

By: Representative Yancey

To: Judiciary A

HOUSE BILL NO. 1345

1 AN ACT TO EXEMPT ANY OFFICIAL, AGENT OR EMPLOYEE OF THE STATE
 2 OR A POLITICAL SUBDIVISION THEREOF FROM ENFORCING OR BEING ORDERED
 3 TO ENFORCE ANY FEDERAL DIRECTIVE THAT ALLOWS ANY MEDICAL, HEALTH
 4 CARE, BEHAVIORAL, OR MENTAL HEALTH TREATMENT, SERVICE, THERAPY OR
 5 COUNSELING TO AN UNEMANCIPATED MINOR WITHOUT PARENTAL NOTIFICATION
 6 OR CONSENT; TO PROVIDE A CAUSE OF ACTION BY A PARENT OR LEGAL
 7 GUARDIAN AGAINST ANY PERSON, CORPORATION OR OTHER ENTITY, WHO
 8 VIOLATES THE MEDICAL AND MENTAL HEALTH RELATED PARENTAL
 9 NOTIFICATION AND CONSENT REQUIREMENTS; TO PROVIDE AN EXCLUSION TO
 10 STUDENTS FROM PARTICIPATING IN A MENTAL HEALTH OR BEHAVIORAL
 11 HEALTH CLASS OR PROGRAM UNLESS AND UNTIL A PARENT OR GUARDIAN OF
 12 THE STUDENT CONSENTS IN WRITING TO SUCH PARTICIPATION; TO PROVIDE
 13 THAT ANY SCHOOL THAT VIOLATED THE PARENTAL NOTIFICATION
 14 REQUIREMENT SHALL BE SUBJECT TO CIVIL SUIT BY THE PARENT WHOSE
 15 RIGHTS TO NOTIFICATION AND CONSENT WERE VIOLATED; TO BRING FORWARD
 16 SECTION 41-41-3, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF
 17 POSSIBLE AMENDMENTS; AND FOR RELATED PURPOSES.

18 WHEREAS, the Secretary of Health and Human Services ("HHS")
 19 has promulgated a regulation, 42 CFR, Section 59.10, providing
 20 that "Title X projects may not require consent of parents or
 21 guardians for the provision of services to minors, nor can any
 22 Title X project staff notify a parent or guardian before or after
 23 a minor has requested and/or received Title X family planning
 24 services." (See also *Deanda v. Becerra*, 645 F.Supp.3d 600, 607
 25 (N.D. Tex. 2022)); and



26 WHEREAS, the authorizing statute for this regulation is Title
27 X of the Public Health Service ("PHS") Act, 42 USCS Section 300 et
28 seq.; and

29 WHEREAS, the text of the authorizing statute, 42 USCS Section
30 300(a), provides in pertinent part, "To the extent practical,
31 entities which receive grants or contracts under this subsection
32 shall encourage family participation in projects assisted under
33 this subsection"; and

34 WHEREAS, the authorizing statute, as reflected by the quoted
35 section above, does not prohibit parental notification or consent
36 and, therefore, the regulation exceeds the authority of the
37 authorizing statute; and

38 WHEREAS, nevertheless, the HHS Office of Population Affairs
39 ("OPA"), through OPA Program Policy Notice 2014-01 (June 5, 2014),
40 issued written guidance instructing grant recipients that they may
41 not require parental consent for family planning services; and

42 WHEREAS, it is the purpose and intention of the Legislature
43 to defend the rights of the state government and of the people of
44 this state reserved to them in our federal system of government
45 under the Ninth and Tenth Amendments to the United States
46 Constitution and further codified in Mississippi law insofar as
47 the rights of parents to govern and direct medical decisions of
48 their children are concerned; and

49 WHEREAS, the United States Supreme Court has held that under
50 the Tenth Amendment, "Congress cannot compel the States to enact



51 or enforce a federal regulatory program ... Congress cannot
52 circumvent that prohibition by conscripting the State's officers
53 directly. The Federal Government may neither issue directives
54 requiring the States to address particular problems, nor command
55 the States' officers, or those of their political subdivisions, to
56 administer or enforce a federal regulatory program." (*Printz v.*
57 *U.S.*, 521 U.S. 898, 935 (1997)): NOW, THEREFORE:

58 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

59 **SECTION 1.** (1) It is the intention and purpose of the
60 Legislature by this act to provide a civil action for damages in
61 favor of any parent whose parental rights related to access,
62 notification and consent for the medical care, health care, health
63 records, and mental health treatment of their children are
64 violated.

65 (2) It is the further intention and purpose of the
66 Legislature by this act to prohibit the officers of this state, or
67 those of its political subdivisions, from administering or
68 enforcing the referenced federal programs that impinge on parental
69 rights.

70 **SECTION 2.** Any federal executive order, agency order, rule,
71 guidance document, memorandum, directive, regulation or
72 administrative interpretation of a law or statute enrolled by the
73 United States Congress and signed by the President of the United
74 States, including, without limitation, any provision of Title X of
75 the Public Health Service ("PHS") Act, 42 USCS Section 300 et



76 seq., 42 CFR Section 59.10, or the OPA Program Policy Notice
77 2014-01 (June 5, 2014), which allow any medical, health care,
78 behavioral, or mental health treatment, service, therapy or
79 counseling without parental notification or consent in
80 contravention of the provisions of Section 41-41-3, shall not be
81 enforced or ordered to be enforced by any official, agent or
82 employee of this state or a political subdivision thereof, or any
83 person acting under color of state law.

84 **SECTION 3.** (1) Notwithstanding any federal executive order,
85 agency order, rule, guidance document, memorandum, directive,
86 regulation or administrative interpretation of a law or statute
87 enrolled by the United States Congress and signed by the President
88 of the United States, including, without limitation, any provision
89 of Title X of the Public Health Service ("PHS") Act, 42 USCS
90 Section 300 et seq., 42 CFR Section 59.10, or the OPA Program
91 Policy Notice 2014-01 (June 5, 2014), which allow any medical,
92 healthcare, behavioral, or mental health treatment, service,
93 therapy or counseling, without parental notification or consent in
94 contravention of the provisions of Section 41-41-3, any person,
95 corporation or other entity, who violates the medical and mental
96 health related parental notification and consent requirements of
97 the provisions of Section 41-41-3, may be subject to a civil suit
98 for damages brought by any parent whose rights, secured by those
99 sections, were violated. Relief available in such a civil suit
100 may include, without limitation, actual damages, court costs,



101 reasonable attorney fees as ordered by the court, and punitive
102 damages if the violation satisfies the standards for imposition of
103 punitive damages elsewhere provided by law.

104 (2) An individual may assert a violation of this act as a
105 claim in any judicial or administrative proceeding or as defense
106 in any judicial or administrative proceeding without regard to
107 whether the proceeding is brought by or in the name of the
108 government, any private person or any other party.

109 (3) An action under this act may be commenced, and relief
110 may be granted, in a court of competent jurisdiction in the state
111 without regard to whether the individual commencing the action has
112 sought or exhausted available administrative remedies.

113 (4) Sovereign immunity shall not be an affirmative defense
114 in any action pursuant to this act.

115 **SECTION 4.** (1) No student shall be required to participate
116 in a mental health or behavioral health class or program unless
117 and until a parent or guardian of the student consents in writing
118 to such participation. If the instruction or program is a part of
119 or is taught during a credit course, a student may be required to
120 enroll in the course but shall not be required to receive
121 instruction in or participate in the instruction or program unless
122 and until a parent or guardian consents in writing.

123 (2) Any school district that violates the parental
124 notification and consent requirements of this section may be



125 subject to a civil suit for damages brought by any parent whose
126 rights were violated.

127 **SECTION 5.** Section 41-41-3, Mississippi Code of 1972, is
128 brought forward as follows:

129 41-41-3. (1) It is hereby recognized and established that,
130 in addition to such other persons as may be so authorized and
131 empowered, any one (1) of the following persons who is reasonably
132 available, in descending order of priority, is authorized and
133 empowered to consent on behalf of an unemancipated minor, either
134 orally or otherwise, to any surgical or medical treatment or
135 procedures not prohibited by law which may be suggested,
136 recommended, prescribed or directed by a duly licensed physician:

- 137 (a) The minor's guardian or custodian.
- 138 (b) The minor's parent.
- 139 (c) An adult brother or sister of the minor.
- 140 (d) The minor's grandparent.

141 (2) If none of the individuals eligible to act under
142 subsection (1) is reasonably available, an adult who has exhibited
143 special care and concern for the minor and who is reasonably
144 available may act; the adult shall communicate the assumption of
145 authority as promptly as practicable to the individuals specified
146 in subsection (1) who can be readily contacted.

147 (3) Any female, regardless of age or marital status, is
148 empowered to give consent for herself in connection with pregnancy
149 or childbirth.



150 **SECTION 6.** If any one or more provisions, sections,
151 subsections, sentences, clauses, phrases or words of this act or
152 the application thereof to any person or circumstance is found to
153 be unconstitutional, the same is hereby declared to be severable
154 and the balance of this act shall remain effective notwithstanding
155 such unconstitutionality. The Legislature hereby declares that it
156 would have passed this act, and each provision, section,
157 subsection, sentence, clause, phrase or word thereof, irrespective
158 of the fact that any one or more provisions, sections,
159 subsections, sentences, clauses, phrases or words be declared
160 unconstitutional.

161 **SECTION 7.** This act shall take effect and be in force from
162 and after July 1, 2024.

