

MAINE STATE LEGISLATURE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION**

HOUSE AMENDMENT "A" to "House Order Propounding Questions to the Supreme Judicial Court"

Amend the House Order Propounding Questions to the Justices of the Supreme Judicial Court by striking out everything after the title and inserting in its place the following:

Whereas, it appears to the House of Representatives of the 114th Legislature that the following are important questions of law and that this is a solemn occasion; and

Whereas, the Constitution of Maine, Article VI, Section 3, provides for the Justices of the Supreme Judicial Court to render their opinion on these questions; and

Whereas, there is now before the 114th Legislature for its consideration House Paper 457, Legislative Document 622, "An Act to Require Parental Consent to a Minor's Abortion"; and

Whereas, Committee Amendment "A" has been proposed which would amend the document to include informed consent requirements in place of either parental consent or judicial authorization requirements; and

Whereas, if Legislative Document 622, as amended by Committee Amendment "A" becomes law, there may be serious questions regarding its constitutionality; and

Whereas, it is important that the Legislature be informed as to the questions raised in this Order; now, therefore, be it

Ordered, that in accordance with the provisions of the Constitution of Maine, the House of Representatives respectfully requests the Justices of the Supreme Judicial Court to give the House of Representatives their opinion on the following questions of law.

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Question No. 1. If Legislative Document 622 as amended by Committee Amendment "A" becomes law, would the detailed requirements concerning what the minor must be told, contained in what would be the Maine Revised Statutes, Title 22, section 1597-A, subsection 3, paragraph A and subsection 4, be compatible with the holdings of the United States Supreme Court in Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 758-65 (1986), including the holdings that the United States Constitution bars an informed consent requirement "that a specific body of information be given in all cases, irrespective of the particular needs of the patient," id. at 762, or that "officially structures... the dialogue between the woman and her physician," id. at 763?

Question No. 2. If Legislative Document 622 as amended by Committee Amendment "A" becomes law, would the requirement in what would be the Maine Revised Statutes, Title 22, section 1597-A, subsection 4, paragraph A, subparagraph (4), that the physician or counselor "explain that public and private agencies are available to provide birth control information and that a list of these agencies and the services available from each will be provided if the minor requests" be compatible with the holding of the United States Supreme Court in Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 762-63 (1986), that, with regard to the Pennsylvania legislation invalidated in Thornburgh, "Even the listing of agencies in the printed Pennsylvania form presents serious problems; it contains names of agencies that well may be out of step with the needs of the particular woman and thus places the physician in an awkward position and infringes upon his or her professional responsibilities. Forcing the physician or counselor to present the materials and the list to the woman makes him or her in effect an agent of the State in treating the woman and places his or her imprimatur upon both the materials and the list"?

Question No. 3. If Legislative Document 622 as amended by Committee Amendment "A" becomes law, would the requirements in what would be the Maine Revised Statutes, Title 22, section 1597-A, subsection 3, paragraph A, subparagraph (1), division (c), that the physician inform the minor concerning "particular risks associated with the minor's pregnancy, the abortion technique that may be performed and the risks involved for both" be compatible with the holding of the United States Supreme Court in Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 764 (1986), that, with regard to the Pennsylvania legislation invalidated in Thornburgh, "The requirements...that the woman be informed by the physician...of all 'particular medical risks' compound the problem of medical attendance, increase the patient's anxiety, and intrude upon the physician's exercise of proper professional judgment"?

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3 Question No. 4. If Legislative Document 622 as amended by
5 Committee Amendment "A" becomes law, would the provision in what
7 would be the Maine Revised Statutes, Title 22, section 1597-A,
9 subsection 7, that "an abortion may be performed against the will
11 of a minor pursuant to a court order" if in the opinion of the
13 court it "is necessary to preserve the life of the minor" compatible with the holding of the United States Supreme Court in Maher v. Roe, 432 U.S. 464, 472 n.7 (1977) that "A woman has at least an equal right to choose to carry her fetus to term as to choose to abort it" and with the provisions of the First and Fourteenth Amendments to the United States Constitution?'

Filed by Rep. Carter of Winslow
Reproduced and distributed under the direction of the Clerk of the House
5/15/89 (Filing No. H-186)