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Inconceivable?

Helena Silverstein*

Thirty-two states in the United States currently enforce laws that require parental involvement when a pregnant minor seeks an abortion. Of these, seventeen require parental consent¹ while fifteen require parental notification.² Another ten states have passed parental involvement bills that are either currently enjoined or have been found constitutionally infirm.³

The typical parental involvement mandate prohibits the performance of an abortion on a minor without parental participation, unless the minor obtains a judge's order waiving that participation. Under the Pennsylvania Abortion Control Act,⁴ for example, a physician may not perform an abortion on an unemancipated woman under the age of eighteen without first obtaining the informed consent of the pregnant minor as well as one of her parents, or, if both parents are unavailable, her

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1. These states are Alabama, Idaho, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Tennessee, Wisconsin, and Wyoming. *Parental Involvement in Minors' Abortions*, STATE POLICIES IN BRIEF (The Alan Guttmacher Institute, New York, N.Y. & Washington, D.C.), Nov. 1, 2001, at 1, available at http://www.agi-usa.org/pubs/spib_PIMA.pdf. In addition to these seventeen states, Maine allows minors to receive counseling instead of obtaining parental consent or court authorization for abortion. *Id.*

2. These states are Arkansas, Delaware, Georgia, Iowa, Kansas, Maryland, Minnesota, Nebraska, Ohio, Oklahoma, South Dakota, Texas, Utah, Virginia, and West Virginia. *Id.* While Oklahoma is included among the states requiring parental notification, that state's law does not, strictly speaking, mandate such notice. Instead, the law states: "Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion." *Id.*

3. These states are Alaska, Arizona, California, Colorado, Florida, Illinois, Montana, Nevada, New Jersey, and New Mexico. *Id.* In addition to these ten states, Ohio's parental consent legislation has also been enjoined, but the state's parental notification law is currently enforced. *See id.*

4. 18 PA. CONS. STAT. § 3206 (2001).

guardian.⁵ However, if the minor does not wish to or cannot obtain the consent of either parent or her guardian, she may petition the court for a bypass of the requisite consent. The statute specifies:

[T]he court of common pleas of the judicial district in which the applicant resides of [sic] in which the abortion is sought shall, upon petition or motion, after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion, and has, in fact, given such consent.⁶

Furthermore, under the Pennsylvania statute, even upon finding that the minor is not mature and capable of giving informed consent, the court shall authorize the abortion if it "determines that the performance of an abortion would be in the best interests of the woman."⁷

Like the Pennsylvania statute, nearly all parental involvement mandates currently in effect have incorporated a judicial bypass option into their statutory provisions.⁸ This is due to U.S. Supreme Court rulings that have overturned parental consent requirements that fail to incorporate such a bypass provision.⁹ As some members of the Court have reasoned, because

5. See *id.* § 3206(a).

6. *Id.* § 3206(c).

7. *Id.* § 3206(d).

8. Utah and Maryland are exceptions. Under the Utah statute, physicians must notify the minor's parents "if possible." UTAH CODE ANN. § 76-7-304 (1999). This statute was upheld by the U.S. Supreme Court in the case of an immature minor. See *H.L. v. Matheson*, 450 U.S. 398, 398-99 (1981). Maryland also mandates parental notification, but physicians may waive notice upon finding that the minor is mature or that notification would not be in her best interest. See MD. CODE ANN., HEALTH—GEN. § 20-103 (2000).

9. See *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 52-53 (1976) (overturning a Missouri one-parent consent statute); *Bellotti v. Baird (Bellotti I)*, 428 U.S. 132, 147-48 (1976) (remanding the question of a Massachusetts two-parent consent statute to the district court for proceedings consistent with the finding that interpreting the statute to permit a minor, capable of giving informed consent, to get a court order allowing abortion without the requisite parental consent could avoid a constitutional question); *Bellotti v. Baird (Bellotti II)*, 443 U.S. 622, 622 (1979) (overturning a Massachusetts two-parent consent statute with a judicial bypass provision); *Akron v. Akron Ctr. for Reprod. Health (Akron I)*, 462 U.S. 416, 416-18 (1983) (overturning a one-parent consent statute). The Supreme Court has not decided whether parental notification laws must be accompanied by a bypass provision. See *Ohio v. Akron Ctr. for Reprod. Health (Akron II)*, 497 U.S. 502, 510 (1990) ("[A]lthough our cases have required bypass procedures for parental consent statutes, we have not decided whether parental notice statutes must contain such procedures." (citations omitted)). The Court has, however, commented that mandated notification does not appear to place the same types of

“unwanted motherhood may be exceptionally burdensome for a minor’ . . . the constitutional protection against unjustified state intrusion into the process of deciding whether or not to bear a child extends to pregnant minors as well as adult women.”¹⁰ A pregnant minor’s right to abortion, although not subject to the same level of protection as that of an adult woman, may be regulated only when the state’s interest in doing so is significant.¹¹ Additionally, regulation of abortion is invalid when it imposes an “undue burden” on women.¹² “A finding of an undue burden,” as members of Court have explained, “is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”¹³ It has been further explained that imposing an “absolute parental veto” on a minor’s decision to choose abortion creates an undue burden,¹⁴ while regulations providing a meaningful bypass alternative eliminate this burden.¹⁵

Although initially finding parental involvement statutes to be unconstitutional,¹⁶ the Supreme Court has on six separate occasions since 1983 upheld mandated parental participation in

barriers to abortion as consent. See, e.g., *Matheson*, 450 U.S. at 409 (noting that mandated consent demands parental approval and could amount to a veto, whereas under a “mere requirement of parental notice,” a minor may still obtain her abortion even without parental approval).

10. *Hodgson v. Minnesota*, 497 U.S. 417, 434-35 (1990) (opinion of Stevens, J.) (quoting *Bellotti II*, 443 U.S. at 642).

11. See *Akron I*, 462 U.S. at 427-28 n.10 (noting that “the Court repeatedly has recognized that, in view of the unique status 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’” (quoting *Danforth*, 428 U.S. at 75)).

12. *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 874-75 (1992) (opinion of O’Connor, J., Kennedy, J., and Souter, J.).

13. *Id.* at 877.

14. *Bellotti II*, 443 U.S. at 639 (finding that states may “not lawfully authorize an absolute parental veto over the decision of a minor to terminate her pregnancy”) (opinion of Powell, J., who announced the judgment of the court); see also *Danforth*, 428 U.S. at 74 (holding that “the State may not impose a blanket provision . . . as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy”).

15. In parental consent for abortion cases, a minor petitioning for a waiver of consent must be granted her request upon demonstrating “(1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents’ wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests.” *Bellotti II*, 443 U.S. at 643-44 (opinion of Powell, J., who announced the judgment of the court).

16. See cases cited *supra* note 9.

abortions for minors.¹⁷ Members of the Court have consistently referred to parental and family interests that ought to be balanced against the minor's stake in privacy:

[T]he demonstration of commitment to the child through the assumption of personal, financial, or custodial responsibility may give the natural parent a stake in the relationship with the child rising to the level of a liberty interest. . . . [T]he family has a privacy interest in the upbringing and education of children and the intimacies of the marital relationship which is protected by the Constitution against undue state interference.¹⁸

States frequently cite the family privacy interest in justifying parental involvement legislation. For example, Michigan's parental consent provision is known as the "Parental Rights Restoration Act," indicating the legislature's intent to keep parents involved.¹⁹ Alabama's parental consent statute offers the following motivation for its legislation:

It is the intent of the legislature in enacting this parental consent provision to further the important and compelling state interests of: (1) protecting minors against their own immaturity, (2) fostering the family structure and preserving it as a viable social unit, and (3) protecting the rights of parents to rear children who are members of their household.²⁰

State legislatures thus seek to protect parents' rights to be involved in their minor daughters' abortion decisions.

State efforts to protect parental rights concerning their daughters' abortion decisions have engendered much debate.²¹

17. See *Lambert v. Wicklund*, 520 U.S. 292, 297-99 (1997) (upholding Montana's one-parent notification statute with a judicial bypass provision); *Casey*, 505 U.S. at 899-901 (upholding Pennsylvania's one-parent consent statute with a judicial bypass provision); *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 519-20 (1990) (upholding Ohio's one-parent notification statute with a judicial bypass provision); *Hodgson v. Minnesota*, 497 U.S. 417, 455 (1990) (upholding Minnesota's two-parent notification statute with a judicial bypass provision); *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 494 (1983) (upholding Missouri's one-parent consent statute with a judicial bypass provision); *H.L. v. Matheson*, 450 U.S. 398, 413 (1981) (upholding Utah's one-parent notification statute).

18. See *Hodgson*, 497 U.S. at 446 (opinion of Stevens, J.).

19. MICH. COMP. LAWS § 722.901 (1993).

20. ALA. CODE § 26-21-1(a) (1992).

21. Compare, e.g., Maggie O'Shaughnessy, *The Worst of Both Worlds? Parental Involvement Requirements and the Privacy Rights of Mature Minors*, 57 OHIO ST. L.J. 1731, 1734 (1996) (arguing that mandated "parental involvement does not seem to have the effect of facilitating better-reasoned abortion decisions"), with Sandra M. Secrest, *Minors' Rights to Abortion—Are Parental Notice and Consent Laws Justified?* 66 U. DET. L. REV. 691, 692 (1989) (arguing that one-parent involvement statutes, accompanied by a judicial bypass procedure, serve state interests in

This Essay joins the debate by presenting three fictitious judicial opinions based on an equally fictitious state law that requires parental consent when a minor chooses pregnancy rather than abortion. These imagined judicial opinions are modeled after very real opinions that have been issued by various state appellate courts. Because of the parallels between existing parental consent requirements for minors seeking abortions and laws that would mandate similar requirements for minors wishing to continue their pregnancies, these invented judicial rulings mirror the realities of, and controversies surrounding, current court rulings.

* * *

Recognizing the fundamental importance of parental rights, the state legislature of Statesylvania passed the Parental Consent for Pregnancy Act in May 2001. Modeled upon statutes requiring parental consent for abortion,²² the Statesylvania law includes a judicial bypass provision that allows a minor to carry the pregnancy to term, and forego an abortion, without the consent of her parents. It is this statute that is at issue in the following ruling handed down by the Supreme Court of Statesylvania.²³

protecting minors and promoting parental involvement).

22. See, e.g., MICH. COMP. LAWS § 722.903 (1993); 18 PA. CONS. STAT. § 3206 (1992); ALA. CODE §§ 26-21-1 to -8 (1997); WIS. STAT. § 48.375 (2000). Michigan's parental consent legislation, for example, establishes the following:

Except as otherwise provided in this act, a person shall not perform an abortion on a minor without first obtaining the written consent of the minor and 1 of the parents or the legal guardian of the minor. . . . If a parent or the legal guardian is not available or refuses to give his or her consent, or if the minor elects not to seek consent of a parent or the legal guardian, the minor may petition the probate court pursuant to section 4 for a waiver of the parental consent requirement of this section.

MICH. COMP. LAWS § 722.903.

23. For parallel rulings in cases dealing with minors who have been denied their petitions to bypass parental involvement in their abortion decisions, see, e.g., *In re Anonymous*, 770 So. 2d 1107, 1110 (Ala. Civ. App. 2000) (reversed and waiver granted); *In re Anonymous*, 733 So. 2d 429, 432-33 (Ala. Civ. App. 1999) (reversed and waiver granted); *In re Anonymous*, 711 So. 2d 475, 476 (Ala. Civ. App. 1998) (remanded with instructions to grant waiver); *In re Complaint of Jane Doe*, 96 Ohio App. 3d 435, 437 (Ohio Ct. App. 1994) (reversed and waiver granted); *In re Complaint of Jane Doe*, 83 Ohio App. 3d 98, 102 (Ohio Ct. App. 1993) (reversed with order to waive parental notification); *In re Jane Doe 3*, 19 S.W.3d 300, 301 (Tex. 2000) (vacated and remanded to determine whether parental notification would lead to abuse and whether minor was sufficiently mature and well-informed to make the abortion decision); *In re Jane Doe 2*, 19 S.W.3d 278, 280 (Tex. 2000) (vacated and remanded to determine if the minor was sufficiently well-informed to consent to an abortion).

IN RE JANE DOE
SUPREME COURT OF STATESYLVANIA
29 N.S.2d 375
APRIL 1, 2002, DELIVERED

Chief Justice X, joined by 6 justices, delivered the opinion of the Court.

This appeal involves the denial of a pregnant minor's application to waive Statesylyvania's mandated parental consent requirement for pregnancy.

The minor filed her petition on March 21, 2002, pursuant to Statesylyvania Code § 22-34-2 (2001). In filing the petition, the minor indicated her desire to carry her pregnancy to term without the requisite consent from her parents. After a hearing, the trial court denied the minor's petition, finding that she was not sufficiently mature and well-informed to continue with the pregnancy absent the consent of her parents, and, therefore, that pursuing the pregnancy was not in her best interest.²⁴

We conclude, after reviewing the record, that the trial court did not err in its denial of the minor's petition.

I.

Statesylyvania's Parental Consent for Pregnancy Act was enacted by the State Legislature on May 14, 2001, and took effect on September 3, 2001. Section 22-34-2(a) protects a parent's right to demand that his or her daughter undergo an abortion procedure, rather than continue with the pregnancy. The Act mandates that abortion providers perform abortions on unemancipated pregnant minors under the age of sixteen at the request of one of her parents or her legal guardian, even if the minor indicates a desire to proceed with the pregnancy.²⁵ However, abortion providers may refuse to perform an abortion if the procedure is deemed medically unsafe for the minor or if the minor requests a judicial hearing seeking a waiver of the parental

24. Appellate court rulings on denials of bypass requests of parental consent in abortion cases often begin in this manner. *See, e.g., In re Anonymous*, 660 So. 2d 1022, 1022-23 (Ala. Civ. App. 1995) ("Following . . . proceedings, the trial court denied the minor's petition, stating in its order that 'the minor is not mature and well informed enough to make the abortion decision and the performance of the abortion without parental consent is not in the best interest of the minor.'").

25. There are no such statutes in existence in the United States.

consent requirement.

Should the minor request a judicial hearing, she has one week to petition the juvenile court, either in the county in which she resides or the county where the abortion is to be performed.²⁶ The Act provides that the required parental consent for continuing pregnancy shall be waived if the court finds either:

- (1) That the minor is mature and well-informed enough to carry the pregnancy to term without parental consent; or
- (2) That pursuing pregnancy would be in the best interest of the minor.²⁷

The Statesylvania Code further provides that judicial proceedings for a waiver of parental consent to pursue pregnancy must be expeditious and "given precedence over other pending matters," and that the court shall advise the minor that she has a right to court-appointed counsel. Statesylvania Code § 22-34-2(e)-(f).²⁸

26. In statutes requiring parental consent for abortion, it is typical for minors to be given the right to petition the court in a timely manner in one of two counties. See, e.g., ALA. CODE § 26-21-4(a), (e) (1992). The Alabama Code states:

A minor who elects not to seek or does not or cannot for any reason, obtain consent from either of her parents or legal guardian, may petition, on her own behalf, the juvenile court, or the court of equal standing, in the county in which the minor resides or in the county in which the abortion is to be performed for a waiver of the consent requirement of this chapter. . . . Court proceedings shall be given such precedence over other pending matters as is necessary to insure that the court may reach a decision promptly, but in no case, except as provided herein, shall the court fail to rule within 72 hours of the time the petition is filed, Saturdays, Sundays, and legal holidays excluded.

Id.

27. Statutes requiring parental consent or notification for abortion incorporate similar language. See, e.g., ALA. CODE § 26-21-4(f) (1992) ("The required consent shall be waived if the court finds either: (1) That the minor is mature and well-informed enough to make the abortion decision on her own; or (2) That performance of the abortion would be in the best interest of the minor.").

28. For an example of a similar statute, see, e.g., 18 PA. CONS. STAT. § 3206(e)-(f)(1) (2001), which provides:

The pregnant woman may participate in proceedings in the court on her own behalf and the court may appoint a guardian ad litem to assist her. The court shall, however, advise her that she has a right to court appointed counsel. . . . Court proceedings under this section shall be confidential and shall be given such precedence over other pending matters as will ensure that the court may reach a decision promptly and without delay in order to serve the best interests of the pregnant woman

See also MICH. COMP. LAWS § 722.904 (1993) ("The probate court shall, upon its first contact with a minor seeking a waiver of parental consent under this act, provide the minor with notice of the minor's right to . . . Court appointment of an attorney or guardian ad litem.").

II.

Jane Doe, a pregnant, unemancipated minor, filed a petition to waive the state's mandated parental consent requirement. The trial court appointed counsel to represent Doe and held a hearing within the requisite timeframe. At the hearing, the petitioner testified concerning her pregnancy and her perceptions of carrying the pregnancy to term.

Jane Doe is fourteen years old and a sophomore in high school. She lives with her parents, has never held a job, receives B's and C's in school, and is a member of two extra-curricular organizations. She testified that she had sex with her fifteen-year-old boyfriend only a few times, and that, upon learning of her pregnancy, he indicated that he would not marry her or help raise the child should she pursue the pregnancy.²⁹

When asked whether she knew about the physical and medical effects of carrying a pregnancy to term, Doe said the following:

I know I'll get fat, that's for sure. And I've been nauseous for a month. I heard that people get cravings for weird things like pickles and ice cream, but that sounds gross to me right now. I stopped getting my period, which is great, but I guess that's supposed to come back after I give birth.

Asked by the trial judge whether she would consider having an amniocentesis during the pregnancy, the minor said she had not considered it one way or the other. Asked whether she was aware of the potential risks associated with pregnancy, such as preeclampsia or pregnancy-related diabetes, the minor stated that she wasn't "too worried" because she would be able "to get out of gym class for the remainder of the year." Asked whether she was aware of the difficulties associated with giving birth, including

29. For testimony offered by a minor seeking a waiver of parental consent in an abortion case, see, e.g., *In re Anonymous*, 650 So. 2d 923 (Ala. Civ. App. 1994). A court described one minor's testimony as follows:

The minor testified that she is 17 years old; is in the eleventh grade; makes A's, B's, and C's; and is a cheerleader. She works three days a week teaching young children gymnastics. She testified that with the money she earns she helps pay for her car, saves for college, and has some spending money. Her plans for the future include studying physical therapy at the University of Alabama at Birmingham. . . . The minor's boyfriend, who she says is the father, is 18 years old, attends UAB, and is currently employed. The minor says that he has stated that he would support her "100 percent" in whatever decision she made regarding her pregnancy.

Id. at 924.

breech births, caesarian sections, and tearing, Doe stated that she didn't "like to think about the bad things that might happen."³⁰

Doe testified that she wants to pursue the pregnancy:

I love to play with kids. I don't want to go to college, school is so boring. I've babysat a few times for my neighbor's six-year-old and he's really cute. I want a kid of my own. I never had any brothers or sisters. My parents don't want me to have this kid, but I'll show them I can be good at something.³¹

Asked how she would afford to raise the child, Doe stated that she knew of some mothers who receive "food stamps and money from the government." She further stated, "I know that my boyfriend says he won't help, but once he sees how cute the kid is and, you know, that it's, like, his kid, what's he gonna do? And I know my parents won't let their own grandkid starve."

Doe testified that she would drop out of school to raise her child, that she has changed diapers before, and that she would never consider giving up the child for adoption. "I hate the idea that there's a little me running around out there and not knowing who it is." Asked whether she has views about the morality of abortion, she said, "Well, it's not like I think I'll go to hell or anything. I just don't like the idea of it."

In light of the minor's testimony, the juvenile court judge concluded:

While the minor may show some signs of maturity, she is not sufficiently mature to accept the responsibilities of

30. Compare this testimony with the following description from a proceeding in which a minor sought a waiver of parental consent for abortion:

[The minor] testified that there are two types of possible emotional problems after an abortion—post-abortion trauma syndrome, which usually involves feelings of guilt, stress, and regret, and post-abortion psychosis. She stated that psychosis is usually experienced by women who have had mental health problems before the abortion. . . . The minor testified about the abortion procedure: "[The doctor] does a pelvic examination to see where the uterus is located and the size. Then he inserts a speculum to open you up and look at the cervix. He injects lidocaine into the cervix to numb it. Then he uses a vacuum aspiration to remove the embryo."

In re Anonymous, No. 2001070, 2001 Ala. Civ. App. LEXIS 361, at *20-21 (Ala. Civ. App. July 27, 2001) (Murdock, J., concurring).

31. Compare with the following description of a minor who was denied a waiver of parental consent for abortion by a trial judge:

The minor is 16 years of age, has never been married, and is a junior in high school. She is attending a local college this summer to get college credit, has gained an early acceptance to that college, and will graduate early from high school. She has accepted a job beginning in January after she graduates, in the field in which she plans to study.

In re Anonymous, No. 2000932, 2001 Ala. Civ. App. LEXIS 312, at *1 (Ala. Civ. App. June 15, 2001).

motherhood. In particular, she demonstrates minimal knowledge about the medical and physical aspects of pregnancy, and perhaps even less about the responsibilities and burdens of parenting. Furthermore, pursuing this pregnancy would not be in the best interests of this fourteen-year-old girl. Being only nine weeks into this pregnancy, an abortion is, medically speaking, safer for Doe than carrying the pregnancy to term.³² In addition, Doe has no prospects for marriage or support from her family; she has not finished high school; she has no funds to support the child or employment experience that would allow her to become gainfully employed. In short, should this girl give birth, it would be the classic case of a child seeking to raise a child.³³ And the burden would be on the taxpayers to fund this ill-advised venture.³⁴

32. Compare with the following trial court order in the case of a minor who was denied a waiver of parental consent for abortion:

Petitioner has been denied the opportunity to engage in pre-op counseling with the physician, evaluate the physician or interview and question the physician. Likewise the physician hasn't evaluated petitioner or furnished information to petitioner[,] so the court finds that the petitioner is not mature or well-informed and that abortion at this time under the proposed circumstances is contra to her best interests.

In re Anonymous, No. 1001488, 2001 Ala. LEXIS 202, at *6 (Ala. June 1, 2001).

33. See, e.g., Sherri A. Jayson, "Loving Infertile Couple Seeks Woman Age 18-31 to Help Have Baby. \$6,500 Plus Expenses and a Gift": Should We Regulate the Use of Assisted Reproductive Technologies by Older Women?, 11 ALB. L.J. SCI. & TECH. 287, 316-17 (2001) ("Teenagers, children themselves, require their parents' guidance and supervision, and, thus, lack the knowledge and emotional strength to raise a child capably . . . Teenagers and even women in their early 20s hardly have the requisite level of financial and emotional stability or maturity to raise healthy children."); Judy Nichols, *Square Mile Booms with Teen Births*, ARIZ. REPUBLIC, Oct. 29, 1995, at A1 ("We end up with children having children, women who have a very hard time pulling themselves out of poverty, mothers with less parenting skills who don't have the support of another partner, more latchkey kids, more youth violence and gangs. . . ."); *Commentary: Teen Parenthood out of Control*, HARTFORD COURANT, May 28, 1995, at E2 ("Welfare rolls are swollen with jobless, aimless and undereducated children having children, particularly in urban centers. Life generally turns out to be bleak for both the mother and child, who are most often abandoned by the father.").

34. Studies have suggested that the financial costs of adolescent childbearing are, in part, shouldered by society. According to one study:

The social costs of having large numbers of adolescents give birth are heavy. Many teenagers will require financial assistance from public sources in order to support their children. . . . In addition, adolescents' higher risk of prenatal and perinatal complications translates into higher medical costs for themselves and their children. These medical costs are often borne by society, as are the costs of any social services that an adolescent mother or her children may require.

Jeanne Marecek, *Consequences of Adolescent Childbearing and Abortion*, in ADOLESCENT ABORTION 96, 108 (Gary B. Melton ed., 1986).

III.

Before turning to the merits of this case, it is important to note that we are not called upon by the petitioner to rule on the constitutionality of the Parental Consent for Pregnancy Act. The Act mirrors parental consent for abortion statutes that have been upheld as constitutional by the U.S. Supreme Court.³⁵ The Act thus contains the safeguards that have protected similar statutes from being condemned as unconstitutional.³⁶ But whether, in the end, this statute will avoid such a fate is a question that must be left for another day.

As we have previously held, statutes passed by our Legislature are presumed constitutional, and constitutional challenges should only be considered when properly raised and accompanied by appropriate pleadings.³⁷

IV.

Denials of waiver requests must be examined on a case-by-case basis. When so doing, appellate review must assess a trial judge's decision under an abuse of discretion standard.³⁸ Abuse of discretion

"connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." . . . Above all, a reviewing court should be guided by a presumption that the findings of a trial court are correct, since the trial judge "is best able to view the witnesses and observe their demeanor, gestures and voice inflections,

35. See, e.g., *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833 (1992) (upholding as constitutional Pennsylvania's one-parent consent requirement for abortion that incorporates a judicial bypass option).

36. See *Lambert v. Wicklund*, 520 U.S. 292, 297 (1997) (upholding Montana's one-parent notification statute with a judicial bypass provision); *Hodgson v. Minnesota*, 497 U.S. 417, 461 (1990) (upholding Minnesota's two-parent notification statute with a judicial bypass provision); *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502, 519-20 (1990) (upholding Ohio's one-parent notification statute with a judicial bypass provision); *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 490-93 (1983) (upholding Missouri's one-parent consent statute with a judicial bypass provision).

37. See *In re Jane Doe 2*, 19 S.W.3d 278, 284 (Tex. 2000) ("We have previously cautioned that the constitutionality of a statute should be considered only when the question is properly raised and such determination is necessary and appropriate to a decision in the case."); see also *In re Anonymous*, 515 So. 2d 1254, 1256 (Ala. Civ. App. 1987) ("[I]t has been held that the constitutionality of a law will not be considered on appeal unless *essential* to the decision of the actual case before the court.").

38. See *In re Jane Doe 1*, 566 N.E.2d 1181, 1184 (Ohio 1991) (applying the abuse of discretion standard to a trial judge's denial of a minor's request to waive parental notification of abortion).

and use these observations in weighing the credibility of the proffered testimony."³⁹

Applying the abuse of discretion standard to the instant case, we find that the trial court did not err in denying the minor's petition for a waiver because there is no evidence that the minor is even remotely informed about pregnancy or parenthood or that pursuing the pregnancy would be in her best interest. Indeed, were we to find this minor mature and well-informed, it would be difficult to imagine a minor who would fail to meet this standard.⁴⁰ Likewise, were we to find that having a child was in this minor's best interest, there would be few minors who would be unable to pass this standard.

AFFIRMED.

Justice Y, dissenting.

In protecting the right of parents to raise their children, the court today, ironically and with grave consequences, neglects a more fundamental consideration: the life of the unborn fetus. Because I would not hold that safeguarding a parent's right to guide the upbringing of his or her child means granting a parent the authority to terminate the life of his or her own unborn grandchild, I strongly dissent.

On first glance, this law may appear to be constitutional because it mirrors what are perceived to be analogous laws—those laws that mandate parental consent for abortion. But there is a fundamental disanalogy between requiring parental consent for abortion and requiring the same for pregnancy. The confusion arises because parental consent for abortion laws are purported to be protective of parental rights.⁴¹ But in truth, those laws are

39. *Id.* (citations omitted).

40. Compare with the appellate court conclusion in a case overturning a trial court's denial of a minor's petition to waive parental consent for abortion: "We can safely say, having considered the record, that, should this minor not meet the criteria for 'maturity' under the statute, it is difficult to imagine one who would." *In re Anonymous*, 515 So. 2d 1254, 1256 (Ala. Civ. App. 1987).

41. In a case upholding Minnesota's parental notification statute, Justice Stevens reasoned, "Three separate but related interests—the interest in the welfare of the pregnant minor, the interest of the parents, and the interest of the family unit—are relevant to our consideration of the constitutionality of . . . the two-parent notification requirement." *Hodgson*, 497 U.S. at 444; see also *Bellotti v. Baird (Bellotti II)*, 443 U.S. 622, 637 (1979) (opinion of Powell, J.) (indicating that states give deference to parental control and involvement).

designed to protect the potential life of the unborn child.⁴² It is only because of the contentious and political debate over abortion that state legislatures frame parental consent for abortion laws as “parental rights bills” rather than as “right to life bills.”

Ironically, this “parental rights” framing provides the justification in the present case for supporting a bill that allows the killing of innocent human lives. But once we see that requiring parental consent for abortion is really aimed at advancing the fundamental right to life, the analogy falls apart. When the presumed analogy is revealed to be false, we can see that the state interest in “parental rights” is far outweighed by the state’s compelling interest in safeguarding the sanctity of human life.

Justice Z, dissenting.

I disagree with the majority decision and respectfully dissent. For entirely different reasons than Justice Y, I would find the Parental Consent for Pregnancy Act unconstitutional and allow Jane Doe to proceed with her pregnancy over her parent’s objections.

The majority is correct in affirming that statutes passed by our Legislature are presumed constitutional and that constitutional challenges should only be considered when properly raised. But it is also true that when consideration of the constitutionality of a law is “essential” to deciding the case before the court, such consideration should be undertaken.⁴³ Such is the case here.

The Parental Consent for Pregnancy Act is an unconstitutional infringement on the right to privacy protected by the Due Process Clause of the Fourteenth Amendment.⁴⁴ That right to privacy has been found to protect many things, including

42. Even though statutes requiring parental involvement in abortion decisions do not make explicit reference to protecting the fetus, it is apparently possible to infer legislative intent to protect the life of the unborn. Such an inference was drawn by four justices of the Alabama Supreme Court in 1998:

[I]t seems clear that the Legislature intended, in adopting the Parental Consent Statute, to preserve the life of the unborn, and that it deliberately was doing what it could within the constraints of the Federal Constitution, as interpreted by the Supreme Court of the United States, to accomplish that purpose.

In re Anonymous, 720 So. 2d 497, 502-03 (Ala. 1998).

43. See *In re Anonymous*, 515 So. 2d at 1256.

44. U.S. CONST. amend. XIV, § 1.

decisions concerning procreation, contraception, and abortion.⁴⁵ While a minor female is not granted the same level of constitutional protection as adult females, her young age does not place her fully beyond the reach of constitutional guarantees.⁴⁶ In fact, with respect to a decision concerning childbirth, it would be difficult to overstate the importance of protecting a minor's rights. Whether protecting her choice of abortion or childbirth, "there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible."⁴⁷

By enacting the Parental Consent for Pregnancy Act, the Statesylvania Legislature has placed parental rights over and above the right of a young woman to control her own body. Indeed, the Legislature has given parents the right to veto, with a judge's permission, their daughter's decision to give birth. This goes to the very heart of liberty, authorizing physical and emotional invasion of personal autonomy. This invasion will produce irreversible consequences that may haunt a woman throughout her life. Liberty must extend to cover "the quintessentially intimate, personal, and life-directing decision whether to carry a fetus to term."⁴⁸ When it does not—and it does not in this case—we forfeit the fundamental right to personal autonomy.

Some might say that this law gives parents no greater control over their daughters' bodies than do laws that mandate parental consent for abortion, and that the U.S. Supreme Court has upheld as constitutional such mandates as long as they are accompanied by a judicial bypass alternative. This is, no doubt, true. But those laws, I would argue, also impose unconstitutional burdens on a young woman's right to privacy. As the California Supreme Court stated:

[T]he decision whether to continue or terminate her pregnancy

45. See *Roe v. Wade*, 410 U.S. 113, 153 (1973) (extending the Fourteenth Amendment Due Process and privacy protection to abortion); *Eisenstadt v. Baird*, 405 U.S. 438, 454 (1972) (extending to unmarried individuals the right to decide whether to use contraception); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (recognizing a married couple's constitutional right to decide whether or not to use contraceptive devices); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (stating the right to reproduce to be "one of the basic civil rights of man").

46. See *Bellotti II*, 443 U.S. at 633 (citing *In re Gault*, 387 U.S. 1, 13 (1967)).

47. *Id.* at 642. The Supreme Court made this point with respect only to the right of abortion. See *id.*

48. *Webster v. Reprod. Health Serv.*, 492 U.S. 490, 538 (1989) (Blackmun, J., concurring in part and dissenting in part).

has such a substantial effect on a pregnant minor's control over her personal bodily integrity, has such serious long-term consequences in determining her life choices, is so central to the preservation of her ability to define and adhere to her ultimate values regarding the meaning of human existence and life, and (unlike many other choices) *is a decision that cannot be postponed until adulthood.*⁴⁹

Applying this logic, I would conclude that a minor's decision whether to continue or terminate her own pregnancy is a protected privacy interest, and an interest intruded upon by parental involvement mandates.⁵⁰ Simply because the U.S. Supreme Court has wrongly concluded otherwise does not mean we should make the same error in the context of pregnancy.

There is no right more important than the right to self-determination. Self-determination is impossible without the right to control one's own body. Whether in the context of forcing a young woman to abort a fetus or to proceed with an unwanted pregnancy, mandated parental consent laws are not only misguided, but also fundamental and unconstitutional intrusions upon a young woman's liberty and privacy.

With this in mind, I respectfully dissent.

49. *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 816 (Cal. 1997) (holding that California's parental consent to abortion statute violates the right to privacy afforded under the state constitution).

50. *See In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989) (holding that Florida's parental consent to abortion statute violates the right to privacy protected by the state constitution).

