To: The Legislative Mandates Subcommittee / SCAC

From: Pete Schenkkan

I am so sorry I cannot attend today. Here is some information that may be useful background for all, and my own thoughts on the judicial bypass rules questions are on which SCAC should try to help the Court.

For 2016-2021 Office of Court Administration data show 100-200 applications for judicial bypass of parental notification were filed each year. The % denied ranged from 2% to 11%.

The Department of State Health Services collects and publishes data on abortions performed in Texas.

Year	Total Abortions performed in Texas	Abortions in Texas for patients 17 and younger (2-3%)	Bypass Applications Filed	Percent of Bypass applications for patients > 17	Bypass applications Denied	Percent Denied
2016	52,331	1,535	174	11%	19	11%
2017	52,103	1,423	197	14%	4	2%
2018	53,887	1,419	205	14%	9	4%
2019	55,966	1,392	174	12.5%	7	4%
2020	53,949	1,258	142	11%	7	5%
2021	49,293	1,050	107	10%	6	6%

This table does not show that 10-14% of all Texas abortion patients were bypass applicants, even if it were true that all bypass applicants have abortions. (In fact, some miscarry and some decide to continue their pregnancies). Instead, the #s of bypass cases reflected in OCA data were 10%-14% of the total # of abortion patients 17 or younger, so these bypass applicants accounted for between 2 tenths of 1% and 4 tenths of 1% of all abortions in Texas. As I understand it, an order granting a bypass application does not involve a finding that having an abortion is lawful for the applicant or in the applicant's best interest.

It only involves a finding that the applicant is mature and well informed or that notification of and obtaining notarized written consent from a parent is not in her best interest, if so, there are two questions on judicial bypass rules. One is whether the rules are still needed. The other is whether the wording of the rules needs to be changed.

As a law matter, the bypass rules are still needed: the Legislature has not banned abortions to protect the pregnant woman from death or serious bodily injury, and the Legislature has not abolished the parental notification bypass exceptions for pregnant girls under 18.

As a practical matter the bypass process is still needed. It is reasonable to assume that effective August 25, many fewer abortions will be legal and that as a result fewer parental notice bypass applications will be filed. But some girls who are 17 or under will still face pregnancy-related risks of death or serious injury, and some of those girls will continue to need notice bypass because they cannot get the required written and notarized consent of a parent or guardian.

As to the wording of the rules, the Court should continue to focus exclusively on the notice bypass process as a distinct inquiry about whether the individual applicant's circumstances meet either ground for a notice bypass. The bypass statute does not put the courts in the business of examining the patient's pregnancy related medical risks or second-guessing her doctor's medical judgment about those risks. Notice bypass cases are not a process for adjudicating the application of substantive limitations on abortions. The power to make notice bypass rules does not include power to legislate changes in those substantive limitations.