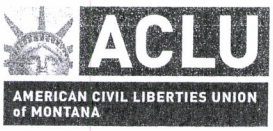
SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3/28/13
BILL NO. HB391

Key Findings of *Wicklund v. State*

Privacy Rights of Minors: The Court examined the parental notification law applying both the right to privacy in Montana's Constitution (Art. II, section 10) and the rights of minors provision in Montana's Constitution (Art. II, section 15). The Court identified that the right to privacy protects the right to choose to terminate a pregnancy. The Court looked to the minors' rights provision, which grants minors all the protections afforded in the Constitution, allowing only narrow exceptions when a law that infringes on those rights serves to "enhance the protection of minors." The Court found that although the parental notification law claimed to "enhance the protection of minors" it did not actually do so as it made it more difficult and in some cases more dangerous for minors to have abortions. Given that fact, the Court found that this provision, which would violate the privacy rights of adults, also violates the privacy rights of minors. (pages 5-8)

Determination of a Compelling State Interest: The Court reviewed the stated reasons for the law and found that they were not sufficient to infringe these constitutional rights. Undisputed evidence before the Court indicated the majority of pregnant minors involve a parent in decision-making about whether to obtain an abortion, and those minors who do not involve their parents often have a legitimate reason for not doing so. (pages 8-13)

Equal Protection Under the Law: The Court also found that the law discriminated against pregnant minors who choose abortion as compared with those who do not, given that state law provides that pregnant minors who carry to term are authorized to consent to all medical care necessary during pregnancy. (MCA 41-1-402). The Court reviewed the many responsibilities of pregnant minors who choose to continue their pregnancies, all without any parental notice requirement under state law, and found that there was no legitimate reason to distinguish between these minors. (page 9)



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