

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board —in recent past or present

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 - UPS
 - Bayer Corporation
 - GlaxoSmithKline
 - Energy Future Holdings
 - Johnson & Johnson
 - Coca-Cola Company
 - PhRMA
 - Kraft Foods, Inc.
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 - Wal-Mart Stores, Inc.
 - Salt River Project
 - Altria Client Services, Inc.
 - American Bail Coalition
 - State Farm Insurance
- For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

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Parental Consent For Abortion Act

Did you know that global pharmaceutical company Bayer Healthcare was the corporate co-chair in 2011?

Summary

Rather than end the debate on abortion, the Supreme Court's 1973 decision of *Roe v. Wade* has only ignited a firestorm of controversy. The consequences of the Court's actions include an annual 1.5 million deaths by abortion and the attendant emotional and physical turmoil suffered by once expectant mothers, their families, and loved ones. The Parental Consent for Abortion Act, which is based on a 1984 Indiana law, establishes a mechanism by which some of the burdens involved in this most serious of decisions can be shared by a young girl's most caring support group, her family. The measure also includes a provision that reflects the great advances in medical care of the last decade. As premature babies are surviving at earlier and earlier ages, and as more late-term abortions actually result in live births, the bill requires that abortions performed on babies after the age of viability be done in hospitals with premature birth intensive care units and in the presence of a second physician whose specific duty is to care for a child born alive.

While the Supreme Court has taken the right to decide the legality of abortion from the states, it has repeatedly recognized that in view of the unique states of children under the law, the states have a significant interest in certain abortion regulations aimed at protecting children "that is not present in the case of an adult." (See *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 75). While the right of privacy includes "independence in making certain kinds of important decisions," (*Whalen v. Roe*, 429, U.S. 589, 599-600), The Supreme Court has recognized that many minors are less capable than adults in making those decisions, and has held that states have a legitimate interest in encouraging parental involvement in their minor children's decision to have an abortion (*H.L. v Matheson*, 450 U.S. 389). In *Bellotti v. Baird* (443 U.S. 622), the Court concluded that a state which encourages parental involvement must provide an alternative procedure through which a minor may demonstrate that she is mature enough to make her own decision or that the abortion is in her "best interest."

Clearly, then, the Supreme Court will uphold parental consent laws dealing with abortion if those laws dealing with abortion if those laws conform to its requirements. Basically, a state must provide a consent procedure in its law whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests. There must be an "opportunity for case-by-case evaluations of the maturity of pregnant minors." (*Bellotti*, 643, n.23).

The Parental Consent for Abortion Act is designed to meet the constitutional tests established by Supreme Court decisions. The Act includes procedural safeguards that correct deficiencies found in Indiana's 1982 parental notification law. It would allow a minor who objects to obtaining the written consent of her parent or legal guardian, or whose parent or guardian refuses to consent to an abortion, to petition the juvenile court to waive the requirement, or a judge would be permitted to waive the requirement if he determined the minor was mature enough to make the decision on her own, or that an abortion would be in the best interest of the minor. The Act would require the judge to appoint an attorney to represent the minor in a waiver proceeding or appeal unless she had already engaged an attorney. The county would have to pay the cost of the attorney's fees.

Additional procedural safeguards include: permitting non-resident minors to petition the juvenile court in the county in which the abortion is to be performed; expedited appeal; confidential records; appointment of counsel; and exemption of filing fees.

A state certainly has legitimate, perhaps compelling interest in protecting the most basic social unit, the family. By involving families in the life changing decision of parenthood/adoption/abortion, it advances family integrity and parental authority. It also recognizes that there is no "mediating structure" better equipped to help a child than her family.

As mentioned, the proposed legislation also would necessitate that post-viability abortions be performed in hospitals with premature birth intensive units and in the presence of a second physician whose duty would be to care for a child born alive.

This section of the bill conforms to the Supreme Court's decision in *Planned*

Parenthood v. Ashcroft, which upheld Missouri's second-physician law. This Act declares that a child born alive is a person under the law and, therefore, such a child would be issued a birth certificate, and in the event that the child dies, it would be issued a death certificate. Failure to take reasonable steps to preserve the child's life and health would be actionable under applicable criminal, wrongful death, and malpractice laws.

Model Legislation

{Title, enacting clause, etc}

Section 1. {Short title} This act may be cited as the Parental Consent for Abortion Act.

Section 2. {Definitions}

(A) "Hospital" as used in this act means any institution, place, building, or agency represented and held out to the general public as a ready, willing and able to furnish care, accommodations, facilities, and equipment for the use, in connection with the services of a physician, of persons who may be suffering from deformity, injury, or disease, or from any other condition, from which medical or surgical services would be appropriate for care, diagnosis, or treatment.

The term does not include convalescent homes, boarding homes, or homes for the aged; nor does it include any hospital or institution specially intended for use in the diagnosis, care and treatment of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions; nor does it include offices of physicians where patients are not regularly kept as bed patients.

The [appropriate state office] shall have the authority to determine whether or not any institution or agency comes within the scope of this act and its decisions in that regard shall be subject only to such rights of review as the courts exercise with respect to administrative actions. It shall be unlawful for institution, place, building, or agency to be called a hospital which is not a hospital as defined in this section.

(B) "Trimester" means any one of three (3) equal periods of time of normal gestation period of the pregnant woman in question derived by dividing such period of gestation into three (3) equal parts of three (3) months each and to be designated as the first trimester, second trimester, and third trimester, respectively.

(C) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(D) "Physician" means a person an unlimited license to practice medicine, surgery, or obstetrics in this state.

(E) "Viability" means the ability of a fetus to live outside the mothers womb.

(F) "Consent" means a written agreement to submit to an abortion after consenting party has had full explanation of the abortion procedure to be preformed as evidenced by the signature of the consenting party on a form of explanation and written consent promulgated by the state board of health.

(G) "Parental consent" means the written consent of the parent or legal guardian of an unemancipated pregnant woman under age of eighteen (18) years to the performance of an abortion on the minor pregnant woman.

Section 3. {Parental consent for abortions preformed on minors}

(A) No physician shall perform an abortion upon an unemancipated pregnant woman under the age of eighteen (18) years without fist having obtained the written consent of one (1) of the parents or the legal guardian of the minor pregnant woman.

(B) A minor who objects to having to obtain the written consent of her parent or legal guardian under this section, or whose parent or legal guardian refuses to consent to an abortion, may petition, on her own behalf to by next friend, the juvenile court for a waiver of the parental consent requirement under Section 3(A).

(C) A physician who feels that compliance with the parental consent requirement in Section 3(A) would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may petition the juvenile court in the county in which the minor resides (or the juvenile court in the county in which the abortion is to preformed if the minor is a nonresident) within twenty-four (24) hours of the abortion request, for a waiver of the parental consent requirement under Section 3(A).

(D) The juvenile court must rule on a petition filed by a pregnant minor under Section 3(B) or by her physician under Section 3(C) within forty-eight (48) hours of the filling of the petition. Before ruling on such petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that abortion would be in the minor's best interest.

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(E) Unless the juvenile court finds that the pregnant minor is already represented by an attorney, the juvenile court shall appoint an attorney to represent the pregnant minor in a waiver proceeding brought by the minor under Section 3(B) and on any appeals. The cost of legal representation appointed for the minor under this section shall be paid by the county.

(F) A minor (or her physician) who desires to appeal an adverse judgment of the juvenile court in a waiver proceeding under Section 3 (B) or Section 3(C) is entitled to an expedited appeal, under rules to be adopted by the [state] Supreme Court.

(G) All records of the juvenile court and any appellate court that are made as a result of proceedings conducted under this section are confidential.

(H) A minor who initiates legal proceedings under this section is exempt from the payment of filing fees

(I) This section shall not apply where there is an emergency need for a medical procedure to be preformed such that continuation of pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and the attending physician so certifies in writing.

Section 4. It shall be the responsibility of the attending physician to determine in accordance with the accepted medical standards which trimester the pregnant woman receiving the abortion is in, to determine whether the fetus is viable, and to certify that determination as part of any written reports required of him by the state board of health or the facility in which the abortion is preformed.

Section 5. {Penalty} A physician who performs an abortion intentionally or knowingly in violation of Section 3 of this Act commits a [class of misdemeanor].

Section 6. {Abortions preformed on viable fetuses}

(A) All abortions preformed after a fetus is viable shall be:

(1) preformed in a hospital having premature birth intensive care units, unless compliance with the requirement would result in an increased risk to the life or health of the mother; and

(2) preformed in the presence of a second physician as provided in Section 6(B).

(B) An abortion may be preformed after a fetus is viable only if there is in attendance a physician, other than the physician performing the abortion who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing it, after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

(C) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to [state] laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(D) If, prior to the abortion, the mother and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted prior to the abortion, the child, if born alive, shall immediately upon birth become a ward of the county department of public welfare.

Adopted by the Health and Human Services Task Force and approved by the ALEC Board of Directors in 1985.

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