***Bellotti v. Baird* (1979) - Justice Powell -** 8/1.

The *Belotti* Court:
The Court's makeup has not changed since *Colautti*.
Majority (8): Powell, Blackmun, Brennan, Stewart, Marshall, Stevens, Burger & Rehnquist.
Minority (1): White.

Issue: Is this Massachusetts statute Constitutional with respect to a **minor's** access to an abortion?

Held: No.

Reasoning: Justice Powell/Burger/Stewart/Rehnquist...Section 12S provides in part:

> "If the mother is <18 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. 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. The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files."

Physicians performing abortions in the absence of the consent required by §12S are subject to

injunctions and criminal penalties.

Mary Moe was pregnant, resided at home with her parents and was desirous of obtaining an abortion without informing them.

There are 3 reasons justifying the conclusion that the Constitutional rights of minors cannot be equated with those of adults: (1) the peculiar vulnerability of children; (2) their inability to make critical decisions in an informed, mature manner; and, (3) the importance of the guiding role of parents in child rearing.

As to the 3rd reason, the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. An important justification for state deference to parental control over children is that "**the 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.*

Remember *Wisconsin v. Yoder* from the 1st Amendment "religious clause" journey. Amish parents were permitted to take their children out of school at age 14. It was a 6 to 1 decision. Justice Douglas dissented because he thought the kids needed representation separate and apart from their parents. The point being that **just 7 years prior to this case, the Yoders (i.e., the "parents") were being supported by the Supreme Court in their right to raise their children in conformance with their beliefs, not the beliefs of the State.**

"It 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*. **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**." *Ginsberg v. New York.*

I cannot believe this was an 8 to 1 decision. I think it is the saddest case we have read to date. The Court says "**we do not pretend any special wisdom on this subject,"** then, after firmly establishing the rightful "first place" role of parents in the upbringing of their children, they **do** assume the role of **Solomon** and jerk the foundation out from under the family structure. To me, this issue has nothing to do with the narrower issue of "abortion." Regardless of how you feel about that, this Court is now placing the State ahead of parents when it comes to critical issues literally involving life or death within the family unit. What is next? Will the Court decide where your minor children go to school? Who they marry? Whether you must let them drive your car even if you feel they are not ready to do so? Whether you can discipline them by taking away access to the family vehicle while they are living in your household? Sound far fetched? Well, hold on. The Supreme Court of the United States is about to tell you, parent, that "it is Constitutional" for your 12 year old daughter to get permission from a judge you do not know and have an abortion from a doctor you do not know without so much as even notifying you. Where is that to be found in the Constitution?

To me, it doesn't matter where you stand on the concept of abortion under circumstances that suit your belief system. Here, we have the State making the very decision parents would make if they were notified. Think about that, please. It sounds like Hitler's Germany to me. A judge has the right to make what amounts to a decision to approve of an abortion procedure for a minor without notifying parents. Where are Americans on this issue? Who knows? We don't know about this as a culture or, perhaps, we don't want to know. We are ignorant! We are dead to what our Government is doing.

Someone out there in ELL Nation is saying, "But, some parents might react violently to being notified of such news." That is, of course, true. But, it should not be a judge's call to make and the solution is not to leave all other parents in the dark. I simply cannot apologize for my anger. This decision is un-American and unconstitutional! Do not misunderstand. I am not necessarily even arguing for a parent's right to make the ultimate decision. I am simply talking about **being let in on what a judge, a doctor and our government is doing with our daughters in what might be the most significant decision of their life – simple notification!**

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, who have the primary responsibility for children's well-being, are entitled to the support of laws designed to aid discharge of that responsibility."** *Ginsberg v. New York.*

The Court's opinions discussed in the text above -- *Pierce, Yoder, Prince*, and *Ginsberg* – all have contributed to a line of decisions suggesting the existence of a constitutional parental

right against undue, adverse interference by the State.

We previously had held that a State could not lawfully authorize an absolute parental veto over the decision of a minor to terminate her pregnancy. *Planned Parenthood v. Danforth.* The question before us -- in light of what we have said in the prior cases -- is whether §12S, as authoritatively interpreted 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.

APPELLEES CONTEND THAT THE MERE REQUIREMENT OF PARENTAL NOTICE CONSTITUTES SUCH A BURDEN. As stated above, however, 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**.

In *Roe v. Wade* and *Doe v. Bolton* we emphasized the importance of the role of the attending physician. Those cases involved adult women presumably capable of selecting and obtaining a competent physician. In this case, however, we are concerned only with minors who, according to the record, may range in age from **12** to 17. 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 or unethical.

To this point in the Opinion, it appears clear that the Majority has provided insurmountable policy and constitutional reasons why notifying mom or dad should be mandatory! You are all in for a surprise!

BUT we are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions facing minors. The State is required to act with particular sensitivity when it legislates to foster parental involvement in this matter.

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 v. Danforth,* "the State may not impose a blanket provision...requiring the **consent** of a parent as a condition for abortion of an unmarried minor..." 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; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests.

> Someone please help! The minor is entitled to show that she is mature enough to make the decision (along with her physician, but without her parents) or, if she cannot convince a judge she is mature, she has the opportunity to convince the judge that an abortion would be in her best interest (even though she is not mature enough to independently make that decision) ?!?! But, then, I forgot. Justice Blackmun believes that if a child is mature enough to "get pregnant," she is mature enough to decide to abort — apparently without mom or dad even being informed.

Such a procedure **must ensure** that a resolution of the issue will be completed with **anonymity** and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the "absolute, and possibly arbitrary, veto" that was found impermissible in *Danforth.*

> In other words, the procedure must ensure complete secrecy under cloak of darkness to keep all of this from the parents!

§12S falls short of the foregoing standards in 2 respects: (1) it permits judicial authorization for an abortion to be withheld from a minor who is found by a court to be mature and fully competent to make such a decision independently; and, (2) it requires parental consultation or notification in every instance, whether or not in the minor's best interests, without affording her 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.

Truly frightening! I guess the State knows best!

As construed, §12S would impose an undue burden upon the exercise by minors of the right to seek an abortion. As the District Court recognized, "there are parents who would obstruct, and perhaps altogether prevent, the minor's right to go to court." There is no reason to believe that this would be so in the majority of cases where consent is withheld. But many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access to court. It would be unrealistic, therefore, to assume that the mere existence of a legal right to seek relief in superior court provides an effective avenue of relief for some of those who need it the most.

Many parents do hold strong views on the subject. Many would seek to persuade against aborting. There is a monumental irony, here. I think most would agree that the odds of a "family decision" opting for life increase as the age of the minor increases and, get this, as the maturity level of the minor child, therefore, increases. Just ponder that thought. Many minors who do abort, especially without input from parents, live with guilt the rest of their lives. Many do not regret the decision. BUT, IT IS FLAT OUT WRONG, IN MY HUMBLE ESTIMATION, FOR ANY JUDGE AND A MAJORITY OF THE SUPREME COURT OF THIS LAND TO DECIDE THAT PARENTS SHOULD BE LEFT OUT OF THE DECISION MAKING PROCESS ON SUCH AN ISSUE. AND, GIVEN THE COURT'S PRIOR SUPPORT OF TRADITIONAL FAMILY VALUES, IT IS CLEARLY UNCONSTITUTIONAL. Please do not forget that I am making no value judgment on the act of abortion, here. Pro-choice or pro-life, it does not matter on this point, for I am focusing on pro-family vs. parenting-by-government. This decision has far reaching implications beyond just abortion.

Who are they to decide for the rest of us that it is they (the State), through a local judge they don't even know (the State), that are more fit than parents to make the very same decision. Don't forget, the decision is not whether it is a good idea for a 12 year old girl to abort her fetus. The decision is whether she is mature enough to make that decision in partnership with her doctor without even notifying her parents or, if not, that it would still be in her best interest to abort without so much as notifying mom and/or dad!

With this ruling, parents do not even have the right to counsel their daughters. The State will do that for them. The Majority apparently thinks the State can do a better job, no matter what elected legislators believe.

We conclude, therefore, that 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.

Let me see if I get this. A 12 year old child, a judge who does not know her and a doctor who does not know her can all agree to an abortion without the parents knowledge and the child could die on the operating table, all done with the procedural sanction of the Supreme Court of the United States of America! Now, let's add deeply held religious beliefs of the parents (and the child, if the judge and doctor really knew her like her parents do) to the mix. Regardless of how anyone feels about abortion, keeping this a secret from parents is an outrage — the kind of thing that could generate a Constitutional amendment. But, I am convinced our populace does not know about this case.

The parents might have some insight. Perhaps they might be able to accurately predict that aborting a fetus, regardless of their daughter's age, will have a far more devastating impact to their daughter than a judge could possibly have the insight to know. The parents and child should at least confer. Right?

They might even be in favor of the abortion, but have independent knowledge that the doctor is a quack. Is familial medical history relevant? Could the absence of such knowledge from the parents be fatal to the child? Oops, I forgot. The State knows better than the parents!

And, finally, what happens if the local judge determines that the minor is neither mature enough to decide nor that it is in her best interests not to notify parents. All the opinion says is that the judge "may decline to sanction the operation." It does not say that the judge must also then notify the parents and, given the Majority's penchant for secrecy, I presume they would not sanction notification in that instance. Now we have an immature minor pregnant girl who's plea for an abortion is rejected by a Court who will not notify parents of that rejection. **This is the blueprint for back-alley-abortion, compliments of the Majority of your United States Supreme Court!**

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

DISSENT: Justice White...Going beyond *Danforth*, the Court now holds it unconstitutional for a State to require that in all cases parents receive **notice** that their daughter seeks an abortion and, if they object to the abortion, **an opportunity to participate in a hearing** that will determine whether it is in the "best interests" of the child to undergo the surgery. Until now, **I WOULD HAVE THOUGHT INCONCEIVABLE** a holding that the United States Constitution forbids even notice to parents when their minor child who seeks surgery objects to such notice and is able to convince a judge that the parents should be denied participation in the decision.

Justice White is the sole dissenting Justice.

Hard to believe. I guess Big Brother knows best!!!