

# The Burger Court Opinion Writing Database

*H. L. v. Matheson*

450 U.S. 398 (1981)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

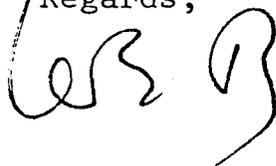
November 7, 1980

Re: 79-5903 - H.L., etc. v. Matheson

MEMORANDUM TO: Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

I will have a dissent out next week. I hope you  
are willing to "hold" until I get it to you.

Regards,



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 17, 1980

MEMORANDUM TO: Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

Re: No. 79-5903, H.L. v. MATHESON

Before undertaking to draft an "opinion", either by way of dissent or otherwise, I have concluded to expose my views on this case by memorandum to those who appear not ready to join the proposed opinion reversing the Utah Supreme Court. If the general thrust of these views is acceptable, I will proceed to develop them in an opinion.

At the outset, it is important to set out just what this case involves. First, it deals with the traditional authority of states to regulate family relationships -- a power reserved to the states, not delegated to federal authority -- judicial or otherwise. Second, it deals with the equally traditional and constitutionally protected authority -- that of the parents in relation to their children -- rights not delegated by the parents to any governmental authority -- federal, state, or local. The Court has

*L.F.P.*  
*Reversed hurriedly. The CJ makes an appealing argument for parental rights that TM's opinion largely ignores. But CJ does not come to grips with the limitations of prior opinions on what we now are free to decide - e.g.*

*Roe, Danforth, & Bellotti I & II.*  
*Not does CJ focus only whether we analyze them on a facial or "as applied" basis. This makes a difference.*

inconceivable that the Constitution can be read to forbid a state to require that a physician contemplating an abortion on a minor unmarried girl must give some minimal notice.

For the foregoing reasons, I would affirm. I expect to write along these lines. Obviously if I write a dissent for myself, as this memo is cast, the approach will not be the same as writing a Court or plurality opinion affirming. An opinion could be considerably shorter than this exposition.

Regards,

A handwritten signature in black ink, appearing to be 'WGB' with a checkmark-like flourish at the end.

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interest" [pp. 2, 20n.47] and the conclusion that the Utah statute "prevents implementation of the physician's medical recommendation" [p.23] are totally unsupported by the record. The factual premise is not even alleged in appellant's complaint.

Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
THE CHIEF JUSTICE

November 18, 1980

Re: No. 79-5903, H.L. v. MATHESON

Dear John:

I welcome your comments. My purpose in sending the memorandum of November 17, was to probe for a common denominator that might possibly grow into a narrow opinion. I am for making it narrow.

Regards,

Justice Stevens

cc: Justice Stewart  
Justice White  
Justice Powell  
Justice Rehnquist

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 24, 1980

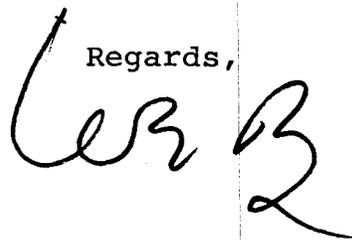
RE: 79-5903 - H. L., etc. v. Matheson

Dear Thurgood:

I circulated a memo of my tentative dissent in the above case to those who might be inclined to join it.

I hope to circulate it in print soon.

Regards,

A handwritten signature in cursive script, appearing to be "W. E. B.", written in black ink.

Mr. Justice Marshall

Copies to the Conference

To: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: The Chief Justice

Circulated: DEC 16 1980

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-5903

<p>H. L., etc., Appellant,          v.          Scott M. Matheson et al.</p>	}	<p>On Appeal from the Supreme          Court of Utah.</p>
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[December —, 1980]

CHIEF JUSTICE BURGER, dissenting.

The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarantees.

### I

In the spring of 1978, appellant was an unmarried 15-year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. She consulted with a social worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents.

Section 76-7-304, enacted in 1974, provides:

"To enable a physician to exercise his best medical judgment [in considering a possible abortion], he shall:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, emotional and psychological health and safety,

"(b) Her age,

"(c) Her familial situation.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 10, 1981

Re: No. 79-5903, H.L. v. Matheson

MEMORANDUM TO THE CONFERENCE:

In light of the current situation, I venture the enclosed draft as a proposed opinion for the Court. Necessarily, this calls for treating Thurgood's opinion tentatively as a dissent.

Regards,

A handwritten signature in black ink, appearing to be "W. B. D.", written in a cursive style. The signature is positioned below the typed word "Regards,".

— 1-2, 7-12  
and stylistic

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Burger  
Mr. Justice Rehnquist

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-5903

JAN 10 1981

H. L., etc., Appellant,  
v.  
Scott M. Matheson et al. } On Appeal from the Supreme  
Court of Utah.

[January —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarantees.

I

In the spring of 1978, appellant was an unmarried 15-year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. She consulted with a social worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents.

Section 76-7-304, enacted in 1974, provides:

"To enable a physician to exercise his best medical judgment [in considering a possible abortion], he shall:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

- "(a) Her physical, emotional and psychological health and safety,
- "(b) Her age,
- "(c) Her familial situation.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

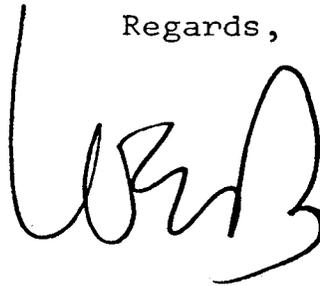
January 15, 1981

Re: 79-5903 - H.L. v. Matheson

Dear Lewis:

Since I see no difference in the suggested changes in your January 15 memo and my January 10 draft, I am glad to make the changes.

Regards,

A handwritten signature in black ink, appearing to be 'W. Powell', written in a cursive style.

Justice Powell

Copy to Justice Stewart

11-12

To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

Concurred:

JAN 16 1981

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-5903

H. L., etc., Appellant, }  
v. } On Appeal from the Supreme  
Scott M. Matheson et al. } Court of Utah.

[January —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarantees.

I

In the spring of 1978, appellant was an unmarried 15-year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. She consulted with a social worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents.

Section 76-7-304, enacted in 1974, provides:

"To enable a physician to exercise his best medical judgment [in considering a possible abortion], he shall:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, emotional and psychological health and safety,

"(b) Her age,

"(c) Her familial situation.



TO: Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

STYLISTIC CHANGES

From The Chief Justice

Circulated \_\_\_\_\_

5th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-5903

H. L., etc., Appellant,  
 v.  
 Scott M. Matheson et al. } On Appeal from the Supreme  
 Court of Utah.

[March —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarantees.

I

In the spring of 1978, appellant was an unmarried 15-year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. She consulted with a social worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents.

Section 76-7-304, enacted in 1974, provides:

"To enable a physician to exercise his best medical judgment [in considering a possible abortion], he shall:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, emotional and psychological health and safety,

"(b) Her age,

"(c) Her familial situation.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 17, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-5903, H.L. v. Matheson

I am adding the following paragraph at the end of footnote 25:

"The dissenting opinion purports to see in the Court's opinion "a clear signal" as to how the Court will decide a future case concerning this or a similar statute, and goes on to forecast a successful challenge on the merits. Today, of course, the Court's function is to decide only the question properly presented in this case, and there is no occasion to intimate or predict a view as to the proper resolution of some future case. Speaking for the unanimous Court in Kleppe v. New Mexico, supra, JUSTICE MARSHALL took note of the impropriety of deciding constitutional questions "in the absence of 'an adequate and full-bodied record.'" Id., at 546, quoting Public Affairs Associates, Inc. v. Rickover, 369 U.S. 111, 113 (1962)."

Regards,



17-15

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

Circulated: \_\_\_\_\_

6th DRAFT

Recirculated: MAR 18 1981

**SUPREME COURT OF THE UNITED STATES**

No. 79-5903

H. L., etc., Appellant,  
v.  
Scott M. Matheson et al. } On Appeal from the Supreme  
Court of Utah.

[March —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented in this case is whether a state statute which requires a physician to "notify, if possible" the parents of a dependent, unmarried minor girl prior to performing an abortion on the girl violates federal constitutional guarantees.

I

In the spring of 1978, appellant was an unmarried 15-year-old girl living with her parents in Utah and dependent on them for her support. She discovered she was pregnant. She consulted with a social worker and a physician. The physician advised appellant that an abortion would be in her best medical interest. However, because of Utah Code Ann. (1953) § 76-7-304, he refused to perform the abortion without first notifying appellant's parents.

Section 76-7-304, enacted in 1974, provides:

"To enable a physician to exercise his best medical judgment [in considering a possible abortion], he shall:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, emotional and psychological health and safety,

"(b) Her age,

"(c) Her familial situation.

①

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 13, 1980

RE: No. 79-5903 H.L., etc. v. Matheson

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 27, 1981

RE: No. 79-5903 H.L., etc. v. Matheson, et al.

Dear Thurgood:

Please join me.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 10, 1980

Re: No. 79-5903, H. L. v. Matheson

Dear Thurgood,

Your proposed opinion of the Court strikes me as an admirably thorough exposition of your position. It is, however, a position that I do not share, as you know from our Conference discussion. Accordingly, I shall be unable to join your opinion.

Sincerely yours,

P.S.

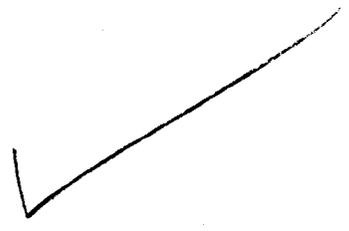
Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 19, 1980



Re: No. 79-5903, H.L. v. Matheson

Dear Chief,

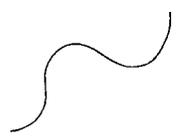
My views closely parallel those expressed by Lewis in his letter to you of today.

Sincerely yours,

P.S.  
1.3.  
/

The Chief Justice

Copies to Justice White  
Justice Powell  
Justice Rehnquist  
Justice Stevens



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART



December 18, 1980

Re: 79-5903 - H. L. v. Matheson

Dear Chief:

I agree with the views that Lewis has expressed in his letter to you of December 18.

Sincerely yours,

*P.S.*  
/

The Chief Justice

Copies to: Justice White  
Justice Powell  
Justice Rehnquist  
Justice Stevens

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 9, 1981

Re: No. 79-5903, H.L. v. Matheson

Dear Lewis,

I agree with your memorandum, circulated  
yesterday.

Sincerely yours,

P.S.  
1/

Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 22, 1981

Re: No. 79-5903, H.L. v. Matheson

Dear Chief,

I have greatly regretted our previous fragmentation in cases falling into the area that this one falls. Accordingly, I am particularly glad to join your opinion for the Court.

Sincerely yours,

P.S.  
/

The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 22, 1981

Re: No. 79-5903, H. L. v. Matheson

Dear Lewis,

Please add my name to your concurring  
opinion, which also joins the opinion of the Court.

Sincerely yours,

P.S.  
/

Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 24, 1980

Re: No. 79-5903: H. L. v. Matheson

Dear Chief,

I could join major parts of your circulating memorandum if converted to an opinion, whether majority, concurring or dissenting. Some parts I would not embrace since I continue to disagree with the original abortion opinions and would very likely say so.

I shall await developments.

Sincerely yours,



The Chief Justice

Copies to the Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 4, 1981

Re: 79-5903 - H. L. v. Matheson

Dear Chief,

I join your circulating opinion of  
January 16.

Sincerely yours,



The Chief Justice

Copies to the Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: 7 NOV 1980

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-5903

H. L., etc., Appellant,  
 v.  
 Scott M. Matheson et al. } On Appeal from the Supreme  
 Court of Utah.

[November —, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

At issue in this case is the constitutionality of a Utah statute, Utah Code Ann. § 76-7-304 (2),<sup>1</sup> which imposes criminal sanctions against a physician who fails to notify parents prior to performing an abortion on their unmarried minor daughter. The Supreme Court of Utah upheld the statute. We reverse.

I

The facts, according to the stipulations filed with the trial court, are as follows. When the suit was initiated appellant

<sup>1</sup> Appellant challenges pt. 2 of § 76-7-304, which appears in the "Offenses Against the Family" chapter of the Utah Criminal Code. In its entirety, § 76-7-304 provides:

"To enable the physician to exercise his best medical judgment, he shall:

"(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

"(a) Her physical, emotion and psychological health and safety,

"(b) Her age,

"(c) Her familial situation.

"(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor or the husband of the woman, if she is married."

A violation of this provision is a misdemeanor, § 76-7-314 (3), punishable by a maximum one-year sentence, § 76-3-204 (1), and a maximum fine of \$1,000 § 76-3-301.

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: 17 NOV 1980

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 79-5903

H. L., etc., Appellant, }  
                                  v.            } On Appeal from the Supreme  
Scott M. Matheson et al. } Court of Utah.

[November —, 1980]

JUSTICE MARSHALL delivered the opinion of the Court.

At issue in this case is the constitutionality of a Utah statute, Utah Code Ann. § 76-7-304 (2),<sup>1</sup> which imposes criminal sanctions against a physician who fails to notify parents prior to performing an abortion on their unmarried minor daughter. The Supreme Court of Utah upheld the statute. We reverse.

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    - "(b) Her age,
    - "(c) Her familial situation.
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 19, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 79-5903 - H.L., etc. v. Matheson

Please substitute the enclosed page 6 for  
the page 6 in the opinion circulated on Monday,  
November 17.

*Jm*  
T.M.

1-8, 13, 15, 16, 14, 20, 22, 25, 26-27

25 FEB 1981

1st DRAFT (dissent)

## SUPREME COURT OF THE UNITED STATES

No. 79-5903

<p>H. L., etc., Appellant, v. Scott M. Matheson et al.</p>	}	<p>On Appeal from the Supreme Court of Utah.</p>
--	---	--

[March —, 1981]

JUSTICE MARSHALL, dissenting.

The decision of the Court is narrow. It finds shortcomings in appellant's complaint and therefore denies relief. Thus, the Court sends out a clear signal that more carefully drafted pleadings could secure both a plaintiff's standing to challenge the overbreadth of Utah Code Ann. (1953) § 76-7-304 (2), and success on the merits.<sup>1</sup>

<sup>1</sup> Under the majority's view, to assure standing, the plaintiff pregnant minor simply need allege her desire to obtain an abortion, her inability to do so because of the statute, and her view that she is emancipated, mature, or that it is in her best interests to have an abortion performed without notifying her parents. The majority finds no standing problem where the complaint alleges that the plaintiff is emancipated or mature, and thus reaffirms the standing analysis employed in *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). See *ante*, at 5, n. 8 (opinion of BURGER, C. J.). In addition, the Court relies in part on a decision by the Federal District Court in Utah, which enjoined application of the same Utah statute involved here to emancipated minors. *L. R. v. Hansen*, Civil No. C80-0078 (Feb 8, 1980). The Court apparently contemplates that similar challenges will meet with success in the future. For example, the District Court in *L. R. v. Hansen* also accorded intervenor status and awarded preliminary relief to a minor woman who, like appellant, is under 17 years old and is dependent upon a parent with whom she resides. The only difference between the allegations of the instant appellant and those of that intervenor is the latter's express allegation that parental notice would result in her expulsion from home and destruction of her relationship with her parent. *L. R. v. Hansen*, Civil No. 80-0078 (Findings of Fact and Conclusions of Law ¶ 4) (Oct. 24, 1980). Finally, the Court

pp. 6, 8, 10, 15, 27

-Master-

STYLISTIC CHANGES THROUGHOUT.

26 FEB 1981

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-5903

<p>H. L., etc., Appellant, v. Scott M. Matheson et al.</p>	<p>  On Appeal from the Supreme   Court of Utah.</p>
--	--

[March —, 1981]

JUSTICE MARSHALL, dissenting.

The decision of the Court is narrow. It finds shortcomings in appellant's complaint and therefore denies relief. Thus, the Court sends out a clear signal that more carefully drafted pleadings could secure both a plaintiff's standing to challenge the overbreadth of Utah Code Ann. (1953) § 76-7-304 (2), and success on the merits.<sup>1</sup>

<sup>1</sup> Under the majority's view, to assure standing, the plaintiff pregnant minor simply need allege her desire to obtain an abortion, her inability to do so because of the statute, and her view that she is emancipated, mature, or that it is in her best interests to have an abortion performed without notifying her parents. The majority finds no standing problem where the complaint alleges that the plaintiff is emancipated or mature, and thus reaffirms the standing analysis employed in *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). See *ante*, at 5, n. 8 (opinion of BURGER, C. J.). In addition, the Court relies in part on a decision by the Federal District Court in Utah, which enjoined application of the same Utah statute involved here to emancipated minors. *L. R. v. Hansen*, Civil No. C80-0078 (Feb 8, 1980). The Court apparently contemplates that similar challenges will meet with success in the future. For example, the District Court in *L. R. v. Hansen* also accorded intervenor status and awarded preliminary relief to a minor woman who, like appellant, is under 17 years old and is dependent upon a parent with whom she resides. The only difference between the allegations of the instant appellant and those of that intervenor is the latter's express allegation that parental notice would result in her expulsion from home and destruction of her relationship with her parent. *L. R. v. Hansen*, Civil No. 80-0078 (Findings of Fact and Conclusions of Law ¶ 4) (Oct. 24, 1980). Finally, the Court

presented to the Court 11/17/80  
 14, 16, 17, 19, 20

ce  
 nnan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: 16 MAR 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5903

H. L., etc., Appellant,  
 v.  
 Scott M. Matheson et al. | On Appeal from the Supreme  
 Court of Utah.

[March —, 1981]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

The decision of the Court is narrow. It finds shortcomings in appellant's complaint and therefore denies relief. Thus, the Court sends out a clear signal that more carefully drafted pleadings could secure both a plaintiff's standing to challenge the overbreadth of Utah Code Ann. (1953) § 76-7-304 (2), and success on the merits.<sup>1</sup>

<sup>1</sup> Under the majority's view, to assure standing, the plaintiff pregnant minor simply need allege her desire to obtain an abortion, her inability to do so because of the statute, and her view that she is emancipated, mature, or that it is in her best interests to have an abortion performed without notifying her parents. The majority finds no standing problem where the complaint alleges that the plaintiff is emancipated or mature, and thus reaffirms the standing analysis employed in *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). See *ante*, at 7, n. 12 (opinion of BURGER, C. J.). In addition, the Court relies in part on a decision by the Federal District Court in Utah, which enjoined application of the same Utah statute involved here to emancipated minors. *L. R. v. Hansen*, Civil No. C80-0078 (Feb 8, 1980). The Court apparently contemplates that similar challenges will meet with success in the future. For example, the District Court in *L. R. v. Hansen* also accorded intervenor status and awarded preliminary relief to a minor woman who, like appellant, is under 17 years old and is dependent upon a parent with whom she resides. The only difference between the allegations of the instant appellant and those of that intervenor is the latter's express allegation that parental notice would result in her expulsion from home and destruction of her relationship with her parent. *L. R. v. Hansen*, Civil No. 80-0078 (Findings of Fact and Conclusions of Law ¶ 4) (Oct. 24, 1980). Finally, the Court

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 12, 1980

Re: No. 79-5903 - H.L. v. Matheson

Dear Thurgood:

I shall join your opinion, of course. My concern, at the moment, is the timing. Potter's brief and rather peremptory note of November 10 was not unanticipated, and, as expected, Lewis has fallen in line behind Potter. This means that your opinion will not command a Court. I suspect that the Chief Justice, in writing for the four in original dissent, hopes to frame his opinion to attract the votes of Potter and Lewis.

Your opinion is thoughtful, thorough, and well crafted. I feel that of particular interest are the discussion of family interactions, the ideal as contrasted with the actual (pp. 8-12), the important role played by physician obligations and capabilities (pp. 14, 23), and the useful but unobtrusive intimations about ways in which state statutes might pass constitutional muster (notes 39 and 42). The opinion accords constitutional recognition to the mature minor and emancipated minor doctrines (pp. 20-22), which seems necessary and even overdue in light of the "undoubted social reality," with which I so heartily agree.

I might have wished, perhaps, that there were fewer footnotes, but that is a matter of personal preference, and surely is for you to decide. I have just one concern with substance. On page 6, in the full paragraph on that page, is a statement to the effect that in Roe the Court held that the State's interests "could not override the pregnant woman's right to make the abortion decision through private, unfettered consultation with her physician." I would much prefer to have the quoted material read "could not override the pregnant woman's and her attending physician's right to make the abortion decision through private, unfettered consultation." I fear that the present form would give impetus to the "abortion on demand" criticism that so frequently, and wrongfully, appears in public comment. What I regard as the proper description appears elsewhere throughout the opinion. See, for example, the seventh and eighth lines on page 13.

I say again that this is a helpful opinion and I deeply regret that it probably will not prove to be one for the Court. I need not say how disappointed I have been in what I perceive to be the Court's noticeable withdrawal in recent cases from the more positive position taken in Roe, Doe and Danforth. I fear that the forces of emotion and professed morality are winning some battles. That "real world" continues to exist "out there" and I earnestly hope that the "war," despite these adverse "battles," will not be lost. You and Bill Brennan, of course, have been most supportive.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal flourish underneath.

Mr. Justice Marshall

cc: Mr. Justice Brennan

②

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 13, 1980

Re: No. 79-5903 - H.L. v. Matheson

Dear Thurgood:

I join your opinion.

Your opinion is thoughtful, thorough, and well crafted. I feel that of particular interest are the discussion of family interactions, the ideal as contrasted with the actual (pp. 8-12), the important role played by physician obligations and capabilities (pp. 14, 23), and the useful but unobtrusive intimations about ways in which state statutes might pass constitutional muster (notes 39 and 42). The opinion accords constitutional recognition to the mature minor and emancipated minor doctrines (pp. 20-22), which seems necessary and even overdue in light of the "undoubted social reality," with which I so heartily agree.

I say again that this is a helpful opinion and I deeply regret that it probably will not prove to be one for the Court. I need not say how disappointed I have been in what I perceive to be the Court's noticeable withdrawal in recent cases from the more positive position taken in Roe, Doe and Danforth.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 26, 1981

Re: No. 79-5903 - H.L. v. Matheson

Dear Thurgood:

Please join me in your dissent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a vertical line extending downwards from the end of the signature.

Mr. Justice Marshall

cc: The Conference

October 31, 1980

79-5903 H.L. v. Matheson

Dear Potter:

Here is a memorandum that I wrote in an effort to clarify my thinking. Also enclosed is a copy of my clerk Greg Morgan's comment on my memo.

For the reasons we both state, Greg now agrees that - on the very restricted record before us - I could join a carefully written affirmance and accompany it with a concurring opinion reiterating our views with respect to the need for an impartial decision-maker where the minor considers herself mature or that it would not be in her best interests to notify parents.

I no longer think I could join even the judgment that the present statute is invalid. What do you think?

If you agree with me, perhaps we should notify the Brothers.

Sincerely,

Mr. Justice Stewart

lfp/ss

lfp/ss 10/29/80

*This is memo  
I sent to P.S.*

79-5903 Matheson

In view of the unsettled state (at least in my mind) of this case, I have today reviewed more carefully the bill of complaint, the testimony, and the decisions below.

It is perfectly clear that counsel for H.L. (the plaintiff) brought this class action as a test case to determine whether parental notification may ever be required constitutionally by a minor who merely states that she desires an abortion and will consult only a physician. By repetitive arguing, and even badgering, her counsel finally persuaded the trial court to rule that this was the only issue presented by this case under the statute.

The only relevant averment in the complaint is as follows:

"6. Plaintiff does not wish to inform her parents of her condition and believes that it is in

GM 10/30/80

To: Mr. Justice Powell

From: Greg Morgan

Re: H---L--- v. Matheson: H---L---'s Allegations & Proof

No. 79-5903

I have now looked again at the complaint, testimony, and findings in the trial court. The short answer to the question in your memo of 10/29 is--yes, the case is postured in such a way that you can decide, substantially for the reasons expressed in Bellotti II, that the Constitutional does not guarantee to a minor the right to an abortion without parental notice simply because the minor does not wish her parents to know. Interestingly, I think that this is the conclusion upon which we agree before oral argument. I, at least, did not understand fully until now that that is the guarantee HL seeks.

For the file, I note my conclusions upon re-reading the record. HL never alleged that her parents would obstruct her abortion, and she never presented any evidence to support a finding that her parents would do so. Neither did HL allege or prove that her doctor believed that her parents would obstruct her abortion. Therefore, although I otherwise would read the trial court's Finding # 7 to find that the doctor believed (1) that an abortion of HL's pregnancy was in her best medical interest and (2) that an abortion without parental notification

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 12, 1980

79-5903 H. L., etc. v. Matheson

Dear Thurgood:

My vote at the Conference was to reverse because the Utah statute provides no independent decision-maker, a provision I considered necessary in my Bellotti opinion.

I agree with Potter that your proposed opinion for the Court is a most thorough exposition of your position, but it accepts appellant's argument that a pregnant minor, regardless of age or circumstances and without notice to parents, has a constitutional right to decide for herself, in consultation with a physician, whether to have an abortion.

As this is a view that I rejected in Bellotti, I cannot join your opinion, nor am I at rest as to the judgment. I will await further writing, and probably will reiterate in summary my Bellotti view that a state validly may require, before a minor may decline to notify her parents, that she satisfy an independent decision-maker either that she is mature or that her best interests require no such notification.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 19, 1980

No. 79-5903 H. L. v. Matheson

Dear Chief:

This refers to your memorandum of November 17 in which you sketch out a draft opinion in this case, and ask whether it is generally acceptable.

As you know, Potter and I voted to reverse. Each of us, however, has advised Thurgood that we cannot join his opinion. See my letter to him of November 12.

You have written a strong memorandum. Although I agree with a good deal of what you say, I am not sure that portions of it can be harmonized with our precedents. In any event, I could not join you because - as I read the memorandum - you would sustain a statute that required notice to the parents, but provided no independent decision maker to whom a minor could have recourse if she thinks she is mature or that notification would not be in her best interests.

Thus, if the pregnant minor in this case (petitioner) had shown that she was mature enough to be emancipated or even that notification of her parents would be detrimental to her best interests, I would hold the Utah statute invalid as applied to such a minor because of the absence of any independent decision maker to whom she could turn.

In this case, however, as you point out, the record is silent as to petitioner's maturity and as to whether notification would be adverse to her best interest. You correctly state that we have "no more than the naked assertion of a 15-year-old that in her judgment it was not

in her best interest to notify the parents." Moreover, the class certified by the trial court appears to include only minors similarly situated. Accordingly, as presently advised, I believe I can join a judgment of affirmance.

I will write briefly to reaffirm my Bellotti II views.

Sincerely,



The Chief Justice

LFP/lab

cc: Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Rehnquist  
Mr. Justice Stevens

December 18, 1980

79-5903 H.L., etc. v. Matheson

Dear Chief:

This refers to your opinion circulated December 16, characterized as a dissent.

As stated in my letter to Thurgood of November 12, I cannot join his opinion as it recognizes a far more absolute right in a minor than I could accept. I still adhere generally to the views expressed in my Bellotti II opinion.

I agree with you that, on the basis of the facts in this case, appellants have no standing to argue overbreadth. Your statement of the "issue before us" on page 6 is quite close to my view as to the posture of the case. I therefore believe I can join your Parts I and II.

Part III, as presently written, gives me some difficulty in view of Bellotti II. I believe that portion of your opinion will be read as holding that a state validly may require notice to parents in cases that may differ substantially from this one. In Bellotti, four of us stated that a statute of this kind should provide for an independent decision maker to whom a minor could have recourse if she thinks she is mature and needs no parental guidance, or if she thinks that notification otherwise would not be in her best interests.

Your Part III also purports to summarize our abortion decisions, and quotes selectively from several opinions including Bellotti II. As there has been so much writing in these decisions, with varying shades of opinion expressed, I would prefer not to try to make a general "restatement" of abortion law. I wonder whether in this case it is useful to undertake this.

At Conference, Potter and I voted to reverse. At that time I read the trial court's finding on page 40 of the appendix as saying - though inartfully - that a physician

had concluded it would not be in the best interest of this minor to notify her parents. Now that I have read the record with greater care, I am satisfied that my initial reading of the ambiguous language on App. 40 was incorrect. Thus, as you state, we have a test case that presents the most extreme situation: a 15-year-old minor, living with her parents, claims an absolute right to be aborted without being required to give any reason other than her own personal wish and belief that it is in her best interest not to inform her parents. I find nothing in the record that indicates even that the doctor had examined her or that there were medical reasons for not notifying her parents. Accordingly, I will now join a judgment to affirm, holding that the statute is valid as applied to these facts.

I am drafting a concurring opinion along the foregoing lines, and should have it shortly. I would like to be able also to join your opinion. Since I am committed to my Bellotti II views, would it be possible for you to revise your Part III to accommodate the two concerns expressed above: (i) reserve the notion that an independent decision maker should be required, and (ii) reduce substantially the selective quotations from other decisions especially Bellotti II?

Sincerely,

The Chief Justice

LFP/lab

cc: Justice Stewart  
Justice White  
Justice Rehnquist  
Justice Stevens

January 6, 1981

No. 79-5903 H. L., Etc. v. Matheson

Dear Potter:

Here is a first draft of a concurring opinion in this unattractive little case. As I have heard nothing further from the Chief, what would you think of circulating our draft at this time? It might get the process moving, and give the Chief a clear understanding of our position.

The alternative would be to send him the draft privately.

Sincerely,

Mr. Justice Stewart

LFP/lab

Enclosure

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 8, 1981

79-79-5903 H.L., etc. v. Matheson, et al

Dear Chief and Thurgood:

As Potter and I were somewhere "in the middle" in this case, and as I cannot join either of the circulated opinions, I have written the enclosed memorandum.

On the facts of this case I do not believe that appellant has standing, as she makes an insufficient showing of injury to herself or the class she describes. Thus, the Utah statute does not burden appellant's right to an abortion. On the other hand, for the reasons stated in Bellotti II, I cannot agree that a state may require parental notification by every pregnant minor, desiring an abortion, regardless of the circumstances.

Thus, in the present posture of the writing in this case, I could join the Chief in a judgment of affirmance but would write separately along the lines of the enclosed memorandum.

Sincerely,

*Lewis*

The Chief Justice  
Mr. Justice Marshall

lfp/ss

cc: The Conference

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall ✓  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Powell

1-7-81

2nd DRAFT

Circulated: \_\_\_\_\_

Recirculated:    JAN 8 1981   

SUPREME COURT OF THE UNITED STATES

No. 79-5903

H. L., etc., Appellant, }  
                           v.        } On Appeal from the Supreme  
 Scott M. Matheson et al. } Court of Utah.

[January —, 1981]

Memorandum of JUSTICE POWELL.

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52 (1976); *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). I join Parts I and II of THE CHIEF JUSTICE's opinion. I also agree that Utah Code Ann. § 76-7-304 (2) does not unconstitutionally burden this appellant's right to an abortion. I do not join Part III of his opinion, however, for the views that I express in *Bellotti II* lead me to conclude that a State cannot properly require, without allowing for exceptions, that parents be notified of their minor daughter's abortion decision.

I

Section 304 (2) requires that a physician "[n]otify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor."<sup>1</sup> Appellant attacks this notice requirement on the ground that it burdens the right of a minor who is emancipated, or who is mature enough to make the abortion decision independent of parental involvement, or whose parents will react obstructively upon notice. See *ante*, at 5. The threshold question, as the Court's opinion notes, is whether appellant has standing to

<sup>1</sup> Section 304 (2) is quoted in full in the Court's opinion. *Ante*, at 1-2.

January 15, 1981

79-5903 H.L. v. Matheson

Dear Chief:

I will be happy to join your most recent circulation if you could clarify footnote 17, and add the few words to the sentence at the top of page 12 that I have suggested.

I enclose these two pages with the suggested changes.

Potter agrees that he also will join you if these changes are made and also will join my separate concurring opinion.

Sincerely,

The Chief Justice

lfp/ss

cc: Mr. Justice Stewart

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 16, 1981

79-5903 H.L. v. Matheson

Dear Chief:

As your opinion (3rd draft) now meets the concerns I have previously expressed, I am happy to join it.

I am making appropriate changes in the memorandum I circulated to convert it to a concurring opinion.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

Page 1, 5, 7, 8

Chief Justice  
Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Black  
Mr. Justice Brennan  
Mr. Justice Stevens

1-21-81

3rd DRAFT

From Mr. Justice Powell  
Circulated  
Recirculated: JAN 21 1981

SUPREME COURT OF THE UNITED STATES

No. 79-5903

H. L., etc., Appellant,  
v.  
Scott M. Matheson et al. | On Appeal from the Supreme  
Court of Utah.

[January —, 1981]

JUSTICE POWELL, concurring.

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52 (1976); *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). I agree with the Court that Utah Code Ann. § 76-7-304 (2) does not unconstitutionally burden this appellant's right to an abortion. I join the opinion of the Court on the understanding that it leaves open the question whether § 304 (2) unconstitutionally burdens the right of a mature minor or a minor whose best interests would not be served by parental notification. See *ante*, at —, n. 17. I write to make clear that I continue to entertain the views on this question stated in my opinion in *Bellotti II*. See *infra*, at n. 8.

I

Section 304 (2) requires that a physician "[n]otify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor."<sup>1</sup> Appellant attacks this notice requirement on the ground that it burdens the right of a minor who is emancipated, or who is mature enough to make the abortion decision independent of parental involvement, or whose parents will react obstructively upon

<sup>1</sup> Section 304 (2) is quoted in full in the Court's opinion. *Ante*, at 1-2.

pgs 1, 3, fn 6.  
new fn 4

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

3-2-81

From: Mr. Justice Powell

4th DRAFT

Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES MAR 3 1981

No. 79-5903

H. L., etc., Appellant,  
v.  
Scott M. Matheson et al. } On Appeal from the Supreme  
Court of Utah.

[January —, 1981]

JUSTICE POWELL, with whom JUSTICE STEWART joins, concurring.

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52 (1976); *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). I agree with the Court that Utah Code Ann. § 76-7-304 (2) does not unconstitutionally burden this appellant's right to an abortion. I join the opinion of the Court on the understanding that it leaves open the question whether § 304 (2) unconstitutionally burdens the right of a mature minor or a minor whose best interests would not be served by parental notification. See *ante*, at —, n. 17. I write to make clear that I continue to entertain the views on this question stated in my opinion in *Bellotti II*. See *infra*, at n. 8.

I

Section 304 (2) requires that a physician “[n]otify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor.”<sup>1</sup> Appellant attacks this notice requirement on the ground that it burdens the right of a minor who is emancipated, or who is mature enough to make the abortion decision independent of parental involvement, or whose parents will react obstructively upon

<sup>1</sup>Section 304 (2) is quoted in full in the Court's opinion. *Ante*, at 1-2.

pg 3

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall ✓  
 Mr. Justice Blackmun  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

3-9-81

5th DRAFT

From: Mr. Justice Powell

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_  
 Recirculated: MAR 9 1981

No. 79-5903

H. L., etc., Appellant,  
 v.  
 Scott M. Matheson et al. } On Appeal from the Supreme  
 Court of Utah.

[January —, 1981]

JUSTICE POWELL, with whom JUSTICE STEWART joins, concurring.

This case requires the Court to consider again the divisive questions raised by a state statute intended to encourage parental involvement in the decision of a pregnant minor to have an abortion. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52 (1976); *Bellotti v. Baird*, 443 U. S. 662 (1979) (*Bellotti II*). I agree with the Court that Utah Code Ann. § 76-7-304 (2) does not unconstitutionally burden this appellant's right to an abortion. I join the opinion of the Court on the understanding that it leaves open the question whether § 304 (2) unconstitutionally burdens the right of a mature minor or a minor whose best interests would not be served by parental notification. See *ante*, at —, n. 17. I write to make clear that I continue to entertain the views on this question stated in my opinion in *Bellotti II*. See *infra*, at n. 8.

I

Section 304 (2) requires that a physician "[n]otify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor."<sup>1</sup> Appellant attacks this notice requirement on the ground that it burdens the right of a minor who is emancipated, or who is mature enough to make the abortion decision independent of parental involvement, or whose parents will react obstructively upon

<sup>1</sup> Section 304 (2) is quoted in full in the Court's opinion. *Ante*, at 1-2.

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 22, 1981

Re: No. 79-5903 H.L. v. Matheson

Dear Chief:

Please join me.

Sincerely,  


The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 18, 1980

Re: 79-5903 - H.L. v. Matheson

Dear Chief:

Thank you for sharing your preliminary memorandum with me. One can never be sure until a memorandum is converted into an opinion, but I am presently inclined to believe that I do not agree with a good deal of what you have written. My view is that the state's interest in protecting young people from harm justifies the parental notice requirement. I would say little more than I said in my separate opinion in Danforth, 428 U.S., at 102, 105.

Respectfully,



The Chief Justice

cc: Justice Stewart  
Justice White  
Justice Powell  
Justice Rehnquist

Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall ✓  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

79-5903 - H.L. v. Matheson

From: Mr. Justice Stevens

JUSTICE STEVENS, dissenting.

Circulated: DEC 16 '80

Recirculated: \_\_\_\_\_

In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 72-75 (1976), the Court held that a pregnant minor's right to make the decision to obtain an abortion may not be conditioned on parental consent. My dissent from that holding, id., at 102-105, does not qualify my duty to respect it as a part of our law. See Bellotti v. Baird, 443 U.S. 622, 652-656 (1979) (STEVENS, J., concurring). However, as I noted in Bellotti, neither that case nor Danforth "determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto." 443 U.S., at 654 n.1. Since the outcome in this case is not controlled by Danforth, the principles that I considered dispositive of the parental consent issue in that case plainly dictate that the Utah statute now before us be upheld.

The fact that a State statute may have some impact upon a minor's exercise of his or her rights begins, rather than ends, the constitutional inquiry. Once the statute's impact is identified, it must be evaluated in light of the State interests underlying the statute. The State interest that the Utah statute at issue in this case attempts to advance is essentially the same State interest at issue in Danforth. As I noted in Danforth, that interest is fundamental and substantial:

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: DEC 17 '80

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-5903

<p>H. L., etc., Appellant,          v.          Scott M. Matheson et al.</p>	}	<p>On Appeal from the Supreme          Court of Utah.</p>
--	---	---

[January —, 1981]

JUSTICE STEVENS, dissenting.

In *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52, 72-75 (1976), the Court held that a pregnant minor's right to make the decision to obtain an abortion may not be conditioned on parental consent. My dissent from that holding, *id.*, at 102-105, does not qualify my duty to respect it as a part of our law. See *Bellotti v. Baird*, 443 U. S. 622, 652-656 (1979) (STEVENS, J., concurring). However, as I noted in *Bellotti*, neither that case nor *Danforth* "determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto." 443 U. S., at 654, n. 1. Since the outcome in this case is not controlled by *Danforth*, the principles that I considered dispositive of the parental consent issue in that case plainly dictate that the Utah statute now before us be upheld.

The fact that a state statute may have some impact upon a minor's exercise of his or her rights begins, rather than ends, the constitutional inquiry. Once the statute's impact is identified, it must be evaluated in light of the state interests underlying the statute. The state interest that the Utah statute at issue in this case attempts to advance is essentially the same state interest at issue in *Danforth*. As I noted in *Danforth*, that interest is fundamental and substantial:

"The State's interest in the welfare of its young citizens justifies a variety of protective measures. Because he

To: The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

Pp. 1, 3, 5  
 footnote 2 omitted

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: JAN 13 '81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5903

H. L., etc., Appellant,  
 v.  
 Scott M. Matheson et al. } On Appeal from the Supreme  
 Court of Utah.

[January —, 1981]

JUSTICE STEVENS, concurring in the judgment.

As THE CHIEF JUSTICE points out, this is a class action in which the appellant represents all unmarried "minor women who are suffering unwanted pregnancies and desire to terminate the pregnancies but may not do so' because of their physicians' insistence on complying with § 76-7-304 (2)" of the Utah Code. *Ante*, at 2-3. The Utah Supreme Court held that the statute may validly be applied to *all* members of that class. This appeal therefore squarely presents the question whether that holding is consistent with the Constitution of the United States. THE CHIEF JUSTICE, however, declines to reach this question and instead decides the narrower question presented by the appellant's particular factual situation. Because I believe we have a duty to answer the broader question decided by the Utah Supreme Court, I am unable to join the opinion of THE CHIEF JUSTICE.

In *Planned Parenthood of Central Missouri v. Danforth*, 428 U. S. 52, 72-75 (1976), the Court held that a pregnant minor's right to make the decision to obtain an abortion may not be conditioned on parental consent. My dissent from that holding, *id.*, at 102-105, does not qualify my duty to respect it as a part of our law. See *Bellotti v. Baird*, 443 U. S. 622, 652-656 (1979) (STEVENS, J., concurring). However, as I noted in *Bellotti*, neither that case nor *Danforth* "determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any

— pp. 2, 4, 5-6

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rahnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: FEB 11 '81

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-5903

H. L., etc., Appellant,  
v.  
Scott M. Matheson et al. } On Appeal from the Supreme Court of Utah.

[February —, 1981]

JUSTICE STEVENS, concurring in the judgment.

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