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pregnancy has been undisputed since the Supreme Court decision in *Roe v. Wade*²⁶. However, the right for an unmarried and unemancipated minor to receive an abortion has been a constant source of debate. Mississippi is one state that requires minors seeking an abortion to obtain the consent of at least one parent.²⁷ This comment attempts to briefly outline, using *In the Matter of R.B. v. State*²⁸ as an example, the benefits that parental consent legislation offers to minors seeking abortions.

Historically, judges and legislatures have recognized that minors do not enjoy the same spectrum of constitutional rights, as do adults. Minors' legal rights have been limited because of immense psychological differences between them and adults, which makes them

***PARENTAL CONSENT
LEGISLATION BENEFITS
MINORS SEEKING ABORTIONS***

Jason Allen MacBride

I. Introduction

**The right for an adult
woman to terminate her**

²⁶ 410 U.S. 113 (1973) (holding that a state may reasonably determine that parental consultation is desirable and in the best interests of the minor with respect to a decision to obtain an abortion).

²⁷ See MISS. CODE ANN. §§ 41-41-51 to 41-41-63 (1993) (requiring a minor to obtain consent from both parents before obtaining an abortion).

²⁸ 790 So.2d 830 (Miss. 2001).

more vulnerable to being taken advantage of. It is the states' responsibility to ensure that their minors are fully cognizant of the procedures and consequences involved when pursuing an abortion. Parental consent legislation ensures that all minors seeking an abortion are mature and well-informed enough to decide such a critical decision, and that an abortion is in their best interests. This goal is accomplished by involving parents in the decisionmaking process and by allowing parents to provide emotional support during and following the abortion procedure.

II. *In the Matter of R.B. v. State*²⁹

A recent Mississippi Supreme Court decision, denying an unmarried and unemancipated minor the right to receive an abortion, rekindled a great deal of debate amongst pro-choice and pro-life supporters. *In the Matter of R.B. v. State* involved in situation where a seventeen year old girl with a middle school education sought to have an abortion. She was

living with her grandmother at the time of her pregnancy, as her parents were deceased, and she was pursuing her high school equivalent degree.

On July 19, 2001, the Mississippi Supreme Court determined R.B., an "[u]nmarried and unemancipated minor failed to demonstrate that she was mature and well-informed enough to make [an] abortion decision on her own or that termination of pregnancy would be in her best interest, and thus, parental consent for abortion would not be waived."³⁰ The majority took into consideration the fact that R.B. had an eighth grade education at the time of her pregnancy, and the fact that she was never informed of the risks associated with an abortion, nor has she specifically asked. In addition to above factors, R.B. had no

²⁹ *Id.*

³⁰ *Id.* at 790, 836 (Banks, J., dissenting, raised a very important point that the minor's grandmother, who was acting *in loco parentis*, consented to the abortion, which should have been sufficient to meet the statute's requirements; however, the minor never petitioned the court to have her grandmother appointed as her legal guardian, and therefore the grandmother could not consent).

knowledge of the risks of infection, hemorrhage, breast cancer, nor was she aware that an abortion could cause danger to subsequent pregnancies and infertility. R.B. did not even know the name, background, or qualifications of the physician who would perform the procedure. R.B.'s only major inquiry into the procedure was as to the location where the abortion would take place. In fact, R.B. chose an out-of-state location based solely on the cost of the procedure.³¹ In addition to her claim that she was mature and well-informed enough to make the decision to terminate her pregnancy, R.B. also claimed that the abortion was in her best interest because she was attempting to attain her GED; however, she also testified that the pregnancy would not interfere with the GED program.³²

Because R.B. could not present any mitigating factors

to the facts presented above, Justice Smith, writing for the majority, stated, "[t]he record does not indicate that the minor is capable of reasoned decision-making and that she has considered her various options. Rather the evidence, shows that R.B.'s decision is the product of impulse." Although this decision may be seen as limiting a woman's right to choose, it in fact demonstrates the necessity of legal protection, through competent legislation, to ensure that minors possess the requisite thought-process needed for an abortion, and to guarantee that incompetent physicians do not operate on vulnerable and desperate minors.

III. The Rights of Minors Under the Law Are Limited

Historically, minors have not been granted the same range of rights under the Constitution as adults. Rights of children cannot be equated with those of adults because of the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental

³¹ *Id.* at 832.

³² *Id.* at 831 (under MISS. CODE ANN. § 41-41-51 to 63 (1993), a minor can sidestep the parental consent requirement by showing a judge either that she is mature and well-informed enough to make an abortion decision or that an abortion is in her best interests).

role in child rearing."³³ Many states, including Mississippi, have sought to protect their minors from these handicaps through legislation. For instance, Mississippi requires its unemancipated minors to obtain parental consent prior to consummating a marriage, applying for educational loans, being admitted into a mental and illness center, being subject to an autopsy, and receiving contraception.³⁴ The decision of a minor to obtain an abortion is without a doubt more dangerous to her physical and mental hygiene and carries more permanent consequences than any of the acts mentioned above.

The seminal case surrounding the constitutionality of parental consent legislation is the United States Supreme Court decision, *Bellotti v. Baird*.³⁵ Throughout his opinion,

Justice Powell, writing for the majority, explicated the rationale for limiting the rights of minors in the realm of reproductive choice:

In this case . . . we are concerned only with minors who . . . may range in age from children of 12 years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent and unethical.³⁶

³³ *Id.* at 634 - 640.

³⁴ See MISS. CODE ANN. §93-1-5(4) (1994) (obtaining marriage license); *id.* §37-49-5 (1996) (applying for educational loans; *id.* §41-19-205 (1993) (for admittance into mental and illness centers); *id.* §41-37-25 (1993) (before autopsies may be performed); and *id.* §41-42-7 (1999) (contraception).

³⁵ 443 U.S. at 622.

It would be an extreme overstatement to argue that all unemancipated minors fall into the scenario described by Justice Powell, as many minors are strong and capable of

³⁶ *Id.* at 641.

making well-informed and mature decisions of a critical nature without parental involvement. For these types of minors, a mandatory judicial bypass clause, mandated by the Supreme Court, allows unemancipated minors to forego obtaining parental consent as long as they can persuade a judge that they are well-informed and mature enough to make the decision to obtain an abortion or that the abortion is in their best interests.³⁷ The fact remains that there are many unemancipated minors like R.B. who cannot make well-informed and mature decisions of great magnitude.

³⁷ See *id.* at 643 (Justice Powell stating, “we therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents’ consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled to in such a proceeding to show either: (1) that she is mature enough and well informed enough to make her abortion decision . . . independently of her parent’s wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests).

IV. The Emotional State of Minors Illustrates Their Vulnerability

Currently, no consensus exists as to the optimal method in determining whether a minor is legally mature enough to make the decision to seek an abortion. Few studies conducted in this area have directly compared adults’ decisionmaking abilities with that of minors’. Because decisionmaking is at the crux of whether parental consent legislation promotes minors’ well-being, this type of research must be examined extensively before critics of parental consent legislation proclaim minors are as capable as adults in deciding whether an abortion is in their best interests. It would be far-fetched to argue that R.B. was mentally capable of undergoing an abortion on her own in another distant state by a physician that she had never met and knew nothing about.

In contrast, there have been studies conducted that evidence distinct differences between minors’ and adults’ capacities for making well-

reasoned abortion decisions.³⁸ One psychoanalytic analysis found that adolescents' responses to abortion decisions differed depending on their stage of development.³⁹ Minors, age twelve to fifteen, lacked knowledge of the nature of the situation, used the pregnancy to enhance their relationship with their mother, and denied responsibility for their actions. This group of adolescents did not attribute any reality to the fetus and made the decision to abort based on the perception that they had no other choice.⁴⁰

³⁸ See, e.g., Victoria Foster & Norman A. Sprinthall, *Dev. Profiles of Adolescents and Young Adults Choosing Abortion: Stage Sequence, Decalage, and Implications for Policy*, 27 ADOLESCENCE 655 (1992).

³⁹ See Wanda Franz & David Reardon, *Differential Impact of Abortion on Adolescents and Adults*, 27 ADOLESCENCE 161, 163 (1992) (citing Sherry L. Hatcher, *Understanding Adolescent Pregnancy and Abortion*, 3 PRIMARY CARE 407, 410 (1997)).

⁴⁰ Stephanie A. Zavala, Note, *Defending Parental Involvement and the Presumption of Immaturity in Minors' Decisions to Abort*, 72 S. CAL. L. REV. 1725, 1737 (citing Victoria Foster & Norman A. Sprinthall, *Dev. Profiles of Adolescents and Young Adults Choosing Abortion: Stage Sequence,*

Minors, ages fifteen to eighteen, demonstrated a limited understanding of their responsibility for the situation, used the pregnancy as a means to obtain autonomy from the family and as a source of power, and showed ambivalence toward the abortion.⁴¹ In contrast, young adults, ages eighteen to twenty-one, took greater responsibility, were in tune with their emotions and desires, and determined the abortion decision to be most difficult.⁴²

V. Parental Involvement Provides Support to Minors

Decalage, and Implications for Policy, 27 ADOLESCENCE 655 (1992)).

⁴¹ Zavala, *supra* note 15, at 1737 (citing Victoria Foster & Norman A. Sprinthall, *Dev. Profiles of Adolescents and Young Adults Choosing Abortion: Stage Sequence, Decalage, and Implications for Policy*, 27 ADOLESCENCE 655, 665 (1992)).

⁴² Zavala, *supra* note 16, at 1737 (citing Victoria Foster & Norman A. Sprinthall, *Dev. Profiles of Adolescents and Young Adults Choosing Abortion: Stage Sequence, Decalage, and Implications for Policy*, 27 ADOLESCENCE 655, 665 (1992)).

It is assumed that all parents have their child's best interests at heart, and that in the end, every parent will support their child's decision to have an abortion despite their own position on the issue. Although this may not be the situation in the United States today, evidence tends to suggest that it is very rare for parents to refuse to provide support to their pregnant daughter(s). Again, in cases where parents are not a positive element, minors can bypass parental involvement by going before a judge and by proving that they are well-informed and mature enough to make a decision to seek an abortion, or in the alternative demonstrate that the abortion would be in her best interest. Many would be surprised to learn that "while anticipated parental anger towards a daughter's pregnancy may take place initially, most parents become supportive upon adjusting to the news. Two-thirds to four-fifths of parents have been found to be supportive of their daughter, even in those studies conducted prior to *Roe v. Wade* when attitudes towards teenage pregnancy were much more judgmental than

today."⁴³ Even though these statistics relate to teen pregnancy in general, they demonstrate that a great deal of minors misjudge parental anger and lack of support. Furthermore, since *Roe v. Wade*, abortion has become legal practice, and, as a result, it has gained the greatest degree of social acceptance than at any other time in this nation's history.

There is little evidence that suggests parental consent legislation harms the minor or her family.⁴⁴ On the contrary, there are many benefits to parental consent legislation. Parental consent legislation recognizes that parents, in most instances, are in the best position, based on their knowledge and bonds of affection, to assess and act in their children's best interests by protecting their children from physical and psychological harm, but also affirmatively influencing children's cognitive, emotional, social and moral

⁴³ Zavala, *supra* note 17, at 1747 (citing Robert H. Mnookin, *In the Interest of Children: Advocacy Law Reform and Public Policy*, 159 (1985)).

⁴⁴ Zavala, *supra* note 18, at 1748.

development.⁴⁵ Another advantage to parental consent legislation is that it has the potential to protect many minors from their own impulsive decisionmaking ability. Many minors who engage in a deliberative thought process, assign value in a manner that reflects their immaturity, as they will give great weight to short-term consequences, and little weight to long-term consequences. They will attach positive rather than negative value to risks, or at least fail to account for the great costs associated with these risks; they will place greater value than adults on how others will respond to the choices they make.⁴⁶ Parental involvement mitigates these setbacks because most parents bring experience, stability, and mature judgment to decisionmaking.

rights of minors. However, by recognizing the distinct differences between minors and adults, these states ensure that the mental and physical safety of its children is protected. Because children do not possess the same mental awareness and decisionmaking abilities as adults, parental consent legislation ensures that minors understand the decision to procure an abortion. Legal and psychological evidence demonstrates that many minors, such as R.B., who believe that an abortion is the only solution, do not understand the complexities and dangers of the procedure. Parental consent legislation does not forbid a minor from receiving an abortion, but it does ensure that she understands the procedure, and receives a safer abortion.

VI. Conclusion

Many opponents of parental consent legislation proclaim that states such as Mississippi trample on the

⁴⁵ Emily Buss, *The Parental Rights of Minors*, 48 BUFF. L. REV. 785, 804 (2000).

⁴⁶ *Id.* at 797.