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Bypassing Her Constitutional Rights: How the Nebraska Supreme Court Set a Damaging Precedent for Pregnant Minors Seeking Abortion Care

BYPASSING HER CONSTITUTIONAL RIGHTS: HOW THE NEBRASKA SUPREME COURT SET A DAMAGING PRECEDENT FOR PREGNANT MINORS SEEKING ABORTION CARE

By: Carlie J. Armstrong

“[T]he Legislature has assumed under (the law) that all minors will have a parent or guardian who can give consent. As this case illustrates, however, that is not always true.” – Judge William Connolly¹

I. Introduction

In the realm of women’s reproductive health, controversy abounds. The media and politicians on both sides are often quick to co-op the issue in order to incorporate it into broader debates regarding the scope of governmental interests and morality. Despite abundant data demonstrating that women who exercise their right to the full ambit of reproductive health care come from diverse socio-economic backgrounds and faiths,² the labels assigned to women seeking such care too often range from judgmental to offensive.³ The sheer volume of legislation regarding women’s reproductive health over the past year demonstrates the lingering contentiousness surrounding these issues, particularly when it comes to the right to obtain abortion care.⁴ The current constitutional protections afforded to young women under the age of eighteen contain numerous loopholes through which states and activist judges may attempt to restrict their reproductive health care choices. As such, young women are especially vulnerable to outside interference when making decisions about their own reproductive health care.⁵ By analyzing a case recently before the Nebraska Supreme Court, this article explores the current status of constitutional protections for young women seeking abortion care, particularly as these protections apply to wards of the state.⁶

As discussed *infra*, the constitutional protections afforded to pregnant minors are tightly circumscribed and appear to be shrinking. For a ward of the state, the options available to a young woman seeking to obtain an abortion often require her to

go before a judge and plead her case.⁷ As a recent decision by the Nebraska Supreme Court illustrates, such proceedings are not immune from bias and judicial activism.⁸ To conform to the requirements of the United States Supreme Court’s opinions on this issue, states are expected to institute particular safeguards to avoid allowing a third parties an “absolute, and possibly arbitrary, veto” over a young woman’s reproductive choices.⁹ However, in practice, the mechanisms meant to protect vulnerable minors are failing them.

II. The Petition of Anonymous 5 and Nebraska Judicial Bypass Law

The sixteen-year-old petitioner, known only as Anonymous 5, was ten weeks pregnant when she appeared before the district judge seeking to terminate her pregnancy.¹⁰ The young woman and her two younger siblings were removed from their biological parents’ custody in 2011 due to abuse and neglect, and the Nebraska Department of Health and Human Services assumed temporary custody.¹¹ The young woman and her siblings were eventually placed with a foster family and the biological parents’ parental and custodial rights were formally terminated in May 2013.¹² At the time of the hearing, the young woman was still living with her foster parents but indicated that she was anxious to move out and had saved enough money to live on her own after graduating high school.¹³ Furthermore, she stated that she intended to attend college but was considering working to financially support herself beforehand.¹⁴

When asked about her reason for seeking an abortion, Anonymous 5 said that she was unable to financially support a child and, at sixteen years old, could not fully meet her maternal responsibilities.¹⁵ She noted that she had already practically raised her two younger siblings, as their biological parents were neglectful and rarely around.¹⁶

At her hearing, Anonymous 5 stated that her concerns about her foster family's disapproval of her choice to seek an abortion led her to pursue the judicial bypass option.¹⁷ She feared that revealing the pregnancy could jeopardize her placement with the foster family, given their deeply held religious beliefs, and she felt that they would act punitively toward both her and her child if she carried the pregnancy to term.¹⁸ When asked whether she would prefer an abortion to a potential difficult situation in her foster home, Anonymous 5 answered affirmatively.¹⁹ Additionally, the young woman confirmed that she had attended multiple counseling sessions in the process of making her decision to end the pregnancy, as well as undergone the necessary physical examinations, including three ultrasounds.²⁰ When asked by Judge Peter Bataillon whether she understood that the abortion would "kill the child inside of [her]" she answered, "Yes."²¹

In 2011, the Nebraska Legislature passed L690, which stipulates that a minor seeking an abortion must obtain the notarized consent of a parent or legal guardian.²² The law includes a mechanism by which the court may waive this requirement if it determines that doing so is in the best interests of the minor.²³ The law specifically notes that the court must take into consideration any abuse or neglect when determining whether or not to grant such a waiver.²⁴ Additionally, the Nebraska Administrative Code provides that a ward of the state seeking to terminate a pregnancy is not required to obtain consent from her parents nor the Department of Health and Human Services.²⁵ The law places the decision squarely on the shoulders of the pregnant minor, affirming that the decision to notify her parents is hers alone and the Department will respect her privacy if she requests it.²⁶

Despite Anonymous 5's precarious foster placement and her status as a ward of the state, Judge Bataillon ruled at the bypass hearing that she failed to establish by clear and convincing evidence that she was sufficiently mature and well informed enough to make the decision independently of her foster parents.²⁷ Furthermore, Judge Bataillon held that

she did not meet the exception granted for victims of abuse, since her foster parents were not abusive.²⁸ In reviewing the case *de novo*, the Nebraska Supreme Court upheld Judge Bataillon's decision and rejected the young woman's argument that, as a ward of the state, she was not subject to the same requirements of parental consent as other minors.²⁹ The Court dismissed this argument on the grounds that it was not properly raised in her initial petition for judicial bypass.³⁰ With her judicial options exhausted, Anonymous 5 was left with the option of carrying the pregnancy to term or requesting consent from her foster family while possibly jeopardizing the only stable living arrangements she has had in years.

III. Historical Development of Parental Consent and the Judicial Bypass Requirement

The United States Supreme Court first addressed whether the Federal Constitution protected a woman's right to terminate her pregnancy in its 1973 decision in *Roe v. Wade*.³¹ The Court ultimately determined that the Constitutional right to privacy protected a woman's choice to end a pregnancy; however, the Court noted that this right is not absolute and must consider the state's interest in protecting prenatal life.³² To that end, the Court created a framework in which the state's interest became more compelling and the woman's expectation of privacy decreased as the pregnancy progressed.³³ In the first trimester, the state's only compelling interest involves the preservation of maternal health.³⁴ As mortality in abortion is lower than that for childbirth during the first trimester, the state's interests are quite limited.³⁵ However, as the pregnancy continues, the state's interest becomes increasingly compelling to the point of viability, at which time a woman may only obtain an abortion if her life or health is at risk.³⁶

Three years after *Roe*, the Court reviewed the issue of parental consent for the first time. In *Planned Parenthood of Central Missouri v. Danforth*, the Court examined a Missouri statute that required a parent or guardian to provide consent before an unmarried minor could obtain an abortion during the first trimester of pregnancy.³⁷ The Court held that without an alternative legal mechanism by which to obtain consent (judicial bypass), such a law amounted to giving a "third party an absolute, and possibly

arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy."³⁸ In discussing the rights of pregnant minors, the Court reasoned that constitutional protections do not only take effect after the age of majority and, as such, minors must not be deprived of their liberty interests.³⁹

While the Court's holding in *Danforth* established the requirement of judicial bypass for minors seeking an abortion, the Court did not specify on what grounds a judge should grant such a petition in the absence of parental consent.⁴⁰ The Court was called upon to clarify this issue in *Bellotti v. Baird*.⁴¹ Like *Danforth*, the case at issue involved a state statute; however, in this instance the law already contained a judicial bypass notwithstanding for "good cause shown."⁴² Although the term "good cause shown" was intended to mean "in the best interests of the minor," the Court still found the law unconstitutional as it required the pregnant minor to request parental consent prior to seeking a judicial bypass.⁴³ This rule effectively would result in parental notification in all instances, which the Court found unacceptable without an exception for cases in which notice would not be in the minor's best interest.⁴⁴ Furthermore, the Court specified that the state law could not allow a judge to veto an abortion petition if the minor could prove her ability to give informed consent on the basis of her maturity.⁴⁵ Finally, the law's failure to stipulate that parents could only refuse consent in the best interest of the minor was unacceptable.⁴⁶ The Court also expounded on the Constitution's application to minors and noted that the rights of minors could not be compared to those of adults.⁴⁷ The distinction between the rights of adults and those of children was justified on the grounds that children are particularly vulnerable, they are unable to make informed and mature decisions, and parents maintain an important guiding role in raising their children.⁴⁸

Although *Bellotti* upheld a minor's right to judicial bypass, the factors a judge must assess in granting an abortion have proven vulnerable to subjectivity. The Court held that to avoid imposing an undue burden on a minor seeking an abortion, she may be granted a bypass to make an independent choice if she can demonstrate that she is sufficiently mature and well informed.⁴⁹ If the minor fails to convince the court of her maturity, the court may still permit the procedure to go forward if the minor can effectively show that the abortion is in her best

interests.⁵⁰ Additionally, all such bypass proceedings, including appeals, must maintain the anonymity of the minor and must be conducted in an expeditious manner so as not to foreclose the option of abortion.⁵¹ The Court in *Bellotti* emphasized that a state may not interpose its interests between a minor and her right to a decision from an independent court.⁵²

In 1992, the Court abandoned the trimester framework established in *Roe* and adopted the undue burden test.⁵³ The Court held that state statutes would be found invalid if their purpose was to place a substantial obstacle in the path of a woman seeking to abort a nonviable fetus.⁵⁴ The Court determined that the means employed by the state to protect the life of the fetus could not encumber the liberty interests of the woman.⁵⁵ In the opinion, the Court noted that the new standard did not shield a woman from outside interference in her decision.⁵⁶ As long as her ability to choose was preserved, a state could adopt measures intended to persuade her not to have an abortion.⁵⁷ In its decision, the Court also upheld the state's parental consent law because it included a judicial bypass in keeping with the rule in *Bellotti*.⁵⁸

IV. Subjectivity and Judicial Activism

As the basis for the Nebraska Supreme Court's denial of Anonymous 5's petition, the maturity standard merits closer examination. *Bellotti* established the standard, yet the Court refrained from creating specific guidelines for courts to utilize in making these determinations.⁵⁹ Although thirty-nine states require parental involvement in a minor's decision to have an abortion,⁶⁰ no state has enacted legislation creating guidelines for a court in establishing a minor's "maturity."⁶¹ As a result, great variation exists among state courts in determining which factors carry the most weight when deciding whether a minor is sufficiently mature.⁶² Courts are likely to consider the minor's age, intellect, academic performance, and financial independence, but other considerations may come in if the judge finds them relevant.⁶³ In practice, the lack of cohesive standards means that pregnant minors are ultimately at the mercy of each individual judge's discretion.⁶⁴ Such circumstances raise concerns about the personal biases of the judges impacting their decisions in these cases.⁶⁵ Whether intentionally or innocently, a judge

may incorrectly consider the minor's socio-economic status, race, religion, or make a decision based upon his or her own religious beliefs.⁶⁶ Without a clear standard by which to gauge these judicial decisions, biased determinations will likely go unchecked.

In appealing the district court's judgment against her, Anonymous 5 argued that Judge Bataillon's question regarding "killing the child inside [her]" revealed his lack of impartiality and she contended that he should have recused himself.⁶⁷ The Nebraska Supreme Court gave her argument little-to-no consideration, dismissing the claim in a short paragraph on procedural grounds;⁶⁸ however, in light of Judge Bataillon's professional history, such concerns are not unfounded. While practicing as a private attorney in the 1990s, Judge Bataillon defended seventeen members of Operation Rescue accused of trespassing on the property of an abortion clinic.⁶⁹ Operation Rescue is a right-wing, anti-abortion organization that has been associated with violence against physicians who provide abortion care.⁷⁰ Furthermore, a few years later, he defended an anti-abortion activist accused of stalking and threatening an abortion provider.⁷¹ With this information in mind, Judge Bataillon's question to Anonymous 5 seems less innocuous than the Nebraska Supreme Court implied.

The United States Supreme Court emphasized the importance of a pregnant minor's right to an *independent* judicial determination in its decision in *Bellotti*.⁷² Without such a determination, the Court expressed the concern that pregnant minors could be refused abortions by their parents or legal guardians for arbitrary reasons that were not in the minors' best interests.⁷³ Unfortunately, the Court's ambiguity regarding what it meant by "mature" left the door open for capricious decisions at the judicial level. The relevant Nebraska state law specifies that during judicial bypass hearings, the court will "hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant woman."⁷⁴ Furthermore, the state explains that the burden to show maturity rests exclusively with the pregnant woman and it "is not solely a matter of social skills, level of intelligence, or verbal skills, but, more importantly, a matter of experience, perspective, and judgment."⁷⁵

In Anonymous 5's case, the Nebraska Supreme Court did not identify exactly what factors,

in its estimation, rendered the young woman so immature as to be incapable of making an informed decision.⁷⁶ Instead, the court noted that it placed particular emphasis on her tone, analytic ability, expressions, composure, and her ability to articulate her reasoning.⁷⁷ Furthermore, the court stated that since these factors could not be established from the record, it gave weight to Judge Bataillon's determination of her immaturity.⁷⁸ As such, the court focused heavily on the wording of her responses to particular questions and looked for any inconsistencies, some as inconsequential as her inability to remember whether she attended five or six counseling sessions.⁷⁹ In its discussion, the court outlined many of the particulars of Anonymous 5's situation that could be relevant in establishing her maturity. The court observed that she was nearly seventeen years old, enrolled in high school, and intended to graduate a semester early and attend college.⁸⁰ The court conceded that the petitioner had saved enough money to live on her own, but it elected to focus on her current financial dependence on her foster parents as evidence of her financial immaturity.⁸¹ The court also highlighted her lack of work experience but subsequently stated that it is not unusual for unemancipated minors to have little experience before moving away from home.⁸²

In the course of the decision, the Nebraska Supreme Court engaged in a back-and-forth analysis of Anonymous 5's situation while not revealing upon which factors it would ultimately make its ruling.⁸³ The court placed particular significance on Anonymous 5's failure to discuss her understanding of the potential emotional and psychological consequences of the procedure.⁸⁴ However, the court seemed to give little credence to the fact that the young woman had attended numerous counseling sessions prior to making her decision.⁸⁵ The court never explains why the young woman's age, status as a high school senior, and previous experience raising her two younger siblings carried so little weight in assessing her maturity.⁸⁶ Instead, an inexplicable amount of attention is given to her manner of speech.⁸⁷ The court's decision to give so much weight to this factor is particularly concerning since it makes no allowance for the normal nervousness that accompanies appearances before a court.⁸⁸ For young women seeking a judicial bypass, the experience of appearing before a judge often generates feelings of fear and tension, as well as a sense of shame and anxiousness.⁸⁹ The Nebraska

Supreme Court seemingly took no notice of this reality when it assessed Anonymous 5's responses.

Given Judge Bataillon's previous professional involvement in the pro-life movement, the Nebraska Supreme Court's deference to his determination of Anonymous 5's maturity calls into question the value of such a *de novo* review. The Court sought to limit the imposition of a judge's personal set of beliefs upon a pregnant minor in *Bellotti*; however, as articulated by Justice Stewart in his concurrence, the "best interest" standard "provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor—particularly when contrary to her own informed and reasonable decision—is fundamentally at odds with privacy interests underlying the constitutional protection afforded to her decision."⁹⁰ Justice Stewart's concern is further compounded by the fact that in instances wherein the minor is a ward of the state, the judicial bypass process may present her sole option for obtaining an abortion.⁹¹ In Anonymous 5's case, the court's slight discussion of relevant factors regarding her maturity⁹² (e.g., her age, her numerous counseling sessions, and her tenuous living situation) lend credence to Justice Stewart's fears that the personal beliefs of the trial judge may supplant a young woman's constitutional right to seek an abortion.

V. Not an Effective Avenue of Relief for Those Who Need it Most

Although the Court in *Bellotti* specified that minors do not enjoy the same constitutional rights as adults, the rationale for the distinction largely stemmed from recognition of the inherent vulnerability of minors.⁹³ Additionally, the decision to carry to term or end a pregnancy is unique and cannot be equated with other situations in which minors' rights are restricted.⁹⁴ The Court observed that "there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible."⁹⁵ Depending on her background, maturity, and financial situation, "unwanted motherhood may be exceptionally burdensome for a minor" by thrusting her into the adult world with all of the responsibilities that her loss of legal minority entails.⁹⁶

Pregnant minors in foster care face an additional level of vulnerability given their often-unstable living situations and lack of parental support. Young women living in foster homes are more than twice as likely to become pregnant before the age of nineteen than their peers who are not in foster care.⁹⁷ Little data exists regarding national pregnancy rates and sexual activity among this population; however, certain risk factors render young women in foster care more likely to engage in early sexual activity.⁹⁸ Several studies on teen sexuality revealed that young people who have close relationships with their parents and live at home are more likely to delay sexual activity and demonstrate higher rates of contraception use when they do become sexually active.⁹⁹ Research suggests that young women in foster care may not be as motivated as their peers to prevent pregnancy, as they perceive a baby as an opportunity to create the family they never had.¹⁰⁰ Furthermore, social workers in the foster care system are often overwhelmed by the number of clients and do not have the time or resources to coach teens on safe sex.¹⁰¹ Foster parents are also unlikely to feel comfortable discussing these issues with children only temporarily placed in their care.¹⁰²

With an estimated 160,000 adolescents living in foster care or with a relative other than their biological parents,¹⁰³ the Nebraska Supreme Court's decision becomes increasingly worrisome. As Judge Connolly stated in his dissent, Anonymous 5 "is in a legal limbo—a quandary of the Legislature's making."¹⁰⁴ Of primary importance in this situation is the nonexistence of a legal guardian aside from the Nebraska Department of Health and Human Services.¹⁰⁵ Nowhere in the Nebraska Supreme Court's majority opinion is this reality acknowledged. The court accepts Judge Bataillon's erroneous suggestion¹⁰⁶ that the minor seek the consent of her foster parents, despite the young woman's correct assertion that her foster parents do not have the legal authority to make such medical decisions, even if they wished to do so.¹⁰⁷ The Department of Health and Human Services delegates to foster parents only routine immunizations and medical care, nothing more.¹⁰⁸ When the young woman and her attorney raised this issue to the court, it was quickly dismissed as "outside the scope of [the] special statutory proceeding."¹⁰⁹

Without the consent of the Department of Health and Human Services, the Nebraska Supreme

Court placed Anonymous 5 in an impossible situation. As explained by Judge Connolly in his dissent, the relevant state statute regarding judicial bypass specifically applies to a pregnant woman who “elects not to obtain the consent of her parents or guardians.”¹¹⁰ Judge Connolly contended that Anonymous 5 could not possibly *elect* to bypass consent as she lacked any legal guardian to grant consent.¹¹¹ A minor’s decision to circumvent obtaining her parents’ consent is a prerequisite for the court to hear such cases.¹¹² In Judge Connolly’s estimation, a case lacking that component deprives the district court of subject matter jurisdiction and, as such, the court lacks the authority to hear that particular question and grant the requested relief.¹¹³

The judicial quagmire created by the district court and upheld by the Nebraska Supreme Court in the case of Anonymous 5 has dangerous implications for minors in foster care. The United States Supreme Court emphasized in *Bellotti* that requiring a minor to first seek parental consent before having access to judicial bypass failed to “provide an effective avenue of relief for some of those who need it the most.”¹¹⁴ Regrettably, it is now the judicial bypass procedure itself that threatens to deprive pregnant minors from obtaining effective relief. Despite the petitioner and her attorney raising the absence of parental guardianship issue at trial, the Nebraska Supreme Court refused to examine the issue further because Anonymous 5’s original petition for judicial bypass did not address this specific concern.¹¹⁵ However, nowhere on the judicial bypass form could Anonymous 5 have indicated her concerns regarding the jurisdictional issues relating to the Department of Health and Human Service’s status as her guardian.¹¹⁶ As noted by Judge Connolly, the form is intended to be easily navigable by minors and, therefore, is a series of blanks and boxes to check.¹¹⁷ As such, the Nebraska Supreme Court’s failure to reexamine the status of the petitioner’s guardianship deprived her of an effective avenue of relief.

VI. Conclusion

The case of Anonymous 5 serves as a proverbial perfect storm at the intersection of women’s reproductive health and the judicial constraints placed on the exercise of a pregnant

minor’s constitutional right to bodily autonomy. While the particular circumstances of this case are unlikely to be reproduced in many judicial bypass cases, the large number of young women in foster care suggests that Anonymous 5’s experience may not be exceptional. Unfortunately, young women in such circumstances are incredibly vulnerable and already face many obstacles to obtaining an education, escaping poverty, and keeping themselves safe from abusive or neglectful guardians.¹¹⁸

The United States Supreme Court has consistently held that a pregnant minor has a constitutional right to an independent judicial determination on whether she is sufficiently mature to decide for herself to terminate her pregnancy or whether the abortion would still be in her best interests despite her immaturity. The case of Anonymous 5 reveals that the protections available to pregnant minors are inadequate. While the Court may have stymied parental interference, not enough safeguards exist to protect these young women from judicial activism on this already contentious issue. As Judge Connolly’s dissent highlights, the Nebraska Supreme Court incorrectly assumed the existence of parents to give consent in such cases, which is sadly not the reality for wards of the state. Unfortunately, it appears that the United States Supreme Court similarly erred when it made the damaging assumption that judges would set aside their personal biases and act in the best interests of the minor.

(Endnotes)

¹ In re Petition of Anonymous 5, 286 Neb. 640, 658 (2013) (Connolly, J., dissenting).

² See Darshak Sanghavi, *Who Has an Abortion After 20 Weeks?*, SLATE (July 11, 2013), http://www.slate.com/articles/health_and_science/medical_examiner/2013/07/texas_abortion_ban_after_20_weeks_prenatal_testing_reveals_birth_defects.html.

³ See Erik Wemple, *Rush Limbaugh’s Legacy on Sandra Fluke*, THE WASHINGTON POST (Oct. 11, 2013, 6:04PM), <http://www.washingtonpost.com/blogs/erik-wemple/wp/2013/10/11/rush-limbaughs-legacy-on-sandra-fluke>.

⁴ See *State Level Assault on Abortion Rights Continues in First Half of 2013*, GUTTMACHER INSTITUTE (July 8, 2013), <http://www.guttmacher.org/media/inthenews/2013/07/08/index.html>; Katie McDonough, *2012 was a Banner Year for Antiabortion Laws*, SALON (Jan. 2, 2013) http://www.salon.com/2013/01/02/2012_was_a_banner_year_for_anti_abortion_laws/.

- ⁵ See Satsie Veith, *The Judicial Bypass Procedure and Adolescents' Abortion Rights: The Fallacy of the "Maturity" Standard*, 23 HOFSTRA L. REV. 453, 474 (1994) (arguing that the judicial bypass procedure relies on the manipulability of young women and further victimizes them for the political purpose of blocking abortion access).
- ⁶ *In re Petition of Anonymous 5*, 286 Neb. 640 (2013).
- ⁷ *Parental Involvement in Minors' Abortions*, GUTTMACHER INSTITUTE (Nov. 1, 2013), http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf.
- ⁸ *In re Petition of Anonymous 5*, 286 Neb. at 645, 649 (contending that the district judge's statement to petition that an abortion would "kill the child inside her" was not grounds for recusal).
- ⁹ *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976).
- ¹⁰ *In re Petition of Anonymous 5*, 286 Neb. at 643.
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ *Id.* at 650.
- ¹⁴ *Id.*
- ¹⁵ *Id.* at 643.
- ¹⁶ *Id.*
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ *Id.* at 649.
- ²¹ *Id.*
- ²² Neb. Rev. Stat. § 71-6902 (Cum. Supp. 2012).
- ²³ Neb. Rev. Stat. § 71-6903 (Cum. Supp. 2012).
- ²⁴ *Id.*
- ²⁵ 390 Neb. Admin. Code, ch. 11, § 11-002.04A (1998).
- ²⁶ *Id.*
- ²⁷ *In re Petition of Anonymous 5*, 286 Neb. 640, at 643.
- ²⁸ *Id.*
- ²⁹ *Id.* at 640.
- ³⁰ *Id.* at 651.
- ³¹ *Roe v. Wade*, 410 U.S. 113 (1973).
- ³² *Id.* at 155.
- ³³ *Id.* at 162-63.
- ³⁴ *Id.*
- ³⁵ *Id.* at 163.
- ³⁶ *Id.*
- ³⁷ *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976).
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ Suellen Scarnecchia & Julie Kunce Field, *Judging Girls: Decision Making in Parental Consent to Abortion Cases*, 3 MICH. J. GENDER & L. 75, 78 (1995).
- ⁴¹ *Bellotti v. Baird*, 443 U.S. 622 (1979) (plurality opinion).
- ⁴² *Id.* at 630.
- ⁴³ *Id.*
- ⁴⁴ *Id.* at 631-32.
- ⁴⁵ *Id.* at 632.
- ⁴⁶ *Id.*
- ⁴⁷ *Id.* at 622-23.
- ⁴⁸ *Id.*
- ⁴⁹ *Id.* at 650.
- ⁵⁰ *Id.* at 651.
- ⁵¹ *Id.* at 644.
- ⁵² *Id.* at 623.
- ⁵³ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).
- ⁵⁴ *Id.* at 877.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Id.* at 877-78.
- ⁵⁸ *Id.* at 899.
- ⁵⁹ *Bellotti v. Baird*, 443 U.S. 622, 643 n.23 (1979) (plurality opinion) (noting that "the problem of determining 'maturity' makes clear why the State generally may resort to objective, though inevitably arbitrary, criteria").
- ⁶⁰ *Parental Involvement in Minors' Abortions*, *supra* note 7.
- ⁶¹ See Scarnecchia, *supra* note 40, at 113.
- ⁶² See Stephen P. Rosenberg, *Splitting the Baby: When Can A Pregnant Minor Obtain an Abortion Without Parental Consent? The Ex Parte Anonymous Cases (Alabama 2001)*, 34 CONN. L. REV. 1109, 1117-18 (2002).
- ⁶³ *Id.*
- ⁶⁴ See Anna C. Bonny, *Parental Consent and Notification Laws in the Abortion Context: Rejecting the "Maturity" Standard in Judicial Bypass Proceedings*, 11 U.C. DAVIS J. JUV. L. & POL'Y 311, 322-23 (2007).
- ⁶⁵ See *id.* at 323.
- ⁶⁶ See *id.*
- ⁶⁷ *In re Petition of Anonymous 5*, 286 Neb. 640, 645 (2013).
- ⁶⁸ *Id.*
- ⁶⁹ Jessica Mason Pieklo, *In Denying a 16-Year-Old Judicial Bypass, Nebraska Supreme Court Creates Ban on Abortions for Minors in State Custody*, RH REALITY CHECK (Oct. 6, 2013), <http://rhrealitycheck.org/article/2013/10/06/in-denying-a-16-year-old-judicial-bypass-nebraska-supreme-court-creates-ban-on-abortions-for-minors-in-state-custody>.
- ⁷⁰ See Erin Gloria Ryan, *Operation Rescue Reveals Identity of Anonymous Abortion Doctor, Because Abortion is Like Bank Robbery*, JEZEBEL (Oct. 14, 2011), <http://jezebel.com/5849661/operation-rescue-reveals-identity-of-anonymous-abortion-doctor-because-abortion-is-like-bank-robbery>.
- ⁷¹ Pieklo, *supra* note 69.
- ⁷² *Bellotti v. Baird*, 443 U.S. 622, 623 (1979) (plurality opinion).
- ⁷³ *Id.* at 647.
- ⁷⁴ Neb. Rev. Stat. § 71-6903 (Cum. Supp. 2012).
- ⁷⁵ *Id.*
- ⁷⁶ *In re Petition of Anonymous 5*, 286 Neb. 640, 649 (2013) (quoting *In re Petition of Anonymous 1*, 251 Neb. 424, 429, 558 N.W.2d 784, 788 (1997)) ("Experience, perspective and judgment are often lacking in unemancipated minors who are wholly dependent and have never lived away from home or had any significant employment experience.' We find that to be true in this case.").
- ⁷⁷ *Id.* at 649.
- ⁷⁸ *Id.*

- 79 *Id.* (noting the petitioner’s use of “um” while pausing to in the midst of answering a question from the court, as well her statement that she planned to work for “a little bit” before attending college).
- 80 *Id.*
- 81 *Id.*
- 82 *Id.*
- 83 *Id.* at 648-50 (discussing the precedent for establishing maturity and particular facts about the petitioner while not conducting a comprehensive analysis of these facts in light of the case law).
- 84 *Id.* at 650.
- 85 *Id.* at 649-50.
- 86 *Id.* (listing these factors but not discussing their significance in the determination of the petitioner’s lack of maturity).
- 87 *Id.* at 649 (noting the petitioner’s use of “um” and “a little bit” while answering a question from the court).
- 88 *See, e.g.,* Veith, *supra* note 5, at 460 (discussing the discomfort and fear young women feel when appearing before a judge for a judicial bypass hearing).
- 89 *Id.* (citing *Hodgson v. State of Minn.*, 648 F. Supp. 756, 763 (D. Minn. 1986) *rev’d*, 853 F.2d 1452 (8th Cir. 1988) *aff’d sub nom. Hodgson v. Minnesota*, 497 U.S. 417 (1990)).
- 90 *Bellotti v. Baird*, 443 U.S. 622, 655-56 (1979) (Stevens, J., concurring in judgment).
- 91 Pieklo, *supra* note 69.
- 92 *In re Petition of Anonymous 5*, 286 Neb. at 643, 649-50 (discussing petitioner’s concerns about losing her foster placement if her pregnancy were discovered and acknowledging her age and plans to graduate soon, but not directly applying these factors to the maturity analysis).
- 93 *Bellotti v. Baird*, 443 U.S. at 622-23 (plurality opinion).
- 94 *Id.* at 642.
- 95 *Id.*
- 96 *Id.*
- 97 Heather D. Boonstra, *Teen Pregnancy Among Young Women in Foster Care: A Primer*, 14.2 GUTTMACHER POL’Y REV. (2011), available at <http://www.guttmacher.org/pubs/gpr/14/2/gpr140208.html>.
- 98 *Id.*
- 99 *Id.*
- 100 Amy Sullivan, *Teen Pregnancy: An Epidemic in Foster Care*, TIME (July 22, 2009), <http://content.time.com/time/nation/article/0,8599,1911854,00.html>.
- 101 *Id.*
- 102 *Id.*
- 103 Boonstra, *supra* note 97.
- 104 *In re Petition of Anonymous 5*, 286 Neb. 640, 654 (2013) (Connolly, J., dissenting) (“The petitioner has no legal parents; the juvenile court terminated their parental rights. Her legal guardian, the Department—by regulation—will not give her consent. And although the district court has required her to get her foster parents’ consent to obtain an abortion, their consent would be meaningless under the law because they are neither parents nor guardians.”).
- 105 *Id.*
- 106 *Id.* at 644.
- 107 *Id.* at 654.
- 108 *Id.* at 657.
- 109 *Id.* at 654.
- 110 *Id.* at 655 (Connolly, J., dissenting) (citing Neb. Rev. Stat. § 71-6903 (Cum. Supp. 2012)).
- 111 *Id.*
- 112 *Id.*
- 113 *Id.* at 656.
- 114 *Bellotti v. Baird*, 443 U.S. 622, 647 (1979) (plurality opinion).
- 115 *In re Petition of Anonymous 5*, 286 Neb. 640, at 659.
- 116 *Id.*
- 117 *Id.* at 660.
- 118 Boonstra, *supra* note 97.