Hodgson v. Minnesota (1990) [1]

By: Horwitz, Rainey Keywords: Minnesota [2]

In the 1990 case *Hodgson v. Minnesota*, the US Supreme Court in Washington, D.C., upheld Minnesota statute 144.343, which required physicians to notify both biological parents of minors seeking abortions forty-eight hours prior to each procedure. The US Supreme Court determined that a state could legally require physicians to notify both parents of minors prior to performing abortions as long as they allowed for a judicial bypass procedure, in which courts could grant exceptions. The Supreme Court's decision in *Hodgson v. Minnesota* allowed for the enforcement of Minnesota statute 144.343, which changed minors' abilities to access abortions in Minnesota by requiring parental notification by a physician forty-eight hours prior to each abortion [3].

Following the legalization of abortions by the US Supreme Court in 1973, many states including Minnesota passed laws that restricted women's access to abortion [3] services. In the 1973 case *Roe v. Wade*, the US Supreme Court legalized abortions in the US and established limits on the ability of states to restrict women's access to abortion [3] services. However, after *Roe v. Wade* [4], many states passed laws constraining women's access to abortions. Many states passed laws specifically restricting the ability of minors to receive abortions, and several such laws were challenged in the US Supreme Court. In the 1981 case *Planned Parenthood of Central Missouri v. Danforth*, the US Supreme Court determined that the Missouri law that required a minor to obtain written consent from a parent prior to undergoing an abortion [3] was unconstitutional and did not serve state interest. Two years later, in *City of Akron v. Akron Center for Reproductive Health*, the US Supreme Court struck down an Ohio city ordinance that required a twenty-four hour waiting period before a minor could undergo an abortion [3]. In that same case, the Court also found that the ordinance requiring parental consent before an unmarried minor could undergo an abortion [3] was unconstitutional.

Minnesota, like Missouri and Ohio, also enacted a state law to restrict the ability of minors to access abortions. In 1981, the state of Minnesota enacted Minnesota statute 144.343. The statute had many sections, two of which pertained to minors obtaining abortions, section two and section six. Section two of the statute, the notice-delay provision, required physicians to notify both biological parents of a minor forty-eight hours prior to performing an abortion [3] for that minor. Section six of the statute, the judicial bypass provision, allowed physicians to perform abortions on minors without notifying the minor's parents if the minor received permission to undergo an abortion [3] from a judge. According to legal analyst Laura Wagner, the primary objective of the statute was to encourage minors to discuss with their parents whether or not they should terminate pregnancies.

On 30 July 1981, two days before the Minnesota statute was to take effect, Jane Elizabeth Hodgson and a physician who performed abortions in Minnesota filed a class action lawsuit against the state of Minnesota. Another physician, six minors seeking abortions, a parent, and four clinics that performed abortions also joined the suit. In addition to challenging the constitutionality of the statute, they also requested temporary relief from the enforcement of Minnesota statute 144.343. Hodgson filed the suit in the US District Court in the District of Minnesota. Hodgson and those challenging the law were represented by Janet Benshoof, Rachel Pine, Suzanne Lynn, and William Pentelovitch. The state of Minnesota was represented by Hubert Humphrey III, John Galus, and Peter Ackerberg. Donald Alsop served as the chief judge.

Hodgson and the others who protested the statute made a three-part argument against the statute. First, they argued that statute 144.343 was unconstitutional in its entirety because it violated the rights of pregnant minors guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the US Constitution. The due process clause of the Fourteenth Amendment states that a citizen cannot be stripped of any rights without proper legal proceedings. Hodgson claimed that the Minnesota statute stripped minors in Minnesota of their rights to receive abortions without following proper legal steps. She further argued that the statute violated the equal protection clause, which states that all citizens of the US are to be treated and protected equally under the law. According to Hodgson, the Minnesota statute only restricted the rights of minors and therefore did not offer equal treatment to all women under the law.

Though the bulk of Hodgson's argument was that the Minnesota statute was entirely unconstitutional, she made two further arguments against specific parts of the law. Hodgson argued that if the entire statute was not unconstitutional, at the very least the section requiring that physicians notify both parents, rather than only one, was unconstitutional because not all minors could meet such a requirement. If a minor had poor relationships with a parent or lived in a single or no parent home, for example, then the minor would be unable to meet the parental notification requirement. Hodgson also argued that the forty-eight-hour waiting period requirement was unconstitutional because it placed undue burden on minors and infringed on their abilities to access

abortion [3] services, a right guaranteed by the US Supreme Court in *Roe v. Wade* [4]. Hodgson and the minors who sought abortions asserted that the Minnesota statute violated both the Minnesota and US constitutions and that the notification of parents prior to the abortions of minors was not in the best interest of the minors. They also argued that the minors were mature enough to decide about abortions without consulting their parents.

In response to the arguments made by Hodgson and her group, the state of Minnesota requested a summary judgment from the court. A judge issues a summary judgment when the outcome of the case is clear enough that the case does not need to go to trial. On 23 January 1985, Alsop granted the state's request for a summary judgment in part and denied it in part. Alsop determined that the Minnesota statute itself was not unconstitutional and that he would therefore not decide on that argument in court. However, he allowed for the possibility that the statute was being applied unconstitutionally, meaning that Minnesota judges were not applying the law as it was written. Alsop decided that Hodgson and the others challenging the law should be given the opportunity to prove that the judicial bypass allowance of the statute was being applied unconstitutionally and granted them a trial to do so.

From 10 February 1986 to 13 March 1986, during the five-week trial to determine whether the Minnesota statute was being applied constitutionally, Hodgson provided minors in single parent homes and divorced families, who testified to the difficulties associated with obtaining a judicial bypass to receive an abortion [3]. During the trial, the court discovered that only fifty percent of minors in Minnesota were residing with both parents, further emphasizing the undue stress placed on minors to notify both parents before having an abortion [3], as the statute required.

On 6 November 1986, Alsop decided the case. He concluded that Minnesota statute 144.343 was unconstitutional. Though Alsop agreed with the state of Minnesota that the much of the statute was constitutional, he noted that the sections requiring notification of both parents and the forty-eight-hour waiting period were not. He decided that because the two-parent requirement could not be separated from the rest of the law, the entire statute was effectively unconstitutional. Following that ruling, Alsop prevented enforcement of the statute in Minnesota. Both sides of the case *Hodgson v. Minnesota* appealed.

On 12 February 1988 the case was submitted to the Court of Appeals for the Eighth Circuit in St. Louis, Missouri, to reevaluate the decision made by Alsop. Ten judges heard the case: Donald P. Lay, Gerald Heaney, Theodore McMillian, Richard Arnold, John R. Gibson, George Fagg, Pasco Bowman II, Roger Wollman, Frank J. Magill, and C. Arlen Beam. On 8 August 1988, the court of appeals judges concluded that the district court incorrectly labeled Minnesota statute 144.343 as unconstitutional. In the majority opinion, authored by Gibson, the court of appeals decided that the state had legitimate interests in protecting the welfare of minors as well as in assisting parents in helping their children make appropriate decisions. The court of appeals determined that the Minnesota statute correctly supported those interests of the state by requiring parental notification and was therefore not unconstitutional. When examining the required notification of both parents, the court of appeals decided that the burden placed on minors by requiring them to notify both parents was alleviated by the judicial bypass procedure option granted by section six of the statute, making the requirement constitutional. The court of appeals also determined that the forty-eight-hour waiting period was not a significant enough burden to outweigh the state's interest in fostering parental involvement with the decision making of minors.

Several court of appeals judges disagreed with the decision by the majority, instead agreeing with the initial decision made by Alsop. The dissenting judges, Lay, McMillian, and Heaney, argued that the restrictions Minnesota statute 144.343 placed on minors seeking abortions did not serve the state interest and that the statute placed undue burden on minors seeking abortions. The dissenting judges also addressed the two-parent notification requirement and argued it was unconstitutional even with a judicial bypass procedure option available and noted that Minnesota was the only state requiring such a notification. The dissenting judges at the court of appeals suggested that a single-parent notification would be sufficient in supporting the state interest.

On 25 June 1990, the US Supreme Court affirmed the court of appeals decision in a five to four ruling. Nine Justices heard the case: Anthony Kennedy [5], John Paul Stevens, William Brennan, Thurgood Marshall, Harry Blackmun, Sandra Day O'Connor, Chief Justice William Rehnquist, Byron White, and Antonin Scalia. The Court evaluated the Minnesota law under two circumstances, called holdings. In the first circumstance, the Court considered the law as though it did not allow for a judicial bypass, simply requiring the notification of both parents. The Court then evaluated the law taking into consideration the judicial bypass procedure. By evaluating the law twice, the Court issued two separate decisions, both of which could act as precedents for evaluating other laws.

In the Court's first evaluation of the law, which addressed the law without the judicial bypass procedure, the Court decided in a five to four decision that the law was unconstitutional. For the first opinion, Stevens wrote the majority opinion and was joined by Brennan, Marshall, Blackmun, and O'Connor. In his opinion, Stevens argued that in the absence of a judicial bypass option, the law restricted a minor's access to abortion [3] and was therefore unconstitutional. Stevens agreed with Alsop that the two-parent notification requirement of Minnesota statute 144.343 was not constitutional because whether or not both parents had an interest

or even wanted to know if their child was having an abortion [3] did not support state interest. Stevens also noted that the two-parent notification requirement disserved state interest by not assisting and protecting minors belonging to dysfunctional families in which notifying two parents could lessen the safety of the child. Stevens's opinion, and the five to four decision of the court under the first circumstance, established that it was unconstitutional for a state to require physicians to notify both parents of a minor prior to performing an abortion [3].

Though O'Connor agreed with Stevens's opinion, she also wrote her own opinion in which she agreed that without the judicial bypass procedure option, the law was unconstitutional. However, O'Connor continued in her opinion that the Minnesota law did have a judicial bypass option, which changed the constitutionality of the law. O'Connor argued that because the Minnesota law offered an alternative for minors in dysfunctional families, the law was constitutional. O'Connor's written opinion reflected her vote on the law under the second set of circumstances.

The Supreme Court evaluated the Minnesota statute under a second set of circumstances, taking into consideration the judicial bypass procedure. Under the second set of circumstances, the Court voted in a six to three decision that the Minnesota statute was constitutional. Stevens again wrote the majority opinion, in which he said that the law contained a judicial bypass option that overrode the two-parent notification requirement and made the entire statute constitutional. Stevens was joined by Rehnquist, White, Scalia, Kennedy, and O'Connor.

In addition to stating that the judicial bypass allowance made the Minnesota statute constitutional, Stevens also stated that the forty-eight hour waiting period should be kept. He noted that the waiting period furthered the state's interest in protecting pregnant minors by not prolonging the waiting time to a week or longer and increasing the risks associated with abortion [3]. In addition to agreeing with Stevens's opinion, O'Connor again wrote her own opinion. In their opinions, Stevens and O'Connor, who both voted that without the judicial bypass the Minnesota statute would be unconstitutional, concluded that the government should not intrude on families' choices to protect their children and be involved in their decisions related to abortion [3]. They also concluded that the presence of a judicial bypass procedure took away the burden placed on minors by specifically addressing the concern of minors whose parental notification would not be in their best interest and who are mature enough to make their own decisions

Marshall, joined by Brennan and Blackmun, wrote a separate opinion that stated that the presence of a judicial bypass procedure made the entire law constitutional. Scalia, too, wrote a separate opinion arguing that the subject of abortion [3] did not fall under the purview of the Court and should not be dealt with by any courts at all. Regardless, the Supreme Court decision under the second set of circumstances, taking into consideration the judicial bypass procedure, established that states could require the notification of both parents of a minor prior to the minor receiving an abortion [3] as long as the state allowed for a judicial bypass.

As a result of the US Supreme Court decision in *Hodgson v. Minnesota*, the Minnesota statute requiring a physician to notify both parents of a minor prior to performing an abortion [3] was enforced. The enforcement changed the ability of minors to access abortion [3] services and required physicians to notify both parents of a minor forty-eight hours prior to performing an abortion [3].

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