

# ALASKA STATE SENATE



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## Senator Fred Dyson

### SPONSOR STATEMENT

#### SB 279 Notice & Consent for Minor's Abortion

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The issue of parental consent and the eleven-year struggle for protecting parental rights requires this complete picture for the legislature to address this subject.

On November 2, 2007 in *State of Alaska v. Planned Parenthood of Alaska*, the Alaska Supreme Court, in a 3 – 2 decision, has once again undermined a long line of case law, the intent of the Constitution, and the overwhelming support of the people of Alaska. SB 279 is a direct response to an active judiciary and an attempt to put this issue to rest once and for all.

Overriding the Governor's veto, the legislature passed the Parental Consent Act (PCA) in 1997. In July of that same year, Alaska Superior Court Judge Sen Tan ruled the law was unconstitutional because "the privacy clause of the Alaska Constitution protects minors as well as adults." The Superior Court did not address whether or not the PCA violated the privacy clause. The State appealed the decision and the Supreme Court ruled that the privacy clause extends to minors unless there is a compelling state interest using the least restrictive means available. The Supreme Court remanded the case back to Sen Tan to hold an evidentiary hearing to determine if PCA furthered a compelling state interest.

In January 2003 the Superior Court held a bench trial spanning almost three weeks to hear evidence regarding the constitutionality of the PCA. In October 2003, Judge Sen Tan ruled the PCA was unconstitutional because it did not further a compelling state interest while using the least restrictive means available. In January 2004 the Superior Court enjoined the State from enforcing the PCA declaring the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution.

The primary purpose of the right to privacy is to protect Alaskans from "**unwarranted intrusions by the State**" (*Ravin*, P.2d 514). State law already requires parental consent for tattoos, immunization, school use of student information, body piercing, school travel for extra-curricular activities, marrying, entering the military, and all medical procedures except abortion. In the mental health profession, this is recognized as cognitive dissidence.

In its November 2, 2007 decision, the court agreed with the State that “*protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities*” are “*compelling interests*.” Therefore, the issue at hand for the court was whether the PCA was the least restrictive means of achieving the State’s compelling interests.

SB 279 addresses the legal issues of parental consent in a practical manner based on the historical beliefs of our forefathers. The Parental Consent Act of 1997 was fully compliant with the U.S. Supreme Court precedent *Bellotti v. Baird*, (443 U.S. 622 1979). In essence, the Alaska Supreme Court in its November 2, 2007 decision struck down a decision of the U.S. Supreme Court. Justice Carpeneti eloquently wrote the dissenting decision stating the following:

*“Because this court’s rejection of the legislature’s thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature’s role in expressing the will of the people, I respectfully dissent.”*

The dissent opinion brought to light the lack of consideration or recognition in case law that “*children are not generally considered competent to consent to medical procedures*.” It brought to light the four exemptions in the PCA, “*married minors, ... minors who have been legally emancipated, ...minors who have entered the armed services of the United States ,and ...who have become employed and self-subsisting*.” For those pregnant minors who did not fall into the four exempt categories a judicial bypass provision was provided for appropriate circumstances. It was a process designed to be speedy and cost-free to the child. The PCA called for a five-day response of the court; SB 279 calls for a three-day response. Failure by the court to respond in time would be construed as an act constructive authorization. The judicial bypass requires a sworn statement from the pregnant minor and an adult family member or state agent such as an Office of Children’s Services caseworker or law enforcement officer.

Carpeneti discussed the fact that the Court quickly recognized that there was a compelling State interest but failed to “*look closely at the nature of the state’s and parents’ interests*” leaving “*its constitutional ‘balance’ one-sided*.” Carpeneti continues in his dissent to outline case law that creates a judicial history of “*treating minors differently from adults*,” “*protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity*,” prohibiting minors from making contract to “*smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parent’s consent they may not become licensed drivers or get married or obtain general medical or dental treatment*.”

*“In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent’s consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest.”*

In his dissenting opinion, Carpeneti uses the litmus test for parental consent that is required for participation in school field trips to demonstrating the extent to which the State must go to terminate parental rights is his argument:

*“In addition to society’s interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in raising of their children.”*

Carpeneti’s dissenting opinion determines that the State’s compelling interest does outweigh the equal protection and privacy clauses because:

*“In sum, the norm in American, and Alaskan, life and law is that the parents are a child’s first and most important resource for assistance in decision-making. For that reason, the state’s interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents’ right and duty to guide the upbringing of their children is particularly compelling.”*

SB 279 enacts the notification process that the Court determined is the least restrictive means of achieving the State’s compelling interest but further continues to require parental consent unless the minor chooses a judicial bypass. It leaves intact the four exemptions from parental consent: *married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting.*

I believe parental consent should be a part of Alaska Public Policy that recognizes the State’s compelling interest in *“protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities.”* In addition to **parental consent**, SB 279 provides for a judicial bypass for sexual abuse cases using a ***lower standard than the 1997 PCA Act’s clear and convincing*** provision, and a **provision prohibiting the parents from coercing a pregnant minor to have an abortion.**

In an era where government intrusion continues to be an issue with infringement on parental rights, it is time to reverse the trend and protect those principles our forefathers rooted in government to preserve our freedom and support traditional and essential parental rights.