



# **MINOR ABORTION ACCESS RESEARCH AND ADVOCACY PROJECT FROM PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS**

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## I. INTRODUCTION

In *Dobbs v. Jackson Women's Health Organization*, the Supreme Court overturned *Roe v. Wade* and returned legal authority over abortion to the states. The evisceration of the right to abortion under the federal constitution has had a devastating impact on abortion access across large swaths of the country, with a disparate impact on communities that have long faced systemic barriers to accessing health care, including teens.

When it comes to teens, not only are they subject to the access barriers that adult abortion seekers face, but they must also contend with the additional requirements imposed by parental involvement laws that are currently in effect in a majority of states. These laws subject teens to state surveillance and control, while teens who instead choose to carry to term are legally free to make their own reproductive decisions. As exemplified by Idaho's first-in-the-nation law making it a crime to help teens access cross-border abortion care, with *Roe* gone, young people face the risk of additional age-specific legal restrictions in this post-*Dobbs* era.

***As set out in this report, the goals of the PPLM Minor Abortion Access Research and Advocacy Project (MAARAP) are to:***

- Provide a legal overview of the abortion rights of minors in the pre-*Dobbs* era within an abortion exceptionalism framework and consider the age-specific threats to teen abortion access in a post-*Roe* landscape;
- Identify the reasons why some teens opt to seek judicial authorization for an abortion rather than involve their parents;
- Detail the harms of the judicial bypass process;
- Assess the burdens imposed by parental involvement laws and assign a minor-specific access grade to each state and the District of Columbia;
- Assign an abortion access grade to each state and the District of Columbia based on the laws applicable to all abortion seekers regardless of age to highlight the abortion access differential faced by teens;
- Advocate for state-level legal reforms to eliminate parental involvement laws through repeal or state constitutional challenges in abortion-protective states as well as the launch of public education campaigns in states where such reforms are not currently feasible to set the stage for future initiatives.

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## II. THE ABORTION RIGHTS OF TEENS IN THE PRE-DOBBS ERA

### ***The Federal Constitutional Framework***

When the U.S. Supreme Court ruled in its landmark 1973 *Roe v. Wade* decision that the federal constitution protects a “woman’s decision whether or not to terminate her pregnancy,” it was silent on whether teens under the age of 18 (minors) were included in the word “woman.” Hoping they were not, anti-abortion activists promptly began pressing states to enact parental involvement laws that would give decision-making authority over abortion to parents, rather than to pregnant teens themselves.

Within a few years of *Roe*, the Supreme Court was faced with constitutional challenges to the first generation of parental involvement laws. Grounded in the recognition that “[m]inors, as well as adults, are protected by the Constitution and possess constitutional rights,”<sup>1</sup> it ruled that in keeping with *Roe*, states could not give parents veto power over their child’s abortion decision. The underlying logic was that states could not delegate a power to parents that they did not possess – namely, the authority to ban (veto) the abortion decision of their child.

However, the Supreme Court also made clear that the decisional rights of teens were not equal to those of adults due to their “inability to make critical decisions in an informed and mature manner” and the “importance of the guiding role of parents in the upbringing of their children.”<sup>2</sup> It accordingly concluded that states have a special interest in “encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child,” which could be actualized through the enactment of a parental involvement law.<sup>3</sup> The Supreme Court added an important caveat – to avoid the unconstitutional delegation of veto power to parents, these laws had to include a confidential judicial bypass option.<sup>4</sup> Seeking to actualize this “special interest,” within a few decades of *Roe*, a clear majority of states had enacted parental involvement laws.

### ***Writing Abortion Exceptionalism into the Federal Constitution***

At first glance, the Supreme Court’s approach appears to have struck a reasonable balance between the abortion rights of teens and the interest parents have in the upbringing of their children – a right that is, it should be noted, also constitutionally protected. However, upon closer look, this seeming compromise turns out to be a glaring example of “abortion exceptionalism” – namely, the subjecting of abortion to “over-regulation”<sup>5</sup> due to its “highly politicized and stigmatized status.”<sup>6</sup>

Notably in this regard, the Supreme Court declared that states have a “special interest” in encouraging pregnant teens to talk to their parents when making the decision whether to carry a pregnancy to term or not, and also further recognized that unwanted parenthood “may be exceptionally burdensome for a minor.”<sup>7</sup> In reality, however, this interest is only actualized when the decision is to not bear a child. In short, the legal regime of reproductive surveillance and control is reserved for teens who choose to end a pregnancy, while teens who instead choose to carry to term are free to do so without any required adult oversight.

1 *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976).

2 *Bellotti v. Baird*, 443 U.S. 622, 637 (1979).

3 *Bellotti*, 443 U.S. at 639.

4 *Bellotti*, 443 U.S. at 639. The Supreme Court noted that the parental bypass mechanism did not have to be in the nature of a court hearing. However, this report will speak in terms of a court alternative since this is the option that the majority of states with parental involvement laws have adopted.

5 Millar, E. (2023). Abortion stigma, abortion exceptionalism, and medical curricula. *Health Sociology Review*, 32(3), 261–276. <https://doi.org/10.1080/14461242.2023.2184272>

6 Joffe, C., & Schroeder, R. (2021). COVID-19, health care, and abortion exceptionalism in the United States. *Perspectives on Sexual and Reproductive Health*, 53(1-2), 5-12. <https://doi.org/10.1363/psrh.12182>

7 *Bellotti*, 443 U.S. at 642.

Mincing no words, in a 1981 decision, the Supreme Court starkly revealed the anti-abortion bias underlying this differential treatment resulting in the over-regulation of abortion by way of parental involvement laws. As it explained, “the state’s interests in full-term pregnancies are sufficiently different to justify the line drawn by the statutes. If the pregnant girl elects to carry her child to term the medical decisions...entail few—perhaps none of the potentially grave emotional and psychological consequences of the decision to abort.”<sup>8</sup> Accordingly, states may try and steer her in the preferred direction of parenthood through the enactment of potentially intrusive and onerous parental involvement laws, notwithstanding the fact that this is likely to be an “exceptionally burdensome” outcome.

### III. CENTERING THE EXPERIENCE OF TEENS WHO SEEK JUDICIAL AUTHORIZATION FOR AN ABORTION

A common argument in favor of parental involvement laws is that teens will benefit from the guidance and support of their parents. Most teens who choose to terminate a pregnancy do confide in one or both parents, regardless of whether they live in a state with a parental involvement law, and those who do not tell a parent typically have a good reason for not doing so and will instead confide in a trusted adult.<sup>9</sup>

Teens are most likely to disclose a pregnancy to a parent if there is a “history of warmth, rapport, and involvement of parents in past problem-solving.” Supporting the importance of this connection, the evidence does not support the view that “legislation mandating parental involvement against the adolescent’s wishes has any added benefit in improving productive family communication.”<sup>10</sup>

Those teens who cannot confide in a parent for the kinds of reasons discussed in this section, must then seek authorization from a court for their abortion in what is known as a judicial bypass hearing. As also discussed below, this is a deeply problematic process that marks abortion as the ‘wrong’ reproductive choice.

#### **Reasons Why Some Teens Do Not Share Their Abortion Decision with a Parent**

Research shows that “teens who are strongly opposed to informing parents about their intent to have an abortion tend to predict family reactions accurately.”<sup>11</sup> This is borne out by a study finding that teens gave careful consideration to the non-disclosure decision and did not “simply or indiscriminately lump their parents together with a dismissive ‘they’ll never understand’ or ‘they’ll be pissed’ attitude that one might anticipate from teens;” rather, “reasons for noninvolvement reflect the individualized nature” of the relationship the teen had with each parent.<sup>12</sup>

##### **(I) Fear of an Adverse Parental Reaction**

Approximately one third of non-disclosing teens have been subject to family violence and live in fear of its recurrence.<sup>13</sup> This makes fear of an adverse parental reaction one of the most common reasons for non-disclosure.

8 *H.L. v. Matheson*, 450 U.S. 398, 400 (1980, emphasis in original omitted)

9 American Academy of Pediatrics Committee on Adolescence (2022). The adolescent’s right to confidential care when considering abortion. *Pediatrics*, 150(3), e2022058780. <https://doi.org/10.1542/peds.2022-058780>; Hasselbacher, L. A., Dekleva, A., Tristan, S., & Gilliam, M. L. (2014). Factors influencing parental involvement among minors seeking an abortion: a qualitative study. *American journal of public health*, 104(11), 2207–2211. <https://doi.org/10.2105/AJPH.2014.302116>

10 American Academy of Pediatrics Committee on Adolescence (2022).

11 American Academy of Pediatrics Committee on Adolescence (2022).

12 Ehrlich, J. S. (2006). *Who decides?: The Abortion Rights of Teens*. Praeger. 115; Teens who are quoted here with respect to the reason for non-disclosure to one parent, all also provided a different reason for non-disclosure to the other parent.

13 American Academy of Pediatrics Committee on Adolescence (2022).

Capturing the dynamic connection between a history of abuse and fear of an adverse parental reaction, one teen who was interviewed about her decision not to involve her mom explained she couldn't tell her because:

**"I get beat up sometimes.... I get beat up most in my house—more than my brothers and sisters."<sup>14</sup>**

Another teen worried that her dad would castigate her for being a whore and take out a delinquency petition on her in juvenile court. While this might sound like hyperbole, in fact her father had taken out a delinquency petition on her twice before, once upon learning she was sexually active and again following a particularly nasty argument.<sup>15</sup>

### **(II) Family Preservation**

Perhaps counterintuitively, what can best be characterized as "family preservation" is another salient reason for non-disclosure. This theme encompasses two separate strands: (1) protection of the parent-child bond and (2) concern for a precarious or overburdened family.<sup>16</sup>

When it comes to protecting the parent-child relationship, a driving consideration is that disclosure would result in profound parental disappointment or judgement resulting in a long-term, if not a permanent, negative impact on the relationship. As illustrated by the following quote, this concern may be particularly pressing in the context of high parental expectations:

**"I'm the oldest kid on both sides of the family. All the grandkids, all the cousins look up to me, and everyone depends on me – you're the eldest, you're doing so good in school, you're gonna go to college, and you're going to do this or that, without messing up with dudes."<sup>17</sup>**

In a similar vein, another teen explained her non-disclosure decision as follows:

**"[My mom] has this assumption that like I'm like too smart to make a mistake because I'm in the National Honor Society and going to college...I think it would have definitely affected her viewpoint...She would think I was irresponsible about everything."<sup>18</sup>**

Also under the rubric of "family preservation" is the stated desire by some teens to protect their already stressed parents from being overwhelmed by the additional worry that learning of their pregnancy and abortion plans would likely cause. One teen explained that her father was an alcoholic and manic-depressive, and that the springtime (the time of her pregnancy) was "his time to try and commit suicide, and...I didn't want to add to any of his problems."<sup>19</sup>

Due to structural inequities, this may be a more salient consideration for teens of color whose families are more likely to face multiple stressors that may impact the disclosure decision.<sup>20</sup>

What is striking about the family preservation rationale is that, rather than representing failed relationships or a callous lack of regard for their parents, non-disclosure in this context signals a teen's "desire to prevent

14 Ehrlich, *Who Decides?* 110

15 Ehrlich, *Who Decides?* 118.

16 See Ehrlich, *Who Decides?* 120-123; American Academy of Pediatrics Committee on Adolescence (2022); Hasselbacher, L. A., Dekleva, A., Tristan, S., & Gilliam, M. L. (2014). Factors influencing parental involvement among minors seeking an abortion: a qualitative study. *American journal of public health, 104*(11), 2207-2211. <https://doi.org/10.2105/AJPH.2014.302116>

17 Ehrlich, *Who Decides?* 121

18 Ehrlich, *Who Decides?* 121

19 Ehrlich, *Who Decides?* 122-123

20 American Academy of Pediatrics Committee on Adolescence (2022).

harm and safeguard existing familial patterns.”<sup>21</sup> In short, rather than being rooted in a casual disregard for the importance of the relationship with their parents, as is often assumed to be the case, non-disclosure is rooted in an ethos of care.

### **(III) The Lack of a Relationship with a Legally Qualifying Parent or Guardian**

Another salient consideration is a teen’s lack of a relationship with a legally qualified parent or guardian due to factors such as abandonment, incarceration, or deportation. A contributing factor here is that parental involvement laws typically define “parent” or “legal guardian” in normative ways, which “discount[s] the complexity of family structures in the United States” with a disparate burden on teens from “various racial, ethnic, and socioeconomic background [who] are more likely to live in family structures that may not include, or include more than, both biological parents.”<sup>22</sup>

### **(IV) Abortion Stigma**

Abortion stigma can also play a role in why some teens avoid parental disclosure.<sup>23</sup> This concern may be compounded by the deep stigma surrounding teen sexuality, particularly if the parents of a teen seeking an abortion have never talked openly and supportively with them about their sexuality.<sup>24</sup> Stigma may well play an increasing role in a teen’s decisional calculus regarding the risks of parental disclosure in the post-*Dobbs* period given the ongoing attacks on rights of access.

### **The Harms of Judicial Bypass**

The judicial bypass option protects teens from the risk of a parental veto of their abortion decision. At the same time, however, laws mandating that a teen involve their parents or a judge in the abortion decision stigmatize this choice as the wrong pregnancy outcome. As a clear reminder of the deep imprint of abortion exceptionalism, no such penalty is extracted from teens who instead opt to carry their pregnancy to term, or who, as discussed below, seek other kinds of sexual and reproductive health care. The judicial bypass process varies from state to state; in Massachusetts, the process is as follows.



### **(I) Fear, Stigma, and Shame**

For most teens, the court process “produce[s] fear, tension, anxiety and shame.”<sup>25</sup> They have been observed to exhibit “‘fight or flight’ physical responses at the hearing, including stuttering, shaking, sweating, nausea, and pallor.”<sup>26</sup> Contributing to the anxiety, the bypass hearing may be experienced as a ‘high stakes test’ that a teen must pass to avoid being forced into parenthood – the dreaded outcome they are trying so hard to avoid. As one teen put it:

**“I’ve never felt my hands so sweaty...[from] nervousness, being uncomfortable. Intimidated. Scared that [the judge] would say no – that was the main thing.”<sup>27</sup>**

21 *Hodgson*, 498 U.S. at 123.

22 American Academy of Pediatrics Committee on Adolescence (2022).

23 Coleman-Minahan, K., Jean Stevenson, A., Obront, E., & Hays, S. (2020). Adolescents obtaining abortion without parental consent: their reasons and experiences of social support. *Perspectives on sexual and reproductive health*, 52(1), 15-22. <https://doi.org/10.1363/psrh.12132>

24 Ehrlich, *Who Decides?*, 111-114.

25 *Hodgson*, 498 U.S. at 441.

26 Coleman-Minahan, K., Stevenson, A. J., Obront, E., & Hays, S. (2019). Young women’s experiences obtaining judicial bypass for abortion in Texas. *The Journal of adolescent health : official publication of the Society for Adolescent Medicine*, 64(1), 20-25. <https://doi.org/10.1016/j.jadohealth.2018.07.017>

27 Ehrlich, *Who Decides?* 133-134

Teens also often associate court with criminal activity or other kinds of wrongdoing. Capturing this, one teen explains: “I’ve never seen anything good go on with authorities in courtrooms...your [sic] getting locked up...I see kids going there because they are arrested.”<sup>28</sup> As a result, those seeking permission for an abortion “talk about feeling that they don’t belong in the court system, that they are ashamed, embarrassed and somehow that they are being punished for the situation they are in.”<sup>29</sup> Capturing the shame and stigma of going through the bypass process, one teen poignantly explains:

**“It was so uncomfortable...having to share something so intimate and personal with strangers... here I was with my big mistake, and strangers saying if my decisions were right or wrong.”<sup>30</sup>**

Encapsulating these concerns, one scholar writes that these hearings are the “price young women are expected to pay for seeking an abortion and for having sex, and for doing both without owning up to their parents.”<sup>31</sup>

### **(II) Delay**

Having to seek court authorization for an abortion often delays access to care, which can make it more expensive, time consuming, or even inaccessible due to a state’s gestational age restrictions on abortion. Even a delay of a few days can make a patient ineligible for a medication abortion, which are less expensive and may be a teen’s preferred option.

Delay reflects the reality that “both the judicial bypass process and the termination procedure require flexibility and mobility that many teens do not have.”<sup>32</sup> For instance, they may have trouble getting out of school or finding reliable transportation. These logistical obstacles are compounded in restrictive states in which, for example, there is a waiting period necessitating two trips to the clinic, or a scarcity of abortion providers.

Two recent studies have documented the significant delays associated with the bypass process.

A 2019 study in Massachusetts led by PPLM’s Social Science Research Director Elizabeth Janiak (see page 7) demonstrated that “[o]n average, the parental consent group experienced approximately. a 9-day lapse from first scheduling call to abortion care...[b]y contrast, the judicial bypass group experienced a 15-day wait. One-fifth of the teens who had to go through the judicial bypass system saw a delay of 21 days or more.”<sup>33</sup> The odds of becoming ineligible for medication abortion were significantly greater among minors who obtained a judicial bypass compared with minors who obtained parental consent – 19% of those who went through judicial bypass compared to 7% of the parental consent group. Similarly, a recent Illinois study found that “having to arrange and attend a court hearing contributed an average of 6.4 days to their timelines of abortion-seeking.”<sup>34</sup>

Critically, the Massachusetts study found that the risk of delay fell most heavily on teens of color. Not only were they disproportionately represented in the pool of abortion seekers “minors who identify as racial or ethnic minorities, and are of low socioeconomic status,” were overrepresented in the pool of minors

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28 Ehrlich, *Who Decides?* 132-133

29 *Hodgson*, 498 U.S. at 442.

30 Ehrlich, *Who Decides?* 132

31 Carol S, (2009) Decisional dignity: teenage abortion, bypass hearings, and the misuse of law,” *Columbia Journal of Gender and Law*, 18:477

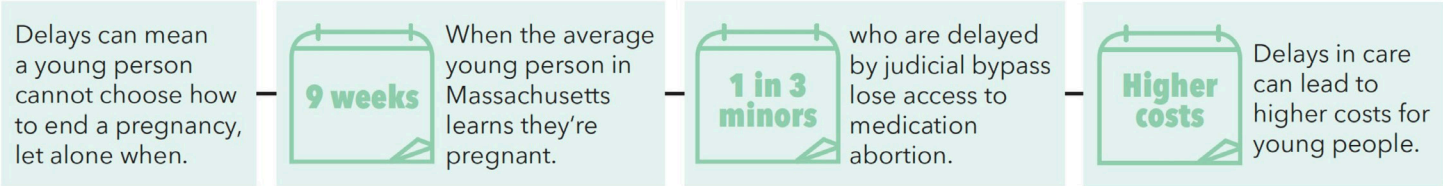
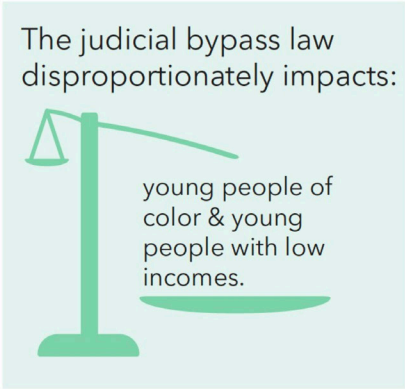
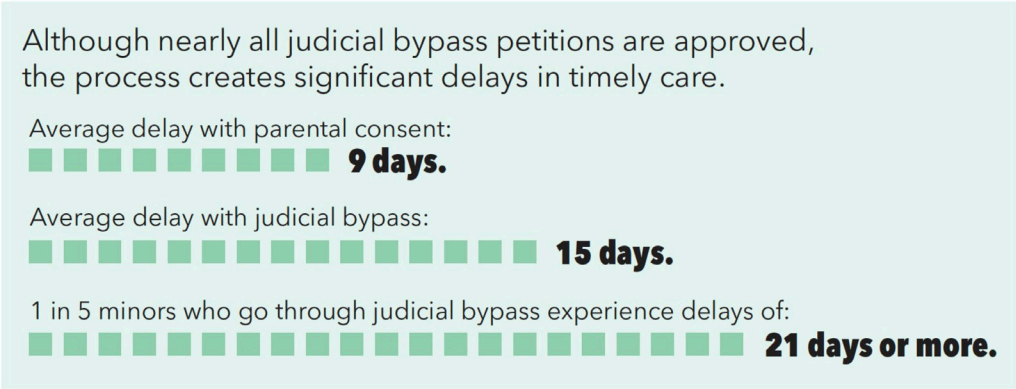
32 Rachel Rebouché, (2019) Report of a national meeting: parental involvement laws and the judicial bypass, *Law and Inequality*, 37 (2019): 31.

33 Janiak, E., Fulcher, I. R., Cottrill, A. A., Tantoco, N., Mason, A. H., Fortin, J., Sabino, J., & Goldberg, A. B. (2019). Massachusetts’ parental consent law and procedural timing among adolescents undergoing abortion. *Obstetrics and gynecology*, 133(5), 978-986. <https://doi.org/10.1097/AOG.00000000000003190>

34 Ralph, L. J., Chaiten, L., Werth, E., Daniel, S., Brindis, C. D., & Biggs, M. A. (2021). Reasons for and logistical burdens of judicial bypass for abortion in Illinois. *The Journal of adolescent health* 68(1), 71-78. <https://doi.org/10.1016/j.jadohealth.2020.08.025>



A **2019 study of over 2,000 patients** found that Massachusetts’ restrictions on a young person’s access to safe, legal abortion has created stark disparities in access and significantly delayed care.



seeking court authorization for an abortion.<sup>35</sup> We thus again come face-to-face with the reality that parental involvement laws further exacerbate existing racial and economic disparities in access to reproductive health care.

Notably, in contrast to many states with parental involvement laws, at the time these studies were conducted, both Massachusetts and Illinois (which has since repealed its parental involvement law) had well-coordinated systems in place for assisting teens through the court bypass process. Delays are likely to be longer in states without coordinated support systems given the logistical obstacles imposed by the bypass process.

#### IV. THE SUPREME COURT’S DECISION IN *DOBBS V. JACKSON WOMEN’S HEALTH ORGANIZATION*

In June of 2022, the U.S Supreme Court ruled in the case of *Dobbs v. Jackson Women’s Health Organization* that the federal constitution does not protect the right to abortion. It accordingly overruled its 1973 landmark decision in *Roe v. Wade* and returned legal authority over abortion to the individual states.

Although anti-abortion lawmakers had succeeded in chipping away at *Roe* through the enactment of more than 1300 restrictive measures in the pre-*Dobbs* era, with a disparate impact on “those already subject to systemic racism and economic injustice,”<sup>36</sup> the loss of the federal constitutional protection for the abortion right has further fragmented abortion access across wide swaths of the country. Largely concentrated in the Midwest and South, fourteen states have completely banned abortion while another six states have enacted strict gestational limit bans at somewhere between six and fifteen weeks. These laws typically include extremely narrow exceptions for when an abortion may be performed.<sup>37</sup>

35 Janiak et al. (2019). Massachusetts’ parental consent law, 985.

36 *Inequity in US abortion rights and access: The end of Roe is deepening existing divides*. (2023, July 18). Guttmacher Institute. <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides>

37 Guttmacher Institute. (n.d.). *Interactive Map: US abortion policies and access after Roe*. <https://states.guttmacher.org/policies/utah/abortion-policies?ftag=MSF0951a18>

Magnifying the impact of these geographical access barriers, abortion bans disproportionately burden structurally vulnerable and marginalized communities. According to a 2022 report from Human Rights Watch, these include “BIPOC women, people of diverse gender identities and sexual orientations, migrants, persons with disabilities, people who are low-income or living in poverty, children, and rural residents [who] often have poorer health outcomes compared to other populations.”<sup>38</sup>

In this post-*Dobbs* environment, many abortion seekers will be forced to jump through multiple hoops, including travelling far from home in order to access abortion care. Others, however, others will find themselves unable to access a wanted abortion, which, of course, exacerbates existing inequalities when it comes to accessing reproductive healthcare.

**As we know from the landmark Turnaway Study conducted by ANSIRH (a program within the University of California San Francisco), when compared to those who received a wanted abortion, there is a high cost to not being able to access wanted abortion care.**

Key findings include that:

- “Women who were turned away and went on to give birth experienced an increase in household poverty lasting at least four years relative to those who received an abortion.”
- “Women who were denied an abortion and gave birth instead reported more chronic headaches or migraines, joint pain, and gestational hypertension compared to those who had an abortion.”
- “Carrying an unwanted pregnancy to term is associated with poorer maternal bonding, such as feeling trapped or resenting the baby, with the child born after abortion denial, compared to the next child born to a woman who received an abortion.”<sup>39</sup>

Among additional findings, the study also found that women who were denied a wanted abortion are comparatively “less likely to have aspirational one-year plans” and “more likely to have neutral or negative expectations for their future.”<sup>40</sup> This raises important concerns about the reinforcement of existing structural inequities tied to pregnancy outcomes given that teens who choose abortion are likely to “come from higher socioeconomic backgrounds, have higher educational aspirations . . . have greater feelings of control over life . . . are better able to conceptualize the future . . . [and] may choose to have an abortion so that they can pursue that future.”<sup>41</sup>

## V. THE ABORTION RIGHTS OF TEENS POST-DOBBS

Like other abortion seekers, teens are, of course, subject to the devastating impacts of the abortion bans and restrictions that are now in effect across a wide swath of the country. Adding on to this, as discussed in this section, they also face additional access burdens imposed by parental involvement laws and the further risk of being targeted with age-specific legal restrictions.

38 Human rights crisis: Abortion in the United States after *Dobbs*. (2023, April 18). *Human Rights Watch*. <https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs> (internal citations omitted).

39 *The harms of denying a woman a wanted abortion*. (n.d.). ANSIRH. <https://www.ansirh.org/research/sheet/harms-denying-woman-wanted-abortion>

40 Upadhyay, U. D., Biggs, M. A., & Foster, D. G. (2015). The effect of abortion on having and achieving aspirational one-year plans. *BMC Women’s Health*, 15, 102. <https://doi.org/10.1186/s12905-015-0259-1>

41 American Academy of Pediatrics Committee on Adolescence (2022). The Adolescent’s Right to Confidential Care When Considering Abortion. *Pediatrics*, 150(3), e2022058780. <https://doi.org/10.1542/peds.2022-058780>

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## MAPPING MINOR ABORTION ACCESS

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The legal research team at the ASPIRE Center for Sexual and Reproductive Health at Planned Parenthood League of Massachusetts (ASPIRE Center) created the Minor-Specific Access Map and the Abortion Access Map based upon the access grades assigned to each state and the District of Columbia in accordance with the below methodology. The grade range for both maps is A-F.

These maps were designed to highlight the cumulative access barriers that minors in states with parental involvement laws must navigate. Not only must a teen satisfy the restrictive legal requirements imposed by a state's law on all abortion seekers regardless of age, they must also successfully navigate the additional hurdles imposed by its parental involvement law. In short, abortion access demands that teens jump through a two sets of hoops.

As the Comparative Abortion Access Chart makes clear, these hoops are not always equally calibrated. For example, Massachusetts, a generally high-access state, receives an overall abortion grade of A. However, because Massachusetts law still requires parental consent for those under 16, paired with the logistical barriers imposed by those laws, the state receives a minor abortion access grade of D.

Our overarching goal in this section is to highlight the access inequities that teens face in states with parental involvement laws. Our hope is that this will encourage the initiation of legal reform efforts, particularly by those in abortion-protective states, aimed at eliminating these inequities through the abrogation of parental involvement laws. (See Sections VI-VIII below.)

### *Methodology for Determining the Minor-Specific Abortion Access Grades:*

To arrive at the minor-specific abortion access grades, we first determined whether a state has a parental involvement law or not (including laws permitting the involvement of an alternative adult, such as a relative). Given that this factor is by far the most consequential when it comes to minor abortion access, it was given the greatest weight in our calculus. States with total abortion bans or six-week gestational limits were automatically given a grade of F due to the virtual impossibility of access.

We then selected four common statutory factors and assessed their cumulative impact on abortion access:

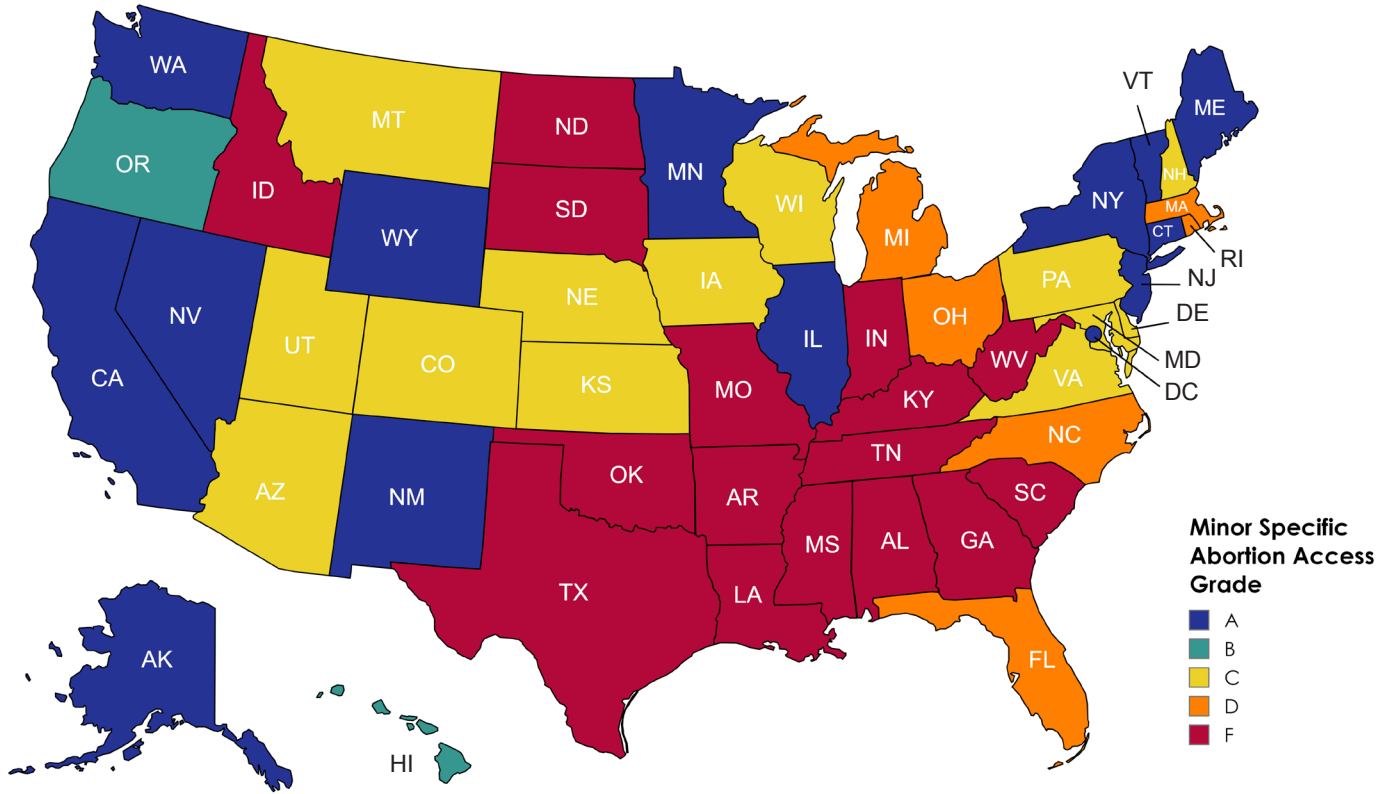
- 1. At what age can a minor self-consent to abortion (meaning that they are no longer subject to the parental involvement law)?** This factor is directly tied to how many teens in a state are subject to its parental involvement law.
- 2. How many venue choices are available to teens seeking judicial authorization for an abortion? In other words, how many physical court location options do teens have?** This factor is directly tied to the protection of confidentiality. Specifically, the risks of a breach of confidentiality are greatest when teens are limited to bringing the bypass petition in the county where they reside and are significantly reduced when there are no venue limitations.
- 3. What is the maximum number of possible days between the filing requesting a bypass hearing and the issuance of the judicial order?** This timeliness requirement is directly linked to abortion access as delay may push a teen past a state's gestational limits or eliminate the option of medication abortion.
- 4. What standard of proof is used in judicial bypass hearings?** This factor determines the evidentiary burden placed on a teen when seeking to persuade a judge to approve the petition for abortion authorization.

### *Methodology for Determining the Abortion Access Grades:*

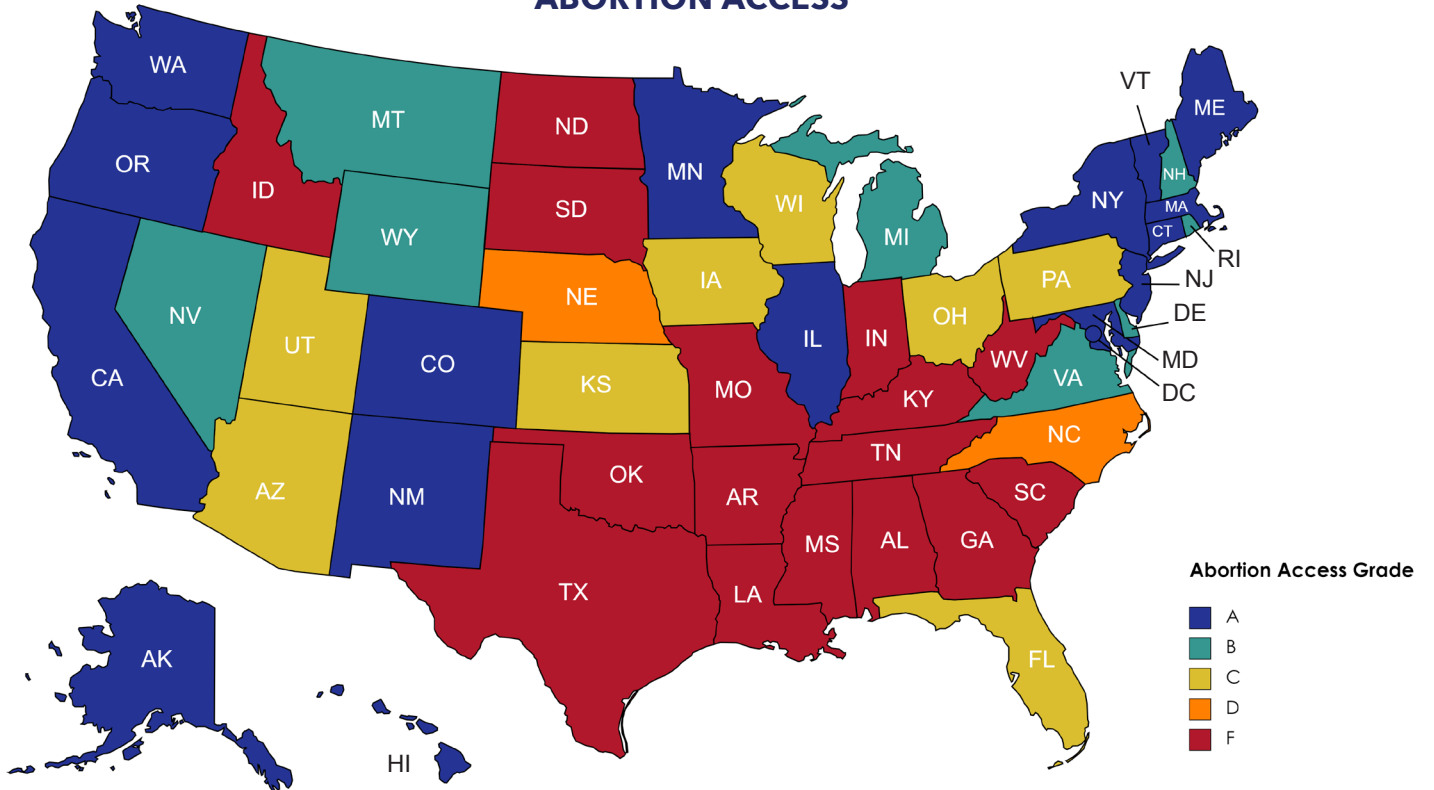
Using policy data that was generously shared with us by the Guttmacher Institute, we assigned each state a letter grade based on a determined set of abortion restrictions and protections, such as waiting periods, limitations on medication abortion, and the availability of protections for abortion seekers and providers, which apply generally to all abortion seekers regardless of age.<sup>42</sup> Again, states with total abortion bans or six-week gestational limits were automatically given a grade of F.

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<sup>42</sup> We highly encourage readers to consult the Guttmacher Institute's Interactive Map: US Abortion Access and Policies After Roe. It is regularly updated, and identifies key abortion restrictions, including parental involvement laws, and protections that determine a state's ranking from most restrictive to most protective.

## MINOR-SPECIFIC ABORTION ACCESS



## ABORTION ACCESS



STATE	MINOR-SPECIFIC ABORTION ACCESS GRADE	OVERALL ABORTION ACCESS GRADE
Alaska	<b>A</b>	<b>A</b>
California	<b>A</b>	<b>A</b>
Connecticut	<b>A</b>	<b>A</b>
Washington, D.C.	<b>A</b>	<b>A</b>
Illinois	<b>A</b>	<b>A</b>
Maine	<b>A</b>	<b>A</b>
Minnesota	<b>A</b>	<b>A</b>
Nevada	<b>A</b>	<b>B</b>
New Jersey	<b>A</b>	<b>A</b>
New Mexico	<b>A</b>	<b>A</b>
New York	<b>A</b>	<b>A</b>
Vermont	<b>A</b>	<b>A</b>
Washington	<b>A</b>	<b>A</b>
Wyoming*	<b>A</b>	<b>B</b>
Hawaii	<b>B</b>	<b>A</b>
Oregon	<b>B</b>	<b>A</b>
Arizona	<b>C</b>	<b>C</b>
Colorado	<b>C</b>	<b>A</b>
Delaware	<b>C</b>	<b>B</b>
Iowa	<b>C</b>	<b>C</b>
Kansas	<b>C</b>	<b>C</b>
Maryland	<b>C</b>	<b>A</b>
Montana	<b>C</b>	<b>B</b>
Nebraska	<b>C</b>	<b>D</b>
New Hampshire	<b>C</b>	<b>B</b>
Pennsylvania	<b>C</b>	<b>C</b>

STATE	MINOR-SPECIFIC ABORTION ACCESS GRADE	OVERALL ABORTION ACCESS GRADE
Utah	<b>C</b>	<b>C</b>
Virginia	<b>C</b>	<b>B</b>
Wisconsin	<b>C</b>	<b>C</b>
Florida	<b>D</b>	<b>C</b>
Massachusetts	<b>D</b>	<b>A</b>
Michigan	<b>D</b>	<b>B</b>
North Carolina	<b>D</b>	<b>D</b>
Ohio	<b>D</b>	<b>C</b>
Rhode Island	<b>D</b>	<b>B</b>
Alabama	<b>F</b>	<b>F</b>
Arkansas	<b>F</b>	<b>F</b>
Georgia	<b>F</b>	<b>F</b>
Idaho	<b>F</b>	<b>F</b>
Indiana	<b>F</b>	<b>F</b>
Kentucky	<b>F</b>	<b>F</b>
Louisiana	<b>F</b>	<b>F</b>
Mississippi	<b>F</b>	<b>F</b>
Missouri	<b>F</b>	<b>F</b>
North Dakota	<b>F</b>	<b>F</b>
Oklahoma	<b>F</b>	<b>F</b>
South Carolina	<b>F</b>	<b>F</b>
South Dakota	<b>F</b>	<b>F</b>
Tennessee	<b>F</b>	<b>F</b>
Texas	<b>F</b>	<b>F</b>
West Virginia	<b>F</b>	<b>F</b>

\*As of January 2024, Wyoming's parental involvement law is not currently in effect.

## Survey Analysis

To supplement the statutory analysis that we used to create the minor-specific abortion access grades, the ASPIRE Center team created and circulated a survey on logistical barriers to judicial bypass attorneys, medical directors, and other policy and clinic staff at Planned Parenthood affiliates across the United States. A total of 16 respondents gave insight into access issues related to the judicial bypass process for minors in 15 different states with varied levels of abortion restrictions. The following themes emerged from these responses.

- **Logistical Challenges:** The judicial bypass process presents a myriad of logistical challenges for teens due to limited venue options, hearing times conflicting with school hours, and a lack of transportation. Transportation emerged as a particularly significant challenge. Finding safe and reliable transportation can be difficult, especially if a minor has not used public transit on their own before. Minors may also confront lengthy travel times to court, and difficulties in maintaining confidentiality when planning their travel since they may have to take time off from school. It was also reported that bypass attorneys and health center volunteers sometimes drive teens to court to mitigate some of these challenges and/or ensure they arrived safely to their hearing.
- **Intimidating or Hostile Setting:** Respondents reported that the court setting is typically an intimidating environment for teens. They often feel scared to share intimate details about their life with a judge and associate the process of going to court with having done something wrong. Some of the attorneys described instances where court personnel provided inaccurate information or judges asked minors inappropriate or pressuring questions, such as suggesting they might regret their decision to terminate their pregnancy or asking about sexual partners. On occasion, judges reacted hostilely when informed that they were not entitled to certain identifying information that they were seeking. It was also mentioned that holding hearings in conference rooms rather than in courtrooms, as well as having the attorneys rather than the judge question the minor, can alleviate some of the stress, shame, and fear associated with the court process.
- **Confidentiality:** Problems with maintaining confidentiality emerged as a crucial issue, as breaches can result in unsafe situations for minors. Respondents identified that it can be difficult finding a place in a courthouse for the bypass hearing that does not compromise confidentiality. This problem may be compounded if a judge asks for potentially identifying information. Minors can also have difficulty finding a private space at home where they can speak confidentially with their attorney or participate in a virtual bypass hearing without their parents overhearing or becoming suspicious about their activity.
- **Problems with Virtual Hearings:** Respondents noted that while virtual hearings can alleviate the logistical problems associated with in-person hearings, this is not always the case. For instance, while it is customary for teens to receive judicial orders at the end of an in-person hearing, they may have to wait a day or two after a virtual hearing for the order to be ready, and then have to pick it up from the courthouse. This both introduces delays, and recreates the logistical issues associated with in-person hearings.
- **Disclosure to Parents:** The complexity of the judicial bypass process makes unintentional disclosure to parents a possibility. For example, a school may notify parents or legal guardians about a minor's absence, leading to difficult conversations when minors do not feel safe to discuss their reasons for their absence. Minors who are overwhelmed by the bypass process may also unintentionally disclose information to a parent or someone that tells the parent.
- **Delays:** Concerns about delays in the process was a recurrent theme in the survey responses. At the outset, the lack of resources to support teens navigating the bypass process or their lack of awareness about available resources can result in delayed access to court. These delays may be compounded by the lack of an available attorney, difficulties in scheduling a hearing, the lack of transportation, or the denial of the petition by the hearing judge. In addition to increasing health risks, some respondents reported that delays resulted in a teen being pushed beyond a state's gestational limits.

## **The Precarity of Teen Abortion Access: Looking to the Future**

The inequities currently faced by teens in states with parental involvement laws may be exacerbated by a possible post-*Dobbs* generation of new age-specific limitations on their abortion access. This threat is best exemplified by Idaho’s recently enacted ‘abortion trafficking’ law—an option that lawmakers in a growing number of states are considering adopting. The clearly strategic appropriation of the trafficking framework to limit abortion access for teens has been soundly criticized “as an excuse to rationalize legislation that restricts reproductive rights and constructs barriers to effectively addressing trafficking.”<sup>43</sup>

Idaho’s law was enacted against the backdrop of the state’s strict abortion ban when lawmakers panicked that teens would seek to circumvent its law through cross-border travel to the neighboring high-access states of Oregon and Washington. Framed as a parental rights measure, it aims to give “the state the tools to go after those who would subvert a parent’s right to be able to make [the abortion decision] in conjunction with their child.”<sup>44</sup> To this end, a person who harbors, recruits, or transports a pregnant teen with the intent of helping them obtain an abortion without the knowledge of a parent or guardian is subject to imprisonment for a term ranging from two to five years.

The law has been challenged as unconstitutional for both interfering with the protected right to travel within and between states and with the first amendment right to provide information to pregnant teens who are considering abortion.. Another salient concern of those challenging the law is that it will have a “disproportionately negative impact [on] historically marginalized groups, who will likely have the hardest time traveling to neighboring states to terminate pregnancies and may struggle to raise children they otherwise would not have chosen to have.”<sup>45</sup>

Laws criminalizing the provision of assistance to teens who are seeking cross-border abortion care are a clear example of age-specific restrictions on abortion access, although, as is often the case, teens may prove to be the test case for the imposition of more sweeping limitations on interstate abortion travel. Other types of age-specific threats to abortion access may well lie ahead, and it is accordingly important for advocates and providers to remain vigilant.

## **VI. ADVOCATING FOR THE REPEAL OR STATE CONSTITUTIONAL INVALIDATION OF PARENTAL INVOLVEMENT LAWS**

As we have seen, the *Dobbs* decision gutted the federally protected constitutional right to abortion and returned regulatory authority to the states, which has resulted in a cascade of abortion harms. Fighting back, activists and reproductive health providers have, with considerable success, also turned to the states to protect/expand abortion rights. Following this approach, this section likewise considers two state-based approaches – one statutory and the other constitutional – to dismantling the regime of abortion exceptionalism that is built into parental involvement laws. We are, of course, deeply cognizant of the reality that this approach is likely only to gain a foothold in abortion-protective states. Accordingly, in the final section, we also offer the example of Illinois’ decade-long public education campaign that ultimately resulted in the repeal of the state’s parental involvement law.

### ***Extending the Self-Consent Rights of Teens Under State Law to Include Abortion***

It is a legal truism that parents have the basic right to direct the upbringing of their children, which includes the making of medical (and other) decisions on their behalf. However, all states have carved out a range

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43 Freedom Network Community. (2023, July 28). *Equating abortion and human trafficking creates barriers to services for survivors - Freedom Network USA*. Freedom Network USA. <https://freedomnetworkusa.org/2023/07/28/equating-abortion-and-human-trafficking-creates-barriers-to-services-for-survivors/>

44 Bernstein, S. (2023, March 31). *Idaho bill would ban minors from travel for abortions without parental consent*. Reuters. <https://www.reuters.com/world/us/idaho-bill-would-ban-minors-travel-abortions-without-parental-consent-2023-03-31/>

45 *Matsumoto v. Labrador*, Complaint for Declaratory Judgement, Case 1:23-cv-00323-DKG, 13 (2023).

of exceptions to this rule, which operate to transfer decision-making authority from parents to their teen children. The repeal of parental involvement laws would enfold abortion into this decisional space. In this vein, Hawaii and Oregon have recently passed legislation that expands the definition of reproductive care for which teens can self-consent to include abortion.

### **Sexual and Reproductive Health**

The basic rule that parents have the authority to make medical decisions on behalf of their minor children reflects interlocking assumptions about the decisional immaturity of minors in tandem with the general authority that parents have over their minor children. It also presumes that the interests of parent and children are closely aligned, and that parents accordingly will act in their child’s medical best interest.

However, the authority of parents is far from absolute, and all states have carved out a well-delineated space within which teens are authorized to make their own decision with respect to what is commonly referred to as “sensitive” kinds of care. This virtually always includes care related to sexual activity, such as STI testing and treatment and contraceptives.<sup>46</sup>

Often framed as public health measures, medical treatment laws are premised on the recognition that a teen might delay or avoid seeking needed care altogether if required to involve a parent. They thus tacitly acknowledge that the interests of parents and their teen children are not always aligned, and that adherence to the parental consent rule can have adverse health consequences due to delayed or forgone care. Correspondingly, these laws recognize that in these situations, teens are better positioned to make medical decisions for themselves based on their life circumstances.

An important caveat is in order here. Depending upon the state and the kind of care being sought, these laws may give medical providers the option of notifying parents before providing care. Clearly, if this route to legal reform is pursued, it would defeat the purpose of allowing a teen to self-consent to abortion if the provider had the option of parental notification, and care must be taken to avoid this outcome.

### **Pregnant and Parenting Teens**

It is important to note that the overall risk of serious health complications or death associated with carrying a pregnancy to term and giving birth is far greater than the risk associated with having an abortion. According to the CDC, in 2019, the maternal mortality rate was 20.1 deaths per 100,000 live births, and it has continued to rise since then.<sup>47</sup> Notably, the maternal mortality rate is higher for Black women, who are roughly three times more likely to die from a pregnancy-related cause than white women due to a myriad of structural inequities.<sup>48</sup> In sharp contrast to the maternal mortality rate, in 2019, the rate of death from legally induced abortion was 0.6 four deaths per 100,000 abortions.<sup>49</sup>

When it comes to carrying to term, teens face an increased chance of pregnancy-related health risks, including high blood pressure, pre-eclampsia, and complications from sexually transmitted diseases. They also face a higher risk of negative neo-natal outcomes, including infant mortality, and congenital birth defects.<sup>50</sup>

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46 It should be noted that teens who are partially or fully emancipated under state law may be permitted to self-consent to abortion.

47 Hoyert DL. Maternal mortality rates in the United States, 2021. NCHS Health E-Stats. 2023. DOI: <https://dx.doi.org/10.15620/cdc:124678>

48 Working together to reduce black maternal mortality, 2023. CDC <https://www.cdc.gov/healthequity/features/maternal-mortality/index.html>

49 Kortsmitt K, Nguyen AT, Mandel MG, Clark E, Hollier L, Rodenhizer J, Whiteman, M, 2022. Abortion surveillance – United States ;71(No. SS-10):1–27. DOI: <http://dx.doi.org/10.15585/mmwr.ss7110a1>

50 Varney, S. (2022, October 7). Why childbirth is so dangerous for many young teens. *Health News Florida*. <https://health.wusf.usf.edu/npr-health/npr-health/2022-10-07/why-childbirth-is-so-dangerous-for-many-young-teens>; see also Eliner, Y., Gulersen, M., Kasar, A., Lenchner, E., Grünebaum, A., Chervenak, F. A., & Bornstein, E. (2022). Maternal and neonatal complications in teen pregnancies: a comprehensive study of 661,062 Patients. *The Journal*



Especially considering that carrying a pregnancy to term entails more risk for teens than abortion, a strong argument can be made that abortion decision-making can readily be accommodated within the statutory space that the law has crafted for making decisions related to sexual activity. However, it is not until we also factor in the sweeping consent rights of pregnant and parenting teens that the role abortion exceptionalism has played in determining what is included in this decisional space is made fully apparent.

As discussed previously, although the Supreme Court asserted that states have a “special interest” in “encouraging a pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child,”<sup>51</sup> in reality, this interest is only triggered when a teen chooses not to bear a child. If she instead chooses to carry to term, the decision is hers to make— she is not subject to legal surveillance. The irrationality of this differential treatment is made clear by the following hypothetical.

**Assume that Miranda, age 16, is facing an unintended pregnancy. After talking to her boyfriend, she decides she is ready for parenthood, especially since he is going to share in raising the child. Although she knows her parents will eventually learn she is pregnant, she decides not to talk to them about her situation. They are very religious, and she fears they will make good on their promise to kick her out of the house if she ever comes home pregnant.**

**Miranda gets a referral to an obstetrician from an older cousin and schedules her first pre-natal visit. As the pregnancy progresses, she can consent to whatever pre-natal care is needed. After the child is born, as the parent, she has full consent rights over her child’s medical care and most likely the right to self-consent to her own health care. Moreover, Miranda would have the authority to relinquish the child for adoption in most states without her parents’ consent. Notably, as recognized by the California Supreme Court in its landmark minors’ abortion rights case (discussed below) “The decision to relinquish motherhood after giving birth would seem to have at least as great a potential to cause long-lasting sadness and regret as the decision not to bear a child in the first place.”<sup>52</sup>**



**Now assume that after scheduling her initial pre-natal appointment, Miranda and her boyfriend decide it is better to wait until after they graduate from high school to have a child. She cancels her pre-natal appointment and calls the local reproductive health clinic to schedule an abortion. Miranda is shocked to learn from the patient navigator that she cannot make the decision to have an abortion on her own, but rather must first get the consent of a parent or permission from a judge.**

**Certainly, decisional maturity and the benefit of parental guidance are not ephemeral goods that magically come and go each time a minor reevaluates her pregnancy decision. If she is mature enough to make the decision to become a parent on her own – a decision that effectively propels her into adulthood – certainly she is mature enough to make the decision to postpone parenthood. The same is true of the advisability of seeking parental advice. As the Supreme Court itself clearly recognized, the potential benefit of parental input is not contingent upon the chosen pregnancy outcome.**

**Abortion exceptionalism is the only plausible explanation for the differential treatment of Miranda based upon her intended pregnancy outcome. Reflecting the anti-abortion bias that permeates the Supreme Court’s jurisprudence on the abortion rights of teens, only when her choice is to end the pregnancy does she become subject to a legal regime of surveillance and control, thus indelibly marking it as the ‘wrong’ choice.**

This hypothetical makes clear that the law has carved out a robust space within which teens have considerable decision-making rights based upon the exigencies of their lives, most notably when it comes to pregnancy and parenthood. We have also seen the multiple risks and burdens associated with denying

*of adolescent health* 70(6), 922-927. <https://doi.org/10.1016/j.jadohealth.2021.12.014>

51 *Bellotti*, 443 U.S., at 639.

52 *American Academy of Pediatrics v. Lungren*, 940 P. 2d 797, 827 quoting Donovan, P. A. (1992). *Our daughters’ decisions: The Conflict in State Law on Abortion and Other Issues*. Alan Guttmacher Inst.

teens full decisional autonomy over their pregnancy outcomes—a cost that is disproportionately borne by teens from marginalized communities.

The repeal of parental involvement laws would enfold abortion into this well-established decisional space, which would liberate it from the stigmatizing consequences of the exceptionalist framing that marks abortion as the “wrong” choice for teens.<sup>53</sup> This will help ensure that the *Dobbs* decision is not weaponized in age-specific ways to further limit the rights of teens by pressing them into parenthood by fiat.

### **State Constitutional Challenge to Parental Involvement Laws**

As we have seen, well before its decision in *Dobbs*, the Supreme Court made clear that it was permissible under the federal constitution for states to enact parental involvement laws so long as they contained a judicial bypass option. In response, some advocates and providers adopted a new legal strategy of challenging these laws in state courts on the grounds that they violated state (as distinct from federal) constitutional protections.

This strategic shift, which was also deployed by advocates challenging Medicaid funding bans after the Supreme Court ruled they were constitutional, was prompted by the recognition that while a state may not deprive individuals of their federally protected rights, it can interpret its own constitution more generously. In short, the federal constitution acts as a floor, not a ceiling, on the protection of individual rights.

The overturning of *Roe* has amplified the importance of looking to state constitutions as a source of protections for abortion rights. This enterprise must specifically encompass teens whose reproductive futures are particularly precarious for the reasons discussed in this report.

To this end, we consider two early landmark state constitutional cases – the first from California, and the second from New Jersey. Although neither court relies on the abortion exceptionalism frame, each carefully tracks its logic in concluding that the challenged parental involvement law was unconstitutional.

#### **(I) American Academy of Pediatrics v. Lungren**

In 1997, the Supreme Court of California ruled that the state’s parental consent law deprived minors of the right of privacy guaranteed by the state constitution. In doing so, it stressed the illogic of a statutory scheme that divested teens of their decisional privacy when it came to abortion while protecting their right to “obtain medical care and make other important decisions in analogous contexts that pose at least equal or greater risks to the physical, emotional, and psychological health of a minor and her child as those posed by the decision to terminate the pregnancy.”<sup>54</sup>

Elaborating, the court zeroed in on the differential privacy protections afforded to a pregnant teen who had opted to carry to term, stressing that she was empowered under state law to “make medical decisions relating both to her own health and to her fetus’s survival, without parental consent, in circumstances that may pose much greater risks than generally are presented in undergoing an abortion.”<sup>55</sup>

Further illustrative of the illogic of the state’s statutory scheme, the court homed in on the decisional autonomy afforded teens considering relinquishing their child for adoption. It pinpointed this as a decision having “at least as great a potential to cause long-lasting sadness and regret as the decision not to bear a child in the first place,” it stressed that it was “particularly difficult to reconcile [the state’s] contention—that parental or judicial involvement in the abortion decision is necessary to protect a minor’s emotional or psychological health—with these statutory provisions authorizing a minor ... to consent, on her own, to the adoption of her child.”<sup>56</sup>

53 Depending upon the state, other steps – such as expressly adding abortion to a state’s medical treatment law without the option of parental notification – may also be necessary.

54 *American Academy of Pediatrics v. Lungren*, 940 P.2d 797, 826 (1997).

55 *American Academy of Pediatrics*, 940 P. 2d at 826.

56 *American Academy of Pediatrics*, 940 P. 2d at 827, quoting Patricia Donovan, *Our Daughters’ Decisions: The*

Implicitly tracking the logic of the abortion exceptionalism frame, the court firmly rejected the state's contention that the parental consent law was justified by the need to protect the well-being of teens along with the integrity of the parent-child relationship. It also made clear that the availability of the bypass option did not cure the constitutional infringement on the privacy rights of minors given the associated delays in accessing safe abortion care and the infliction of "emotional and psychological stress...without providing any greater protection ...than what is provided by the minor's own health care provider," as would be the case when a minor chooses to carry to term.<sup>57</sup>

## **(II) *Planned Parenthood of Central New Jersey v. Farmer***

Starting from the premise that abortion was protected under the state constitution's implicit incorporation of a right to privacy, in 2000, the Supreme Court of New Jersey struck down the state's parental notification law as depriving teens of the equal protection of the law due to the selective burdening of the abortion right. In defending the law, the state of New Jersey argued it was needed to protect teens from their immaturity and to safeguard the integrity of the family unit and the parent-child relationship.

Like the California high court, this court was similarly unimpressed with the state's attempt to differentiate abortion from the other decisions teens were permitted to make with respect to "sexuality, reproductive decisions, substance-abuse treatment, and placing children for adoption, without parental involvement."<sup>58</sup>

Illustrative of the extreme illogic of treating abortion differently from childbirth, the court zeroed in on Caesarean sections, stressing that the state did not require parental notification for this major surgical procedure, but that only the "considerably less difficult abortion procedure is burdened in the name of protecting minors."<sup>59</sup> The court also rejected the state's rationale that the notification provision gave parents the chance to provide critical medical information to the abortion provider that was not otherwise available, pointing out that it could not "conceive of a better time than before a major health operation such as a Cesarean section for a doctor to be fully knowledgeable about a patient's health status."<sup>60</sup>

The court also addressed the state's claimed interest in protecting teens from their decisional immaturity. As it made clear, there was no logical basis for excluding abortion from the protected zone of decisional privacy as nothing suggested that the decision to terminate a pregnancy calls for more sophisticated reasoning capabilities than opting for parenthood.

Unsurprisingly, the New Jersey Supreme Court also ruled that the judicial bypass option did not cure the law's constitutional infirmity. As it stressed, only the abortion decision was subjected to the burdens and delays of the bypass process in the event a teen chose not to confide in a parent about their intended pregnancy outcome.

Having soundly rejected the state's justification for its over-regulation of abortion, the court laid bare the real reason behind this differential treatment of teens based on their reproductive choice. Quoting from a dissenting opinion of Supreme Court Justice Harry Blackmun (the author of the *Roe* decision), it concluded that the "pattern of obstacles" imposed by parental involvement laws are "merely 'poorly disguised elements of discouragements for the abortion decision.'"<sup>61</sup>

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Conflict in State Law on Abortion and Other Issues, Alan Guttmacher Institute, 21 (1992).

57 *American Academy of Pediatrics*, 940 P. 2d at 829-830.

58 *Planned Parenthood of Central New Jersey v. Farmer*, 762 A.2d 620, 636 (2000).

59 *Planned Parenthood of Central New Jersey*, 762 A. 2d at 636.

60 *Planned Parenthood of Central New Jersey*, 762 A. 2d at 638.

61 *Planned Parenthood of Central New Jersey*, 762 A. 2d at 638, quoting the dissenting opinion of Justice Blackmun in *Ohio v. Akron Center for Reproductive Health*, 497 U.S 502, 526-527 (1990).

State constitutional challenges to parental involvement laws are an important tool for protecting abortion access for teens. Although the aforementioned case studies did not deploy the abortion exceptionalism frame, the reasoning tracks its logic. This can be tapped into as a powerful advocacy tool in states that have committed to the protection and expansion of abortion rights – a commitment that has often not expressly included teens.

Of course, litigation is typically a very time-consuming, outcome uncertain, and expensive route to pursue. Accordingly, another constitutional approach would be that where a constitutional amendment is being considered, advocates press for language making it clear that minors are likewise entitled to protection of their right to reproductive self-determination.

## VII. CONCLUSION: ENDING THE LEGAL REGIME OF ABORTION EXCEPTIONALISM

As documented in this report, parental involvement laws discriminate against teens seeking to terminate a pregnancy when compared to those seeking to carry a pregnancy to term or obtain other kinds of reproductive and sexual health care. The only logical explanation for this discriminatory treatment is abortion exceptionalism, which as we have seen, is the hyper-regulation of abortion due to its disfavored and stigmatized status. A strong argument can be made in abortion-protective states which also have a parental involvement law that the time has come to afford teens equal access to abortion care, rather than leaving them by the wayside when it comes to the protection of abortion rights.

Of course, we recognize that launching this kind of major law reform effort is not currently feasible in abortion-restrictive states. Accordingly, we offer you a brief case study of the successful repeal campaign in Illinois, which took more than a decade of engaged public education about the harms of parental involvement laws. As was the case in Illinois, youth voices can be effectively harnessed to help make this case. As evidenced by the work of both Advocates for Youth and Planned Parenthood Generation Action, “Young people understand that reproductive and sexual health and rights are inextricably tied to social justice and the fight for liberation.”<sup>62</sup>

### **Illinois Case Study**

In December 2021, Governor JB Pritzker signed the Youth Health and Safety Act into law, which repealed the Parental Notification Act (PNA) with an effective date of June 1, 2022. The Governor declared the repeal “essential” to counteracting efforts to restrict abortion in other states and at the federal level.<sup>63</sup> Celebrating the victory, Emily Werth, staff attorney at the ACLU of Illinois, emphasized that pregnant young people could make any medical decision without parental notification except abortion and that with the repeal “(...) abortion is treated just like all other forms of health care in this state.”<sup>64</sup>

As advocates in other states consider moving forward with reform efforts, it is instructive to consider the vital role that youth activists played in the RepealPNA campaign. In a shout out to them after the Governor signed the repeal bill into law, the Illinois Caucus for Adolescent Health (ICAH) emphasized that “It takes a village to make a movement like this...Youth especially were the game changers every step of the way as a necessary voice and for constantly reminding adult accomplices that to #TrustYouth is to advocate WITH and FOR youth.”<sup>65</sup>

62 <https://www.advocatesforyouth.org/>. Planned Parenthood Generation Action can be found at <https://www.plannedparenthoodaction.org/communities/planned-parenthood-generation-action>

63 Illinois.gov. (2021, December 17). *Gov. Pritzker signs legislation to further protect reproductive rights* [press release]. <https://www.illinois.gov/news/press-release.24287.html>

64 Hancock, P. (2022, June 13). Parental notice of abortion law officially ends. *Capitol News Illinois*. <https://capitolnewsillinois.com/NEWS/parental-notice-of-abortion-law-officially-ends>

65 Illinois.gov. (2021, December 17). *Gov. Pritzker signs legislation to further protect reproductive rights* [press release]. <https://www.illinois.gov/news/press-release.24287.html>

The RepealPNA website powerfully centers the voices of youth regarding the harms of the state's parental notification law and the importance of reproductive autonomy as embodied in the following quotes from Illinois youth.<sup>66</sup>

**"PNA harms youth by not trusting them, forcing them to share private information and making access to abortion harder."**

**- Dream**



**"If I am expected to make choices that have lifelong consequences (...) like my choice of college, joining the military, or who I vote for, I should be able to make decisions about my body."**

**- Curtis**



**"Young people's experience proves that this law is extremely dangerous. Not everyone has a safe relationship with their parents or guardians."**

**- Anonymous**



The passage of abortion protective measures in the wake of *Dobbs* shows that lawmakers in many states are intent on strengthening their states' abortion laws to expand and safeguard access within their borders, including for those coming from abortion-ban states. But teens have not been offered the same level of protection - or agency to make to make their own reproductive health decisions - as adults. We hope advocates will leverage the research and findings of this report to identify opportunities in their home state to enact change so that teens have equitable access to abortion. We further hope that advocates can leverage the research and findings to counter any age-specific restrictive measures introduced in their home state aimed at further restricting abortion access for teens.

66 More Voices - Trust Youth. Repeal PNA. (2021, February 22). *Trust Youth. Repeal PNA*. <https://repealpna.org/more-voices/>