IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELISSA L. ANSPACH, et al.,	:	
Plaintiffs,	:	
	:	2:05-CV-00810-JCJ
v.	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	

BRIEF *AMICI CURIAE* OF
OBSTETRICAL SOCIETY OF PHILADELPHIA, PHYSICIANS FOR REPRODUCTIVE CHOICE AND HEALTH®, NATIONAL ASSOCIATION OF SOCIAL WORKERS, NATIONAL ASSOCIATION OF SOCIAL WORKERS-PA SECTION, SUPPORT CENTER FOR CHILD ADVOCATES, PHILADELPHIA CITIZENS FOR CHILDREN AND YOUTH, KIDSVOICE, NATIONAL FAMILY PLANNING AND REPRODUCTIVE HEALTH ASSOCIATION, JUVENILE LAW CENTER, NATIONAL HEALTH LAW PROGRAM, AND WOMEN'S LAW PROJECT
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici Curiae are eleven prominent medical, public health, social work, and legal advocacy organizations committed to protecting the health and well-being of young people. Representing a variety of disciplines and professions, *Amici* have expertise in the importance of reproductive health care for sexually active youth.

Founded in 1868, *Amicus* **Obstetrical Society of Philadelphia** is a non-profit organization that seeks to improve the quality of reproductive health care and women's access to that care. Offering a range of courses, educational projects, a resource library, and a speaker series, the Society seeks to bring together like-minded professionals to develop and improve the field of women's health. The Society's membership encompasses over 300 medical professionals, four medical schools and one school of osteopathic medicine extending throughout Pennsylvania, New Jersey, and Delaware.

Since 1992, *Amicus* **Physicians for Reproductive Choice and Health®** (PRCH) has been a national non-profit organization whose mission is to improve the delivery of the full range of reproductive health services. Physician members of PRCH number more than 2,800. The active membership and board of PRCH consist of some of the most nationally renowned academic, research, and clinical physicians. PRCH physicians provide cutting-edge educational resources in a variety of areas of reproductive health, such as contraception, sexuality, and abortion. PRCH has developed a physician training curriculum on reproductive health issues for dissemination and use at medical colleges across the country. PRCH is committed to the expansion of reproductive health research and to ensuring that all people, including young people, have the knowledge, access to high quality services, and freedom they need in order to make their own reproductive health decisions.

With 153,000 members, the **National Association of Social Workers** (NASW) is the largest organization of professional social workers in the world. The **National Association of Social Workers—Pennsylvania Section** represents 6,400 members. Created in 1955 by the merger of seven predecessor social work organizations, the purposes of NASW include improving the quality and effectiveness of social work practice in the United States and developing and disseminating high standards of social work practice, concomitant with the strengthening and unification of the social work profession as a whole.

NASW's members are highly trained and experienced professionals who counsel individuals, families, and communities in a variety of settings, including schools, hospitals, mental health clinics, senior centers, and private practices. NASW promulgates professional standards and criteria, conducts research, prepares studies of interest to the profession, sponsors the NASW press, provides opportunities for continuing education, and enforces the NASW Code of Ethics, which NASW members are required to honor. NASW also offers a credentialing program to enhance the professional standing of social workers.

The NASW policy, "Adolescent Pregnancy and Parenting," supports a range of services to help prevent teen pregnancy including "safe, legal, affordable, and confidential health and reproductive health services, including sex education, contraception, pregnancy testing, abortion, prenatal care, birthing services, postnatal care, and pediatric care, especially well baby services . . . ." (*Social Work Speaks*, National Association of Social Workers Policy Statements, 2003 - 2006).

Amicus **Support Center for Child Advocates** (Support Center) provides legal assistance and social service advocacy to abused and neglected children in Philadelphia. Support Center lawyers and social workers fight to ensure the safety, health, appropriate academic and social

education, permanency and access to justice for the children they serve. In their advocacy, Support Center lawyers and social workers witness the negative effects of family problems on young people and a child welfare system that often does not adequately prepare or support youths for the transition to adulthood.

Founded in 1980, *Amicus* **Philadelphia Citizens for Children and Youth** (PCCY) serves as the region's child advocacy organization and works to improve the lives and life chances of Philadelphia's children through thoughtful and informed advocacy. PCCY undertakes specific and focused projects in the areas of health care, child welfare, child care and afterschool opportunities. PCCY also regularly prepares analyses of the city, state, and school district budgets, develops and distributes background papers and reports, testifies regularly on the impact of proposed decisions on children, and acts as a resource center for the media on children and family issues. PCCY's ongoing presence as a watchdog and advocate for Philadelphia's children informs all of its efforts.

Since 1908, *Amicus* **KidsVoice** is a Pittsburgh organization that has advocated in court and in the community to ensure a safe and permanent home for abused, neglected, and at-risk children. The agency's legal advocates vigilantly guide each child through the court process to ensure that every agency involved meets the child's needs.

To that end, KidsVoice each year represents 5,000 abused, neglected and at-risk children, many of whom live in foster and group homes. Its efforts ensure that the most appropriate services are in place to protect children from future harm, with the ultimate goal of providing a safe and permanent home for every child. Over 1,000 of the children KidsVoice represents each year are teenagers for whom access to contraception and to reproductive health care are significant and sometimes life-altering issues.

Amicus **National Family Planning and Reproductive Health Association** (NFPRHA) is a non-profit membership organization that represents thousands of family planning providers across the United States that deliver services to low-income women. Many of the providers NFPRHA represents receive funding through Title X of the Public Health Service Act.

NFPRHA recognizes that many vulnerable teens would avoid health care altogether if it were conditioned on parental involvement, and that consequently, confidentiality is a critically important component of reproductive health services for young people. For more than three decades, NFPRHA has been intimately involved at the federal level in legislative and policy efforts intended to ensure that all individuals—including young women—are guaranteed access to the full range of confidential family planning services.

Founded in 1975 to advance the rights and well-being of children in jeopardy, *Amicus* **Juvenile Law Center** (JLC) is one of the oldest public interest law firms for children in the United States. JLC pays particular attention to the needs of children who come within the purview of public agencies—for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement needing specialized services.

For several years, JLC has focused its attention on children as they make the critical transition from youth to adulthood. JLC has disseminated several publications on this topic, including *Consent to Treatment and Confidentiality Provisions Affecting Minors in Pennsylvania* (Rosado, 2002), which guides health care providers who directly treat minors, as well as those child-serving professions who assist youth in obtaining health care; *Dependent Youth Aging Out of Foster Care in Pennsylvania: A Judicial Guide* (Pokempner and Rosado, 2003), which was adapted for judges across the United States; and *Dependent Youth Aging Out of Foster Care: A*

Guide for Judges (Pokempner and Rosado, 2003). JLC also recently published *Pennsylvania Judicial Deskbook: A Guide to Statutes, Judicial Decisions and Recommended Practices for Cases Involving Dependent Children in Pennsylvania* (Field, 2004).

Amicus **National Health Law Program** (NHeLP) is a national public interest law firm that seeks to improve health care for America's working and unemployed poor, including people of color, women, people with disabilities, and children and adolescents. Through policy and legal advocacy, NHeLP works to preserve these groups' access to high quality and equitable health care. Among other things, NHeLP engages in research, policy analysis and advocacy designed to assure the availability of necessary reproductive health services for the groups it serves.

Amicus **Women's Law Project** (WLP) is a non-profit legal advocacy organization in Pennsylvania. Founded in 1974, the Law Project works to advance the legal and economic status of women and their families through litigation, public policy development, education, and one-on-one counseling. Throughout the past thirty-one years, WLP has played a leading role in the struggle to protect women's privacy in the context of reproductive health decisions. WLP served as co-counsel for plaintiffs in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747 (1986).

Amici submit this Brief to assist the Court by addressing the public health and policy considerations underlying the legal framework that permits minors to obtain reproductive health services without mandatory parental involvement. Given the critical importance of reproductive health care and the likelihood that many vulnerable teens would avoid such care altogether if it

were conditioned on parental involvement, *Amici* strongly support the well-established privacy rights of young people who seek contraceptive services.

SUMMARY OF ARGUMENT

Reproductive health care—contraception and counseling about pregnancy prevention, testing and treatment for sexually transmitted infections, HIV testing and treatment, pregnancy testing, options counseling, and general gynecological care—is essential to the health and well-being of young people. When sexually active teens do not obtain this care, they experience alarmingly high rates of sexually transmitted infections and unwanted pregnancy. Moreover, any impediment to available reproductive health care may well cause teens to forgo their only access to primary health services. Concern for the health of young people provides a compelling reason to ensure that they have unencumbered access to family planning services that include contraception, as the medical risks associated with prescription contraceptives are markedly lower than the risks of pregnancy or sexually transmitted disease.

Most parents play an important role in educating their children about sexuality and reproductive health. However, for a variety of reasons, a significant number of teenagers cannot or will not inform their parents when they seek family planning services. Requiring this population to obtain parental consent as a condition of providing them with prescription contraception will effectively deny them essential preventive health care.

As privacy is an essential prerequisite of reproductive health care, which is critical to the well-being of sexually active teens and the protection of the public health, government policy has long supported confidential reproductive health services for minors. As demonstrated below, the nation's most respected medical and public health organizations share this commitment, which Congress and the Pennsylvania legislature have also embraced in statutes and funding programs authorizing young people to consent on their own to family planning services. Separately, and as made clear in Defendants' Memorandum in Support of the Motion to Dismiss, it has long been

established under federal and Pennsylvania law that minors have the right to access reproductive health care and contraceptive services without parental consent.

Indeed, contrary to Plaintiffs' assertions, respecting the confidentiality of young women seeking contraceptive services does not violate parental due process rights. Young women possess a constitutional right to privacy, which, while not as broad in every respect as the privacy enjoyed by adults, affords them the unfettered right to make private decisions about contraception without a parental veto.

For these reasons, as well as those contained in Defendants' Motion to Dismiss and supporting Memorandum of Law, and accepting as true all well-pleaded assertions set forth in Plaintiffs' Complaint, there is no legal basis to support any of the federal or supplemental state claims. Defendants' Motion to Dismiss should be granted.

ARGUMENT

I. Forced Parental Involvement Policies Threaten Young People's Health and Safety and Undermine Public Health Strategies for Reducing the Incidence of Sexually Transmitted Infections and Unintended Pregnancy.

Reproductive health care is essential to young people's health. Nearly half of all teenagers report having had sexual intercourse. Joyce C. Abma, *Teenagers in the United States: Sexual Activity, Contraceptive Use, and Childbearing*, 23 Nat'l Center for Health Statistics 6 (2004) (hereinafter Abma, *Teenagers in the United States*) (47% of teenage girls and 46% of teenage boys). This population faces a disturbingly high risk of sexually transmitted infections and unwanted pregnancy. Annually, 13% of young people between 13 and 19 contract a sexually transmitted infection, and sexually active teen women not using any contraception have a 90% chance of becoming pregnant within one year. *See* Susan Harlap et al., *Preventing*

Pregnancy, Protecting Health: A New Look at Birth Control Choices in the United States 36 (1991).

The provision of emergency contraception is an essential part of reproductive health care, because it allows women to avoid unwanted pregnancies. As its name indicates, emergency contraception, including *Nordette,* is a contraceptive drug, not an abortifacient. *See* Alan Guttmacher Institute, *Emergency Contraception: Increasing Public Awareness*, *available at* http://alanguttmacher.org/pubs/ib_2-03.html; David A. Grimes, *Emergency Contraception—Expanding Opportunities for Primary Prevention*, 337 New Eng. J. Med. 1077, 1078 (1997) ("[E]ven if emergency contraception worked solely by preventing the implantation of a zygote, it would still not be an abortifacient."). In fact, emergency contraception is merely a concentrated dose of the same hormones found in ordinary birth control pills. *Id*. As such, it is subject to the same legal standards applicable to other methods of contraception.

Emergency contraception is easy to use, effective at preventing unwanted pregnancy, and extremely safe. The emergency contraceptive regimen is simple, consisting of the oral ingestion of two doses of pills within 72 hours after unprotected intercourse. *Id*. Taken properly, emergency contraception prevents approximately 80% to 85% of pregnancies that would otherwise occur; if used after all contraceptive failures, emergency contraception could prevent half of all unintended pregnancies. Melanie A. Gold, *Provision of Emergency Contraception to Adolescents*, 35 J. Adolescent Health 66 (2004). Even if a woman uses emergency contraception after she becomes pregnant, experts believe that the drug will not cause any harm to the woman or the fetus. *See* World Health Organization, *Emergency Contraception* (2000), *available at* http://www.who.int/mediacentre/factsheets/fs244/en/. Compared to the relatively serious health

risks pregnancy carries for women,[1] there have been no recorded deaths linked to the use of emergency contraception, *see* David A. Grimes & Elizabeth G. Raymond, *Emergency Contraception*, 137 Annals Internal Medicine 180 (2002), and the side effects are relatively mild. *See* Robert A. Hatcher, *Contraceptive Technology* 289 (2004) (most common side effects include nausea and vomiting; less common side effects include fatigue, breast tenderness, headache, abdominal pain, and dizziness).

Despite the importance of emergency contraception—indeed, of all forms of contraception—teenagers are less likely than older women to practice contraception without interruption over the course of a year and more likely to practice contraception sporadically or not at all. Dana Glei, *Measuring Contraceptive Use Patterns Among Teenage and Adult Women*, 31 Fam. Plan. Persps. 73 (1999). In fact, only 40% of sexually active young women obtain medical contraceptive services within their first year of sexual activity. Alan Guttmacher Institute, *Sex and America's Teenagers* (1994); *see also* Carol A. Ford & Abigail English, *Limiting Confidentiality of Adolescent Health Services: What Are the Risks?*, 288 JAMA 752 (2002) (summarizing research indicating that many adolescents with privacy concerns delay obtaining care).

A significant reason why teenagers avoid reproductive health care is the fear that their parents will find out. *See generally* Rachel Jones & Heather Boonstra, *Confidential Reproductive Health Services for Minors: The Potential Impact of Mandated Parental*

[1] For every 100,000 births, 8.4 women die as a result of pregnancy-related complications. *See* F. Gary Cunningham, *Williams Obstetrics* 9 (21st ed. 2001). Risks to a woman's life include hemorrhage, infection, cardiomyopathy, embolism, and pregnancy hypertension. *See id*. at 210. Furthermore, pregnancy can pose dangerous or deadly health risks to women with chronic illnesses such as heart disease, diabetes, hypertension, renal disease, sickle-cell disease, cancer, epilepsy, lupus, hypertension, asthma, pneumonia and HIV. *See generally id*. at 1045-1338; Am. Coll. Obs. & Gyns., *Guidelines for Women's Health Care* 163-64 (2d ed. 2001); *see also Harris v. McRae*, 448 U.S. 297, 339 (1980) ("Numerous conditions—such as cancer, rheumatic fever, diabetes, malnutrition, phlebitis, sickle cell anemia, and heart disease—substantially increase the risks associated with pregnancy or are themselves aggravated by pregnancy.").

Involvement for Contraception, 36 Persps. Sexual & Reproductive Health 182 (2004) (reviewing research examining issues of parental involvement among adolescents using clinic-based reproductive health services). Most young people voluntarily involve their parents in decisions concerning reproductive health care. *See* Rachel K. Jones et al., *Adolescents' Reports of Parental Knowledge of Adolescents' Use of Sexual Health Services and Their Reactions to Mandated Parental Notification for Prescription Contraception*, 293 JAMA 340 (2005) [hereinafter *Adolescents' Reports of Parental Knowledge*] (finding that 60% of teens surveyed said their parents already were aware that they visited a family planning provider and 59% would continue to seek contraceptive services if parental notification were required). However, according to the National Center for Health Statistics of the Centers for Disease Control and Prevention, nearly one-third of teens (31% of boys and 29% of girls) have never discussed sex, contraception, or sexually transmitted infections with their parents. *See* Abma, *Teenagers in the United States*, *supra*, at 38.

While teens' fear of discussing these issues with their parents has many sources, one-third of teens who do not inform their parents of their pregnancy have experienced family violence and fear that it will recur. American Academy of Pediatrics, *The Adolescent's Right to Confidential Care When Considering Abortion*, 97 Pediatrics 746, 748 (1996). Whatever the reason for teens' reluctance to involve a parent in decisions regarding reproductive health care, many teens will delay or avoid medical treatment altogether if they cannot obtain it confidentially, despite the danger to their own health and the health of their partners.[2]

[2] Analysts have projected that the effects of teenagers' loss of confidentiality resulting from two Texas state laws—one requiring minors to get parental consent to obtain prescription contraceptives and the other requiring health care providers to report to law enforcement officials the identity of patients younger than 17 whom they have reason to believe are sexually active—will lead to an additional 5,372 births, 1,654 abortions, 2,243 cases of chlamydia, 521 cases of gonorrhea, and 501 cases of pelvic inflammatory disease among young people. Luisa Franzini, *Projected Economic Costs Due to Health Consequences of Teenagers' Loss of Confidentiality in Obtaining Reproductive Health Care Services in Texas*, 158 Archives Pediatrics & Adolescent Medicine 1140, 1143 (2004).

Studies of the issue have confirmed the disastrous effects of threats to teens' confidential reproductive health care. In a recent survey of 1,526 girls under eighteen who attended federally funded family planning clinics, 70% of respondents whose parents were unaware that they were receiving reproductive health care said they would stop using clinic services if a parental notification law were enacted. *Adolescents' Reports of Parental Knowledge, supra*, at 347. Instead, almost half said that they would use a non-prescription birth control method, and 18% would rely on the rhythm method or withdrawal, much less reliable methods of contraception.[3] *Id*. Another recent study reported that 35% of students who did not seek reproductive health care reported as one reason "not wanting to tell their parents." *See* Jonathan D. Klein et al., *Access to Medical Care for Adolescents: Results from the 1997 Commonwealth Fund Survey of the Health of Adolescent Girls*, 25 J. Adolescent Health 120 (1999). These results are mirrored in an even more recent study which found that out of 950 girls seeking reproductive health care services who were surveyed, 59% indicated they would stop using all sexual health care services, delay testing or treatment for HIV or other STDs, or discontinue use of specific sexual health care services if their parents were informed that they were seeking prescribed contraceptives. Diane M. Reddy, *Effects of Mandatory Parental Notification on Adolescent Girls' Use of Sexual Health Care Services*, 288 JAMA 710, 712 (2002).

An earlier survey of a suburban teen population found that, if parental knowledge were required as a condition of obtaining reproductive health care, only 19% of suburban teens would seek medical care for birth control and only 15% would seek medical care for a sexually transmitted infection. *See* Andrea Marks et al., *Assessment of Health Needs and Willingness to Utilize Health Care Resources of Adolescents in a Suburban Population*, 102 Pediatrics 456

[3] Only 7% reported that they would practice abstinence. *Adolescents' Reports of Parental Knowledge, supra*, at 345.

(1983). If assured that medical treatment would be confidential, an additional 45% would seek contraceptive care, and an additional 50% would seek care for a sexually transmitted infection. *See id.*

II. The Nation's Leading Medical and Public Health Authorities Oppose Requiring Minors to Involve Their Parents in Reproductive Health Decisions.

The nation's leading medical and public health authorities have strongly and consistently supported policies and legal requirements that allow minors to access reproductive health care without parental involvement. The American Medical Association (AMA) opposes mandatory parental notification for contraceptive services for minors through federally funded programs because such policies "create a breach of confidentiality in the physician-patient relationship." AMA, *Confidential Care for Minors*, Ethical Op. 5.055, Code of Med. Ethics (July 17, 2002); House of Delegates, AMA, *Opposition to HHS Regulations on Contraceptive Services for Minors*, HOD Policy 75.998, Policy Compendium (1998).

The American College of Obstetricians and Gynecologists (ACOG) agrees:

> The potential health risks to adolescents if they are unable to obtain reproductive health services are so compelling that legal barriers and deference to parental involvement should not stand in the way of needed health care for patients who request confidentiality. Therefore, laws and regulations that are unduly restrictive of adolescents' confidential access to reproductive health care should be revised.

ACOG, *Policies and Materials on Adolescent Health, available at* http://www.acog.org/from_home/departments/printerFriendly.cfm?recno=7&bulletin=127.

The American Academy of Pediatrics (AAP) echoes this concept:

> There is no evidence that refusal to provide contraception to an adolescent results in abstinence or postponement of sexual activity; in fact, if adolescents perceive obstacles to obtaining contraception and condoms, they are more likely to have negative outcomes to sexual activity. In addition, no evidence exists that provision of information to adolescents

> about contraception results in increased rates of sexual activity, earlier age of first intercourse, or a greater number of partners.

AAP, *Contraception and Adolescents*, 104 Policy Statement 1161 (1999). The American Academy of Family Physicians (AAFP) states: "The physician should offer the adolescent an opportunity for examination and counseling separate from parents/guardians, and their privacy must be respected." AAFP, *Adolescent Health Care*, AAFP Policies on Health Issues (2000). According to the AAFP, mandatory parental involvement "may discourage adolescents from seeking necessary medical care and counseling and may create barriers to open communication between patient and physician." *Id.; accord* American Public Health Association, *Parental Notification of Prescription Contraceptives for Teenagers*, APHA Public Policy Statements (1982) (APHA "strongly opposes policies requiring parental consent or notification as a qualification of minors for initial or continued receipt of prescription contraceptives."); Society for Adolescent Medicine, *Position Statement on Contraception, available at* http://www.adolescenthealth.org/reproductive_health_.htm#position ("[C]ontraceptive education, counseling, and services should be made available to all male and female adolescents desiring such care on the adolescents' own consent without legal or financial barriers. Parental involvement should be encouraged, but this should not be required through either consent or notification."); Ass'n of Reproductive Health Professionals, *ARHP Position Statements, available at* http://www.arhp.org/aboutarhp/positionstatements.cfm?ID=30 ("[Parental involvement in the provision of reproductive health care services for minors] may not always be feasible or in the best interest of the minor, and it should not be legislatively required.").

Acting on these position statements, on June 18, 2003, the nation's preeminent medical and public health organizations forwarded to the House Appropriations Committee a statement strongly opposing mandatory parental involvement for contraceptive services to minors. Written

specifically in response to proposed amendments that, had they not been rejected, would have mandated parental notification or consent for federally-funded reproductive health services in the FY 2004 Labor, Health and Human Services, and Education Appropriations Act, the statement noted:

> Mandating parental consent or notification is likely to discourage many of these teens from seeking family planning services, placing them at an increased risk for sexually transmitted diseases and unintended pregnancies. Studies indicate that one of the major causes of delay by adolescents in seeking contraception is fear of parental discovery and that many would avoid seeking services altogether if parental involvement were required. Mandatory parental consent or notification provisions would be inconsistent with the ongoing efforts of physicians and the Congress to reduce the risks for sexually transmitted diseases and unintended pregnancies among the nation's young people.

Letter of American Academy of Family Physicians, American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American Medical Association, American Public Health Association, American Society for Reproductive Medicine, American Medical Women's Association, Society for Adolescent Medicine, *available at* http://www.apha.org/legislative/legislative/letters/consent.htm.

Plaintiffs' claims rest on the untenable assumption that this Court should utterly disregard the great weight of medical authority and public health opinion, which firmly support the right of minors to access reproductive health care without parental consent.

III. Federal Family Planning Programs and Pennsylvania Law Authorize Minors To Obtain Contraceptive Services Without Mandatory Parental Involvement.

Since the 1970s, the nation's largest categorical funding program for family planning services, Title X of the Public Health Services Act, 42 U.S.C.S. § 300 *et seq*., has required that funded providers offer voluntary family planning services to minors as well as to adult women:

> (a) Authority of Secretary. The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in

> the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and *services for adolescents*).

42 U.S.C.S. § 300(a) (emphasis added); *see also* 42 C.F.R. § 59.5(a)(1) (requiring Title X grantees to provide services for adolescents). Services provided under the Title X program must be confidential:

> All information as to personal facts and circumstances obtained by the Title X project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may only be disclosed in summary, statistical, or other form which does not identify particular individuals.

42 C.F.R. § 59.15. In 1981, Congress added language to the Title X statute requiring grantee agencies to encourage family participation "[t]o the extent practical." 42 U.S.C.S. § 300(a), P.L. 97-35, 95 Stat. 570 (Aug. 13, 1981). Rules that would have imposed mandatory parental notification for Title X-funded services for minors were held to conflict impermissibly with this plainly discretionary statutory language. *See New York v. Heckler*, 719 F.2d 1191 (2d Cir. 1983); *Planned Parenthood Federation of America v. Heckler*, 712 F.2d 650 (D.C. Cir. 1983). Rather, consistent with the statute, Title X-funded family planning projects provide counsel to minor patients on how to talk to their parents about sexual health matters. *See* Ex. D, attached to Defs.' Mem. Support Mot. Dismiss (Decl. of Dorothy Mann, ¶ 9); Ex. F, attached to Defs.' Mem. Support Mot. Dismiss (DHHS, *Program Guidelines for Project Grants for Family Planning Services*, § 8.7).

The Medicaid Act similarly requires funded programs to serve minors: "Family planning services and supplies must be limited to recipients of childbearing age, including minors who can be considered sexually active and who desire the services and supplies." 42 U.S.C. §

1396d(a)(4)(C); 42 C.F.R. § 440.250(c). As in the Title X program, these services must be confidential: "The State [Medicaid] plan must provide, under a State statute that imposes legal sanctions, safeguards meeting the requirements of this subpart that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan." 42 C.F.R. § 431.301.

Pennsylvania law governing minors' capacity to consent to medical and health care is in accord with federal law and the public health and policy recommendations discussed earlier. The Pennsylvania Minors' Consent Act states:

> Any minor may give effective consent for medical and health services to determine the presence of or to treat pregnancy, and venereal disease and other diseases reportable under the Disease Prevention and Control Law of 1955, and the consent of no other person shall be necessary.

35 P.S. § 10103. This statute has specifically been found to apply to contraceptive services. *See Parents United for Better Schools, Inc. v. School District of Philadelphia*, 978 F. Supp. 197, 208 (E.D. Pa. 1997) (holding that it would be "absurd" to interpret the Minors' Consent Act as not including contraceptives), *aff'd on other grounds*, 148 F.3d 260 (3d Cir. 1998).

Finally, as fully discussed in Defendants' Memorandum in Support of the Motion to Dismiss, federal decisional, statutory and regulatory law ensures that young women may obtain contraceptive services without mandatory parental involvement. As Defendants note, while the Constitution protects parents' rights under the Due Process Clause of the Fourteenth Amendment to make decisions concerning the care, custody, and control of their children, *see, e.g., Troxel v. Granville*, 530 U.S. 57 (2000), these rights must yield to a young woman's right to privacy. *See Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess

constitutional rights."); *Bellotti v. Baird*, 443 U.S. 622, 633 (1979) ("[N]either the First Amendment nor the Bill of Rights is for adults alone."); *Hodgson v. Minnesota*, 497 U.S. 417, 434 (1990) (constitutional protection against unjustified state intrusion into the process of deciding whether or not to bear a child extends to pregnant minors.).

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully urge this Court to grant Defendants' Motion to Dismiss.

DATED: April 20, 2005

Respectfully submitted,

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