

PART I

Parental Involvement Mandates

A Balancing Act

Rachel Ely was a seventeen year old unmarried high school student when she learned that she was pregnant. Her high school counselor recommended that she have an abortion, arranged for State funding for the abortion, and recommended a particular abortion clinic. No other alternatives were discussed. Rachel was afraid to tell her parents that she had become pregnant. Because Rachel was not aware of any alternatives, she consented to the abortion. Had Rachel's parents known their daughter was pregnant, they would have provided her with the alternatives of keeping her child or placing the child for adoption.

After her abortion, Rachel received no discharge instructions from her physician. Several days later she developed some flu-like symptoms in her chest, which she did not associate with her abortion because she believed that any symptoms she might have as a result of a complication from an abortion would be in her pelvic area. She went to her family doctor when these symptoms became worse. She did not tell the doctor about the abortion because she did not think the symptoms were related.

Sometime later, Rachel became very sick, and her father took her to a local hospital because of her persistent flu-like symptoms. The next morning Rachel was found in her hospital bed in a comatose condition. Subsequently, it was discovered that she had developed bacterial endocarditis—a condition directly attributable to a post-abortion surgical infection. The bacterial endocarditis had caused blood clots to develop and become lodged in the vascular system of her brain, causing a stroke. When Rachel recovered from her coma, she was left a permanently wheelchair-bound hemiplegic.

Had Rachel's parents been notified of the abortion, they would have questioned the possible relationship between the abortion and Rachel's symptoms. With simple antibiotic therapy, her devastating life-long disabilities would not have occurred.

—Focus on the Family and Family Research Council,
Friend of the Court Brief¹

The tragic consequences of Rachel Ely's furtive abortion illustrate a primary justification for requiring parental involvement when minors seek to terminate their pregnancies. The argument is simple enough. Most, if not all, medical procedures carry the risk of complications. Abortion, a medical procedure, carries such risk. Adults are in a much better position than minors to assess and deal with post-procedural complications. So minors who have abortions in the absence of parental guidance are in greater danger than those who involve their parents.

Protecting physical health is not the only justification for requiring parental involvement when minors seek abortions. Abortion, it is said, is not analogous to other medical procedures such as tonsillectomy or the extraction of wisdom teeth. Because abortion involves the termination of a human life, it is thought to have emotional consequences not typical of most other medical procedures. Loving and caring parents, the argument goes, can help their daughter through the psychological trauma she may experience as the result of her decision to have an abortion.

In addition to its benefits for young women, mandating parental involvement advances the legitimate interests of parents. Rachel Ely was not the only one harmed by the physical complications of her abortion. Her parents suffered as well. While responsible for the upbringing and care of their daughter, Rachel's parents were not consulted at a crucial juncture in her life and were thereby rendered helpless. Moreover, separate from any issues involving physical or psychological well-being, parents are entitled to oversee the decision-making of their minor children. Parents are generally responsible for their children, and this responsibility affords parents certain rights.

The grounds for mandating parental involvement in the abortion decisions of pregnant minors are substantive and commonsensical, and thus even though research indicates that the majority of minors voluntarily turn to parents when facing an unplanned pregnancy, it is not particularly surprising that parental involvement laws have become commonplace.² Thirty-four states currently have laws in effect that condition a minor's access to abortion on parental involvement.³ Among these, twenty-two require physicians to obtain the consent of one or both parents before performing an abortion on a minor.⁴ Twelve require the prior notification of one or both parents, usually specifying a twenty-four-hour or forty-eight-hour waiting period between the time of notice and the time the abortion is performed.⁵

As might be expected, parental involvement laws are trumpeted by those sympathetic to the pro-life position. But such laws also receive support from those who generally favor a woman's right to choose abortion, for parental involvement laws do not regulate the abortion decisions of adult women, who are presumably capable of making mature and informed choices.⁶ Rather, these laws are a potentially appropriate effort to address the circumstance of a possibly immature girl facing an unplanned pregnancy.

No argument against mandated parental involvement that rejects the import of these considerations stands a chance of being persuasive. Any argument that is going to prevail must do so while absorbing the full force of these considerations and showing why, despite them, mandated parental involvement is misguided public policy. This book aims to make such a case. In this chapter, I flesh out the points in favor of parental involvement laws and outline the case I will make against them.

In Defense of Mandated Parental Involvement

Protecting Minors

It is clear that “[t]here is something disturbing in the image of a young child struggling with the realization that she is pregnant and seeking out an abortionist alone or with equally young friends; there is something appalling about a society that permits this to happen.”⁷ Indeed, however committed one might be to a woman's right to choose abortion, it is plainly undeniable that minors having abortions is a special case. The circumstance of a pregnant teenager attempting to navigate the difficult and consequential abortion decision on her own cannot be seen as analogous to that of an adult woman facing an unplanned pregnancy. As a report by the American Medical Association (AMA) points out, “minors may not make considered choices about abortion because of immaturity, inexperience, or poor judgment.”⁸ These deficiencies can lead minors to jeopardize their physical and emotional well-being.

PHYSICAL HEALTH AND SAFETY

The abortion procedure can have serious side effects. The physical risks associated with abortion include, from most to least common,

hemorrhage, infection, incomplete abortion, perforation of the uterus, sterility, hysterectomy, injury to the bowel and/or bladder, abdominal surgery to correct an injury, and death.⁹

It is true that the physical risks associated with abortion, especially those performed in the first trimester, are low. It is also true that these risks are substantially lower than those associated with carrying a pregnancy to term. According to the Centers for Disease Control and Prevention, the overall mortality rate for legal abortions in the United States is 0.3 per 100,000.¹⁰ By comparison, the overall pregnancy-related mortality rate is 9.2 per 100,000 live births.¹¹ In addition, according to the American Academy of Pediatrics (AAP), “Mortality risks seem to be five times greater for teenagers who continue their pregnancies than they are for teens who terminate them. Morbidity rates and medical complications from continuing a pregnancy are more adverse than those from abortion at all stages of gestation.”¹²

The fact that abortion in the first trimester poses a low health risk and a lower risk than continuing with pregnancy does not obviate arguments favoring mandated parental guidance in a young woman’s abortion decision, for the issue is not the absolute or relative magnitude of the risk but whether the oversight of parents reduces the risk. A minor seeking to conceal an abortion may try to hide post-abortion complications and thereby fail to obtain treatment should complications emerge. Parents who know their daughter has had an abortion can lend a watchful eye to identify physical complications and ensure that their daughter receives treatment when necessary.

If the Rachel Ely case tells us anything, it is that serious and life-altering complications are more likely when parents are kept in the dark about their daughter’s decision to terminate her pregnancy. And Rachel Ely’s story, while an atypical one, is not unique. The Texas House State Affairs Committee heard similar stories during its consideration of a parental notification statute, including the following one:

Amy obtained an abortion on Friday, suffered terrible complications, and subsequently died on Sunday. Because her parents did not know, they delayed taking her to hospital until she was unconscious. Her parents were originally told [their daughter] died of septic shock syndrome, but a friend who knew of the abortion told them after [Amy’s] death. They then confirmed [her death] was due to a botched abortion, but they were misled because of [Amy’s] right to privacy.¹³

A more fortunate girl benefited from her parent's knowledge of her abortion, according to a physician who also testified before the Texas House committee:

I know from my own personal experience—I have dealt with septic abortion. And it was a young lady that I cared for. She chose to go to one of the local reproductive clinics here in town, obtain their services, and if it were not for her parents knowing about what happened and caring for her, she probably would have died, because by the time I was notified about her, she already had an elevated temperature of 104, she was obtunded, didn't know where she was . . . and if not for the concern of her parents who were able to bring her to the emergency room for treatment and subsequent surgery, there is a strong possibility that she would have died.¹⁴

Even before the performance of an abortion, parental involvement can benefit minors. Not all abortion providers are equally qualified or experienced, and parents can render valuable assistance in selecting a capable provider. As the U.S. Supreme Court has found, minors “are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.”¹⁵ Even if a minor locates a capable provider on her own, she may not be well positioned to present that provider with an accurate medical history, especially when she seeks to hide the fact of her abortion from her parents. Parents are better positioned to ensure that the provider has access to the minor's complete medical history, information that could help medical personnel avoid complications or aid their handling of complications that might develop.¹⁶

Some have also argued that mandated parental involvement may help shield minors from statutory rape or sexual assault by providing parents with an avenue for discovering abusive relationships. Teresa Stanton Collett, for example, makes this point in her examination of a Texas notification statute:

National studies reveal that almost two thirds of adolescent mothers have partners older than 20 years of age. In a study of over 46,000 pregnancies by school-age girls in California, researchers found that

71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers. . . . Even among junior high school mothers aged 15 and younger, most births are fathered by adult men 6–7 years their senior. Men aged 25 and older father more births among California school-age girls than do boys under age 18. Other studies confirm that many teenage pregnancies are the result of sexual exploitation of minors by men who are substantially older.¹⁷

While acknowledging that physicians and other professionals are required to report sexual assault to the proper authorities, Collett argues that parents are more likely than others to put an end to the relationships that victimize their daughters.¹⁸

EMOTIONAL HEALTH AND WELL-BEING

Those who favor mandated parental involvement maintain that abortion is not simply a medical procedure with attendant physical risks; a minor's mental well-being is also at stake. Several studies have found that abortion carries with it the risk of potentially serious emotional and psychological side effects, including such things as nervous and sleep disorders, guilt, depression, and suicidal tendencies. One study, for example, concludes that at least 19 percent of post-abortion women experience post-traumatic stress disorder.¹⁹ Another finds that 60 percent of women who suffer from emotional complications after abortion report considering suicide, and 28 percent of these attempt suicide.²⁰ And a review of the literature on emotional responses to abortion conducted by Jo Ann Rosenfeld reports that while most women experience a sense of relief after abortion, "the next most common emotional response is guilt."²¹

Among the factors that may predict negative emotional responses to abortion is a woman's age, and several studies indicate that adolescents may suffer more adverse psychological effects from abortion than their adult counterparts.²² In a 1992 study conducted by Wanda Franz and David Reardon, the authors conclude that adolescents who choose abortion are more likely to be dissatisfied with that choice than adults.²³ And Rosenfeld, citing a 1972 study that finds an increased rate of adverse reactions in teens who conceal their abortions from their parents, speculates that "[t]he lack of parental support in younger women may

be the cause of the increased frequency of unfavorable responses in [this] population.”²⁴

Whether abortion poses serious psychological risks is the subject of debate, and some research findings raise questions about the degree to which women in general and minors in particular experience negative post-abortive emotional responses. Rosenfeld’s review of abortion research notes that women facing unwanted pregnancies “who obtain a legal abortion during the first-trimester typically report positive emotional effects,” and “fewer than 10 percent of such women have long-term psychiatric or emotional reactions, such as sexual dysfunction, severe neuroses or suicide attempts.”²⁵ A more recent review of abortion research explains that

[w]ell-designed studies of psychological responses following abortion have consistently shown that risk of psychological harm is also low. Some women experience psychological dysfunction following an abortion, but postabortion rates of distress and dysfunction are lower than preabortion rates. Moreover, the percentage of women who experience clinically relevant distress is small and appears to be no greater than in general samples of women of reproductive age.²⁶

And as to whether minors are especially prone to psychological harm from abortion, the AAP says in its 1996 review of abortion among minors that “[e]xtensive reviews conclude that there are not documented negative psychological or medical sequelae to elective, legal, first-trimester abortion among teenaged women. No significant psychological sequelae have been substantiated, despite extensive searches of the scientific literature.”²⁷

Debate over the extent of post-abortive emotional responses in women is bound to continue. Nevertheless, in the face of conflicting research findings, prudence suggests erring on the side of caution—that is, on the side of assuming that abortion will result in negative emotional consequences for a significant number of women.

It is reasonable to think that supportive parents can help mitigate the negative emotional consequences their daughter might suffer as the result of having an abortion. In fact, some studies have concluded that adolescents often underestimate the understanding of their parents and overestimate parental anger.²⁸ If these results are correct, minors who

involve a parent in their abortion decision will often find sympathy and support.

Furthermore, just as parents are better positioned to provide physicians with their child's complete medical history, so are they better positioned to offer an accurate psychological profile. A minor who has a history of psychological problems might, out of fear or embarrassment, conceal that fact from a physician. This is less likely to occur with parental oversight.

The Supreme Court has accepted the claim that adverse psychological responses to abortion are heightened in young women, saying that “[t]he emotional and psychological effects of the pregnancy and abortion experience are markedly more severe in girls under 18 than in adults.”²⁹ States, too, have bought this line. For example, part of the state of Florida's justification for enacting a parental notice law appeals to the idea that post-abortion psychological reactions are more intense among minors than they are among adults: “The medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature.”³⁰

ADDITIONAL BENEFITS

When facing an unplanned pregnancy, a minor has several choices. Besides choosing abortion, a minor might carry the pregnancy to term in order to raise the child herself or to place the child for adoption. It is not unreasonable to think that parents can help their children select among these options. Supportive parents can provide the monetary and informational resources necessary to pursue alternatives to abortion. In the absence of this support, a minor might wrongly believe that her only feasible option is to terminate her pregnancy. A young woman might conclude, for example, that she could not continue her education if she opts to keep her child. But consultation with supportive parents—parents who might be willing to help raise the child—might lead her to conclude otherwise. Additionally, a minor who does not consult her parents may face pressure to have an abortion from the man who impregnated her. Parental involvement may serve to bolster a minor against this pressure.

Protecting Parental Rights and the Family Unit

If the state's sole interest lay in protecting minors against the detrimental effects of their own immaturity, that interest could, for the most

part, be achieved through means other than a parental involvement mandate. States could require counseling before and after abortions with a medical or psychological professional, or both. They could also require that minors involve some adult relative, not necessarily a parent, in their abortion decision. But the state's asserted interest in parental involvement typically includes more than shielding minors from harm. Consider the preamble of the Alabama Parental Consent Statute, which states that in addition to protecting minors the legislature aims to advance the important and compelling state interests of "fostering the family structure and preserving it as a viable social unit" and "protecting the rights of parents to rear children who are members of their household."³¹ Alabama's asserted interests in the family unit and parental rights stand apart from the state's interest in safeguarding minors and are used to justify the specific call for parental consultation in the abortion decision.

These interests are clearly significant, and it is not surprising that the Supreme Court has accepted them as a legitimate basis for mandated parental involvement. As Katherine Katz explains, deference to the autonomy of the family unit and parental authority "has been a persistent hallmark of the Court's jurisprudence on the family from 1923 to the present. . . . The Supreme Court's understanding of the family is that the protection of liberty under the Due Process Clause includes parental authority to raise their children as they see fit."³² According to the Court,

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. Surely, these include a "high duty" to recognize the symptoms of illness and to seek and follow medical advice.³³

This interpretation of the family, including the authoritative role of parents within the family, supports not only parental involvement regulations in general but also specific aspects of those regulations. Statutes that require the involvement of both parents do so not primarily out

of concern for the minor—a concern that would be sufficiently allayed by the participation of one parent—but in order to advance parental rights.³⁴ In addition, statutes that require parental consent give greater weight to the interests of advancing parental rights than do notification statutes. But whether a two-parent consent requirement or a one-parent notification regulation, mandated parental involvement in abortion “is promoted on the basis of its theoretical benefits on strengthening family responsibility and communication.”³⁵

Risks of Mandated Parental Involvement

There is little doubt that the interests outlined above are legitimate. In fact, the interests are so commonsensical that, as stated above, even defenders of reproductive rights often concede the reasonableness of parental involvement mandates. However, there are also legitimate and commonsensical considerations that speak against mandated parental involvement, against allowing parents wholesale oversight of their daughter’s pregnancy.

Concern about indiscriminate parental involvement in the reproductive choices of minors stems from the recognition that the reality of family relations is not always ideal. In an ideal world, teens and their parents would communicate openly and constructively about sexuality and its consequences. Teens facing unwanted pregnancies would feel comfortable approaching their parents for guidance and support, and parents, offering their assistance, would act in their daughters’ best interests. Parents and daughters would together and with mutual concern face the challenge of an unplanned pregnancy.

This ideal of constructive and beneficial family interaction exists for many. “For some children, however,” reports the AMA, “the home falls far short of this ideal and may be a place of physical abuse and neglect and psychological maltreatment.”³⁶ If Rachel Ely’s story symbolizes why states should mandate parental involvement, then the story of a thirteen-year-old Idaho girl impregnated by her father and later killed by him when he learned of her intention to secure an abortion is emblematic of the cruel realities of family dysfunction and the risks associated with universal involvement mandates.³⁷ So, too, is the less extreme but still grim story of the teen who anticipates being thrown out of the

house if her parents discover her pregnancy: “My older sister got pregnant when she was seventeen. My mother pushed her against the wall, slapped her across the face and then grabbed her by the hair, pulled her through the living room out the front door and threw her off the porch. We don’t know where she is now.”³⁸

Citing the realities that families and minors confront, the AMA has concluded that some minors would experience serious physical and emotional injury under a blanket parental involvement provision:

On the basis of reports to child protection agencies, the federal government has estimated that there are approximately 1.5 million cases a year of physical abuse and neglect of children. Although no study has specifically dealt with violence as a reaction to minors informing parents about pregnancy, it is reasonable to believe that some minors justifiably fear that they would be treated violently by one or both parents if they had to disclose their pregnancy to their parents. Research on abusive and dysfunctional families has shown that family violence is at its worst during a family member’s pregnancy, immediately following childbirth, and during the adolescence of the family’s children. Studies of family violence have found that 4% to 17% of women are physically abused during their pregnancy. . . . Parental notification often precipitates a family crisis, characterized by severe parental anger and rejection of the minor.³⁹

The AAP has arrived at the same conclusion in its analysis of a minor’s right to confidential care in decisions to terminate pregnancy. Acknowledging its commitment to strong family relationships and its view that parents generally act to serve the best interest of their children,⁴⁰ the AAP nevertheless cautions against involuntary parental involvement when minors seek abortions: “Although parental involvement in minors’ abortion decisions may be helpful in many cases, in others it may be punitive, coercive, or abusive.”⁴¹ Furthermore, “[t]he risks of violence, abuse, coercion, unresolved conflict, and rejection are significant in nonsupportive or dysfunctional families when parents are informed of a pregnancy against the adolescent’s considered judgment.”⁴²

Even where families are free of abuse and dysfunction, the ideal of open communication between parents and their children often goes unrealized.⁴³ In some cases, like the following one reported by a pregnant

minor in Texas, reluctance to approach a parent with news of pregnancy may stem from a disinclination to burden the parent: “My mother is in the hospital with my older brother. He’s dying of cancer. She’d support my decision, but I can’t tell her about this right now. She’s already gone through so much. . . . Dad left us a long time ago and I have no idea where he is.”⁴⁴ In other cases, minors simply worry about disappointing their parents.⁴⁵ Still others are concerned with protecting their privacy.⁴⁶ As the AMA reports, “minors have a profound need for privacy in matters of their health care. . . . Adolescence is a critical period for minors to develop their independent sense of self; the ability to maintain spheres of privacy from parents in areas of personal intimacy is an essential part of that development.”⁴⁷ For those who do not want to disappoint or create problems for their parents, or for those primarily concerned with retaining their privacy, a blanket parental involvement requirement has potentially serious ramifications. According to the AMA,

Because the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a “back-alley” abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since the US Supreme Court decided the existence of a constitutional right to abortion in 1973.⁴⁸

Finally, we ought not forget that not all minors live with or have easy access to their parents or legal guardians. Sometimes pregnant minors live with a grandparent, an aunt, or an older sibling. “Our parents are somewhere in Mexico, but I don’t know if I can find them,” reported a woman who was trying to help her younger sister obtain an abortion after being raped.⁴⁹ Others can find their parents but may have to look for them in a jail, a mental health facility, or a crack house.⁵⁰

Compromise: The Judicial Bypass Option

There are, then, powerful considerations on both sides of the mandated parental involvement debate. Given the realities of family function and

dysfunction, a requirement that minors involve parents in their reproductive choices sometimes serves the interests of protecting the physical and emotional well-being of minors and enhancing the family unit, and sometimes it does not.

These conflicting considerations, though, need not result in a stalemate, for there seems to be a way to satisfy all concerns. Consider a requirement that encourages parental involvement without assigning parents actual or effective veto power over their daughter's decision to terminate her pregnancy. Under this type of requirement, states could mandate parental involvement but provide minors the opportunity to seek third-party authorization to bypass the requirement. Such a compromise balances the case for parental involvement with what in some instances may be the minor's legitimate interest in avoiding that involvement.

The Supreme Court has accepted this compromise position, holding in a line of cases that parental involvement statutes do not impermissibly intrude on the privacy rights of minors when those statutes include a bypass alternative. The Court has ruled that parental involvement mandates accompanied by a bypass procedure establish a sensible and fair middle ground that balances competing interests.⁵¹ In an effort to comply with these rulings, virtually all states that mandate parental involvement authorize judges to be the arbiters of the bypass process, the highlight of which is a promised hearing before a judge, where a minor pleads her case.⁵² As detailed in Chapter 2, the bypass option requires waiver of parental involvement if a minor can show either that she is mature and well-enough informed to make the abortion decision on her own or that the abortion is in her best interest.

The mandated parental involvement statutes that are currently in effect are not blanket mandates. Rather, they are a compromise between legitimate and conflicting interests in the abortion debate. On the one hand, the mandated participation of parents in their daughter's abortion decisions serves to protect the physical and mental well-being of potentially immature minors and ensures that parents remain in a position to shape the upbringing of their children. On the other hand, whatever dissatisfaction there may be concerning the potential imposition of a parental veto is assuaged by the availability of a bypass process. It is against this seemingly reasonable position that the argument of this book is addressed.

Making the Case against Compromise

There are those so opposed to abortion that the idea of relaxing any barrier to the procedure is unthinkable. Similarly, some who favor a woman's right to choose will not concede the legitimacy of any regulation that tends to burden that choice. Between these extremes stands the compromiser who believes that an avenue providing judicial authorization for a waiver of parental involvement alleviates the problems of a blanket mandate. This book aims to convince the compromiser that her position leads to consequences she will find unsatisfactory.

Our acceptance of any law is premised on a belief that implementation will occur, that actors will act appropriately when putting law into effect. This is so with parental involvement requirements and the compromise on which they are built. The commonsense appeal of the compromise turns on the supposed effectiveness of the bypass option. In the absence of an accessible and fair bypass process, statutes mandating parental involvement in the abortion decisions of pregnant teens amount in practice to blanket mandates with all their attendant problems.

In reaction to an unwelcome Supreme Court ruling and referring to the then chief justice, President Andrew Jackson famously quipped, "John Marshall has made his decision, now let him enforce it."⁵³ Jackson's outburst is witness to the fact that laws are not self-implementing.⁵⁴ Despite this fact, we live and act under the expectation that laws will be put into effect in a reasonable way by those responsible for implementation. The rule of law demands this expectation.

However, this faith in the law—dubbed "the myth of rights" by Stuart A. Scheingold⁵⁵—is grounded in the naïve view that the legal system is separate from politics and generates a misguided confidence that the articulation of a right is tantamount to its effectuation. As it applies to the case of parental involvement laws, the myth of rights encourages us to believe that the bypass compromise can easily be and is in fact realized in practice. In particular, the myth encourages us to gloss over the fact that bypass processes are neither self-implementing nor insulated from the political battle over abortion. The compromiser, I maintain, subscribes to this myth, assuming that courts will be aware of their obligation to handle bypass petitions and capable of satisfying that obligation in an apolitical fashion.

In the chapters that follow, I seek to demystify the judicial bypass process and dislodge the uncritical acceptance that has served as the

foundation for the compromise. I illustrate that in many cases court personnel charged with implementing the bypass option are simply unaware that it exists. Occasionally they are not merely unaware of their responsibility to handle bypass requests but convinced that they have no such responsibility. Even where courts are aware of their responsibility, administrative difficulties often get in the way of implementation. Knowledgeable parties are often unreachable for hours, days, and sometimes even weeks. Political and religious views also breed implementation peculiarities, with some judges refusing to hear bypass petitions, others candidly stating that they will deny such petitions, and still others engaging in practices during hearings that aggressively aim to persuade young women to forgo abortions.

Comparing our expectations about how laws governing parental involvement mandates will be implemented with how they actually are implemented requires a grasp of relevant legal precedent and the details of state involvement regulations. These matters are discussed in Chapter 2. In Chapters 3 through 5, I present the results of survey data collected from those charged with implementing the bypass procedure in order to determine how courts and their gatekeepers handle inquiries into the process. By focusing on the initial stage of gaining access to the requisite information for filing a bypass petition, I question whether those responsible for implementing the bypass are sufficiently informed, available, and willing to point a minor in a direction that will provide her with meaningful access to a hearing. This analysis focuses on three states: Alabama, Pennsylvania, and Tennessee. As discussed in Chapter 2, the specifics of these state laws and the particularities of each state's implementation context create appropriate landscapes for testing the propriety of parental involvement.

In Chapters 6 and 7, I expose some of the discretionary practices judges adopt when they preside over hearings. One of these practices, discussed in Chapter 6, is a judicial mandate that minors receive pro-life counseling from an evangelical Christian ministry in order to obtain a bypass. In Chapter 7, I describe the judicial appointment of attorneys to represent the interests of the unborn at bypass hearings. These stories are not intended as demonstrations of what judges typically do when presiding over bypass requests. Rather, my goal is to expose what is possible given the flexibility and authority judges have in applying and interpreting bypass provisions.

In Chapter 8, I examine what constitutional infirmity, if any, results

from the exposed implementation realities. In Chapter 9, I explore the interlocking nexus of mythologies that sustain misplaced confidence in parental involvement mandates. I argue that one's decision about whether to support a particular public policy should depend not only on the sense it might make on paper but also and crucially on the context in which it will be implemented.