

# 2006 Ballot Measure Report Measure 43

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## State of Oregon Ballot Measure 43:

REQUIRES 48-HOUR NOTICE TO UNEMANCIPATED MINOR'S PARENT BEFORE PROVIDING ABORTION; AUTHORIZES LAWSUITS, PHYSICIAN DISCIPLINE

For minors 15 years and older, Oregon law currently leaves parental notification for all medical procedures, including abortions, to the discretion of the minors and their medical providers. Existing law allows medical providers to notify the parents of minors 15 years and older about their child's health care, if the provider determines it is in the best interest of the patient.

Measure 43 would change the law for minors 15 years and older who are seeking an abortion and their medical providers. The measure would authorize civil suits and professional sanctions if medical providers fail to (a) give notice to the parents of minors 15 years and older seeking an abortion and (b) wait 48 hours after the parents have received notice before providing an abortion. Exceptions to the mandatory notification and waiting period do not include rape or incest.

Proponents and opponents of Measure 43 disagree about the need for mandatory notification and its value in assisting minors in making informed and wise decisions. Proponents and opponents also disagree about Measure 43's exception for medical emergencies and whether its bypass option would meet the needs of minors seeking an abortion in special circumstances, including victims of abuse, rape and incest.

While your committee concludes that parents have a substantial interest in knowing when their 15-, 16- or 17-year-old daughter intends to have an abortion, we also conclude that voters should not transform parental interest into a parental right that is binding on medical providers. Current law has established and mainstream scientific research shows that minors 15 years and older are generally competent to understand treatment alternatives, consider risks and benefits and responsibly consent to abortion.

Your committee was further troubled that Measure 43 does not include an exception for victims of rape or incest, and its definition of medical emergency may endanger the health of some minors seeking an abortion. Your committee also concluded that, as reflected in current law, medical providers are better suited, by virtue of training and experience, than administrative law judges to determine whether to notify parents of a minor's intent to have an abortion.

**Your committee unanimously recommends a NO vote on Measure 43.**

*City Club membership will vote on this report on Friday, October 6, 2006. Until the membership vote, City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the City Club Bulletin dated October 20, 2006 and online at [www.pdxcityclub.org](http://www.pdxcityclub.org).*

## I. INTRODUCTION

Ballot Measure 43 will appear on the ballot as follows:

### **REQUIRES 48-HOUR NOTICE TO UNEMANCIPATED MINOR'S PARENT BEFORE PROVIDING ABORTION; AUTHORIZES LAWSUITS, PHYSICIAN DISCIPLINE**

**Result of "Yes" Vote:** "Yes" vote requires abortion provider to give 48-hour written notice to unemancipated minor's parent, with certain exceptions. Authorizes administrative discipline for physicians, parental lawsuits.

**Result of "No" Vote:** "No" vote retains current law allowing medical provider to provide minor 15 or older medical treatment, abortion, without parental notification; younger minors require parental consent.

**Summary:** Current law provides that minor 15 years or older may consent to and obtain medical treatment, including abortion, without parent notification; physician may notify parent without minor's consent. Minors 14 years or younger must obtain parental consent before treatment. Measure requires that provider notify unemancipated minor's parent 48 hours before performing abortion. Notification means written notice to parent by certified mail at parent's residence. Exceptions to notice requirement for documented medical emergencies, which do not include rape or incest. Unemancipated minor may apply for administrative hearing requesting abortion without notice to parent. Hearing shall be confidential, open only to minor, counsel, witnesses, judge. Failure to notify parent may subject provider to civil liability to parent; physicians face administrative sanctions, license suspension, or revocation. Other provisions.

*The language of the caption, question and summary was certified by the Oregon Secretary of State.*

A coalition led by Oregon Right to Life placed Measure 43 on the November 2006 state ballot by initiative petition. With minimal modifications, its provisions reflect state House Bill 2605, which passed in the House of Representative in 2005 and stalled in a Senate committee. If Measure 43 is adopted, it would amend Oregon law to require that medical providers wait 48 hours after providing written notification to the parents of a unemancipated minors before providing an abortion. The measure would also authorize civil suits and professional sanctions for medical providers' failure to comply.

City Club created a study committee of eight Club members to analyze Measure 43 and issue a voting recommendation. Committee members were screened to ensure that no member had an economic or personal interest in the outcome of the study or had taken a public position on the subject of the measure. The study was conducted from August 8 to September 12. Your committee interviewed proponents and opponents of the measure, expert witnesses and other individuals, and reviewed relevant articles, reports and other materials.

## II. BACKGROUND

### Current Oregon Law and Measure 43's Provisions

Oregon law currently permits, but does not require, medical providers to inform parents before providing any type of medical care, including abortions and prenatal care, to 15-, 16- and 17-year-old unemancipated minors who do not want their parents to be notified.\* While existing law allows this notification to take place, it also gives these minors the right to independently decide to have any medical treatment, including an abortion, against the wishes of their parents.†

Measure 43 would change Oregon law to stipulate that a "person may not perform an abortion on an unemancipated minor or a ward until 48 hours after the parent receives written notice from the person of the proposed abortion by certified mail," except in cases of medical emergency. Under Measure 43, medical emergencies would be limited to situations in which "failure to terminate the pregnancy or a delay in terminating the pregnancy would result in the death of the woman, serious impairment to bodily function or serious and permanent lack of function of any bodily organ or part." The measure does not allow exceptions for pregnancies that result from rape or incest.

The measure also authorizes parents to sue medical providers for civil damages and provides professional sanctions for those medical providers who fail to meet the measure's provisions.

The measure permits minors seeking an abortion to apply to the Department of Human Services for a hearing before an administrative law judge for permission to have an abortion without parental notification.

Following notification, parents of minors ages 15 years and older currently have no legal right, and under Measure 43 would still have no legal authority, to prevent their child from having an abortion.

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\* **Emancipated and Unemancipated Minors:** Under Oregon law, emancipation of a minor by court order generally terminates the parents' authority for care and treatment of the minor and recognizes the minor as an adult for the purposes of contracting and conveying, establishing a residence, suing and being sued, and for the purposes of the criminal laws of this state. (ORS 109.510, 109.520, 419B.552, 419B.373(4)) Unemancipated minors are subject to their parents' authority until they reach the age of majority by attaining age 18 or by marrying under Oregon law, with certain exceptions.

† Current law requires parent's permission for all medical care, including abortion, for minors under 15 years of age. Measure 43 would not change this law.

## History of Abortion in Oregon

In 1969, Oregon made abortion legally available under restricted conditions. Four years later, in 1973, the United States Supreme Court's *Roe v. Wade* decision made Oregon's restrictions unconstitutional. *Roe* established a right to abortion, with "the medical judgment to be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well being of the patient."

In 1981, in *Planned Parenthood, Inc., et. al. v. Dept. of Human Resources of Oregon*, the Oregon Court of Appeals ruled the state was required to fund medically necessary abortions under the Oregon Constitution.

In 1983, Oregon updated its abortion laws to conform with *Roe v. Wade*. The restrictions on abortion contained in the 1969 law were repealed. Since 1983, there has been no doubt that anyone, 15 years or older, has the right to an abortion on the same basis as provided by the Supreme Court in *Roe v. Wade* and subsequent decisions.

Many attempts have been made through the legislative and initiative processes to limit the availability of abortion and to require parental notification in Oregon. Notable efforts are listed below.

- In 1978 and 1986 Oregonians considered ballot measures that would have prohibited state funding of abortions. City Club opposed both measures and voters rejected both.
- In 1990, Oregon voters by almost two to one rejected a ballot measure that would have banned abortions and voted 577,806 to 530,851 against a measure requiring parental notification for minors seeking an abortion.
- In 1999, the Legislature passed and Governor Kitzhaber vetoed House Bill 2633, which would have required parental notification before providing an abortion to a minor.
- As previously noted, in 2005 the Oregon House of Representatives passed House Bill 2605. The bill was stalled in a Senate committee when the Legislature adjourned and has now been resurrected through initiative petition as Measure 43.

The constitutionality of parental notification laws was first tested by the U.S. Supreme Court in 1979 in *Bellotti v. Baird*. The *Bellotti* court struck down a Massachusetts parental notification law because it lacked an adequate judicial bypass for minors in specific situations. Subsequently, the court has upheld other states' parental notification laws when they provide an adequate judicial bypass procedure.

## Oregon Among the States

Proponents of Measure 43 point to Oregon's place among a minority of states that do not have laws requiring parental notification, parental consent or both. Thirty-four states have parental involvement laws in effect and another 10 have enacted them. In eight of those states, the laws are permanently enjoined by court order and are not in effect; in one the laws are not in effect due to pending litigation

and in another the state's newly adopted policies are scheduled to take effect in November. Oregon is one of six states that has not adopted a parental involvement law.<sup>1</sup>

Proponents of Measure 43 say the prevalence of these laws indicates Oregon is out of step with societal norms. Opponents exult in Oregon's history of support for women's right to choose an abortion. The Guttmacher Institute, whose studies and statistics are widely used in such debates, notes that "Oregon does not have any of the major types of abortion restrictions—such as waiting periods, mandated parental involvement or limitations on publicly funded abortions—often found in other states."<sup>2</sup>

## Oregon Statistics

The Oregon Vital Statistics Report, published by the Department of Human Services, provides annual data from 1974 to 2004. (Data are not yet available for 2005.) One of the most notable statistical trends is the declining abortion rate in Oregon. Figure 1 demonstrates that the number of abortions among 15-, 16- and 17-year-old minors is decreasing as a proportion of the number of pregnancies. Not only are pregnancies among the target age group decreasing, but so is the proportion of these pregnancies ending in abortion.

**Figure 1**

### **OREGON PREGNANCY AND ABORTION STATISTICS For Minors 15 Years and Older**

<b>YEAR</b>	<b>Average Annual Pregnancies (A=B+C)</b>	<b>Average Annual Births (B)</b>	<b>Average Annual Abortions (C)</b>	<b>Percent Pregnancies Aborted (D=C/A)</b>
1974-1979	3,752	1,850	1,902	51%
1980-1984	3,139	1,532	1,608	51%
1985-1989	2,680	1,458	1,222	46%
1990-1994	2,880	1,792	1,088	38%
1995-1999	3,002	1,909	1,093	36%
2000-2004	2,131	1,368	763	36%

Pregnancy estimates are based on the total number of births and abortions. For 1985 and 1988 to current abortion estimates are based on reports for Oregon residents whether occurring in Oregon or another state. For years prior to 1985 (and 1986-1987) abortion estimates were based on Oregon occurrences only, but included abortions obtained by out-of-state residents. Because some neighboring states do not report abortions to state of residence (especially California), this results in minimal estimates for both abortions and pregnancies. Data summarized from Oregon Vital Statistic Report 2004, Volume 1, Table 4-1.

The Oregon Vital Statistics Report also states that for minors 15 years and older, the largest number of abortions (2,069) was reported in 1980, with the rate being 31.9 per 1,000 females in this age group; the smallest number (662) was reported in 2004, the rate being 8.8 per 1,000. Since 1994, the abortions in this age group declined by 51.6 percent and pregnancies declined 50.4 percent. In 2004, of all those in this age group having an abortion, 96 percent were unmarried, 87 percent were having their first abortion and 68 percent did not use contraception.

Your committee found no reliable statistics for how many parents of unemancipated minors having abortions are informed by their daughters or by the medical providers. Anecdotal information from proponents and opponents indicates that between 40 percent and 60 percent of parents are informed. Additional anecdotal information from abortion providers indicates that approximately 75 percent of minors seeking an abortion involve a responsible adult who may or may not be their parent.

### III. ARGUMENTS PRO & CON

#### Arguments Advanced in Favor of the Measure

“Protect Our Teen Daughters,” the coalition working for passage of Measure 43, includes Oregon Right to Life, Oregon Family Council, Democrats for Life, Stronger Families of Oregon, Catholic Conference, Restore America and the Oregon Republican Party.

Proponents made the following arguments in favor of Measure 43:

**1. Measure 43 will help parents meet their responsibilities.**

Parents are notified before their daughter can have her ears pierced or receive an aspirin from a school nurse; they should be notified before their daughter can have an abortion. Parents are in a stronger position to support and counsel their daughter if they know she is pregnant and wants to have an abortion. This measure will ensure that parents’ need to know is met by written notification from medical providers.

**2. Measure 43 will help pregnant minors make better decisions.**

Many unemancipated minors do not tell their parents of the decision to have an abortion and later regret their silence. If told, parents could offer support and information.

**3. Measure 43 provides a responsible bypass option.**

The bypass option is easy to access, provides timely decisions and allows minors to report abuse, rape, incest or other problems in a safe setting.

#### **4. Parental involvement will work in Oregon; it is already working in 34 other states.**

Some states have had parental involvement laws on the books for more than two decades.

#### **Arguments Advanced Against the Measure**

The coalition leading the campaign to defeat Measure 43 includes Planned Parenthood of the Columbia/Willamette, Planned Parenthood of Southwestern Oregon, American Civil Liberties Union of Oregon and the Democratic Party of Oregon. Joining in opposition to the measure are the Oregon Education Association, the Oregon Nurses Association and the Oregon Medical Association.

Opponents made the following arguments against Measure 43:

##### **1. Measure 43 is unnecessary.**

Current law already allows physicians to notify parents of their daughter's intent to have an abortion without the minor's consent, if it is in the best interest of the patient. No law can successfully mandate good family communication.

##### **2. Measure 43 makes no exceptions for rape or incest.**

Many states with laws mandating parental involvement provide an exception for rape or incest.

##### **3. Measure 43 provides a poorly designed bypass process that will not protect minors.**

Administrative law judges are not as well equipped by training and experience as medical providers to decide whether to notify parents over the objections of a minor. Faced with the requirement to notify parents or to plead her case before an administrative law judge, a desperate minor may make a rash decision, trusting unscrupulous people offering unsafe medical procedures or even taking self-induced treatments.

##### **4. Measure 43 is about the politics of abortion, not family life or health care.**

This measure is part of a national political agenda to erode all women's right to choose abortion.

##### **5. Measure 43 will have a chilling effect on medical providers.**

The measure would put medical providers at risk for performing a legal medical procedure and would further reduce the availability of abortion services.

## IV. DISCUSSION

### **Do parents have a substantial interest in knowing when their 15-, 16- or 17- year-old daughter intends to have an abortion?**

Witnesses on both sides of this issue agreed that parents have a substantial interest in the welfare of their unemancipated minor children. This interest is affirmed in our culture by individuals, families and institutions and, when judged appropriate, is reflected in our laws. For example, minors under the age of 15 must have parental consent for all medical care, including an abortion.

***Witnesses interviewed by your committee agreed on the value of healthy, supportive communication between minors and their parents, and on the responsibility of medical providers to enhance that communication whenever they can appropriately do so.***

Without exception, witnesses interviewed by your committee agreed on the value of healthy, supportive communication between minors and their parents, and on the responsibility of medical providers to enhance that communication whenever they can appropriately do so. Your committee also recognizes that in some situations parents fail to meet their responsibility to care for their children. Some parents neglect, abuse or abandon their children. Sometimes, even in homes where all agree they love each other, communication breaks down, particularly in times of family crisis.

*Your committee concludes that parents have a substantial interest in knowing when their 15-, 16- or 17-year-old daughter may have an abortion.*

### **If parents have a substantial interest in knowing when their 15-, 16- or 17- year-old daughter intends to have an abortion, should Oregon transform that parental interest into a legal right only for this medical procedure?**

To answer this question, your committee first considered three subsidiary questions.

#### **(a) Who should decide whether to notify parents, if a minor seeking an abortion does not want them informed?**

While your committee speaks of parents' "substantial interest," proponents of the measure prefer to speak of parents' "need to know" and assert that it is appropriate

to employ the authority of the state to transform parents' need to know into a legal right, binding medical providers to ensure notice is given unless the pregnant minor can convince an administrative law judge or, on appeal, a circuit judge, that her parents should not be informed.

Your committee believes parents' need to know must be balanced against society's interest in allowing medical providers to act in the best interests of their patients. Current law now relies on the professional discretion of medical providers to determine whether to notify the parents of minors 15 years and older who intend to have an abortion.

Your committee found that medical providers bring extensive medical and clinical experience to bear when dealing with the discretionary decision of whether to inform the parents of a minor seeking an abortion. Your committee heard no credible evidence that medical providers in Oregon are abusing this discretion. Your committee believes that, with time and experience, administrative law judges would be able to competently make these decisions as well. However, your committee found no evidence that suggests that administrative law judges would be more competent than the medical providers currently making these decisions.

Proponents also argue that a hearing before an administrative law judge would allow minors to report abuse, rape, incest or other problems in a safe setting. While this could happen, this need is already met by current law. Medical providers are required to report evidence of these occurrences to legal authorities.

*Your committee concludes that medical providers, rather than administrative law judges, should determine when parental notification is in the best interest of a minor seeking an abortion who does not voluntarily consent to the notice.*

**(b) Are minors competent to decide whether to have an abortion without their parents' providing information and counsel?**

Proponents and opponents of Measure 43 presented conflicting views of minors' abilities to make responsible decisions about abortion. Proponents say a legal requirement for parental notification would help protect unemancipated minors from the regrets some experience after an abortion when, as one witness said, "In hindsight many realize they were just children forced to make an adult decision without proper information and support." Opponents agree that good information and counsel are important but they insist that minors ages 15, 16 and 17 years are generally capable of responsibly making this decision.

Your committee reviewed current law and considered expert opinion to resolve the conflicting views presented by proponents and opponents. The state of Oregon has determined that minors 15 years and older have not only the capacity, but also the right, to make decisions about their own medical care, including abortion. A minor 15 years of age or older has a right to medical or dental care by licensed physicians, dentists and nurse practitioners without parental consent. (See Appendix C for the full text of ORS 109.640.)

Scientific research appears to support state law. The American Psychological Association reports that, by middle adolescence (ages 14 to 15), teens have developed the intellectual and social capacities necessary for understanding treatment alternatives, considering risks and benefits and giving legally competent consent to abortion.<sup>3</sup> The association also says that minors 15 years of age or older usually do talk to their parents before having an abortion.

Your committee found it worth noting that the proponents of Measure 43 did not attempt to address parents' need to know when their minor child is pregnant and receiving prenatal care from a medical provider.

*Your committee concludes that minors 15 years and older are generally competent to decide whether to have an abortion without their parents' providing information and counsel, and in Oregon they have the legal right to do so. Your committee emphasizes that Measure 43 would not change the rights of minors 15 years of age or older to consent to their own medical care, including abortion, but it would require an unnecessary and burdensome notification process if the minor chooses to have an abortion.*

**(c) For minors seeking an abortion, who would choose not to notify their parents, do the practical effects of mandating such a notification justify eliminating that choice for those minors and their medical providers?**

Proponents argue that, since parents are notified before their daughter can have

her ears pierced or receive an aspirin from a school nurse, they should be notified before their daughter can have an abortion. Opponents point out that, while sometimes true, these realities have more to do with concerns about liability than with medical care. In both instances, parental notification is required by non-medical institutions. While personnel with no medical training typically do ear piercing, doctors could provide this service without parental notification or permission. School districts are also sensitive to potential liability and to parent-school relationships and are therefore cautious when providing health care services.

According to medical providers and other witnesses (both proponents and opponents), many of the minors who choose not to inform their parents are homeless, or abused, or desperate for some other reasons that may include incest or rape. For minors from abusive families, or who are victims of incest, a mandatory notification letter arriving at home may endanger that minor's health and safety.

Proponents argue that Measure 43's bypass process was designed to meet the needs of minors in these situations. Opponents argue that, faced with the requirement to notify parents or to plead her case before an administrative law judge, a troubled minor may make rash decisions, trusting unscrupulous people offering unsafe medical procedures or even taking self-induced treatments. Minors need a trusted counselor, a licensed medical provider and safe medical care, not a state-mandated legal process.

*Your committee concludes that healthy family communication cannot be imposed by a government mandate. Your committee also concludes that Oregon should not transform the substantial interest parents have in knowing when their 15-, 16- or 17-year-old daughter intends to have an abortion into a legal right to notification for this medical procedure.*

**If Oregonians want to make parental notification a legal obligation of medical providers, is Measure 43 the appropriate means to do so?**

Measure 43 specifies that an abortion may be performed without giving notice to parents in a medical emergency or if an administrative law judge or circuit judge authorizes it. Notably, Measure 43 does not create an exception in the case of rape or incest.

Measure 43 mandates that parents be notified of an adolescent's pregnancy in all but two circumstances. Parental notification is not necessary if, for some reason notification is not possible or if the person performing the abortion documents the medical emergency in the minor's medical record. Measure 43 defines a medical emergency as follows:

Medical emergency means a medical condition that places the health of a pregnant woman in such serious jeopardy that failure to terminate the pregnancy or a delay in terminating the pregnancy would result in the death of the woman, serious impairment to bodily function or serious and permanent lack of function of any bodily organ or part.

Under Measure 43, several critical reasons for performing an abortion without parental notification would not be allowed. A minor would not have ready access to an abortion if she was the victim of rape or incest, nor if she had a medical problem that could only be addressed by an abortion. The only exceptions allowed would be threat of death, serious impairment to bodily function or serious and permanent lack of function of any bodily organ or part.

Your committee identified two problems with Measure 43's treatment of medical emergencies. First, time may be a factor. The pregnancy may present such a substantial risk of future medical complications that waiting for a condition to actually develop may cause harm to the minor seeking an abortion. If the medical provider believes parental notification is not in the patient's best interest, the measure puts the medical provider in the untenable position of facing potential civil liability if the physician carries out his or her legal and ethical duty to provide appropriate medical care.

Second, determining whether a medical condition satisfies the measure's definition of a medical emergency necessarily involves the exercise of medical judgment. Because medical providers would face civil liability and professional sanctions if the determination later is found to be not justified, your committee anticipates that some medical providers will opt not to invoke the medical emergency exception. This reluctance could result in parental notification in cases where the medical provider believes that notifica-

tion is not in the best interest of the patient, or it could force the patient into the bypass procedure.

*For these reasons, your committee concludes that the medical emergency exception provided by Measure 43 would not provide sufficient safeguards for the health of minors seeking an abortion. Your committee also laments that Measure 43 would not create an exception for victims of rape or incest.*

### **Measure 43's Bypass**

Under Measure 43, a minor seeking an abortion and wanting to avoid parental notification must apply to the Department of Human Services for a hearing before an administrative law judge, who could permit an abortion without parental notice on one of two grounds. The administrative law judge must determine (a) that the applicant is mature and capable of giving informed consent to the abortion or, (b) that obtaining an abortion without parental notification is in the best interest of the applicant. DHS would then have three days to process the application and the administrative law judge would have seven days in which to render a decision. Should the application be denied, the applicant could appeal the decision to the Circuit Court. The court would have two days to decide the case after receiving the appeal.

Proponents characterized the bypass process as a minor formality, probably conducted by telephone with minimum inconvenience for the minor. Opponents described the bypass provision as poorly written and overly burdensome for a minor. Expert testimony taken by the committee noted that there is little useful guidance in the measure for executing the bypass provision.

Your committee concludes that Measure 43, as written, could be difficult to administer. The two key elements of the bypass procedure require administrative law judges to determine if the applicant is "mature" and that not informing the parents "is in best interest of the applicant." These terms will require clarification after the measure has been adopted. Therefore, voters cannot fully understand how the bypass procedure would be implemented.

*Your committee concludes that Measure 43's bypass procedure presents a complicated and unnecessary barrier for unemancipated minors seeking an abortion.*

**Would Measure 43 have a significant long-term negative impact on medical providers and females of all ages who choose to have abortions?**

Opponents of Measure 43 argue that the measure would likely have a negative effect on medical providers, since they would be vulnerable to lawsuits and to losing their medical license if parents allege they were not properly notified. Your committee finds the language of the measure vague in this regard. Measure 43 would require medical providers to establish that they “reasonably relied upon the representations of the minor” using information the minor provided about her parents. One obstetrician/gynecologist told your committee that uncertainty about this requirement and other factors would further reduce the already limited number of physicians willing to perform abortions. Your committee shares the concern that fear of litigation would result in fewer doctors willing to perform abortions.

According to a physician interviewed by your committee, some medical providers, particularly in small towns and cities, prefer to provide abortion services without drawing attention to this fact. Measure 43 would require doctors to send written notification to parents thereby making it known that the medical provider conducts abortions. If Measure 43 passes, some providers could choose to discontinue providing abortions because having this fact known in their communities could adversely affect their medical practices or lead to harassment. Your committee believes that public identification of medical providers who perform abortions could also reduce the availability of medical providers willing to perform abortions.

*Your committee concludes that Measure 43 would likely reduce the availability of medical providers who perform abortions, not just for minors, but for women of all ages.*

**V. MAJOR FINDINGS**

Your committee emphasizes key findings below:

- The frequency of abortions for minors 15 years and older has generally declined since Oregon began keeping records in 1974 and has dropped over 50 percent in the last decade.

***If Measure 43 passes, some providers could choose to discontinue providing abortions because having this fact known in their communities could adversely affect their medical practices or lead to harassment.***

- Oregon law currently permits, but does not require, medical providers to inform parents before providing medical care, including abortions, prenatal care and other procedures to 15-, 16- or 17-year-old unemancipated minors who do not want their parents informed.
- Measure 43 would change the law for 15-, 16- and 17-year-old pregnant unemancipated minors seeking an abortion, their parents and their medical providers, by requiring providers to wait 48 hours after notifying the minors' parents before providing an abortion. The measure authorizes civil suits and professional sanctions if parents allege a medical provider did not meet the requirements of Measure 43.
- Oregon has determined by law that minors 15 years and older have both the capacity and the right to consent to medical care, including abortion.

## VI. CONCLUSIONS

Your committee concludes the following:

- Parents have a substantial interest in knowing when their 15-, 16- or 17-year-old daughter intends to have an abortion.
- Voters should not transform parental interest into a parental right binding on medical providers.
- Minors 15 years and older are generally competent to understand treatment alternatives, consider risks and benefits and responsibly consent to abortion.
- Medical providers, rather than administrative law judges, should decide when involuntary parental notification is in the best interest of a minor seeking an abortion.
- Measure 43 does not include an exception for rape or incest, and its medical emergency exception may be inadequate in ways that endanger the health of minors seeking an abortion.
- Your committee concludes that Measure 43's bypass procedure presents a complicated and unnecessary barrier for unemancipated minors seeking an abortion.
- Your committee concludes that Measure 43 would likely reduce the availability of medical providers who perform abortions, not just for minors, but for women of all ages.
- Healthy family communication cannot be imposed by a mandate of the state.

## VII. RECOMMENDATION

**Your committee unanimously recommends a NO vote on Measure 43.**

Respectfully submitted,

Benjamin Buhayar  
Clifford Droke  
Adam Gamboa  
Tom Iverson  
Mary Ella Kuster  
Maegan Vidal  
Wynne Wakkila  
Mike Greenfield, chair

Jeannie Burt, research adviser  
Wade Fickler, policy director

### ACKNOWLEDGEMENTS

Your committee thanks the witnesses who shared information and opinion with your committee in order to help City Club produce this report. Your committee is also grateful for the able support received from Jeannie Burt, research adviser from City Club's Research Board, and Wade Fickler, City Club's policy director.

### CITATIONS

- 1 "State Policies in Brief," August 1, 2006, The Guttmacher Institute Web site.
- 2 "State Facts About Abortion: Oregon," The Guttmacher Institute Web site.
- 3 Ambuel, B. & Rappaport, J. (1992). "Developmental trends in adolescents' psychological and legal competence to consent to abortion." *Law & Human Behavior*, 16(2), 129-153.

## VIII. APPENDICES

### A. Witnesses

Richard Allen, M.D., Assistant Dean for Graduate Medical Education and Adjunct Professor of Obstetrics and Gynecology, Oregon Health Sciences University

Mike Burkesmith, Director of Development, Pregnancy Resource Center

Melissa D'Agostine, Services Assistant, Pregnancy Resource Center

Terry Daley, Pregnancy Counselor, Downtown Women's Center

David Greenberg, Executive Director, Planned Parenthood of the Columbia/Willamette

Dee Anna Hassanpour, Deputy Chief Administrative Law Judge, Northern Region, Oregon Department of Administrative Hearings

Chris Jensen, Founder, Madison House

Mindy Johnson, HEART Director, Pregnancy Resource Center

Katherine McDowell, Legal Counsel, No on 43 Campaign

Mark McKechnie, Social Worker, Juvenile Rights Project

Sarah Nashif, Campaign Director, Committee to Protect our Teen Daughters

### B. Publications

Oregon Revised Statutes, Rights of Minors, [www.leg.state.or.us](http://www.leg.state.or.us).109.

Oregon Vital Statistics Annual Report 2004, Vol.1, Section 4, Table 4-1.

Ambuel, B. & Rappaport, J. "Developmental trends in adolescents' psychological and legal competence to consent to abortion." *Law and Human Behavior*, 16(2) (1992), pp.129-153.

"Senate OK's abortion bill on consent," *The Oregonian*, July 26, 2006.

"A pregnant pause for family values," *The Oregonian*, July 28, 2006.

Brad Cain, "Supporters of Oregon abortion measure hopeful," *The Oregonian*, August 13, 2006.

Lynn Harris, "Criminals Like Me," *The New York Times*, September 6, 2006.

Andrew Lehren and John Leland, "Scant Drop Seen in Abortion Rate of Parents Are Told," *The New York Times*, March 6, 2006.

David Reinhard, "Parental Notification: 'I didn't want to bring shame on my family,'" *The Oregonian*, July 30, 2006.

Edward Walsh, "Abortion measure on fall ballot," *The Oregonian*, July 26, 2006.

Judith Warner, "When The Parents Can't Know," *The New York Times*, July 29, 2006.

### **C. Relevant Excerpts from Oregon Revised Statutes**

#### **ORS 109.610 Right to treatment for venereal disease without parental consent.**

(1) Notwithstanding any other provision of law, a minor who may have come into contact with any venereal disease may give consent to the furnishing of hospital, medical or surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law or regulation adopted pursuant to law to be reported to the local or state health officer or board. Such consent shall not be subject to disaffirmance because of minority.

(2) The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize such hospital, medical or surgical care and without having given consent the parent, parents, or legal guardian shall not be liable for payment for any such care rendered. [Formerly 109.105; 1977 c.303 §1]

**ORS 109.640 Right to medical or dental treatment without parental consent; provision of birth control information and services to any person.** Any physician or nurse practitioner may provide birth control information and services to any person without regard to the age of the person. A minor 15 years of age or older may give consent to hospital care, medical or surgical diagnosis or treatment by a physician licensed by the Board of Medical Examiners for the State of Oregon, and dental or surgical diagnosis or treatment by a dentist licensed by the Oregon Board of Dentistry, without the consent of a parent or guardian, except as may be provided by ORS 109.660. A minor 15 years of age or older may give consent to diagnosis and treatment by a nurse practitioner who is licensed by the Oregon State Board of Nursing under ORS 678.375 and who is acting within the scope of practice for a nurse practitioner, without the consent of a parent or guardian of the minor. [1971 c.381 §1; 2005 c.471 §7]

**ORS 109.650 Disclosure without minor's consent and without liability.** A hospital or any physician, nurse practitioner or dentist as described in ORS 109.640 may advise the parent or parents or legal guardian of any minor of the care, diagnosis or treatment or the need for any treatment, without the consent of the patient, and any hospital, physician, nurse practitioner or dentist is not liable for advising the parent, parents or legal guardian without the consent of the patient. [1971 c.381 §2; 2005 c.471 §8]

**ORS 109.660 Construction.** The provisions of ORS 109.640, 109.650 and this section do not amend or supersede the provisions of ORS 109.610 or 435.435. [1971 c.381 §3; 1973 c.827 §16]

**ORS 109.672 Certain persons immune from liability for providing care to minor.**

(1) No person licensed, certified or registered to practice a health care profession or health care facility shall be liable for damages in any civil action arising out of the failure of the person or facility to obtain the consent of a parent to the giving of medical care or treatment to a minor child of the parent if consent to the care has been given by the other parent of the child.

(2) The immunity provided by subsection (1) of this section shall apply regardless of whether:

(a) The parents are married, unmarried or separated at the time of consent or treatment.

(b) The consenting parent is, or is not, a custodial parent of the minor.

(c) The giving of consent by only one parent is, or is not, in conformance with the terms of any agreement between the parents, any custody order or any judgment of dissolution or separation.

(3) The immunity created by subsection (1) of this section shall not apply if the parental rights of the parent who gives consent have been terminated pursuant to ORS 419B.500 to 419B.524.

(4) For the purposes of this section, "health care facility" means a facility as defined in ORS 442.015 or any other entity providing medical service. [Formerly 109.133; 1993 c.33 §296; 2003 c.576 §158]



NOTES

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