The Abortion Decision for Minnesota Minors: Who Decides?
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The constitutional protections afforded minors are often subject to limitations not applied to protection afforded adults because minors may be considered too immature to make important decisions. Although the state must have a compelling interest to infringe upon an adult's decision to obtain an abortion, the state need only a significant interest to interfere with a similar decision by a minor. The Minnesota legislature has nearly eliminated a teenager's right to privacy in making a decision about abortion. This Note evaluates Minnesota's abortion law, Minnesota Statutes section 144.343, in light of recent Supreme Court decisions, and concludes the statute may be constitutionally invalid.

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I. INTRODUCTION

In 1980, there were 19,028 abortions performed in Minnesota.1 Approximately 14.3%, or 2,733, of these abortions were performed on teenagers under the age of eighteen.2 These individuals represent a class affected by the new Minnesota criminal abortion statute3 requiring mandatory notification by the physician or his agent to the parents of an unemancipated minor. Prior to the enactment of the parental notification statute, the applicable abortion statute, Minnesota Statutes section

1. Affidavit of Jane Hodgson, M.D., at para. 33, Hodgson v. State, 3-81 Civ. No. 538 (D. Minn. filed July 30, 1981). Thomas Webber, Director of Planned Parenthood of Minnesota, stated that 16,490 Minnesotans had abortions in 1980; of those, 5,603 were under the age of 19. According to Planned Parenthood, there were approximately 15,490 abortions performed on Minnesotans in 1982, a decline of 1000 procedures. Approximately eight out of ten, of the decline, were for those under age 17. Minneapolis Star & Tribune, June 16, 1983 at 10A, cols. 5-6.

2. Affidavit of Jane Hodgson, M.D., supra note 1, at para. 33. Approximately 84% of all teenage abortions performed in Minnesota in 1980 were of teenagers either age seventeen or sixteen. Id. at para. 25. Therefore, this statute affects primarily older teenagers.

3. MINN. STAT. § 144.343(2) (1982) states: Notwithstanding the provisions of section 13.02, subdivision 8, no abortion operation shall be performed upon an unemancipated minor or upon a woman for whom a guardian or conservator has been appointed pursuant to sections 525.54 to 525.551 because of a finding of incompetency, until at least 48 hours after
144.343(1), did not require consent by or notification to the minor's parents. In May of 1981, the legislature restricted the application of Minnesota Statutes section 144.343, subdivision 1, by adding provisions that affect the rights of minors seeking an abortion and the rights of physicians who perform the abortions. One provision requires physicians to notify both parents of any unemancipated minor, regardless of her maturity or her best interests.6

Because of the controversial nature of the parental notification requirement, the legislature provided an alternative which allows the minor to elect a notification "bypass" procedure.7 The "bypass" procedure

written notice of the pending operation has been delivered in the manner specified in subdivisions 2 to 4.

(a) The notice shall be addressed to the parent at his usual place of abode and delivered personally to the parent by the physician or his agent.

(b) In lieu of the delivery required by clause (a), notice shall be made by certified mail addressed to the parent at his usual place of abode with return receipt requested and restricted delivery to the addressee which means postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

4. MINN. STAT. § 144.343(1) (1982) provides that "[a]ny minor may give effective consent for medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse, and the consent of no other person is required."

This statute was originally enacted in 1971 and its purpose was to encourage teenagers to seek and receive medical help for sex-related health problems. See Affidavit of Adele Hoffman at para. 13, Hodgson v. State, 3-81 Civ. No. 538 (D. Minn. filed July 30, 1981); Affidavit of Tom Webber at para. 12-17, Hodgson v. State, 3-81 Civ. No. 538 (D. Minn. filed July 30, 1981).

Section 144.343(1) is limited by MINN. STAT. § 144.346 (1982) which provides that physicians may notify the parent or legal guardian of a minor patient of any treatment needed or given where "failure to inform the parent or legal guardian would seriously jeopardize the health of the minor patient." MINN. STAT. § 144.346 (1982).

For prior development of Minnesota law on abortion, see Hodgson v. Board of County Comm'rs, 614 F.2d 601 (8th Cir. 1980); Planned Parenthood of Minn. v. State, 612 F.2d 359 (8th Cir. 1980); Nyberg v. City of Va., 495 F.2d 1342 (8th Cir. 1974); Hodgson v. Flakne, 463 F. Supp. 67 (D. Minn. 1978); Hodgson v. Anderson, 378 F. Supp. 1008 (D. Minn. 1974); Dakota County Welfare Bd. v. State, 261 N.W.2d 565 (Minn. 1977); McKee v. Likins, 261 N.W.2d 566 (Minn. 1977); Mower County Welfare Bd. v. State, 261 N.W.2d 578 (Minn. 1977); State v. Hodgson, 295 Minn. 294, 204 N.W.2d 199 (1973).

5. Act of May 19, 1981, ch. 228, 1981 Minn. Laws 1011 (codified at MINN. STAT. § 144.343 (2)-(7) (1982)). The physician is subject to both criminal and civil action if this statute is violated: "Performance of an abortion in violation of this section shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification." MINN. STAT. § 144.343(5) (1982).

6. See MINN. STAT. § 144.343(2) (1982).

7. MINN. STAT. § 144.343(6)(c)(i) (1982). Subdivision 6 also provides procedural protections to ensure a confidential and expeditious "bypass" proceeding:

(ii) Such a pregnant woman may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel, and shall, upon her request, provide her with such counsel.

(iii) Proceedings in the court under this section shall be confidential and
becomes operative only if the mandatory notification provision is temporarily or permanently enjoined by judicial order. This procedure permits a judge to authorize the minor’s physician to perform an abortion as long as certain conditions are met. First, if the judge determines that the pregnant minor is mature and capable of giving informed consent to the abortion, the physician is authorized to proceed without notifying the parents. Second, if the minor is not mature, the judge must decide whether an abortion without parental notification would be in her best interests. If the judge concludes that the minor’s best interests would be served by an abortion, the physician will be granted authorization to proceed. The minor’s parents are notified of the abortion only where the judge determines that the minor is not mature and that notification would be in her best interests.

Parental notification is not required in all circumstances. Section 144.343, subdivision 4, provides that notice is not required if the abortion is necessary to prevent the minor’s death and there is insufficient time to provide the required notice, if the abortion is authorized in writing by the persons who are entitled to notice, or if the minor is a victim of sexual

shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting his decision and shall order a record of the evidence to be maintained including his own findings and conclusions.

(iv) An expedited confidential appeal shall be available to any such pregnant woman for whom the court denies an order authorizing an abortion without notice. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant woman at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant woman 24 hours a day, seven days a week.


An action has been brought in federal district court to invalidate the notification requirement and bypass regulations. Plaintiffs in Hodgson v. State, 3-81 Civ. No. 538 (D. Minn. filed July 30, 1981), have claimed that the statute unduly burdens a minor’s right to obtain an abortion in violation of the due process clauses of the United States and Minnesota Constitutions. A temporary restraining order has been issued by Judge Donald Alsop, enjoining the enforcement of the notification requirement. This determination was based upon the Eighth Circuit Court of Appeals’ recent decision of Planned Parenthood Ass’n of Kansas City v. Ashcroft, 655 F.2d 848 (8th Cir. 1981). See infra notes 117-21 and accompanying text. The bypass procedure became operative on August 1, 1981, and is presently in effect, but its validity is expected to be litigated sometime during the summer of 1984. See Minneapolis Star & Tribune, supra note 1, at col. 5.


10. See Minn. Stat. § 144.343(3) (1982) which defines “parent” as “both parents of the pregnant woman if they are both living, one parent of the pregnant woman if only one is living or if the second one cannot be located through reasonably diligent effort, or the guardian or conservator if the pregnant woman has one.”
abuse, neglect, or physical abuse.11
This Article will illustrate the hardships that both the notification re-
quirement and the "bypass" procedure of Minnesota Statutes section
144.343 place upon pregnant minors. The first section focuses upon the
historical basis of current abortion laws, including the recent Supreme
Court reaffirmation of prior abortion decisions. The second section ana-
lyzes the constitutionality of section 144.343, by identifying the interests
of and effects on parent, child, and state.

II. HISTORICAL BASIS OF CURRENT ABORTION LAWS

The right to privacy guarantees that an individual may conduct her
personal affairs free from undue interference or regulation by the state.12
The Supreme Court has stated that "[n]o right is held more sacred, or is
more carefully guarded by the common law, than the right of every indi-
vidual to the possession and control of his person, free from all restraint
or interference of others, unless by clear and unquestionable authority of
law."13 Although the fundamental right to privacy is not articulated in
the Constitution,14 it is grounded in the due process clause of the four-
teenth amendment.15

The United States Supreme Court first enunciated the right to privacy
with respect to childbearing in Griswold v. Connecticut.16 The Court held
that a state could not prohibit married couples from using contracep-
tives; the prohibition would violate their privacy.17 This application was
expanded in subsequent cases to encompass other personal decisions such

11. MINN. STAT. § 144.343(4)(a) (1982) states:
No notice shall be required under this section if:
(a) The attending physician certifies in the pregnant woman's medical rec-
ord that the abortion is necessary to prevent the woman's death and there is
insufficient time to provide the required notice; or
(b) The abortion is authorized in writing by the person or persons who are
entitled to notice; or
(c) The pregnant minor woman declares that she is a victim of sexual abuse,
neglect, or physical abuse as defined in section 626.556. Notice of that declara-
tion shall be made to the proper authorities as provided in section 626.556, sub-
division 3.
12. See, e.g., Griswold v. Connecticut, 381 U.S. 479, 484-85 (1965); Foe v. Vanderhoof,
15. Roe v. Wade, 410 U.S. 113, 153 (1973). Prior to this time, the Court had
grounded the right to privacy in the penumbra of the first, fourth, fifth and ninth amend-
ments. See Stanley v. Georgia, 394 U.S. 557, 565 (1969) (first amendment); Terry v. Ohio,
392 U.S. 1, 8-9 (1968) (fourth and fifth amendments); Katz v. United States, 389 U.S. 347,
350 (1967) (fourth and fifth amendments); Griswold v. Connecticut, 381 U.S. 479, 486
(1965) (Goldberg, J., concurring) (ninth amendment); Meyer v. Nebraska, 262 U.S. 390,
399 (1923) (fourteenth amendment); Boyd v. United States, 116 U.S. 616, 629-30 (1886)
(fourth and fifth amendments).
17. Id. at 485-86.
as marriage\textsuperscript{18} and procreation.\textsuperscript{19}

The right to privacy was extended to a woman’s decision to abort in \textit{Roe v. Wade}\textsuperscript{20} and \textit{Doe v. Bolton}.\textsuperscript{21} These two cases establish that a woman has a fundamental right\textsuperscript{22} to choose between obtaining an abortion or carrying the pregnancy to term.\textsuperscript{23} This fundamental right, however, is not absolute;\textsuperscript{24} it is subject to regulation if the state can show the existence of a compelling interest.\textsuperscript{25} In addition, the regulation must be narrowly constructed to further the compelling interest without

\textsuperscript{18} Zablocki v. Redhail, 434 U.S. 374, 384-86 (1978) (right to marry is a personal right implicit in fourteenth amendment’s due process clause); Loving v. Virginia, 388 U.S. 1, 12 (1967) (state statutory scheme preventing marriages on basis of race was unconstitutional). See also Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (parent has right to bring up children in way acceptable to his own judgment); Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (requiring children to attend public schools interferes with parents’ right to direct upbringing and education of child).

\textsuperscript{19} Skinner v. Oklahoma, 316 U.S. 535 (1942) (statute requiring “habitual criminals” to be sterilized was held unconstitutional). See also Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) (public school maternity leave rules must not arbitrarily impinge upon teacher’s liberty to make childbearing decisions).

\textsuperscript{20} 410 U.S. 113 (1973).

\textsuperscript{21} 410 U.S. 179 (1973).


A fundamental right is a “specific type of civil liberty” including:

(1) first amendment rights; (2) the right to engage in interstate travel; (3) the right to vote; (4) the right to fair proceedings before a deprivation of personal liberty (although this is somewhat unclear); (5) the right to privacy which includes some rights to freedom of choice in sexual matters; (6) the right to freedom of choice in marriage.

\textit{Id.}

\textsuperscript{23} The Court found the right to privacy upon the fourteenth amendment’s concept of personal liberty but found the right to be the same if founded upon the ninth amendment’s reservation of rights to the people. Either amendment was broad enough to encompass a woman’s decision to terminate her pregnancy. Wade, 410 U.S. at 153.

\textsuperscript{24} The Court in \textit{Roe v. Wade} stated, “We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.” 410 U.S. at 154.

\textsuperscript{25} The state has a legitimate interest in protecting the mother’s health and the life of the fetus, each interest becoming compelling at different stages of the pregnancy. The Wade Court summarized its holding as follows:

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

unnecessarily infringing on the fundamental right.26

Generally, minors have not been entitled to the same protections as those guaranteed adults under the Constitution.27 States have been allowed greater freedom to regulate the activities of minors in view of the minor’s alleged inability to protect herself and to make well-informed decisions.28 This alleged vulnerability has led many states to place restrictions upon a minor’s right to vote and to marry.29 Despite the validity of these regulations, the United States Supreme Court has expressed concern regarding the extent of the state’s power.30 The Court has stated, “the question of the extent of state power to regulate conduct of minors not constitutionally regulable when committed by adults is a vexing one, perhaps not susceptible of precise answer.”31

_Roe v. Wade_ did not address whether the right to privacy with respect

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26. 410 U.S. at 155-56. See _Doe v. Bolton_, 410 U.S. 179 (1973) (Georgia abortion statute held unconstitutional even though it had met the compelling interest requirement, because it imposed an undue burden on the woman).

27. _See_ _McKeiver v. Pennsylvania_, 403 U.S. 528 (1971) (due process requirements do not require jury trials in state juvenile delinquency proceedings); _Ginsberg v. New York_, 390 U.S. 629 (1968) (statute prohibiting sale of obscene material to minors was upheld); _Prince v. Massachusetts_, 321 U.S. 158 (1944) (state has broader authority over children than their parents in matters of employment).

28. _Bellotti v. Baird_, 443 U.S. 622, 640-41 (1979) (Bellotti II) (regulation of minor’s abortion decision was upheld); _Planned Parenthood v. Danforth_, 428 U.S. 52, 72-74 (1976) (minor must be sufficiently mature to understand procedure and to make an intelligent assessment of her circumstances); _Wynn v. Carey_, 482 F.2d 1375, 1384-85 (7th Cir. 1978) (the minor’s right to terminate her pregnancy cannot be exercised unless the decision is informed).


A minor’s vulnerability has also been the motivating factor for establishing separate court systems which deal exclusively with minors. _See_ _Foe v. Vanderhoof_, 389 F. Supp. 947, 953 (D. Colo. 1975).


The different tests applied to restrict a minor’s privacy rights (significant state interest) and an adult’s privacy rights (compelling state interest) provide some flexibility in application, yet support the proposition that the degree of permissible state regulation over the minor is far broader than that over the adult. _See_ _Carey v. Population Serv. Int’l_, 431 U.S. 678, 693-94 (1977); _Planned Parenthood v. Danforth_, 428 U.S. 52, 75 (1976); _Roe v. Wade_, 410 U.S. 113, 155 (1973). _But see_ _Eisenstadt v. Baird_, 405 U.S. 438 (1972), where the Court did not differentiate minors from adults, indicating that the right to privacy is “the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” _Id._ at 453 (emphasis supplied).

to an abortion extends to minors as well as adults. Consequently, state legislatures enacted statutes that severely limited the minor's access to the abortion procedure. Typically, statutes require parental or spousal consent, with the intent to protect minors from hasty, uninformed decisions and to protect parental rights as well. Under these statutes, a minor must overcome both parental and state interests before she is enti-

32. Roe v. Wade, 410 U.S. 113, 165 n.67 (1973). The court stated:

North Carolina . . . requires written permission for the abortion from the husband when the woman is a married minor, that is, when she is less than 18 years of age; . . . if the woman is an unmarried minor, written permission from the parents is required. We need not now decide whether provisions of this kind are constitutional.

Id. (citations omitted).

33. The statutes requiring that restrictive procedures be met are similar in scope. See, e.g., MASS. GEN. LAWS ANN., ch. 112, § 12S (West Supp. 1982-83):

(1) If a pregnant woman is less than eighteen years of age and has not married, a physician shall not perform an abortion upon her unless he first obtains both the consent of the pregnant woman and that of her parents, except as hereinafter provided. In deciding whether to grant such consent, a pregnant woman's parents shall consider only their child's best interests. If one of the pregnant woman's parents has died or is unavailable to the physician within a reasonable time and in a reasonable manner, consent of the remaining parent shall be sufficient. If both parents have died or are otherwise unavailable to the physician in a reasonable time and in a reasonable manner, consent of the pregnant woman's guardian or guardians shall be sufficient. If the pregnant woman's parents are divorced, consent of the parent having custody shall be sufficient. If a pregnant woman less than eighteen years of age has not married and if one or both of her parents or guardians refuse to consent to the performance of an abortion, or if she elects not to seek the consent of one or both of her parents or guardians, a judge of the superior court department of the trial court shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if said judge determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion or, if said judge determines that she is not mature, that the performance of an abortion upon her would be in her best interests. A pregnant woman less than eighteen years of age may participate in proceedings in the superior court department of the trial court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court appointed counsel, and shall, upon her request, provide her with such counsel. Proceedings in the superior court department of the trial court under this section shall be confidential and shall be given such precedence over other pending matters that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant woman. A judge of the superior court department of the trial court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting his decision and shall order a record of the evidence to be maintained including his own findings and conclusions.

COLO. REV. STAT. § 18-6-101(1) (1973) states:

'Justified medical termination' means the intentional ending of the pregnancy of a woman at the request of said woman or, if said woman is under the age of eighteen years, then at the request of the woman and her then living parent or guardian, or, if the woman is married and living with her husband, by a licensed physician using accepted medical procedures in a licensed hospital upon written certification.

34. See, e.g., statutes cited supra note 33.

tled to assert the right to make basic decisions without interference from others.

Courts systematically struck down consent statutes as unconstitutional because they infringed upon the fundamental right established in *Roe v. Wade*. These decisions hold that the right to privacy in regard to an abortion decision does extend to minors. The Supreme Court addressed the parental consent issue in *Planned Parenthood v. Danforth*. The *Danforth* Court held a Missouri statute invalid because "the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." The Court recognized the state interest of protecting the family unit and parental authority which was advanced by proponents of the statute, but held that the veto power would not strengthen this interest. The very existence of the pregnancy indicated that the family structure was already fractured. Because the minor bears the child and is more directly affected by the pregnancy, the Court held that the minor's right to privacy outweighs the parent's interest in termination of the pregnancy.

The *Danforth* holding, however, was limited. The Supreme Court stated that it did not mean to imply that the state may not impose any restrictions on the minors. The Court emphasized that the Missouri statute was faulty because the veto provision operated as a prerequisite to the minor's termination of her pregnancy without a sufficient justification for the restriction.

*Bellotti v. Baird* continued the inquiry into the minor's abortion deci-


39. *Id.* at 74.

40. *Id.* at 75.

41. *Id.*

42. *Id.*

43. *Id.*

44. 443 U.S. 622 (1979) (Bellotti II). *Bellotti v. Baird*, 428 U.S. 132 (1976) (Bellotti I) was originally a companion case to *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). In *Bellotti I*, the Supreme Court vacated the district court's decision which held the consent statute unconstitutional, stating that the district court should have abstained and certified issues concerning the meaning of the statute to the Massachusetts Supreme Judi-
sion and the extent of regulation allowed by the state. The Supreme Court struck down the Massachusetts consent statute, stating that it fell short of satisfying constitutional standards in two respects:

First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, without affording the pregnant minor an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests.

The effect of the Court’s decision is that every minor must have the opportunity to go directly to a court without first consulting or notifying her parents.

The Bellotti Court further stated that the requirement of obtaining parental consent does not unduly burden a minor’s right to seek an abortion, as long as an alternative procedure is provided for obtaining authorization for the abortion. The Court suggested that in order to obtain authorization, the minor may show that she is sufficiently mature and well informed to make an independent decision, or if unable to make an independent decision, that the abortion would be in her best interests.

In addition, the Court warned that in developing restrictions on the minor’s abortion decision, states must provide certain procedural safe-

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45. See supra note 34.
46. 443 U.S. at 651.
47. Id. at 647.
48. Id. at 643. The Court’s rationale for this holding is that “the unique nature and consequences of the abortion decision make it inappropriate to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient’s pregnancy, regardless of the reason for withholding the consent.” Id. (quoting Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976)).
49. 443 U.S. at 643-44. The Court acknowledged the significance of the abortion decision, putting aside religious and ethical considerations, indirectly expressed that an abortion may be less burdensome and emotionally detrimental for the minor than raising a child:

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

Id. at 642.
guards for the minor.50 Those safeguards expressly indicated were that the third party decision be made quickly51 and that the issue be completed with anonymity.52 These procedural safeguards coupled with the suggested authorization procedure shift the veto power with which the Court was concerned in Danforth from the minor’s parents to the court.53

The United States Supreme Court recently considered the parental notification requirement for minors seeking an abortion in H.L. v. Matheison.54 The contested Utah statute required a physician to “[n]otify, if possible” the parents or guardian of a minor.55 After discussing the implications of its prior abortion decisions, the Court held that because the appellant did not allege that she was mature or emancipated, she lacked standing to challenge the statute as unconstitutional on grounds of overbreadth.56 Because of the defective pleadings, the Court addressed only the facial constitutionality of a statute requiring a physician to give notice to parents “if possible,” prior to performing an abortion on their minor daughter, (a) when the girl is living with and dependent upon

50. Id. at 644. The Court stated:
The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the “absolute, and possibly arbitrary, veto” that was found impermissible in Danforth.

51. 443 U.S. at 644. If the judicial authorization process extends beyond the three-month stage established in Roe v. Wade, the state’s interest in protecting the mother becomes compelling, and regulation becomes permissible. See supra note 24.

52. 443 U.S. at 644. A judicial authorization process that is not anonymous will deter minors from using a medically safe procedure and instead cause them to resort to illegal abortions.

53. The Court in Danforth stated:
[T]he State may not impose a blanket provision, . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy. Just as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient’s pregnancy, regardless of the reason for withholding the consent.


55. Id. at 399-400. The Utah statute provides:
To enable the physician to exercise his best medical judgment, he shall:
(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,
(a) Her physical, emotional and psychological health and safety,
(b) Her age,
(c) Her familial situation.
(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor or the husband of the woman, if she is married.


her parents, (b) when she is not emancipated by marriage or otherwise, and (c) when she has made no claim or showing as to her maturity or as to her relations with her parents.57

The parental notification issue was not squarely addressed.58

Matheson provides all states, however, with further clarification of the Bellotti decision. The Court stated,

As applied to immature and dependent minors, the statute plainly serves the important considerations of family integrity and protecting adolescents which we identified in Bellotti II. In addition, as applied to that class, the statute serves a significant state interest by providing an opportunity for parents to supply essential medical and other information to a physician.59

The Court seems to suggest that its holding is limited to immature, dependent minors; it did not reach the question of whether the statute can be construed to apply to all unmarried minor girls, including those who are mature and emancipated.60

The Supreme Court recently reaffirmed its decision of Roe v. Wade in three comparison cases,61 which signalled an end to speculation that the Court was retreating from its controversial trimester system.62 In City of Akron v. Akron Center for Reproductive Health, Inc.,63 the Supreme Court struck down a city ordinance that placed numerous restrictions on a woman's access to abortion. The Court stated that the Roe decision had

57. Id. at 407.
58. See Justice Stevens' opinion concurring in the judgment. Justice Stevens stated that this appeal squarely addressed the constitutionality of parental notification requirements for a minor to obtain an abortion, but that the Court decided the narrower question presented by the appellant's fact situation. Id. at 421 (Stevens, J., concurring in judgment).
59. Id. at 411 (footnotes omitted)(emphasis added).
60. See supra note 59.
63. 103 S. Ct. 2481 (1983).
been "considered with special care"64 and that according to principles of stare decisis it would not ignore precedence65 by upholding, among others, a blanket hospitalization requirement, "informed consent" requirement, and a parental-court consent requirement for minors.66 In Planned Parenthood Association v. Ashcroft,67 the Supreme Court consistently struck down a Missouri statute that required abortions at the end of the first trimester to be performed in a hospital.68 The Court also struck down some other statutory requirements,69 but upheld an alternative judicial procedure that first determines whether the minor is mature enough to make the abortion decision on her own, thereby satisfying the City of Akron, Bellotti, and Danforth standard that there not be a blanket consent provision as a prerequisite for obtaining an abortion.70

III. THE CONSTITUTIONALITY OF MINNESOTA STATUTE SECTION 144.343

A. Parental Notification Requirement

1. Interests of Parent, Child, and State

Parental notification statutes raise the question of who knows best how to rear children—the parents or the state—and to what extent children should participate in issues having an impact upon their development. Traditionally, states have applied a doctrine of non-intervention into matters that intimately concern relations between parent and child.71 In 1944, the Supreme Court stated that "the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hin-

64. Id. at 2487 n.1.
65. Id. "We think it prudent . . . to retain Roe's identification of the beginning of the second trimester as the appropriate time at which the State's interest in maternal health becomes sufficiently compelling to justify significant regulation of abortion." Id. at 2505 n.11.
66. See id. at 2494, 2499, 2504 (requirement that abortions performed subsequent to end of first trimester be performed in a hospital struck down; prohibition against physicians performing abortion on minors under age of 15 unless written consent from parents or court is obtained struck down; requirements that physician inform patient of status of pregnancy, development of fetus, date of possible viability, physical and emotional complications of abortion and particular risks of individual's pregnancy, and abortion technique struck down; statute using term "humane" deemed vague as definition of criminal conduct in context of requirement that physicians "insure that the remains of the unborn child are disposed of in a humane and sanitary manner").
68. Id. at 2520.
69. See 103 S. Ct. at 2522 (invalidating statute requiring a second physician to attend the abortion of a viable fetus).
70. See 103 S. Ct. at 2525-26.
The rationale for non-intervention is multifaceted: parents are able to establish and maintain critical family bonds. In addition, the law does not have the capacity to supervise the fragile parent-child relationship.

Despite the preference for non-intervention, the family is not beyond regulation. The right of the parent is not absolute where public safety or harm to the child is imminent. The state interests may in those instances override the parents' right to control the upbringing of the child. In *Bellotti*, the Supreme Court identified three significant state interests regarding the minor's abortion rights. The first is the peculiar vulnerability of children. The Court stated that "the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'" The second interest is the minor's inability to make critical decisions in an informed, mature manner. The Court has held that states may "limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences." The third interest is the importance of the parental role in childrearing.

In developing laws to maintain a healthy parental role in childrearing, the courts focus on the parents' rights in the upbringing of their child.

73. See Freeman, Parents, Child-Rearing and the State: Who Knows Best?, 130 NEW L.J. 1133, 1133 (1980).
74. See id. See generally J. Goldstein, A. Freud & A. Solnit, Before the Best Interests of the Child (1979).
77. The statement must establish a significant state interest, rather than a compelling interest, for a state regulation placed upon a minor's fundamental right to pass constitutional muster. See Planned Parenthood v. Danforth, 428 U.S. 52, 75 (1976). See Note, The Minor's Right of Privacy: Limitations on State Action After Danforth and Carey, 77 COLUM. L. REV. 1216, 1232 n.88 (1977) where the author advocates the use of the compelling interest standard for both minors and adults. Minors, however, are subject to a greater number of regulations, because the regulations may be compelling for minors but not for adults. Id.
78. 443 U.S. at 634.
79. Id. at 635 (quoting McKeiver v. Pennsylvania, 403 U.S. 528, 550 (1971)).
80. 443 U.S. at 635.
81. Id.
82. Id. at 637.
83. Id. at 638.
rather than on the child’s right to make her own decisions. The child, however, has constitutionally protected rights that may not be infringed by either parent or state. Determining these protected rights involves the use of a balancing test. The question becomes whether the parents’ and states’ interests outweigh the minor’s rights to privacy, due process, and equal protection.

Parental notification statutes attempt to address the three significant state interests and, in particular, ensure that a minor’s abortion decision will be well-reasoned and informed. A minor faced with an unwanted pregnancy may be confused and frightened. The Danforth Court stated, “The decision to abort, indeed, is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and its consequences.”

Three arguments undermine the basis of the Supreme Court’s decision in Bellotti. First, it is questionable whether a blanket notification requirement, such as that embodied in Minnesota Statutes section 144.343, subdivision 2, which distinguishes between emancipated and unemancipated minors, but not mature and immature minors, achieves the above objective. Courts have recognized that “[m]arried minors


85. See Planned Parenthood Ass’n v. Fitzpatrick, 401 F. Supp. 554, 567 (E.D. Pa. 1975) in which the court states:

Where there is . . . a potential conflict between the interests of the child and other possible interests of the parent, the state cannot statutorily mandate that the parent must always prevail, for parental consent may not simply be unilaterally substituted for consent of the child; particularly, where as here, the fundamental right is infringed without affording the child any rights of due process.


88. Id. at 67 (opinion of the court). In his concurrence Justice Stewart noted:

There can be little doubt that the State furthers a constitutionally permissibl...
are not necessarily more mature and responsible than their unmarried contemporaries." Parental guidance is undermined when a significant number of minors are not afforded the protection of informed decisions and where a statute distinguishes between married and unmarried minors without justification for the distinction.

Second, the lack of distinction between mature and immature minors infringes upon the right of privacy, which has been defined in part as a right to autonomy in decision-making. The right of privacy includes the right to make wrong decisions as well as correct ones and should not be regulated in accordance with state-determined notions of correctness. Requiring mature minors to notify parents of an abortion decision in order to obtain information and advice creates a presumption of incompetence to decide.

Third, pregnant minors are not less capable of deciding whether to terminate their pregnancies than they are to decide whether to carry them to term. In fact, medical evidence indicates that a full-term pregnancy has far more serious physical developmental consequences on a minor than does an abortion. Thus, a blanket notification requirement such as Minnesota Statutes section 144.343, subdivision 2, does not necessarily achieve well-reasoned and informed abortion decisions.

Parental notification statutes also attempt to preserve the family unit by safeguarding the societal role the parent plays in supervising unemancipated minor children. In Ginsberg v. New York, the Court recognized that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing issue, although the lower courts had found the notice requirement unconstitutional. See id. at 2525 n.17. The City of Akron decision also did not address the notification issue, although in that case, the lower court upheld the notice requirement. See 103 S. Ct. at 2497 n.29."

91. See Wynn v. Carey, 582 F.2d 1375, 1387 (7th Cir. 1978).
93. See Note, supra note 77, at 1235.
94. Id. at 1235-36.
95. Compare the notification requirement concerning abortions of MINN. STAT. § 144.343(2) (1982) to MINN. STAT. § 144.343(1) (1982) which does not require notification for minors desiring "medical, mental and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol and other drug abuse." Id.
96. See Wynn v. Carey, 582 F.2d 1375, 1387 (7th Cir. 1978).
97. See Affidavit of Jane Hodgson, M.D., supra note 1, at para. 27. Comparing birth-related mortality with abortion-related mortality, statistics show that the risk that a teenager has from pregnancy continuation is more than five times the risk from abortion.
98. 390 U.S. 629 (1968).
of their children is basic in the structure of society.\textsuperscript{99} This significant state interest is limited, however, because a state can protect these child-rearing rights only without unduly restricting the minor's rights.\textsuperscript{100}

Several jurisdictions have found the protection of parental rights inadequate to justify restricting the minor’s abortion rights, because parents will often oppose a decision to abort regardless of the minor’s best interests.\textsuperscript{101} In the \textit{Bellotti} majority opinion, Justice Powell stated, “many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents’ efforts to obstruct both an abortion and their access to court.”\textsuperscript{102} Minors, afraid of their parents’ strong reactions, may resort to alternatives that both the state and parents wish to avert.\textsuperscript{103}

That a minor’s best interests may be compromised can also be evidenced from her refusal to seek medical help. Delayed medical attention increases the physical risks involved with abortion and may foreclose the abortion alternative altogether.\textsuperscript{104} Minors may seek illegal abortions or try to self-induce an abortion; both alternatives are significantly more dangerous than a legal abortion.\textsuperscript{105} Thus, teenagers will go to great lengths to avoid letting their parents know, and the result is that in attempting to safeguard the family unit, the family may actually be torn apart.\textsuperscript{106}

2. Additional Repercussions

Having identified problems inherent in statutes requiring parental no-


\textsuperscript{100} The Supreme Court has indicated that parental rights should receive protection absent a "powerful countervailing interest." \textit{Stanley v. Illinois}, 405 U.S. 645, 651 (1972).

\textsuperscript{101} See \textit{Dembitz}, \textit{The Supreme Court and a Minor's Abortion Decision}, 80 \textit{COLUM. L. REV.} 1251, 1255 (1980) in which the author states:

\textit{In my observation, mothers who have opposed their unmarried daughter's efforts to secure abortions variously have expressed a vengeful desire to punish the daughter for her sexual activity by making her suffer the unwanted child, a fervor to impose a religious conviction the mother has failed to instill in her daughter, a hope of caring for her daughter's baby as her own because of an inability or unwillingness to bear another child herself, a defensive or resentful attitude because she bore illegitimate children without seeking or being able to secure an abortion, or a general distaste for abortion.}

\textit{Id.} (footnotes omitted).

\textsuperscript{102} 443 U.S. 622, 647 (1979).

\textsuperscript{103} See \textit{Dembitz}, \textit{supra} note 101, at 1263; 57 \textit{U. DET. J. URB. L.} 337, 361 (1980).

\textsuperscript{104} See Affidavit of Jane Hodgson, M.D., \textit{supra} note 1, at para. 7.

\textsuperscript{105} Id.

\textsuperscript{106} See Plaintiffs' Memorandum in Support of Motion for a Temporary Restraining Order and Preliminary Injunction, at 10 n.13, Hodgson v. State, 3-81 Civ. No. 538 (D. Minn., filed July 30, 1981). “Many prestigious medical and professional groups in Minnesota [who] testified against [MINN. STAT. § 144.343], point out that it was medically ill-advised, contrary to good public health policy, and would not achieve any alleged beneficial effect of helping family communication.” \textit{Id.}
tification, it is helpful to analyze the specific ramifications of Minnesota Statutes section 144.343 on Minnesota minors.

First, the 48-hour waiting period imposed upon Minnesota minors raises due process considerations. The waiting period, which is intertwined with the mandatory notice to parents, became part of the statute in order to further the significant interests set out by Bellott. Section 144.343 provides an adequate period for counseling and discussion between parents and child. A mandatory wait, however, represents a direct interference with an individual’s right to choose an abortion. Several jurisdictions have addressed this issue and have struck down the operation of such waiting periods. Importantly, those courts that struck down waiting periods addressed the issue as applied to adult, mature women, not minors. In City of Akron, the Supreme Court stated that the state does not have “unreviewable authority to decide what information a woman must be given before she chooses to have an abortion,” but that this responsibility lies with the physician so that the state does not influence the woman’s informed choice between abortion and childbirth. The City of Akron Court did distinguish, in a footnote, a special state interest in protecting immature minors by ensuring that the deci-
sion is carefully considered and well-reasoned. Therefore, section 144.343, despite the adult-minor distinction, may still be invalid because it does not distinguish between mature and immature minors.

One authority believes that the waiting period results not only in inaction for 48 hours, but may ultimately result in a complete obstacle for some minors. It may necessitate more than one trip to the Twin Cities or Duluth, which are the areas generally selected by out-state minors due to inadequacies in local court systems. It may increase both mental anguish and health risks. This is particularly true of a minor whose pregnancy extends into the second trimester, and who must then seek out a provider in Minneapolis.

Second, the requirement that both parents be notified, regardless of the existing marital status of the parents or other relevant factors, may unduly burden many minors. To involve a non-custodial parent who has long been removed from any familial role due to divorce or separation may create a stressful situation for both the minor and the custodial parent, and merits little significance in light of the Bellotti interests. In addition, it is possible that one parent's whereabouts cannot be ascertained. Section 144.343, subdivision 3, requires that the parents be located through "reasonably diligent effort," but gives no guidance as to what is considered reasonable diligence.

The preceding considerations illustrate that due to the vulnerability of the pregnant minor, the notification requirement of Minnesota Statutes section 144.343 will probably not be upheld by the court in the recently

113. 103 S. Ct. at 2500 n.32.
114. See Affidavit of Jane Hodgson, M.D., supra note 1, at para. 42.
115. See generally id. at para. 35-47.
116. See id. at para. 43. See also Planned Parenthood Ass'n, 103 S. Ct. at 2525 n.16, in which the Supreme Court recognized that time may be of the essence regarding obtaining an abortion.
117. Dr. Hodgson states, Access to abortion services is extremely difficult for all women in Minnesota. The major providers are in the Minneapolis area, although a clinic has opened up in Duluth this April, 1981. All women who are over twelve weeks pregnant have to travel to Minneapolis, since those procedures are done only there.
119. The rationale behind encouraging minors to discuss their pregnancy with parents is to promote family unity and harmony, although this does not necessarily occur. See Margaret S. v. Edwards, 488 F. Supp. 181, 204-05 (E.D. La. 1980). Assuming that it does, it seems ironic that a noncustodial parent who may have long given up on maintaining a friendly relationship with the custodial parent or minor, is required to become a party to such a conflict. Such notification might only destroy family unity and harmony.
120. Also, the statute does not address who must make the diligent effort to locate the parent. Is it the other parent? Is it the physician? And what is the result if a located parent is unwilling to divulge the location of the unnotified parent? The requirements of notice raise many procedural problems that render the requirement virtually impossible to satisfy under many circumstances.
filed case of *Hodgson v. State*. This requirement imposes an undue burden upon the minor's exercise of her constitutional right to have an abortion as indicated by the *Bellotti* decision and the more recent decisions of *City of Akron*, and *Planned Parenthood Association*.

**B. The Bypass Procedure**

The inquiry into state interests and a minor's abortion rights does not end with the notification issue posed by Minnesota Statutes section 144.343. Subdivision 6 of the statute allows for a judicial procedure that circumvents notification in the event the latter is found to be unconstitutional.

The *Bellotti* Court addressed the bypass issue by holding that "every minor must have the opportunity—if she so desires—to go directly to a court without first consulting or notifying her parents." The Court formulated a procedure that once a minor appeared in court would be satisfactory:

If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her best interests. If the court is persuaded that it is, the court must authorize the abortion. If, however, the court is not persuaded by the minor that she is mature or that the abortion would be in her best interests, it may decline to sanction the operation.

This bypass procedure takes into account family considerations, as well as the state interest of encouraging a family, rather than judicial, resolution of the minor's abortion decision, by requiring the court to determine whether the abortion would be in the minor's best interests. The *Bellotti* Court concludes that "the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court." The resolution of the issue must be completed with "anonymity and sufficient expedition" to assure that the abortion is effectively obtained.

Section 144.343, subdivision 6, is structured to meet the requirements of *Bellotti*. Yet, whether it meets the state-interests standard of pro-

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121. See supra note 8.
122. See supra note 7.
123. *Bellotti*, 443 U.S. at 647.
124. Id. at 647-48.
125. Id. at 648.
126. Id.
127. Id. at 644. "[T]he procedure must ensure that the provision . . . does not in fact amount to the 'absolute and possibly arbitrary, veto' that was found impermissible in *Danforth.*" Id.
128. See supra note 7.
tecting the vulnerability of minors is doubtful. Courts may have difficulty in meeting the requirements, particularly in out-state counties, due to informal court procedures. Confidentiality is also difficult to ensure, and delays occur regularly due to a lack of filing procedures and the refusal of judges to hear petitions because they are personally opposed to abortion. For these reasons, many minors prefer to use Hennepin and Ramsey County courts. Yet, the minor's attempt to utilize a court system that more adequately guarantees her right to privacy in the procedural aspects, indicates her right to privacy is hindered in other ways. Travel may necessitate more than one trip to the Twin Cities and therefore delay her ability to obtain an abortion. For the minor attending school and living 200 miles from the Twin Cities, travel may present a confidentiality problem.

The two remaining problems are of equal concern. First, minors are not knowledgeable about court proceedings. Therefore, requiring judicial approval for an abortion could deter them from making a reasonable and expeditious decision. Second, judges faced with deciding whether to grant judicial approval must determine whether a minor is mature. Since the legislature has given no guidelines for determining maturity within the statute, the judge's determination may be as arbitrary as the parents'.

Although Bellotti clearly sets forth the standard to be used for the judicial bypass procedure, factual guidelines were not enunciated by the Court. Lower courts were given the task of determining the constitutional validity of certain procedures, including how to determine whether a minor is immature or mature, and what is required for anonymity and expedience. Both City of Akron and Planned Parenthood Association reaffirm the Bellotti standard and clarify the constitutional requirements that must be met by a judicial bypass procedure. The clarification lies in distinguishing the City of Akron ordinance, which was

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129. Procedural barriers perpetuate the “Scarlet Letter” attitude that our society has toward premarital pregnancy. One underlying state interest that contributed to the introduction of parental notification statutes is the prevention of teenage sexual activity and pregnancies. See Comment, Parental Notification: A State-Created Obstacle to a Minor Woman's Right of Privacy, 12 GOLDEN GATE U.L. REV. 579, 598 (1982). Many believe that the rise in teenage sexual activity is due to accessible abortion, see id., and so barriers are set to deter minors from making a decision to abort.


131. Id. at col. 2.

132. Id.

133. See Affidavit of Jane Hodgson, M.D., supra note 1, at para. 31, which states that “travel means delay, increased costs, missing work or school, some increased physical risks, and increase in anxiety, stress, and fear . . . . and an increased risk that prolonged absence from home or work will destroy the privacy sought regarding the abortion.” Id.

134. See id. at para. 8.


136. See City of Akron, 103 S. Ct. at 2497; Planned Parenthood Ass'n, 103 S. Ct. at 2525.
struck down, from the *Planned Parenthood Association* statute, which was upheld. These distinctions, and other statements made by the Court, illustrate that the foregoing difficulties are probably not significant enough to cause Minnesota Statutes section 144.343, subdivision 6, to be struck down.

In *City of Akron*, the ordinance in question prohibited a physician from performing an abortion on a minor under the age of fifteen unless the physician obtained written consent from the parents or a court order that the abortion be performed.\(^{137}\) The Supreme Court affirmed the lower court decision on the basis that the ordinance did not meet the *Bellotti* standard because the City had established an absolute parental veto provision,\(^{138}\) and did not provide an alternative determination of maturity.\(^{139}\) The Court stated that “it is clear that Akron may not make a blanket determination that all minors under the age of 15 are too immature to make this decision or that an abortion never may be in the minor’s best interests without parental approval.”\(^{140}\)

In *Planned Parenthood Association*, the statute in question did provide for an initial determination of maturity.\(^{141}\) For this reason, the Supreme Court, consistent with *City of Akron*, upheld the statute.\(^{142}\) Clearly, therefore, for a judicial bypass (or consent substitute) provision to be valid, “the State must provide an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests.”\(^{143}\)

Minnesota Statutes section 144.343, subdivision 6, clearly satisfies this

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137. *See Akron, Ohio, Codified Ordinances ch. 1870, § 1870.05(B) (1978).* The ordinance states:

(B) No physician shall perform or induce an abortion upon a minor pregnant woman under the age of fifteen (15) years without first having obtained the informed written consent of the minor pregnant woman in accordance with Section 1870.06 of this Chapter, and

(1) First having obtained the informed written consent of one of her parents or her legal guardian in accordance with Section 1870.06 of this Chapter, or

(2) The minor pregnant woman first having obtained an order from a court having jurisdiction over her that the abortion be performed or induced.

138. *See City of Akron, 103 S. Ct. at 2497.*

139. *See id. at 2498.*

140. *Id.*

141. *See Planned Parenthood Ass’n, 103 S. Ct. at 2526.* The statute provides:

(4) In the decree, the court shall for good cause:

(a) Grant the petition for majority rights for the purpose of consenting to the abortion; or

(b) Find the abortion to be in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding; or

(c) Deny the petition, setting forth the grounds on which the petition is denied.[\]

142. *See 103 S. Ct. at 2526.*

143. 103 S. Ct. at 2498; *see also Bellotti II, 443 U.S. at 643-44.*
standard because it provides that the judge determine whether the minor is mature and, if not, whether an abortion would be in her best interests. 144 The statute, nonetheless, may still be unlawful because Bellotti also required that the judicial bypass procedure "be completed with anonymity and sufficient expedition to provide an opportunity for an abortion to be obtained." 145 In the Planned Parenthood Association, the Court discussed this requirement, in a footnote, and stated that the Missouri statute in question satisfied the anonymity and expedition requirement because the minor is allowed to use her initials on the petition and appeal of the court decision is to take place within five days from the filing of the appeal notice. 146 The Minnesota statute merely requires anonymity and expeditiousness, but does not set forth the procedures for meeting the test. Therefore, as discussed earlier, it is very possible that the procedures will be neither confidential nor expedient.

IV. CONCLUSION

Minnesota Statutes section 144.343 will have a significant impact upon pregnant minors. If the parental notification requirement is found to be unconstitutional and the bypass procedure is upheld, minors will still have to grapple with obtaining judicial approval.

The primary issue is whether the consenting body shall be the court or the minor's parents. Either one presents obstacles to the frightened minor that affect her abortion rights. Parents may become too emotionally reactive to make a sound decision for the child, while the court may be too detached. The existence of these realities suggests that abortion law in this state will undergo changes in the near future as legislators continue the battle over the rights of parents, child, and state.

144. See supra notes 7-9 and accompanying text.
146. See 103 S. Ct. at 2525 n.16.