HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1 Parental Notification of Abortion on a Minor
SPONSOR(S): Byrd, Cantens, Murman
TIED BILLS: **IDEN./SIM. BILLS:** SJR 2178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) House Calendar		Birtman	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This joint resolution creates Article X, section 22 of the State Constitution which authorizes the Legislature to enact by general law a requirement that a parent or guardian of a minor be notified prior to the performance of an abortion on the minor, notwithstanding the minor's right to privacy provided in Article I, section 23 of the State Constitution.

Pursuant to Article XI, section 1 of the State Constitution, amendments to the constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The proposed amendment shall then be submitted to the electors at the next general election held more than ninety days after the joint resolution is filed with the custodian of state records, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, pursuant to Article XI, section 5.

This joint resolution appears to have minimal fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[x]	No[]	N/A[]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Since 1972 when the United States Supreme Court decided Roe v. Wade[1], state legislatures have been testing the Constitutional limits on their authority to impose restrictions on abortions. The Roe v. Wade decision was premised upon the right of privacy which the Court held to be a "fundamental right" encompassing a woman's decision to terminate her pregnancy. Whenever a "fundamental right" is involved, regulations limiting that right are subject to strict scrutiny, justified by a "compelling state interest" that must be narrowly drawn to express only that interest.

Since the Roe decision, the Supreme Court has retreated somewhat from its position and no longer refers to the right to abortion as a "fundamental right." The Court has also shifted the standard against which it evaluates state regulatory provisions restricting abortions from a "strict scrutiny" standard to a less rigorous "undue burden" standard. Some of the most common restrictions on abortion require a minor choosing to have an abortion to notify, or obtain the consent of, a parent before the abortion can be performed.

Although the right to abortion may not be considered a "fundamental right" at the federal level, it does not necessarily mean it is not a "fundamental right" at the state level. Under the rule commonly referred to as the "adequate and independent state ground doctrine," a federal court will not disturb a state court judgment that is based on an adequate and independent state ground provided the result is not violative of the federal Constitution. The federal Constitution serves as a minimum level of guaranteed rights, and the states, in interpreting their own constitutions, are free to guarantee a higher level of protection. When states do guarantee a higher level of protection, federal courts do not have jurisdiction to review these decisions, as long as the state ground is both adequate and independent. Florida is one of only five states that has its own express constitutional provision raising the level of protection of the federal Constitution and guaranteeing an independent right to privacy. Such provisions can make a crucial difference in determining whether a statute is constitutional because the statute in question must pass muster under both the federal and state constitutions.

In 1980, Florida citizens voted in general elections to amend the State Constitution to provide for a right of privacy. Art. 1, Sec 23 of the Florida Constitution reads:

> Right of privacy..-- Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

[1] See *Roe v. Wade, 410 US 113 (1972).*

The Florida Supreme Court has determined that "the amendment embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution."[2] The Florida Supreme Court also held that the state's right of privacy:

> is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.[3]

In the case of In re T.W.,[4] the Florida Supreme Court concluded, "based on the unambiguous language of the amendment" that, since minors are natural persons, they should be afforded the same fundamental right of privacy. To overcome these constitutional rights, a statute imposing on a minor's rights must survive the test set out in Winfield: The state must prove that the statute furthers a compelling state interest through the least intrusive means.[5]

In the case of In re T.W., the court was faced with the question of whether a state statute requiring parental consent for the abortion of a minor violated the express constitutional right of privacy in the State Constitution. Finding that "Florida's privacy provision is clearly implicated in a woman's decision of whether or not to continue her pregnancy," the court ruled the statute unconstitutional. Rejecting the federal test that a state's interest must only be "significant," the court adopted the Florida standard that the interest be "compelling." The court concluded that neither the interest in protecting minors nor the interest in preserving family unity was sufficiently compelling under Florida law to override Florida's privacy amendment. The parental consent statute also did not pass the test of the least intrusive means of furthering the state interest. The statute did not make provisions for a lawyer for the minor or for a record hearing, which the court felt were necessary for providing an adequate judicial bypass procedure.

Recently, the Florida Supreme Court struck down a statute which required a minor to notify her parents prior to undergoing an abortion, or convince a court that she is sufficiently mature to make the decision herself, or that if she is immature, that the abortion is nevertheless in her best interests.[6] In the opinion for the Court, Justice Shaw opined that the law failed to further a compelling state interest in light of the fact that since In re T.W. was decided, virtually nothing had changed in the statutory provisions authorizing less restrictive treatment of other comparable procedures and practices. Justice Lewis, who concurred in result only, wrote that the effect of the majority opinion is to prohibit the state from ever acting to protect the health and welfare of minors through involvement of parents in the reproductive arena.[7]

Under the rulings of the Florida Supreme Court, minors in Florida have privacy rights that go beyond those protected under the federal Constitution. Parental rights are protected by implication under both the federal and State Constitutions. The United States Supreme Court has held that one of the guaranteed liberty interests protected by the Fourteenth Amendment is the right to bring up children.[8] Similarly, the Florida Supreme Court has found that the State Constitution's right to privacy indirectly protects the fundamental right of parents to raise their children, absent a showing of harm.[9]

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[2] See *Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d 544 (Fla.1985)*.
[3] Id. at 547.
[4] See *In re T.W., 551 So.2d 1186 (Fla. 1989).*
[5] See Id.
[6] See *North Florida Women's Health and Counseling Services, Inc. v. State, 2003 WL 21546546 (Fla. 2003).*
[7] See Id. at 101.
[8] See *Meyer v. Nebraska, 43 S.Ct. 625 (1923)* and *Pierce v. Society of Sisters, 45 S.Ct. 571 (1925).*
[9] *Beagle v. Beagle, 678 So.2d 1271 (Fla. 1996)* (Florida Supreme Court struck statute which allowed grandparent visitation over the objection of the parents in an intact family. This is the first in a long line of cases which hold the grandparent visitation statute unconstitutional as the statute does not require a showing of harm.); *Padgett v. Department of Health and Rehabilitative Services, 577 So.2d 565 (Fla. 1991)* (Florida Supreme Court held that the State has a

Thus constitutional tension is created when the privacy rights of parents to raise their children conflicts with the privacy rights of minors to obtain an abortion. This joint resolution resolves the conflict by authorizing the Legislature to enact by general law, a requirement that a parent or guardian be notified prior to the performance of an abortion on a minor, notwithstanding the minor's right to privacy under Article 1, section 23 of the State Constitution.

C. SECTION DIRECTORY:

See "Effect of Proposed Changes" above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The State Constitution requires that a proposed amendment to the constitution be published in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.[10] The Division of Elections estimates that the cost of compliance would be approximately $35,000.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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compelling interest in protecting a child against the clear threat of abuse, neglect, and death, which interest outweighs a parent's privacy interest. In this case, the Court upheld a statute which allowed parental rights to be terminated based on the prior termination of rights to another child.)

[10] See Article XI, section (5)(c), Fla. Constitution.
[11] Estimate based on 2002 advertising rates.

1. Applicability of Municipality/County Mandates Provision:

   This joint resolution does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority to raise revenues; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   - Accuracy of the ballot summary: The ballot summary must be sufficient to provide fair notice of the contents and effect of the amendment.[12] Further, the ballot summary must fully advise the electorate of all consequences of the proposal;[13] and cannot be misleading or ambiguous.[14] This ballot summary appears to meet constitutional requirements.
   - While the provision for parental notice legislation expressly negates the privacy rights of minors, individuals might argue that state due process requirements would limit any legislation enacted under this constitutional provision, similar to arguments made under the federal Constitution. Nonetheless, this constitutional amendment's express authorization of parental notice legislation should overcome any state constitutional challenges. Any federal challenge would not be so limited however, and such legislation would have to comply with all federal constitutional standards.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[12] See *Advisory Opinion to the Attorney General re: Stop Early Release of Prisoners, 642 So.2d 724 (Fla. 1994).*
[13] See *Armstrong v. Harris, 773 So.2d 7 (Fla. 2000).*
[14] See *Smith v. American Airlines, Inc., 606 So.2d 618 (Fla. 1992).*