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Parental Involvement in Adolescent Abortion Decisions: A Legal and Psychological Critique

Melody G. Embree* and Tracy A. Dobson, J.D.**

Introduction

Adolescent pregnancy is a problem of troubling proportions. According to a 1988 report, the United States has the highest teen pregnancy rate of all industrialized countries, and the rate continues to increase.¹ Over one million adolescent pregnancies were reported in 1980.² Given the estimated level of teenage sexual activity, this is not surprising. In a national study of youth, researchers found that 64 percent of boys and 44 percent of girls were sexually active by their eighteenth birthday.³ By age twenty, over 80 percent of males and over 70 percent of females reported having had sexual intercourse.⁴ In addition, 40 percent of women who were twenty years old in 1982 reported at least one pregnancy during their teen years.⁵

Relatively speaking, the number of teens who become mothers each year is not overwhelming. However, the societal and

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1. Paul S. Higgins, *Teenage Pregnancy: An Intractable Problem?*, in AMHERST J. WILDER FOUNDATION, *FUNDER'S GUIDE MANUAL: A GUIDE TO PREVENTION PROGRAMS IN HUMAN SERVICES, FOCUS ON CHILDREN AND ADOLESCENTS* 6 (Supp., 1988).

2. Gloria Zakus & Sandra Wilday, *Adolescent Abortion Option*, 12 SOC. WORK IN HEALTH CARE 77 (1987). More recent data show that little change has occurred. In 1983, 489,000 babies were born to teens, and 411,000 teens obtained abortions. Kristin A. Moore, *Facts at a Glance* (November 1988). In 1987, the most recent year for which information is available, teenage mothers gave birth to 472,623 babies. Information regarding the number of abortions in 1986 is not yet available. PUBLIC HEALTH SERVICE & CENTERS FOR DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, Pub. No. 90-1954, *MONTHLY VITAL STATISTICS REPORTS*, 16 (Supp. 1990).

3. NATIONAL RESEARCH COUNCIL, *RISKING THE FUTURE: ADOLESCENT SEXUALITY, PREGNANCY, AND CHILDBEARING*, 41-42 (Cheryl D. Hayes ed. 1987).

4. *Id.* at 41.

5. Nancy Felipe Russo, *Adolescent Abortion: The Epidemiological Context*, in *ADOLESCENT ABORTION: PSYCHOLOGICAL AND LEGAL ISSUES* 40, 63 (G. B. Melton ed. 1986).

individual consequences of this choice can be serious. In the early 1980s about 15 percent of all births in the United States were to teenagers.⁶ About half of all teen pregnancies in the United States are carried to term.⁷ In 1983, for example, there were 489,000 births to teens and 411,000 abortions performed on teens aged fifteen to nineteen.⁸ There is no national system to collect information about women who give birth and then give the child up for adoption. For that reason, precise data regarding teens who relinquish their children for adoption is not available. Results from a study conducted in 1982, however, revealed that about 4 percent of unmarried teen mothers age fifteen to nineteen gave their children up for adoption.⁹

This article analyzes the legal issues and policy questions underlying parental-consent or notification requirements in the adolescent abortion context. It also establishes the need for additional research and the dissemination of information regarding minors' access to abortion for unwanted pregnancies to better inform the policymaking process. In Section I, we discuss the consequences of adolescent pregnancy for the teen, her child(ren), and society. In Section II, a brief overview of teen pregnancy prevention programs is given. Section III reviews Supreme Court cases pertaining to parental-consent and notification legislation. Section IV elucidates the four fundamental assumptions the Court has relied upon when making decisions regarding the validity of parental involvement requirements. Pertinent psychological research is examined for each of these assumptions in Section V. Section VI discusses conclusions and suggestions for future policy and research directions to help resolve the parental involvement issue.

I. Consequences of Teen Pregnancy

The current proliferation of legislation meant to limit access to abortion, combined with a paucity of legislation and resources committed to helping adolescents avoid pregnancy, has led some commentators to conclude that this country does not care about its young people.¹⁰ Researchers M. Joycelyn Elders, Jennifer Hui and Steff Padilla have pointed out that information is available about the causes of teen pregnancy and ways to prevent it.¹¹ Nonethe-

6. Higgins, *supra* note 1, at 8.

7. Zakus & Wilday, *supra* note 2, at 77.

8. Moore, *supra* note 2, at 2.

9. NATIONAL RESEARCH COUNCIL, *supra* note 3, at 64.

10. M. Joycelyn Elders, Jennifer Hui, & Steff Padilla, *Adolescent Pregnancy: Does the Nation Really Care?*, 5 BERKELEY WOMEN'S L.J. 170, 172 (1990).

11. *Id.* at 172.

less these writers argue that the United States refuses to effectively address teen pregnancy because it is seen as a justifiable punishment for premarital sex.¹² Consequently, they conclude that the United States is willing to allow many of its young people to fall short of their educational, economic, and personal potential.¹³

The consequences of adolescent pregnancy are numerous and serious. A teenager who keeps her child is less likely to finish high school and more likely to be poor and supported by welfare.¹⁴ According to the National Research Council, the estimated taxpayer costs in 1985 for Aid to Families with Dependent Children (AFDC), Medicaid, and food stamps for families begun by birth to a teen were \$16.6 billion.¹⁵ In general, women who begin having children while they are teens have more children and space them more closely together than women who wait until they are older to become parents.¹⁶

Health risks for children born under such circumstances are also significant. Infant mortality rates of babies born to teens are 40 percent higher than for mothers aged twenty to twenty-four.¹⁷ In 1981, low birth weight babies (5.5 pounds or less) were twice as likely to be born to mothers under age fifteen and 33 percent more likely to be born to mothers aged fifteen to nineteen than to mothers aged twenty to twenty-four.¹⁸ In the first twenty-eight days after birth, low birth weight babies are forty times more likely to die than normal weight infants.¹⁹ Low birth weight is correlated with medical problems such as birth defects and prolonged illness²⁰ as well as with infant mortality. Chronic illness, financial hardships and emotional stress are additional problems faced by families with low birth weight infants.²¹

For younger teens physiological immaturity contributes directly to the low birth weight and infant mortality of their children.²² For older teens, age of the mother alone does not account

12. *Id.*

13. *Id.* at 179-80.

14. Higgins, *supra* note 1, at 12-13.

15. NATIONAL RESEARCH COUNCIL, *supra* note 3, at 205-206.

16. WORLD HEALTH ORGANIZATION, THE REPRODUCTIVE HEALTH OF ADOLESCENTS 7-8 (1989).

17. Jeanne Griffith, THE CHILDREN OF TEENAGE MOTHERS, in CONG. RES. SERV., REP. NO. 87-94 at 13 (1987).

18. *Id.* at 16.

19. *Id.* at 15.

20. *Id.* at 42.

21. *Id.* at 42-45.

22. *Id.* at 15, 42.

for low birth weight and infant mortality. Factors such as education level, socioeconomic status, personal habits, and inadequate prenatal care each associated only in part with age also contribute to problems of early childbearing.²³

Disadvantages for children born to adolescent mothers continue as the children mature. Cognitive development has been found to be significantly related to the mother's age, even when other factors such as sex, race, family size, education and income levels of parents, and birth order are taken into account.²⁴ Children of adolescent mothers consistently score lower on intelligence tests,²⁵ and it has been established that IQ scores of such children are adversely affected by factors such as family size, degree of social support, and socioeconomic status.²⁶

Children born to adolescent mothers also suffer from poor scholastic achievement. In a national study based on data collected in 1976 and 1981, a representative sample was employed to assess factors related to educational success. Both white and African-American children whose mothers were seventeen or younger at their child's birth were almost three times as likely to be behind a grade level as were children whose mothers were twenty-five or older at their child's birth.²⁷ The children of adolescent mothers were also less likely to perform well on vocabulary tests and to be assessed by their teachers as succeeding in school.²⁸ It is important to note that the age of the mother at the birth of her first child does not necessarily directly affect school performance. Rather, her age at first birth affects family size, family structure, and her own educational achievement,²⁹ which in turn affects the likelihood that she and her children will be poor.³⁰ All of these mediating factors have an impact on the child's ability to do well in school.³¹

Although the research is not conclusive, behavioral problems of children born to teen mothers have also been documented. These children, for example, display higher levels of antisocial behavior.³² White children aged eleven to sixteen whose mothers were eighteen or younger at their birth were more than twice as

23. *Id.* at 15.

24. *Id.* at 45-46.

25. *Id.* at 46.

26. *Id.* at 43-44.

27. *Id.* at 46-47.

28. *Id.* at 46.

29. *Id.* at 46-47.

30. *Id.* at 47.

31. *Id.*

32. *Id.* at 51-53.

likely as children born to mothers aged twenty-five or older to have had problems in school that included stealing, suspension, expulsion, or some type of parental intervention.³³ They were also more likely to fight at school.³⁴ Similar but less extreme differences were found among African-American children.³⁵ Finally, white adolescents born of teen mothers were 33 percent less likely and African-American adolescents of teen mothers were 60 percent less likely to think that they might wait until age twenty-one to become a parent.³⁶

The effect on children born to mothers who were forced to carry to term the unwanted pregnancy also merits consideration. Researchers Henry David and Zdenek Matejcek followed two matched groups of 220 children born in Czechoslovakia between 1961 and 1963.³⁷ The experimental group was born to mothers who were twice denied permission to abort.³⁸ The control group was born to mothers who did not seek abortion.³⁹ In general, the unwanted children were found to be disadvantaged compared to the control children. They had more problems with learning,⁴⁰ more behavioral problems,⁴¹ and were less likely to continue their education.⁴² Boys, but not girls, perceived their parents' relationship as unstable and felt unaccepted by their mothers.⁴³ Compared to the control group, girls in the experimental group held more liberal attitudes toward sexuality, drugs and alcohol, and divorce.⁴⁴ David and Matejcek concluded that unwanted children have more problems than wanted children, and that these disparities increase across time.⁴⁵

Clearly, adolescent childbearing can have harmful effects on mothers, their children, and society. In addition, denial of abortions to mothers who do not wish to carry a pregnancy to term can produce negative consequences for children born under such circumstances. Although the problems associated with adolescent

33. *Id.* at 52-53.

34. *Id.* at 53.

35. *Id.*

36. *Id.*

37. Henry David & Zdenek Matejcek, *Children Born to Women Denied Abortion: An Update*, 13 FAM. PLAN. PERSP. 32 (1981).

38. *Id.* at 32.

39. *Id.*

40. *Id.* at 33.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 33-34.

45. *Id.* at 34.

pregnancy have been clearly documented, effective responses have not been forthcoming.

II. Teen Pregnancy Prevention Efforts

Many solutions to the problem of unwanted teen pregnancy have been proposed and attempted. Among these are education about a variety of aspects of sexuality,⁴⁶ enhancing life options,⁴⁷ encouraging sexual abstinence,⁴⁸ and increasing access to contraceptives.⁴⁹ Unfortunately, as previously noted,⁵⁰ the problem continues unabated. Sex education, depending upon how and when it is presented, and what information is made available, shows promise for encouraging adolescents to use contraception after becoming sexually active.⁵¹ Despite concerns expressed by critics, sex education has not been shown to significantly affect the age at which sexual activity begins,⁵² nor has it led to increased pregnancy rates.⁵³ Such criticism has, however, kept effective sex education from being widely available to young people.⁵⁴

Increased contraceptive availability, in the absence of widespread education, has also not affected pregnancy rates.⁵⁵ Misconceptions abound regarding contraceptive use and safety.⁵⁶ Many teens use birth control devices only sporadically, if at all,⁵⁷ and often they do not begin birth control use until well after they have become sexually active.⁵⁸ Almost 52 percent of teens who do not use birth control become pregnant within two years of becoming sexually active.⁵⁹ Of those teens who do use birth control, 25 percent who use a non-medical form and 15 percent who use a medical form also become pregnant within two years.⁶⁰ Thus, it seems imperative that effective contraceptive use begin with initiation of

46. See, Higgins, *supra* note 1, at 22-40.

47. *Id.*

48. *Id.*

49. *Id.*

50. See *supra* notes 1-9 and accompanying text.

51. Higgins, *supra* note 1, at 41.

52. William Marsiglio & Frank L. Mott, *The Impact of Sex Education on Sexual Activity, Contraceptive Use, and Premarital Pregnancy Among American Teenagers*, 18 FAM. PLAN. PERSP. 158-59 (1986).

53. *Id.* at 160.

54. Elders, Hui, & Padilla, *supra* note 10.

55. Evelyln Landry, Jane T. Bertrand, Flora Cherry, & Jane Rice, *Teen Pregnancy in New Orleans: Factors that Differentiate Teens Who Deliver, Abort, and Successfully Contracept*, 15 J. YOUTH & ADOLESCENCE 259 (1986).

56. *Id.* at 269, 271.

57. Hayes, *supra* note 3, at 49-50.

58. *Id.*

59. *Id.*

60. *Id.*

sexual activity. In particular, school-based clinics which provide contraceptive services show promise for encouraging teens to wait before becoming sexually active and for increasing the use of birth control.⁶¹

For those teens who become pregnant, adoption is a potentially significant alternative to both early parenthood and abortion.⁶² Indeed, the Adolescent Family Life Demonstration Projects program, which became law in 1981 as Title XX of the Public Health Services Act,⁶³ calls for ways to make adoption a desirable choice for pregnant teens. Yet, only about 4 percent of teens find this a viable option for pregnancy resolution.⁶⁴

At present, most pregnant teens choose to carry the pregnancy to term and keep the child⁶⁵ or to abort the pregnancy.⁶⁶ To reduce the negative impacts of adolescent pregnancy, it is imperative to continue efforts to find and to make broadly available reliable ways to prevent teen pregnancy. Until the United States succeeds in preventing most teen pregnancies, the unfortunate realities of teenage parenthood present a compelling rationale for continuing to allow abortion as a legal alternative to adolescent child-bearing.

III. Supreme Court Review of Parental Involvement Legislation

Given the importance of the abortion question to the United States public, one would expect the issue to win Supreme Court attention. A steady stream of cases has flowed from the Court beginning with its landmark 1973 decision, *Roe v. Wade*.⁶⁷ In this historic case, the Court held that a woman's right to personal privacy included the right to decide whether or not to terminate her pregnancy.⁶⁸ Immediately after *Roe* was handed down, abortion during the first trimester of pregnancy was legal. The decision did not speak to minors' rights. Soon after, however, some states and Congress moved to enact legislation limiting the exercise of abortion rights. Many states focused their attention on minors and sought to restrict access to abortion by requiring parental involvement in abortion decisions. Subsequently, formidable barriers in the form of parental consent or notification legislation have been

61. Higgins, *supra* note 1, at 43-44.

62. NATIONAL RESEARCH COUNCIL, *supra* note 3, at 227.

63. 42 U.S.C. §§ 300 (1989).

64. See *supra* note 9, and accompanying text.

65. NATIONAL RESEARCH COUNCIL, *supra* note 3, at 161.

66. *Id.*

67. 410 U.S. 113 (1973).

68. *Id.*

placed before many teens who wish to abort. Over the last fifteen years, continuing efforts to regulate minors' access to abortion, through laws requiring them to obtain parental consent, to notify parents of their intent to abort, or to seek a judge's permission to abort have proliferated. Currently, thirty-five states have legislation requiring some degree of parental involvement in minors' abortion decisions⁶⁹ and an additional three mandate counseling in which parental involvement may be required.⁷⁰ Of the thirty-five, fifteen are currently being actively enforced.⁷¹

The Supreme Court's first opportunity to review a parental consent law came in 1976 in *Planned Parenthood of Missouri v. Danforth*.⁷² Only part of the case was relevant specifically to minors. *Danforth* involved a Missouri statute which prohibited first trimester abortions without the written consent of a parent or guardian if the woman was unmarried and under age eighteen, unless the abortion was necessary to save her life.⁷³ The Court held that states could not impose a blanket provision denying a minor

69. ALA. CODE §§ 26-21-1 to -8 (Supp. 1990); ALASKA STAT. § 18.16.010(a)(3) (1986), ALASKA ADMIN. CODE tit. 12, § 40.060 (July 1988); ARIZ. REV. STAT. ANN. § 36-2152, -2153 (Supp. 1989); ARK. CODE ANN. §§ 20-16-801 to -808 (Michie Supp. 1989); CAL. HEALTH & SAFETY CODE § 25958 (West Supp. 1991); COLO. REV. STAT. § 18-6-101 (1986) (enacted 1963); DEL. CODE ANN. tit. 24 § 1790(b)(3) (1987); FLA. STAT. ANN. § 390.001(4) (West Supp. 1991); GA. CODE ANN. §§ 15-11-110 to -117 (Michie 1990); IDAHO CODE § 18-609(6) (1987); ILL. ANN. STAT. ch. 38 ¶ 81-64 to -68 (Smith-Hurd Supp. 1991); IND. CODE ANN. § 35-1-58.5-2.5 (Burns Supp. 1991); KY. REV. STAT. ANN. § 311.732 (Baldwin 1990); LA. REV. STAT. ANN. § 40:1299.35.5 (West Supp. 1990), § 40.1299.33D (West 1977); MD. HEALTH-GEN CODE ANN. § 20-103 (1990); MASS. ANN. LAWS ch. 112, § 12S (Law Co-op. 1991); 1990 MICH. PUB. ACTS NO. 211; MINN. STAT. ANN. § 144.343 (West 1989); MISS. CODE ANN. §§ 41-41-51 to -63 (Supp. 1991); MO. ANN. STAT. § 188.028 (Vernon Supp. 1991); MONT. CODE ANN. § 50-20-107 (1989); NEB. REV. STAT. § 28-347 (1989), § 43-2101 (1988); NEV. REV. STAT. ANN. 442.255 (Michie 1986); N.M. STAT. ANN. § 30-5-1.C (Michie 1984) (enacted 1969); N.D. CENT. CODE § 14-0.2.1-03.1 (Supp. 1989); OHIO REV. CODE ANN. § 2919.12 (Anderson 1990), § 2151.85 (Anderson 1990); 19 PA. CONS. STAT. ANN. § 3206 (1983); R.I. GEN. LAWS § 23-4.7-6 (1990); S.C. CODE ANN. §§ 44-41-31 to 37 (Law Co-op. Supp. 1990); S.D. CODIFIED LAWS ANN. § 34-23A-7 (1986), § 26-1-1 (1984); TENN. CODE ANN. §§ 37-10-301 to 307 § 39-15-202(f) (Supp. 1990); UTAH CODE ANN. § 76-7-304(2), § 15-2-1 (1991); WASH. REV. CODE ANN. § 9.02.070 (West 1988) (enacted 1970); W. VA. CODE §§ 16-2F-1 to -5 (1985); WYO. STAT. ANN. §§ 35-6-101, to -118 (Supp. 1991).

70. CONN. GEN. STAT. ANN. §§ 19a-600 to -601 (West Supp. 1991); ME. REV. STAT. ANN. tit. 22 § 1597-A (West Supp. 1990); WIS. STAT. ANN. § 146.78 (West 1989).

71. The states are: Alabama, Arizona, Indiana, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, North Dakota, Ohio, Rhode Island, South Carolina, Utah, West Virginia, and Wyoming. NATIONAL ABORTION RIGHTS ACTION LEAGUE, WHO DECIDES? A STATE BY STATE REVIEW OF ABORTION RIGHTS (1991).

72. 428 U.S. 52 (1976).

73. The version ruled invalid in *Danforth* was cited as *H.C.S. House Bill No. 1211, § 3(4)*. 428 U.S. at 85. The current version, requiring written consent of one parent, appears as MO. ANN. STAT. § 188.028, 1(1) (Vernon 1983, Supp. 1991).

the right to an abortion,⁷⁴ nor could parents have "absolute, and possibly arbitrary, veto" power over a minor's decision to terminate her pregnancy.⁷⁵ Justice Blackmun's majority opinion, joined by Justices Brennan, Stewart, Marshall and Powell (Justice Stevens joined the majority decision, but objected to the Court's invalidation of the parental consent requirement), foreshadowed decisions which relied on a mature/immature minor distinction by stating, "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."⁷⁶ In a separate opinion, Justice Stevens intimated that states' interests in minors' well-being were sufficiently compelling to permit some restrictions on their ability to consent to abortion.⁷⁷ The majority opinion also implied that more narrowly drawn parental consent legislation could pass constitutional muster.⁷⁸

Some states responded to the Court's invitation in *Danforth* by passing narrowly drawn legislation which gave parents a voice in minors' abortion decision-making. The second challenge to a parental involvement law was presented in the 1979 case *Bellotti v. Baird* (cited as *Bellotti II*).⁷⁹ In this case a Massachusetts statute provided that if the mother was less than eighteen and not married, consent of the minor and both of her parents was required for an abortion to be performed, but that if one or both parents refused, consent could be obtained from a judge for "good cause shown."⁸⁰ A plurality in *Bellotti II* found that Massachusetts' interest in protecting minors extended to requiring parental involvement.⁸¹ At the same time, however, the Court established the requirement of a waiver procedure by which a minor could demonstrate sufficient maturity to make her own abortion decision independent of her parents,⁸² or if she lacked maturity, she could demonstrate that an abortion without parental involvement would nonetheless be in her best interests.⁸³

Building on the approach developed in the parental consent

74. 428 U.S. at 74.

75. *Id.* at 74-75.

76. *Id.*

77. *Id.* at 102-05.

78. *Id.* at 74-75.

79. 443 U.S. 622 (1979).

80. MASS. GEN. LAWS ANN. ch. 112, § 12S (West Supp. 1979).

81. 443 U.S. at 640.

82. *Id.* at 644.

83. *Id.*

cases, two years later, in *H.L. v. Matheson*,⁸⁴ the Court addressed the separate issue of the constitutionality of parental notification laws. The Utah statute in question required that prior to performing a minor's abortion, the physician must notify her parents or guardian, if possible.⁸⁵ In this case, Utah's statute was upheld in a narrow holding, influenced by the fact that notification alone does not amount to veto power.⁸⁶ The majority decision, authored by Chief Justice Burger, discussed a possible mature/immature minor distinction. Since the fifteen year old plaintiff did not offer evidence that she met the qualification of maturity or emancipation,⁸⁷ the Court declined to rule on the issue of whether notification placed an undue burden on a mature minor.⁸⁸

In 1983, the Supreme Court decided two cases involving parental consent legislation. In *City of Akron v. Akron Center for Reproductive Health, Inc.*,⁸⁹ the Court considered the constitutionality of an Akron ordinance which required a physician to obtain the informed written consent of a parent or legal guardian before performing an abortion on a minor under age fifteen, unless she had obtained a court order giving permission for her abortion.⁹⁰ Following the reasoning previously advanced in *Bellotti II*⁹¹ regarding the desirability of parental involvement in minor's abortion decisions, the Court cited three reasons why minors' rights are not equal to those of adults: (1) "the peculiar vulnerability of children;"⁹² (2) "their inability to make critical decisions in an informed, mature manner;"⁹³ and (3) "the importance of the parental role in child rearing."⁹⁴ Nonetheless, the Court concluded that minors must have an alternative to seeking parental permission to abort and that the procedure for judicial bypass must be clearly delineated rather than left to interpretation.⁹⁵ In his majority opinion, Justice Powell declared the statute unconstitutional because it was too vague⁹⁶ and noted that "[a] majority of the Court . . . has indicated that [these] state and parental interests [on which parental notice laws have been based] must give way to

84. 450 U.S. 398 (1981).

85. UTAH CODE ANN. § 76-7-304 (1974).

86. 450 U.S. at 411.

87. *Id.* at 405-07.

88. *Id.* at 398.

89. 462 U.S. 416 (1983).

90. AKRON OHIO CODE § 1870.05(B) (1978).

91. 462 U.S. at 439.

92. 443 U.S. at 634.

93. *Id.*

94. *Id.*

95. 462 U.S. 439-41.

96. *Id.* at 440-41.

the constitutional right of a mature minor or of an immature minor whose best interests are contrary to parental involvement."⁹⁷

In the second case heard by the Supreme Court in 1983, *Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft*,⁹⁸ the Court upheld a parental or judicial consent statute that established a two-step procedure for courts to use when reviewing minors' abortion requests.⁹⁹ The two-step analysis assured that good cause for denying a petition to abort meant the court must first find the minor to be sufficiently immature to make her own decision, and then find that the abortion would not be in her best interest.¹⁰⁰

The two most recent Supreme Court decisions regarding parental consent legislation were handed down in 1990. In *Hodgson v. Minnesota*,¹⁰¹ in a five to four decision, the Court reiterated the position first established in *Bellotti II*.¹⁰² The majority held that a judicial bypass mechanism is necessary to avoid undue infringement of constitutionally protected rights. The statute required at least a forty-eight hour waiting period after notification of both parents, before the abortion could be performed.¹⁰³ The Court found that this requirement did not place an undue burden on the minor because it often ran concurrent to abortion scheduling.¹⁰⁴ A separate subsection provided for a judicial bypass mechanism if the more restrictive two parent notification without judicial bypass requirement was enjoined.¹⁰⁵ The dissenting justices believed that the two parent notification requirement was unconstitutional. They reasoned that the requirement did not further the state's interests in promoting parent-teen communication, nor did it assure that the minor would make the best possible decision.¹⁰⁶

In the second 1990 case, *Ohio v. Akron Center for Reproductive Health*,¹⁰⁷ the Court considered the constitutionality of an Ohio ordinance which required the physician who would perform the abortion to personally notify one parent before performing the abortion,¹⁰⁸ unless the minor had either obtained permission to

97. *Id.* at 428, n.10.

98. 462 U.S. 476 (1983).

99. MO. REV. STAT. § 188.028 (Supp. 1982).

100. 462 U.S. at 493.

101. 110 S.Ct. 2926 (1990).

102. 443 U.S. at 643-44.

103. MINN. STAT. § 144.343(2) (1981).

104. 110 S.Ct. at 2926.

105. MINN. STAT. § 144.343(6) (1981).

106. 110 S.Ct. at 2945-49.

107. 110 S.Ct. 2972 (1990).

108. OHIO REV. CODE ANN. § 2919.12(B)(1)(a)(i) (Anderson 1982).

abort without parental notification in a judicial bypass procedure¹⁰⁹ or to receive an expedited review.¹¹⁰ Clear and convincing evidence of a minor's maturity or that the abortion would be in her best interests without parental notification was also required by the statute.¹¹¹ Writing for the Court in a six to three decision, Justice Kennedy stated that a law requiring minors to provide clear and convincing evidence of their maturity when seeking a judicial waiver does not violate due process rights.¹¹² The judicial waiver itself was at issue in this case. The Court perceived an attempt by appellees to weaken its criteria by (1) granting the minor permission to abort automatically if the courts did not act within prescribed time limits,¹¹³ (2) not requiring a clear and convincing evidence standard for proving maturity or best interests,¹¹⁴ and (3) requiring simplification of the pleading so as not to interfere with the minor's due process rights.¹¹⁵ The Court refused to weaken the criteria.¹¹⁶ In his concurring opinion, Justice Stevens concluded that the state must provide a means by which mature minors, or minors whose best interests would not be served by notification, could avoid parental notification.¹¹⁷ He stated, however, that the mechanism need not be judicial.¹¹⁸

In summary, the Supreme Court has been fairly consistent in its consideration of parental involvement legislation. The Court has held to precedent and found unconstitutional legislation in which a single parent has the potential to veto a teen's abortion decision.¹¹⁹ The justices continue to find the question of when a minor's constitutional right to privacy equals that of adults troublesome.¹²⁰ Additionally, even though parental involvement is viewed positively, the Court has not allowed parents' rights to carry more weight than those of teens'. Because of personnel changes on the Court, however, the recent six to three decision in

109. OHIO REV. CODE ANN. § 2919.12(B)(1)(a)(iv) (Anderson 1987).

110. OHIO REV. CODE ANN. § 2505.073(A) (Anderson 1986).

111. OHIO REV. CODE ANN. § 2151.85(C) (Anderson 1986).

112. *Ohio v. Akron Ctr. for Reprod. Health*, 110 S.Ct. at 2981-82 (1990).

113. *Id.* at 2981.

114. *Id.* at 2981-82.

115. *Id.* at 2982.

116. *Id.* at 2978-2981.

117. *Id.* at 2994.

118. *Id.*

119. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52 (1976); *City of Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983).

120. *Danforth*, 428 U.S. 52; *Bellotti v. Baird*, 443 U.S. 622 (1979); *City of Akron*, 462 U.S. 416; *Planned Parenthood Ass'n of Kansas City, Mo. v. Ashcroft*, 462 U.S. 476 (1983); *Hodgson v. Minnesota*, 110 S.Ct. 2926 (1990); *Ohio v. Akron Ctr. for Reprod. Health*, 110 S.Ct. 2972 (1990).

*Ohio v. Akron Center for Reproductive Health*¹²¹ likely bodes a more conservative hearing for future parental involvement legislation.¹²² At a minimum, it seems that the justices have been crafting their decisions to instruct policymakers on ways in which to write ever more restrictive parental involvement laws that will pass constitutional muster.

Perhaps there is a paradox operating here. As the Court has insisted upon laws that allow adolescents some leeway in demonstrating their maturity and making their own decisions, legislatures intent on denying teens access to abortion have achieved little success in passing legislation that both meets their goal and is constitutional. Yet, undaunted in the face of repeated failure, state legislatures continue their search for a constitutionally acceptable formulation.¹²³

IV. The Role of Psychology in Parental Involvement Legislation

Although largely ignored by the United States Supreme Court, psychological research bears importantly on the adolescent abortion question. The issue of parental involvement for minors is especially salient to psychologists because the assumptions upon which courts have based their decisions have psychological foundations. The Court (as well as state legislatures) has relied heavily upon psychological assumptions to inform and shape their conclusions, many of which do not reflect relevant empirical evidence. In this area, four assumptions emerge as critical to the Court's decisions: 1) minors are not competent decision-makers, 2) abortion is psychologically harmful to minors, 3) family cohesion and good decision-making are promoted by parental involvement, and 4) parental rights supercede those of minors.

A. *Informed Decision-Makers*

To assess the correctness of the Court's reliance on these assumptions pertinent psychological research will be discussed. The first assumption focuses on the minor's supposed level of maturity. Since adults' right to give informed consent for treatment rests upon the belief that they are able to understand the consequences and implications of their decisions, the state generally may not interfere with their right to privacy when making such decisions. This was the rationale employed in *Roe v. Wade*.¹²⁴ In contrast,

121. 110 S.Ct. 2972.

122. See *supra* note 69.

123. 410 U.S. 113 (1973).

124. See *supra* note 120.

the Court's parental involvement opinions indicate the belief that at least some minors lack sufficient maturity to make informed decisions regarding pregnancy resolution.¹²⁵ The state's interest in protecting minors from making incorrect or "bad" decisions has justified the limitation on minors' constitutional rights.¹²⁶

Danforth,¹²⁷ the first parental involvement case to be heard by the Supreme Court, established that minors have a right to privacy regarding abortion decisions,¹²⁸ that some minors are sufficiently mature to make their own abortion decisions,¹²⁹ and that parents may not have absolute veto power over a minor's abortion decision.¹³⁰ At the same time, the Court left open the possibility of future challenges to minors' right to privacy by stating that their decision should not be construed to imply that "every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."¹³¹ Even more to the point, in a dissenting opinion, three justices wrote that states are entitled "to protect children from their own immature and improvident decisions."¹³²

Thus, *Danforth* set the stage for subsequent cases to call into question minors' "maturity." Although the Court has not defined the concept of maturity as it relates to abortion, it has since handed down decisions that infringe upon minors' right to privacy based upon an assumption that they are insufficiently mature to make a reasoned decision on their own, and thus will reach a "better" decision if assisted by a parent.¹³³ For example, in *Ohio v. Akron Center for Reproductive Health, Inc.*, Justice Kennedy stated,

A free and enlightened society may decide that each of its members should attain a clearer, more tolerant understanding of the profound philosophic choices confronted by a woman who is considering whether to seek an abortion. Her decision will embrace her own destiny and personal dignity, and the origins of the other human life that lie within the embryo. The State is entitled to assume that, for most of its people, the beginnings of that understanding will be within the family, soci-

125. Bellotti, 443 U.S. at 634-39. See also, Akron Ctr. for Reprod. Health, 110 S.Ct. at 2979-81; Hodgson, 110 S.Ct. at 2942-44; Ashcroft, 462 U.S. at 491; Ginsberg v. New York, 390 U.S. 629, 639-40 (1968); Prince v. Massachusetts, 321 U.S. 158, 166-67 (1944).

126. 428 U.S. 52 (1976).

127. *Id.* at 74-75.

128. *Id.*

129. *Id.*

130. *Id.* at 75.

131. *Id.* at 95 (White, J., dissenting).

132. Bellotti v. Baird, 443 U.S. 622 (1979); See also Planned Parenthood Ass'n of Kansas City, Mo. v. Ashcroft, 462 U.S. 472 (1983); Ohio v. Akron Ctr. for Reprod. Health, 110 S.Ct. 2972 (1990).

133. Akron Ctr. for Reprod. Health, 110 S.Ct. 2972 (1990).

ety's most intimate association.¹³⁴

B. *The Psychological Consequences of Abortion*

The second basis upon which minors' right to reproductive choice may be limited in the view of the Supreme Court is that their youth makes girls particularly vulnerable to presumed negative affects of abortion. Further, it is clear that the issue in question is specifically abortion, not pregnancy in general. In deciding *H.L. v. Matheson*, the Court concluded that "[i]f the pregnant girl elects to carry her child to term, the [medical] decisions to be made entail few—perhaps none—of the potentially grave emotional and psychological consequences of the decision to abort (emphasis in original)."¹³⁵ In formulating its holding, the *Matheson* Court relied on scientifically unsubstantiated psychoanalytic impressions by Hrair M. Babikian and Adila Goldman of teens who bore a child, and a questionable study by Judith S. Wallerstein, Peter Kurtz, and Marion Bar-Din that employed a small, specialized sample of teens who were under clinical treatment.¹³⁶ Based on these findings, the Court concluded that teens are much more negatively impacted by abortion than are adults. It seems ironic that in the one case in which the Court majority attempts to bolster its position by reference to psychological literature, it selected reports that supported their desired policy outcome but that are substantively suspect.

C. *Family Cohesion*

Promotion of family cohesion is cited as the third reason to limit adolescents' abortion rights. Courts have traditionally had an interest in protecting family integrity.¹³⁷ In this respect, they have tended to look upon the family as an independent governmental unit and have been reluctant to interfere with its autonomy.¹³⁸ For example, in *Prince v. Massachusetts* the Supreme Court stated that there exists a "private realm of family life which the state

134. *H.L. v. Matheson*, 450 U.S. 398, 412-13 (1981).

135. Gary B. Melton & Anita J. Pliner, *Adolescent Abortion: A Psychological Analysis*, in *ADOLESCENT ABORTION* 11 (G. Melton ed. 1987) [hereinafter *ADOLESCENT*].

136. See, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974); See also *Griswold v. Connecticut*, 381 U.S. 479, 495-96 (1961).

137. *LaFleur*, 414 U.S. at 639-40; *Yoder*, 406 U.S. at 231-32; *Prince*, 321 U.S. at 165; *Pierce*, 268 U.S. at 518; See also *Griswold*, 381 U.S. at 495-96.

138. 321 U.S. at 166.

cannot enter."¹³⁹

In regard to minors' abortion rights, the goal has been to advance parental involvement in the decision. The Court has reasoned that parental assistance is often desirable¹⁴⁰ and that the interests of the minor and the family will be served through parental involvement.¹⁴¹ The assumption in judicial decisions regarding parental involvement is that parents, once informed, will make decisions that are in the best interest of their minor child. This assumption is illustrated in the most recent Supreme Court abortion decision in which Justice Kennedy stated,

It is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both compassionate and mature. . . . It would deny all dignity to the family to say that the State cannot take this reasonable step in regulating its health professions to ensure that, in most cases, a young woman will receive guidance and understanding from a parent.¹⁴²

D. Parental Rights

The final argument put forth as justification for mandatory parental involvement legislation is that children are the property of their parents; thus, parents' rights extend to control of their minor children's decisions.¹⁴³ The reasoning here is twofold. First, it is argued that parents assume responsibility for their minors' care and well-being, and thus they should take part in decisions affecting their care.¹⁴⁴ Second, parents are responsible for socializing their children and instilling in them appropriate values.¹⁴⁵ However, the Court has ruled that a state's interest in protecting parents' interest in shaping their children's values does not supercede the constitutional rights of a minor who acts with the consent of a court.¹⁴⁶

139. *Bellotti v. Baird*, 443 U.S. 622, 633-39 (1979); *H.L. v. Matheson*, 450 U.S. 410 (1981); *Hodgson v. Minnesota*, 110 S.Ct. 2926 (1990).

140. *Hodgson*, 110 S.Ct. 2926; *Matheson*, 450 U.S. at 410; *Bellotti*, 443 U.S. at 633-39 (1981).

141. *Akron Ctr. for Reprod. Health*, 110 S.Ct. 2972 (1990).

142. *See Parham v. J.R.*, 442 U.S. 584, 603-04 (1979); *Prince*, 321 U.S. at 165-66.

143. *Ginsberg v. New York*, 390 U.S. at 639 (1968); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Lehr v. Robertson* 463 U.S. 248, 257 (1983).

144. *Wisconsin v. Yoder*, 406 U.S. at 233-34 (1972).

145. *Bellotti v. Baird*, 443 U.S. 622, 643 (1979); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 75 (1976).

146. *ADOLESCENT*, *supra* note 135, at 8.

V. A Review of the Psychological Literature

A. *Informed Decision-Making*

To date, courts have not defined "maturity," the pivotal concept upon which a minor's right to consent to abortion is based.¹⁴⁷ If a teen is mature, she is able to understand the consequences of having an abortion and thus able to give informed consent. If she is immature, she cannot.¹⁴⁸ At present, a test that reliably and validly measures maturity does not exist. As a result, judges have no precise guidelines and their assessments of a minor's maturity must necessarily be the result of individual interpretation of the definition. Psychologists and other experts have defined a mature minor as one who is able to make an informed, intelligent, uncoerced decision.¹⁴⁹ Efforts to make the definition measurable have led social science researchers to rely upon a minor's ability to 1) understand situations and their possible outcomes, 2) reason effectively about positive and negative consequences of each outcome, 3) understand ways in which the consequences fit within the framework of values and goals, and 4) make a proactive, uncoerced decision.¹⁵⁰

Using these criteria, researchers have found few differences between minors' and adults' decision-making abilities. Minors appear to be more likely than adults to view their decision to abort as externally determined.¹⁵¹ When comparing older minors (age fourteen to seventeen) to adults, minors have been found to be as competent as adults at understanding alternatives and consequences, and they make their decisions by similar processes.¹⁵² Even very young minors (age nine), despite a general poorer understanding of the decision-making process and its consequences, nonetheless appear to be capable of making a meaningful contribution to decisions regarding personal health care.¹⁵³ By age four-

147. *Id.*

148. Thomas Grisso & Linda Vierling, *Minors' Consent to Treatment: A Developmental Perspective*, 9 PROF. PSYCHOL. 412, 416 (1978); Lois A. Weithorn & Susan B. Campbell, *The Competency of Children and Adolescents to Make Informed Treatment Decisions*, 53 CHILD DEV. 1589 (1982); Walter J. Wadlington, *Consent to Medical Care for Minors: The Legal Framework* in CHILDREN'S COMPETENCE TO CONSENT 57 (G. Melton ed. 1983).

149. Bruce Ambuel & Julian Rappaport, *Developmental Trends in Adolescents' Psychological and Legal Competence to Consent to Abortion*, LAW & HUM. BEHAV. (forthcoming 1992).

150. Catherine C. Lewis, *A Comparison of Minors' and Adults' Pregnancy Decisions*, 50 AM. J. ORTHOPSYCHIATRY 446 (1980).

151. Weithorn & Campbell, *supra* note 148, at 1596.

152. *Id.*

153. *Id.*

teen adolescents perform comparably to older minors and adults in their ability to make rational choices.¹⁵⁴

Additionally, minors have shown themselves to be able to understand the consequences of abortion and childbirth.¹⁵⁵ A recent study of pregnancy resolution decision-making that compared minors and adults found that only minors who were age fifteen or less and *who did not consider abortion* were less competent than adults.¹⁵⁶ Minors who chose abortion to resolve their unwanted pregnancy, regardless of their age, demonstrated competency comparable to that of adults.¹⁵⁷ Researchers Bruce Ambuel and Julian Rappaport suggested that the differences they found can be attributed to the heightened anxiety associated with choosing to carry a pregnancy to term.¹⁵⁸

In summary, an overview of research relating to decision-making competence regarding pregnancy resolution suggests that substantial differences between adults and minors in decision-making ability do not exist. After age thirteen, teens have demonstrated reasoning competence comparable to that of an average adult. Melton asserts that when employing criteria used by courts to assess competence to consent, older adolescents do not differ on average from adults.¹⁵⁹ In addition, no research suggests that minors over age thirteen are *unable* to make reasoned decisions.

B. *Psychological Consequences of Abortion*

Court decisions have rested upon the assumption that the consequences of abortion may be harmful to the psychological well-being of anyone, but the consequences are particularly severe for minors.¹⁶⁰ An extensive cross-cultural review of over 100 studies conducted between 1936 and 1988 was assembled by the Public Interest Directorate of the American Psychological Association. They concluded that the psychological consequences of elective

154. Lewis, *supra* note 150, at 452.

155. Ambuel & Rappaport, *supra* note 149.

156. *Id.*

157. *Id.* at 24.

158. Gary B. Melton, *Knowing What We Do Know: APA and Adolescent Abortion*, 45 AM. PSYCHOLOGIST 1171, 1172 (1990).

159. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 90 (1976) (Stewart, J., concurring); *Bellotti v. Baird*, 443 U.S. 622, 640-41 (1979); *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).

160. Public Interest Directorate of the American Psychological Association, *Research Review: The Psychological Sequelae of Abortion* 18 (1988), (unpublished report to the Office of the Surgeon General, on file with LAW & INEQUALITY [hereinafter Public Interest Directorate]).

abortion are minimal in a vast majority of cases.¹⁶¹ The Directorate reported that severe emotional responses to abortion are rare.¹⁶² Further, longitudinal studies have concluded that negative feelings are strongest immediately after the abortion, and decrease with time.¹⁶³ This is not to suggest that the decision to abort is an easy one. Indeed, it is a difficult and complex choice.¹⁶⁴ Nevertheless, many researchers have found that the most commonly reported post-abortion response is relief and happiness.¹⁶⁵

Specifically regarding teens, the APA Directorate reported on one study that found teens to be at greater risk for "anxiety, depression, sadness, guilt, and regret."¹⁶⁶ The researcher in that study noted that teens have a higher rate of psychiatric problems after giving birth as well.¹⁶⁷ Additional studies reported that younger women are more likely to experience negative emotions following abortion.¹⁶⁸ Despite these findings, a study conducted six months post-abortion by psychologists Marvin Eisen and Gail Zellman concluded that over 80 percent of adolescent respondents would choose abortion again if faced with an unintended pregnancy.¹⁶⁹ The Directorate concluded by stating that according to available research, "serious psychological disorders triggered by abortion appear to be few."¹⁷⁰

C. Family Cohesion

The logic of family cohesiveness relies upon two assumptions. The first is that parental involvement in minors' pregnancy resolution promotes family unity. The second is that minors will not involve their parents unless forced to do so. To date, empirical research has not been done to adequately test the family unity claim. Available information suggests that family unity may not be promoted by involving parents. For example, David Baptiste reported that family therapy for a minor's pregnancy resolution

161. *Id.*

162. *Id.*

163. C. GILLIGAN, IN *A DIFFERENT VOICE*, (1982); see, Public Interest Directorate, *supra* note 160, at 19.

164. Public Interest Directorate, *supra* note 160, at 19.

165. *Id.* at 20.

166. *Id.*

167. *Id.*

168. Marvin Eisen & Gail L. Zellman, *Factors Predicting Pregnancy Resolution Satisfaction of Unmarried Adolescents*, 145 J. GENETIC PSYCH. 231, 234 (1984).

169. Public Interest Directorate, *supra* note 160, at 21.

170. David A. Baptiste, Jr., *Counseling the Pregnant Adolescent Within a Family Context: Therapeutic Issues and Strategies*, 13 FAM. THERAPY 163, 174 (1986).

may be beneficial when the family is healthy prior to the crisis.¹⁷¹ Family intervention can be harmful, however, if there are stressful circumstances present in the family prior to the minor's pregnancy.¹⁷²

A review of existing research regarding functioning of families with a pregnant adolescent who either planned to raise the child or to give the child up for adoption found that these families functioned at a significantly less optimal level than families with teenage children who did not have a member who was an adolescent mother.¹⁷³ An additional study examined the reactions of parents to their pregnant teens. In this study teens reported that their parents' reactions to their pregnancy were not as extreme as they expected.¹⁷⁴ They did, however, report numerous repercussions to their revelation, including heightened parental control, a decrease in the level of trust displayed toward the teen, and attempts to discontinue the teen's relationship with the father of the child.¹⁷⁵ Three of the sixteen abortion patients (not all teens in this study chose abortion) reported that their relationship with their parents deteriorated after they learned of the pregnancy.¹⁷⁶

Under ideal circumstances, it is preferable that pregnant teens seek the support and guidance of a parent. Some teens, however, report family situations¹⁷⁷ in which they were fearful of discussing their pregnancy decisions with their parents. For example, problems such as mental illness, alcoholism, fear of being ejected from the home, threats of harm to the teenager or her partner, and further disruption of already unhealthy family situations have been noted by pregnant teens as reasons not to involve their parents.¹⁷⁸

In contrast, some teens have been found to underestimate the

171. *Id.*

172. Gayle Geber & Michael D. Resnick, *Family Functioning of Adolescents Who Parent and Place for Adoption*, 23 *ADOLESCENCE* 417, 422 (1988).

173. Catherine Briedis, *Marginal Deviants: Teenage Girls Experience Community Response to Premarital Sex and Pregnancy*, 22 *SOC. PROBS.* 480 (1974).

174. *Id.*

175. *Id.*

176. Baptiste, *supra* note 170.

177. Patricia Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions*, 15 *FAM. PLAN. PERSP.* 259, 262 (1983); "Judicial Bypass Procedure Minnesota/Michigan," presentation by Judge G. Peterson, Mich. Probate Judges' Mid-Winter Conference (1991).

178. Briedis, *supra* note 173; Everett L. Worthington, Jr., David B. Larson, Malvin W. Brubaker, Cheryl Colecchi, James T. Berry, & David Morrow, *The Benefits of Legislation Requiring Parental Involvement Prior to Adolescent Abortion*, 44 *AM. PSYCHOLOGIST* 1542 (1989).

amount of support they will receive from their parents.¹⁷⁹ Not wanting to disappoint parents, feeling ashamed about the pregnancy, wishing not to jeopardize the family relationship,¹⁸⁰ as well as lack of awareness of the degree of support they might receive prevent some teens from taking their parents into their confidence. When consent is mandated, many teens who would potentially receive support from their parents will still seek other alternatives rather than discuss their pregnancy at home.¹⁸¹ Indeed, when a parental notification law was in effect in Minnesota, judges there found that across two eighteen-month periods, the greatest percentage of teens (29 and 33 percent respectively) said that fear of damaging their relationship with their parents was their primary reason for not notifying them.¹⁸² Other reasons for not discussing their abortion decision with parents were less benign. They included parental opposition to abortion that would result in the minor being expelled from the home (15 and 21 percent), being forced to carry the pregnancy to term (5 and 7 percent), and fear of aggravating already existing problems in the home (10 and 18 percent).¹⁸³

Thus, it seems that mandatory parental involvement does not necessarily lead to family cohesion and in some cases can be harmful to the pregnant teen. A case in point is that of Becky Bell, an Indiana teenager who died in 1988 of an infection resulting from an illegal abortion.¹⁸⁴ Indiana has a parental consent law. Becky refused to tell her parents she was pregnant because she did not want to disappoint them, and it was widely rumored among teens in her town that the judge she would face for a waiver did not grant them.¹⁸⁵ Understandably, the Bells hold the parental consent law responsible for their daughter's death.¹⁸⁶

Should minors be forced to discuss pregnancy resolution with their parents? In the absence of legislation mandating parental involvement in pregnancy resolution, about half of all pregnant teens do so anyway.¹⁸⁷ The younger the teen, the more likely she

179. Donovan, *supra* note 177; Judge G. Peterson, *supra* note 180.

180. Aida Torres, et. al., *Telling Parents: Clinic Policies and Adolescents' Use of Family Planning and Abortion Services*, 12 FAM. PLAN. PERSP. 284, 288 (1980); See also, Raye Rosen, *Adolescent Pregnancy Decision-Making: Are Parents Important?*, 15 ADOLESCENCE 43 (1980).

181. Judge Peterson, *supra* note 177.

182. *Id.*

183. Margaret Carlson, *Abortion's Hardest Cases*, TIME, July 9, 1990, at 22.

184. *Id.*

185. *Id.*

186. *Id.*

187. Rosen, *supra* note 180.

is to talk with a parent prior to making a decision. Seventy-five percent of twelve to fifteen year olds, compared to 54 percent of sixteen and 46 percent of seventeen year olds, involve at least one parent.¹⁸⁸ Thus, those minors who are most likely to benefit from involving their parents, namely younger teens, to a great extent already do so.

It is possible that families who have discussed issues pertaining to sexuality would be better able to cope with an unplanned adolescent pregnancy. Therefore, it is important to investigate the extent to which parents provide information about sexuality to their daughters. Research regarding the content and extent of communication between teens and parents about sexuality suggests that the most sensitive issues are the most difficult to discuss. Researchers Litton Fox and Judith Inazu found that parents were most likely to give information about menstruating and dating and least likely to discuss their teens' sexual activity and contraception.¹⁸⁹ Further, teens reported feeling uncomfortable with conversations between themselves and parents regarding sexuality.¹⁹⁰ While parents can and do give useful information and advice to their adolescent children, the more closely connected conversations are to the teen's actual sexual activity, the greater the possibility that the topic will be difficult and stressful to discuss.¹⁹¹

D. Parental Rights

At this point, it is important to recall that the Supreme Court has ruled that absolute authority of a third party (including parents) over a teen's decision regarding her pregnancy is a violation of the teen's due process right to privacy.¹⁹² The Court resolved this conflict by insisting upon a judicial bypass mechanism for teens who do not wish to involve their parents in their pregnancy resolution decision.¹⁹³ Parental rights are therefore recognized by the Court, but not given more weight than the teen's rights.

Arguments put forth to justify parental involvement maintain that parents are responsible for the socialization of their chil-

188. Torres, *supra* note 180.

189. Greer Litton Fox & Judith K. Inazu, *Mother-Daughter Communication About Sex*, 29 FAM. REL. 347 (1980).

190. *Id.*

191. *Id.*

192. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979).

193. *Bellotti*, 443 U.S. 622.

dren,¹⁹⁴ as well as the financial consequences of their children's actions,¹⁹⁵ and thus should have control over those actions. Even so, public policymakers have recognized the private nature of some issues and problems facing teens as well as states' compelling interest in assisting minors who seek medical treatment or assistance in resolving them. For example, minors acting alone are presently able to give consent to the prescription of contraceptives,¹⁹⁶ to treatment of sexually transmitted diseases,¹⁹⁷ and to obtain drug and alcohol treatment.¹⁹⁸ These examples document recognition that in some cases teens are able to decide what is best for them, and that forcing parental involvement has the potential to deter minors from seeking and receiving medical care.

A further rationale for parental involvement legislation is that parents will make decisions based on the best interests of teens. Unfortunately, since it is difficult to know prospectively what teens' best interests are, to a large extent such decisions would necessarily be based upon parents' own values and wishes. Further, empirical evidence that parents do in fact make decisions taking teens' best interests into account regarding pregnancy resolution currently does not exist.

VI. Consequences to Teens of Parental Consent Legislation

A. Experiences of Teens Who Seek Judicial Bypass

In keeping with the Supreme Court's ruling that parents may not have absolute veto power over their teen's abortion decision, a court-mandated judicial bypass clause has been incorporated into constitutional parental involvement legislation.¹⁹⁹ The clause ensures that minors who do not wish to involve their parents, or whose parents will not acquiesce in a teen's wish to abort, can gain permission to abort from a court. The clause can work in one of two ways. First, a judge is asked to determine whether a minor seeking an abortion is sufficiently mature to make her own decision. If the judge finds adequate maturity, the teen's decision to abort is upheld.²⁰⁰ If the teen is found to be immature, the judge must then determine whether an abortion would be in her best in-

194. *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974).

195. *See, Stanley v. Illinois*, 405 U.S. 645 (1972); *Lehr v. Robertson*, 463 U.S. 248 (1983).

196. MICH. COMP. LAW § 333.9131, § 330.1938.

197. MINN. STAT. § 144.343(1).

198. MO. REV. STAT. § 431.061 (Supp. 1991).

199. *Bellotti v. Baird*, 443 U.S. 622 (1979).

200. *Planned Parenthood of Cent. Mo. v. Ashcroft*, 462 U.S. 476, 490-93 (1983).

terests, despite her immaturity.²⁰¹ Again, if this is found to be the case, consent to abort is given.²⁰²

Under the judicial bypass provisions of most states, a court in each county has jurisdiction to hear minors' abortion pleas.²⁰³ It is not unusual for a judge to refuse to entertain such requests, however, forcing the minor to travel long distances from a rural area to a city where her case can be heard.²⁰⁴ Because of a paucity of abortion providers in rural areas,²⁰⁵ once consent is obtained, she must often make a second trip to the city in order to have the abortion.²⁰⁶ In some cases, teens have been harassed by judges who disapprove of their decision to abort or the premarital sexual activity that put them in their current situation.²⁰⁷

A significant criticism of the judicial bypass process is that judges are required to perform a role for which they are unprepared.²⁰⁸ Legal and psychological mechanisms do not exist for assessing either the teen's maturity or her best interests. In Minnesota, for example, court proceedings have been essentially a formality, with teens receiving permission to abort in virtually every case.²⁰⁹ In other states, judicial procedure is an insurmountable barrier, where no minor is given permission to abort her fetus.²¹⁰ Wherever the locale, judges have difficulty doing the job they have been mandated to do.

Psychologist Patricia Donovan has documented additional problems associated with the judicial bypass process. For example, because teens must go to court there is a delay in obtaining the abortion.²¹¹ Time is critical in abortion decisions because delays can advance the pregnancy into the second trimester, increasing risk and cost,²¹² or into the third trimester, when abortion is strictly regulated, and much less likely to be allowed.²¹³

201. *Id.*

202. *Id.*

203. Donovan, *supra* note 177.

204. *Id.*

205. National Abortion Rights Action League, *supra* note 71, at 186.

206. Donovan, *supra* note 177.

207. *Id.*

208. See David Oltman, *Juvenile Abortion: State Court Judges Worry About Law*, L.A. DAILY J., Dec. 16, 1987, at 1, col. 2.

209. Donovan, *supra* note 177, at 264.

210. Interview with Robyn Menin, Director of Planned Parenthood of Mid-Michigan (Feb. 4, 1991).

211. Donovan, *supra* note 177, at 264.

212. Nancy Russo, *Adolescent Abortion: The Epidemiological Context*, in ADOLESCENT ABORTION 40, 56 (G. Melton ed. 1986).

213. *Roe v. Wade*, 410 U.S. 113 (1973).

B. Changes Associated With Parental Involvement Legislation

The most noticeable effect of parental consent legislation has been an increase in the number of babies born to teens and greater difficulty obtaining abortions. Pointing to the experience of one state, a Utah Department of Health official reported that out-of-wedlock births to Utah teens had risen following the passage of parental consent legislation.²¹⁴ In less than two years after parental consent legislation went into effect, abortions to teens decreased in three states adopting the law.²¹⁵ At the same time, abortions provided to nonresident minors increased in surrounding states within traveling distance of states mandating parental involvement.²¹⁶

Of course, there are choices available to teens beyond bearing a child or traveling to a more liberal locale to abort. Illegal and self-inflicted abortions have long been used by women who are desperate to be rid of their pregnancy and who do not perceive (or have) other options.²¹⁷ Data from the United States and Great Britain suggest that the availability of legal abortion results in fewer deaths from abortion. Researcher S.L. Barron reported that while the proportion of women's deaths caused by abortion in England and Wales increased at a steady rate from 1952 to 1969, data from 1973 to 1975 (after abortion laws were relaxed) showed a dramatic drop in the rate of death due to abortion.²¹⁸ Deaths from "spontaneous" abortion in the same time frame fell even further than those attributed to illegal abortion,²¹⁹ suggesting that many spontaneous abortions were actually induced. A similar pattern has been found in abortion deaths in the United States.²²⁰

Clearly, illegal and self-induced abortions are widely utilized when safer choices are unavailable or inaccessible.²²¹ Creating barriers to safe, legal abortions, such as parental involvement legislation, may result in significantly increased teen mortality rates,

214. Donovan, *supra* note 177, at 266.

215. Virginia G. Cartoof & Lorraine V. Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 AM. J. PUB. HEALTH 397 (1986).

216. Hallye Jordan, *Abortion Consent Laws Producing Muddled Results*, L.A. DAILY J., Jan. 5, 1988, at 1.

217. Planned Parenthood, *The Bush Administration: Dragging Us Back to the Back Alley* (1989) [Brochure]; Christopher Tietze & Sarah Lewit, *Epidemiology of Induced Abortion* in ABORTION AND STERILIZATION: MEDICAL AND SOCIAL ASPECTS 41 (J. Hodgson, ed. 1981); S.L. Barron, *Abortion and Health*, in STERILIZATION 121, 127.

218. Barron, *supra* note 217, at 125.

219. *Id.* at 125-26.

220. *Id.*

221. See Tietze & Lewit, *supra* note 215; Barron, *supra* note 217, at 121.

because some pregnant adolescents will end unwanted pregnancies by unsafe, illegal means when no other choice is open to them.

VII. Conclusions

At present, parental involvement legislation and Supreme Court decisions have put abortion availability for teens in jeopardy. Since the Supreme Court gave women a greater measure of control over their reproductive decisions in *Roe v. Wade*²²² in 1973, opponents of abortion have worked to have this landmark decision overturned. There has been a step-by-step process of restricting abortion access to vulnerable groups, with the ultimate goal of eliminating all legal abortions.²²³ Indeed, anti-abortion advocates have successfully eroded access to abortion for a number of populations, including poor women through revocation of Medicaid funding.²²⁴ Thus, parental involvement legislation can be viewed as part of an ongoing effort to ban all abortions.

While courts are viewed as impartial purveyors of justice, it is likely that recent Supreme Court decisions limiting abortion access are influenced by the current political and social climate, dominated by conservatism and a hearkening back to the traditional values of paramount respect for family privacy and authority that anti-abortion advocates represent.²²⁵ This perhaps explains why parental involvement legislation has been embraced, despite a notable lack of empirical evidence that it accomplishes the goals it purports to address.

Teenage pregnancy is an unfortunate social reality and will not be eliminated through restrictive legislation. Programs teaching teenagers about how to prevent unwanted pregnancy are badly needed to solve the problem. In the absence of widely available educational programs of this kind, the medical data indicate abortion should be retained as an accessible, affordable, and safe option for resolving adolescent pregnancies if unwanted children and death and injuries to teen mothers are to be avoided.

Assuming that relevant research could influence an increasingly conservative United States Supreme Court, better communication of existing knowledge to the Court and legislatures is needed. Further empirical research that adequately addresses the psychological effects of choices teens make about pregnancy reso-

222. 410 U.S. 113 (1973).

223. Carlson, *supra* note 183, at 26; R. SHEERAN, WOMEN, SOCIETY, THE STATE, AND ABORTION: A STRUCTURALIST ANALYSIS (1987).

224. *Harris v. McRae*, 448 U.S. 297 (1980).

225. SHEERAN, *supra* note 223.

lution, as well as evidence about adolescent decision-making *per se*, should be undertaken as should studies assessing the impact of adolescent pregnancy and abortion on family cohesion. In addition, the effects of parental involvement legislation on teens must continue to be documented. For example, at present we know little about the ways in which parental involvement in pregnancy resolution impacts the family. We also do not know, and need to learn, whether parents can be depended upon to uphold the best interests of their pregnant minor children.

Decisions in cases challenging restrictive legislation should be better informed by empirical evidence. Indeed, the studies discussed in this article suggest that the rationales underpinning court decisions limiting minors' rights to privacy are largely unsupported by research data. By helping to expose the tenuous assumptions upon which judicial and legislative decisions regarding parental involvement rest, psychologists and legal scholars can work together to contribute to thoughtful and responsive policymaking.

