premature birth) and very low birth weight in subsequent pregnancies. Induced abortion has been associated with an increased risk of the

⁵³ Researchers believe that minors are more susceptible because their bodies are not yet fully developed and do not yet produce the protective pathogens found in the cervical mucus of older women. See, e.g., R.T. Burkman et al., *Culture and Treatment Results in Endometritis Following Elective Abortion*, 128 AM. J. OBSTET. GYNECOL. 556-63 (1997); W. Cates, Jr., *Teenagers and Sexual Risk-Taking: The Best of Times and the Worst of Times*, 12 J. ADOLESC. HEALTH 84-94 (1991); D. Avonts & P. Piot, *Genital Infections in Women Undergoing Induced Abortion*, 20 EURO. J. OBSTET. GYNECOL. & REPROD. BIO. 53-59 (1985). Infection may be caused by the spread of an undiagnosed sexually transmitted disease, or by micro-organisms on the surgical instruments.

⁵⁴ S. Lurie & Z. Shoham, *Induced Midtrimester Abortion and Future Fertility: Where Are We Today?*, 40[6] INT’L J. FERTILITY 311-315 (1995); R.T. Burkman, et al., *Culture and Treatment*, *supra*.

⁵⁵ Guttmacher Institute, *Teenage Pregnancy: Overall Trends and State-by-State Information* (Feb. 19, 2004).

premature rupture of membranes, hemorrhage, and cervical and uterine abnormalities, which are responsible for the increased risk of pre-term birth.⁵⁶

Pre-term birth occurs prior to the 37th week of pregnancy and is very dangerous to the child. In 2006, the U.S. Centers for Disease Control announced that premature birth is the leading cause of infant mortality.⁵⁷ It is also a risk factor for later disabilities for the child, such as cerebral palsy and behavioral problems.⁵⁸ Additionally, pre-term birth poses risks to the mother's health. Studies demonstrate that delivering a child before 32 weeks gestation when it is the mother's first pregnancy may increase the mother's breast cancer risk.⁵⁹ The breast cancer risk arises because breast tissue does not mature into cancer-resistant tissue until the last eight weeks of pregnancy, after women have received great amounts of potentially cancer-causing estrogen during the first trimesters.⁶⁰

⁵⁶ C. Moreau, *Previous Induced Abortions and the Risk of Very Preterm Delivery: Results of the EPIPAGE Study*, 112 BRITISH J. OF OBSTET. & GYNECOL. 430-37 (2005).

⁵⁷ J.M. Thorp et al., *Long-Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence*, 58[1] OBSTET. & GYNECOL. SURVEY 67, 75 (2003); William M. Callaghan, *The Contribution of Preterm Birth to Infant Mortality Rates in the U.S.*, 118[4] PEDIATRICS 1566-73 (Oct. 2006).

⁵⁸ B. Rooney & C. Calhoun, *Induced Abortion and Risk of Later Premature Births*, 8[2] J. AM. PHYSICIANS & SURGEONS 46, 46-47 (2003).

⁵⁹ M. Melbye et al., *Preterm Delivery and Risk of Breast Cancer*, 80[3-4] BRITISH J. CANCER 609-13 (1999); C.C. Hsieh et al., *Delivery of Premature Newborns and Maternal Breast-Cancer Risk*, 353 LANCET 1239 (1999).

⁶⁰ A. Lanfranchi, *The Breast Physiology and the Epidemiology of the Abortion Breast Cancer Link*, 12[3] IMAGO HOMINIS 228-36 (2005).

This increased risk of pre-term birth following abortion has been documented in at least 60 significant studies.⁶¹ These studies include a 2005 study demonstrating that a woman who has an abortion is 50 percent more likely to deliver before 33 weeks, and 70 percent more likely to deliver before 28 weeks in subsequent pregnancies. In addition, the risk of pre-term birth increases with every abortion a woman has.⁶² A 2003 study demonstrated that a woman who has two abortions doubles her future risk of pre-term birth, and a woman who has four or more abortions increases the risk of pre-term birth by 800 percent.⁶³

The Institute of Medicine, which is part of the National Academy of Science, lists first-trimester abortion as a risk factor associated with subsequent pre-term birth.⁶⁴ Likewise, a renowned pregnancy resource book states, “if you have had one or more induced abortions, your risk of prematurity with this pregnancy increases by about 30 percent.”⁶⁵ The resource also states that birth before 32 weeks is ten times more likely when a woman has an incompetent cervix—which has already been discussed as a common risk of abortion.⁶⁶

Abortion is also a risk factor for placenta previa.⁶⁷ Placenta previa increases the risk of fetal malformation and excessive bleeding during labor.⁶⁸ Placenta previa also increases the risk

⁶¹ See, e.g., J.M. Thorp et al., *supra*; B. Rooney & C. Calhoun, *supra*. Both resources list numerous studies.

⁶² J.M. Thorp et al., *supra*, at 75.

⁶³ B. Rooney & C. Calhoun, *supra*, at 46-47.

⁶⁴ R.E. Behrman, PRETERM BIRTH: CAUSES, CONSEQUENCES, AND PREVENTION 519 (2006).

⁶⁵ B. Luke, EVERY PREGNANT WOMAN’S GUIDE TO PREVENTING PREMATURE BIRTH 32 (1995).

⁶⁶ *Id.*

⁶⁷ D.C. Reardon et al., *Deaths Associated with Abortion Compared to Childbirth: A Review of New and Old Data and the Medical and Legal Implications*, 20[2] J. CONTEMP. HEALTH LAW &

that the baby will die during the perinatal period, which begins after 28 weeks gestation and ends 28 days after birth.⁶⁹

Finally, it is undisputed that a first full-term pregnancy offers a protective effect against subsequent breast cancer development.⁷⁰ A woman who aborts her first pregnancy loses this protection. The woman also loses the protective effect against cancers of the cervix, colon and rectum, ovaries, endometrium, and liver.⁷¹ Thus, not only does abortion pose an increased risk for future pregnancies, it also strips a woman of the protective effects of a first full-term pregnancy. Furthermore, while it is debated whether abortion is a direct cause of breast cancer, a study by pro-choice researcher Dr. Janet Daling in the *Journal of the National Cancer Institute* sheds light on the risk to minors. In her study, *every woman* with a family history of breast cancer who was under the age of 18 at the time of her abortion developed breast cancer before age 45.⁷² In other words, the risk to minors was incalculable.

iii. Psychological Risks of Abortion

In *Gonzales v. Carhart*, the U.S. Supreme Court acknowledged that “[s]evere depression and loss of esteem” can follow the abortion decision. 127 S. Ct. 1610, 1634 (2007). The Court

POL’Y 279 (2004). This resource is a compilation and examination of many different medical studies by different researchers around the world.

⁶⁸ J.M. Barrett, *Induced Abortion: A Risk Factor for Placenta Previa*, 141 AM. J. OBSTET. & GYNECOL. 7 (1981).

⁶⁹ *Id.*; TABER’S CYCLOPEDIA MEDICAL DICTIONARY 1630 (20th ed. 2001).

⁷⁰ D.C. Reardon et al., *supra*.

⁷¹ *Id.*

⁷² J.R. Daling et al., *Risk of Breast Cancer Among Young Women: Relationship of Induced Abortion*, 86[21] J. NAT’L CANCER INST. 1584-92 (1994).

also stated that it “seems unexceptionable to conclude some women come to regret their choice to abort...” *Id.*

Indeed, numerous studies have examined the effect abortion has on the mental state of women and confirm that abortion poses drastic effects—effects that inflict minors with particular force. In 2006, researchers found that adolescents who abort their unintended pregnancies are five times more likely to seek help for psychological and emotional problems afterwards than those adolescents who carried their pregnancies to term.⁷³ The study also revealed that adolescents who had abortions were three times more likely to experience trouble sleeping.⁷⁴

Other studies have also concluded that women who have abortions have elevated rates of subsequent depression and anxiety. One study, which gathered information from a New Zealand hospital for 25 years, found that 42 percent of young women experience major depression after abortion.⁷⁵ Moreover, minors were found to be particularly at risk for depression. In studying teens aged 15 to 18, researchers found that minors who became pregnant and carried to term had a 35.7 percent chance of experiencing major depression, but minors who aborted had an astonishing 78.6 percent chance of experiencing major depression.⁷⁶

⁷³ P.J. Smith, *Study Shows Abortion Takes Toll on Adolescent Mental Health* (Aug. 18, 2006), available at <http://www.lifesitenews.com/ldn/2006/aug/06081805.html> (last visited May 2, 2008) (discussing P. Coleman research in *Journal of Youth and Adolescents*).

⁷⁴ *Id.*

⁷⁵ D.M. Fergusson et al., *Abortion in Young Women and Subsequent Mental Health*, 41[1] J. CHILD PSYCHOL. & PSYCHIAT. 16 (2006).

⁷⁶ *Id.* at 19.

The study also found that women who abort are twice as likely to experience anxiety disorders.⁷⁷ In teens, the chance of experiencing anxiety after abortion was 64.3 percent, and the chance of suicidal ideation was 50 percent.⁷⁸ Importantly, the study showed that abortion led to depression and anxiety, and that it was not depression and anxiety that led to the abortion. Likewise, a 2003 study showed that women who abort their first pregnancies were 65 percent more likely to be at “high risk” for depression than women who did not abort.⁷⁹

Yet another study stated that “anxiety and depression have long been associated with induced abortion,” and that anxiety is the most common adverse mental effect of abortion.⁸⁰ Up to 30 percent of women experience extremely high levels of anxiety and stress one month after abortion.⁸¹

Thus, abortion increases stress and decreases the ability to deal with stress.⁸² These findings are significant, because depression is a known risk factor for suicide.⁸³ On the other hand, childbirth appears to have a protective effect against suicide.⁸⁴

⁷⁷ *Id.* at 16.

⁷⁸ *Id.* at 19.

⁷⁹ J.R. Cogle et al., *Depression Associated with Abortion and Childbirth: A Long-Term Analysis of the NLSY Cohort*, 9[4] MED. SCI. MONITOR CR157, CR 162 (2003).

⁸⁰ V.M. Rue et al., *Induced Abortion and Traumatic Stress: A Preliminary Comparison of American and Russian Women*, 10[10] MED. SCI. MONITOR SR5, SR6 (2004).

⁸¹ P. Coleman, *Induced Abortion and Increased Risk of Substance Abuse: A Review of the Evidence*, 1 CURRENT WOMEN’S HEALTH ISSUES 21, 23 (2005); Z. Bradshaw & P. Slade, *The Effects of Induced Abortion on Emotional Experiences and Relationships: A Critical Review of the Literature*, 23 CLINICAL PSYCHOL. REV. 929-58 (2003).

⁸² V.M. Rue et al., *supra*, at SR5-SR16.

⁸³ J.R. Cogle et al., *supra*, at CR 162.

Other mental health risks have also been identified. A study in Canada demonstrated that women who abort are treated for mental disorders 41 percent more often than women who do not abort.⁸⁵ A study in Virginia found that women who abort have 62 percent more subsequent mental health claims than woman who do not have abortions.⁸⁶ Other studies have linked a history of abortion to sleeping disorders, eating disorders, and promiscuity, all of which are destructive to women's health.⁸⁷

These statistics are alarming. Not only are mental disorders harmful to women, but such mental disorders are also linked to subsequent drug and alcohol abuse. Women who abort are twice as likely to drink alcohol at dangerous levels and three times as likely to become addicted to illegal drugs.⁸⁸ Women who never abused drugs before abortion are 4.5 times more likely to abuse drugs after abortion.⁸⁹ Another study found that the use of drugs other than marijuana was 6.1 times higher among women who had abortions than woman who did not have abortions.⁹⁰ In regard to minors, one study found that minors who abort their pregnancies are nine times more

⁸⁴ *Id.*

⁸⁵ R. Badgley, REPORT OF THE COMMITTEE ON THE OPERATION OF THE ABORTION LAW 319 (Government of Canada, Minister of Supply & Services 1977).

⁸⁶ D.C. Reardon et al., *supra*.

⁸⁷ D.C. Reardon & P.C. Coleman, *Relative Treatment Rates for Sleep Disorders and Sleep Disturbances Following Abortion and Childbirth: A Prospective Record-Based Study*, 29 J. SLEEP 105-06 (2006); D.C. Reardon et al., *supra*.

⁸⁸ D.M. Fergusson, *supra*.

⁸⁹ P.G. Ney, *Abortion and Subsequent Substance Abuse*, 26 AM. J. DRUG & ALCOHOL ABUSE 61-75 (2000).

⁹⁰ K. Yamaguchi & D. Kandel, *Drug Use and Other Determinants of Premarital Pregnancy and its Outcome: A Dynamic Analysis of Competing Life Events*, 49 J. MARRIAGE & FAMILY 257-70 (1987).

likely to report marijuana use after their abortions than are minors who carry their pregnancies to term.⁹¹

Defendants are allowing minors to obtain abortions without parental notice or consent, when what these girls truly need is support from their parents or guardians. By blocking parents from the abortion decision and process, Defendants are introducing girls to medical risks with both immediate and long-term effects without any parental knowledge. This makes a dangerous situation even more dangerous, as it is parents who have the best knowledge of a child's medical and psychological history. Parents also need to be informed of their daughters' abortions, to ensure that those minors get further medical treatment if necessary. Ohio's parental involvement statutes were enacted to safeguard minors. Yet by refusing to abide by requests common in medical discovery, Defendants frustrate the very purpose of these laws and endanger minors' lives.

The Guttmacher Institute estimates that 40 percent of teenage abortions occur without parental involvement.⁹² Defendants' failure to contact Jane's parents and their subsequent refusal to comply with proper discovery requests ensures that this practice of hiding minors' abortions is maintained.

C. Defendants' Stance Fosters Perpetuated Exploitation And Coercion Of A Vulnerable Population Group

Defendants ignore the fact that the sexual activity of minors is subject to high levels of coercion and is not truly consensual. In fact, the younger a female is when she has sex for the

⁹¹ P.J. Smith, *supra* (discussing P. Coleman research in *Journal of Youth & Adolescents*).

⁹² Guttmacher Institute, *supra*.

first time, the more likely it is to have been unwanted.⁹³ The Supreme Court took note of this unique vulnerability of minors when it enunciated these three differences between minors and adults:

1. Minors possess a lack of maturity and an underdeveloped sense of responsibility, which result in impetuous and ill-considered actions and decisions;
2. Minors are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and
3. The character of a minor is not as well formed as that of an adult, with the personality traits of minors being more transitory and less fixed.

Roper v. Simmons, 543 U.S. 551, 569-70 (2005).

Evidence suggests there is widespread confusion and ignorance among young girls about their sexual encounters and that a “considerable proportion” of minors experience their first sexual intercourse under coercive conditions.⁹⁴ In one study, 60 percent of women who had sexual intercourse before the age of 15 reported having had a forced sexual experience.⁹⁵ Of those with a first sexual experience before the age of 14—*i.e.*, the age of the Plaintiff—74 percent reported a forced sexual experience.⁹⁶ In other words, the very fact that the Plaintiff was pregnant should have tipped Defendants off to the likelihood of sexual abuse.

⁹³ NCPTP, *supra*, at 1.

⁹⁴ Oberman II, *supra*, at 708; Oberman III, *supra*, at 820 (citing J. Abma et al., *Young Women’s Degree of Control Over First Intercourse: An Exploratory Analysis*, 30[1] FAM. PLAN. PERSP. 12, 12-18 (Jan./Feb. 1998)).

⁹⁵ Lewin Group, *supra*, at 1 (citing Guttmacher Institute, *Sex and America’s Teenagers* (1994)); *see also* Oberman II, *supra*, at 717; P. Donovan, *Can Statutory Rape Laws be Effective in Preventing Adolescent Pregnancy?*, 29[1] FAM. PLAN. PERSP. 30 (Jan./Feb. 1997).

⁹⁶ Oberman II, *supra*, at 717; Donovan, *supra*, at 30.

Simply put, because of their inexperience and the sexual culture surrounding them, minors are inherently vulnerable to exploitation and coercion in their sexual interactions.⁹⁷ Finding an informational privacy right in illegal sexual activity fosters this coercion, as sexual abuse is “vastly underreported.”⁹⁸ In fact, nearly 88 percent of sexual abuse is never reported—let alone prosecuted.⁹⁹ Many experts refer to sexual violence and date/acquaintance rape as a “hidden” or “silent” epidemic because of the high rates of occurrence and its infrequent disclosure.¹⁰⁰

It has been documented that 42 percent of women who were sexually abused as minors never disclose their experiences to anyone.¹⁰¹ Other evidence reveals that *less than one in ten* adults who were sexually abused before turning 18 will tell of their experience.¹⁰² A minor’s typical response is shame, self-doubt, and a reluctance to tell anyone.¹⁰³ As such, it is unlikely

⁹⁷ Oberman II, *supra*, at 704-05, 709-10, 778 (citing numerous studies and resources).

⁹⁸ NACHRI, *supra*; Saewyc et al., *supra*, at 99.

⁹⁹ Stop It Now, *Commonly Asked Questions: Answers to Commonly Asked Questions About Child Sexual Abuse* (2005) (citing R.F. Hanson et al., *Factors Related to the Reporting of Childhood Sexual Assault*, 23 CHILD ABUSE & NEGLECT 559, 559-69 (1999)), available at <http://www.stopitnow.com/comquest.html> (last visited May 2, 2008).

¹⁰⁰ C.E. Irwin & V.I. Rickert, *Editorial: Coercive Sexual Experiences During Adolescence and Young Adulthood: A Public Health Problem*, 36 J. ADOLES. HEALTH 359 (2005); V.I. Rickert et al., *supra*, at 17.

¹⁰¹ NACHRI, *supra*.

¹⁰² Darkness to Light, *Adults’ Responsibility in the Prevention of Child Sexual Abuse* (2005), available at http://www.darkness2light.org/KnowAbout/adults_responsible.asp (last visited May 2, 2008).

¹⁰³ Oberman I, *supra*, at 176. In addition, when sexual abuse occurs within the family, there is strong familial pressure to keep silent and be loyal to the family.

that minors would have the self-confidence to inform authorities of abuse on their own.¹⁰⁴ Furthermore, young victims may not even recognize their victimization as sexual abuse.¹⁰⁵ For each of these reasons, it is imperative that providers such as Defendants abide by mandatory reporting laws.

Nevertheless, the unfortunate tendency of mandatory reporters is to under-report. As one physician wrote, information about sexual abuse is “well shielded by social taboos against seeking or obtaining this information.”¹⁰⁶ While the American Academy of Pediatrics, American College of Obstetricians and Gynecologists, and American Medical Association endorse universal screening for intimate partner violence, fewer than half of health providers routinely perform such screening.¹⁰⁷

Here, it is obvious that Defendants did not abide by the standard of care recommended by leading national medical organizations. In failing to report sexual abuse and then in refusing to comply with proper discovery requests necessary in upholding laws protecting minors, Defendants perpetuate victimization of minors.

¹⁰⁴ *Id.*

¹⁰⁵ Darkness to Light, *Statistics Surrounding Child Sex Abuse*, *supra*.

¹⁰⁶ V.J. Felitti, *The Relationship of Adverse Childhood Experiences to Adult Health: Turning Gold Into Lead 2* (German Adverse Childhood Experiences [ACE] Study 2002), available at <http://www.norlien.org/publications/GoldintoLead.pdf> (last visited May 2, 2008).

¹⁰⁷ V.I. Rickert et al., *supra*, at 17.

CONCLUSION

Amici urge this Court to reverse the decision of the Hamilton County Court of Appeals.

Respectfully Submitted,

Kirkpatrick Law Offices PC
Joel J. Kirkpatrick (0071924)
Counsel of Record
31800 Northwestern Highway, Suite 350
Farmington Hills, MI 48334
248.855.6010 (t)
866.241.4152 (f)

Americans United for Life
Mailee R. Smith, Of Counsel
310 S. Peoria St., Suite 500
Chicago, IL 60607
312.492.7234 (t)
312.492.7235 (f)

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I certify that a copy of this Brief of *Amici Curiae* was sent on May _____, 2008, by ordinary U.S. mail to counsel of record for appellants and appellees at the following addresses:

Crabbe Brown & James LLP

Brian E. Hurley (0007827)

30 Garfield Place, Suite 740

Cincinnati, OH 45202

513.784.1525 (t)

513.784.1250 (f)

Counsel for Plaintiffs-Appellants

Vorys, Sater, Seymour & Pease LLP

Daniel J. Buckley (0003772)

Suite 2000, Atrium Two

221 E. Fourth St.

Cincinnati, OH 34201

513.723.4002 (t)

513.852.7819 (f)

Counsel for Defendants-Appellees

Joel J. Kirkpatrick