

Bellotti v. Baird
Supreme Court of the United States, 1979.
443 U.S. 622.

MR. JUSTICE POWELL announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST joined.

These appeals present a challenge to the constitutionality of a state statute regulating the access of minors to abortions. * * *

I.

A.

On August 2, 1974, the Legislature of the Commonwealth of Massachusetts passed, over the Governor's veto, an Act pertaining to abortions performed within the State. * * *

Section 12S provides in part:

"If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents [to an abortion to be performed on the mother] is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient. * * *

* * *

II.

A child, merely on account of his minority, is not beyond the protection of the Constitution. As the Court said in *In re Gault*, "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." This observation, of course, is but the beginning of the analysis. The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children." The unique role in our society of the family, the institution by which "we inculcate and pass down many of our most cherished values, moral and cultural," requires that

constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

A.

The Court's concern for the vulnerability of children is demonstrated in its decisions dealing with minors' claims to constitutional protection against deprivations of liberty or property interests by the State. With respect to many of these claims, we have concluded that the child's right is virtually coextensive with that of an adult. For example, the Court has held that the Fourteenth Amendment's guarantee against the deprivation of liberty without due process of law is applicable to children in juvenile delinquency proceedings. *In re Gault, supra*. In particular, minors involved in such proceedings are entitled to adequate notice, the assistance of counsel, and the opportunity to confront their accusers. They can be found guilty only upon proof beyond a reasonable doubt, and they may assert the privilege against compulsory self-incrimination. *In re Winship* [infra p.1111]; *In re Gault*. * * *

* * *

These rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults. Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults. * * * Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, . . . sympathy, and . . . paternal attention."

B.

Second, the Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.

* * *

C.

Third, the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from

adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. But an additional and more important justification for state deference to parental control over children is that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*. "The duty to prepare the child for 'additional obligations' . . . must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." *Wisconsin v. Yoder*. This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.

We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is something we expect the State not to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice. Thus, "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include *preparation for obligations the state can neither supply nor hinder*." *Prince v. Massachusetts* (emphasis added).

Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."

Properly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding. Under the Constitution, the State can "properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility."¹⁸

III.

* * * The question before us * * * is whether §12S, as authoritatively interpreted

¹⁸ The Court's opinions discussed in the text above—*Pierce*, *Yoder*, *Prince*, and *Ginsberg* [*v. New York*, 390 U.S. 629 (1968)]—all have contributed to a line of decisions suggesting the existence of a constitutional parental right against undue, adverse interference by the State.

by the Supreme Judicial Court, provides for parental notice and consent in a manner that does not unduly burden the right to seek an abortion.

* * * As stated in Part II above, * * * parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor. It may further determine, as a general proposition, that such consultation is particularly desirable with respect to the abortion decision—one that for some people raises profound moral and religious concerns. * * *

* * * The abortion decision differs in important ways from other decisions that may be made during minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter.

A.

The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman, is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Yet, an abortion may not be the best choice for the minor. The circumstances in which this issue arises will vary widely. In a given case, alternatives to abortion, such as marriage to the father of the child, arranging for its adoption, or assuming the responsibilities of motherhood with the assured support of family, may be feasible and relevant to the minor's best interests. Nonetheless, the abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences.

For these reasons, as we held in *Planned Parenthood of Central Missouri v. Danforth*, "the State may not impose a blanket provision . . . requiring the consent of a

parent or person in *loco parentis* as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy." Although * * * such deference to parents may be permissible with respect to other choices facing a minor, the unique nature and consequences of the abortion decision make it inappropriate "to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." 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 in such a proceeding to show either: (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;²³ or 2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. * * *

B.

* * *

(1)

* * *

We conclude * * * that under state regulation such as that undertaken by Massachusetts, every minor must have the opportunity—if she so desires—to go directly to a court without first consulting or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her best interests. If the court is persuaded that it is, the court must authorize the abortion. If, however, the court is not persuaded by the minor that she is mature or that the abortion would be in her best interests, it may decline to sanction the operation.

There is, however, an important state interest in encouraging a family rather than

²³ The nature of both the State's interest in fostering parental authority and the problem of determining "maturity" makes clear why the State generally may resort to objective, though inevitably arbitrary, criteria such as age limits, marital status, or membership in the Armed Forces for lifting some or all of the legal disabilities of minority. Not only is it difficult to define, let alone determine, maturity, but also the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended. As discussed in the text, however, the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors.

a judicial resolution of a minor's abortion decision. Also, as we have observed above, parents naturally take an interest in the welfare of their children—an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents. These factors properly may be taken into account by a court called upon to determine whether an abortion in fact is in a minor's best interests. If, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement. On the other hand, the court may deny the abortion request of an immature minor in the absence of parental consultation if it concludes that her best interests would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate. But this is the full extent to which parental involvement may be required. For the reasons stated above, the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court.

* * *

(3)

Another of the questions certified by the District Court to the Supreme Judicial Court was the following: "If the superior court finds that the minor is capable [of making], and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision is a better one?" To this the state court answered:

"[W]e do not view the judge's role as limited to a determination that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion. * * * [I]n circumstances where he determines that the best interests of the minor will not be served by an abortion, the judge's determination should prevail, assuming that his conclusion is supported by the evidence and adequate findings of fact."

The Supreme Judicial Court's statement reflects the general rule that a State may require a minor to wait until the age of majority before being permitted to exercise legal rights independently. But we are concerned here with the exercise of a constitutional right of unique character. As stated above, if the minor satisfies a court that she has attained sufficient maturity to make a fully informed decision, she then is entitled to make her abortion decision independently. We therefore agree with the District Court that § 12S cannot constitutionally permit judicial disregard of the abortion decision of a minor who has been determined to be mature and fully competent to assess the implications of the choice she has made.

IV.

Although it satisfies constitutional standards in large part, §12S falls short of them in two respects: First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to

make this decision independently. Second, it requires parental consultation or notification in every instance, without affording the pregnant minor an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests. Accordingly, we affirm the judgment of the District Court insofar as it invalidates this statute and enjoins its enforcement.

Affirmed.

[The concurring and dissenting Justices did not take issue with Part II of the plurality opinion, which articulates factors that justify treating children's constitutional rights as less weighty than adults', and proceeds to discuss maturity.]