Statement of Lawyers Demanding an End to Laws That Force Parental Involvement in Young People’s Abortion Decisions

Young People Have A Constitutional Right to Abortion

“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority.” Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976).

Young people, like adults, have constitutional rights – including the right to abortion. As the U.S. Supreme Court went on to explain in the Danforth decision, the rights of young people are enforceable rights, like those of adults, and are not subject to the veto power of either the state or a parent.

Yet, young people’s reproductive rights have remained under attack ever since the abortion right was recognized in Roe v. Wade. Parental involvement laws are part of a decades-long escalation in tactics intended to prevent — by any means necessary — people from accessing or exercising their right to abortion.

As a result, as of 2020, 37 states have some form of forced parental involvement law. These laws make it significantly harder for young people to get abortion care, and deny them the agency and reproductive autonomy they deserve.

Young People Have Moral Agency and the Right to Self-Determination

It is the young person’s body, health, and life course that is at stake when they become pregnant. A young person who becomes pregnant must be the person who will decide either to terminate or continue that pregnancy. Most young people make
these decisions with their communities – by involving a parent, or another network of support.

Also, these laws are so onerous that even some young people who can and do involve a parent in their abortion decision may not be able to comply with the law. For example, ten states require a parent either to appear at the clinic with identification or to complete a notarized form; four states require proof of parenthood. For young people whose parent lacks government-issued identification, or who cannot access documents to prove they are a parent, forced parental involvement laws essentially block their access to abortion entirely.

For those who do not, or cannot, involve a parent, forced parental involvement laws put young people at risk. For all young people, forced parental involvement laws ignore the reality that young people have the ability, the agency, and the moral determination to make important life decisions.

**Forced Parental Involvement Laws Subordinate a Young Person’s Constitutional Right to an Abortion to the Subjective Decisions of an Adult – Either a Parent or a Judge**

States cannot constitutionally grant to a parent an absolute veto of young people’s reproductive decisions. *Danforth*. But, in 1979, in *Belotti v. Baird*, the U.S. Supreme Court held that states *could* require parental involvement in a young person’s abortion decision, *provided* that the states include a legal mechanism a young person can use to “bypass” parental involvement. That mechanism is known as “judicial bypass.”

Proponents of forced parental involvement often cite the judicial bypass process as the mechanism that protects young people’s abortion access when they cannot
involve a parent. But the judicial bypass process does not mitigate the burden created by forced parental involvement and is itself a burden and barrier to abortion access.

Judicial bypass proceedings essentially require a pregnant young person to go to court to get permission from a judge to get an abortion. The absurdity of this requirement is apparent on its face. Lawyers understand how complicated it is to practice law, let alone understand basic court procedures. How and where do you file a petition for a judicial bypass? How is venue determined? How will a young person’s confidentiality be protected, especially in a small county where a young person is more likely to run into someone they know at the courthouse? Will a lawyer be appointed or must a young person, who cannot involve their parent in their abortion decision, retain counsel on their own? How will the young person get permission to leave school for the time it takes to go to court? What if the young person lacks government-issued identification? Does the court provide options for remote hearing attendance for young people who cannot travel?

These are just some of the procedural obstacles. Then there’s proving to a judge – sometimes in a county where the bench is openly hostile to abortion rights – that a young person is either “mature” and “well-informed” or that it is in the young person’s “best interests” to be allowed to proceed with their abortion. The subjectivity of these familiar legal standards is well understood, and demonstrates precisely why there is no legitimate substitute for the young person’s own decision.

No one, regardless of age, should have to go to court to get “permission” to exercise the constitutional right to abortion. Requiring young people to do so upon pain of forced parental involvement or forced childbearing is an “undue burden” and subjects them to physical and psychological harm.
Forced Parental Involvement Laws and Judicial Bypass Proceedings Create Enormous – and Undue – Burdens on Young People’s Access to Abortion

It is not only the absurd and complicated procedural hurdles that make having to go through a judicial bypass proceeding so onerous for young people. As the American Academy of Pediatrics explains, judicial bypass does nothing to ameliorate the health risks of forced parental involvement laws, and in fact can worsen the physical and psychological health of the young people subjected to it. This is because young people – like all litigants – experience stress and fear in having to navigate a court process and go before a judge, and also experience humiliation at the violation of their privacy.

Young people’s physical health is also undermined by forced parental involvement laws. Inevitably, even in jurisdictions where advocates and courts have worked to create streamlined processes for judicial bypass petitions, having to go to court before getting an abortion creates delay. As the American Academy of Pediatrics explains, studies in states that have enacted forced parental involvement laws demonstrate that young people ended up having later abortions than they did prior to enactment of the law. Others decided to travel to neighboring states, again necessitating delay of their abortion care. And when courts deny judicial bypass petitions, young people are subject to the documented mental and physical health consequences of being denied a needed abortion.

While not all young people who want to determine their abortion decision without parental involvement face abuse or harm if their parent were to find out, some young people are at risk. Forced parental involvement laws and judicial bypass proceedings can effectively foreclose a young person who is at risk of violence or abuse from getting abortion care.
These Burdens Are Compounded for Young People of Color, LGBTQ Youth, Immigrant Young People, and Other Young People Experiencing Status Discrimination

For any person – no matter their age – facing any kind of court proceeding is daunting, especially one they must instigate on their own. For all young people, figuring out where and how to get and pay for an abortion, and then navigating a judicial bypass proceeding before getting that abortion, is extremely burdensome. But the judicial bypass requirement is especially burdensome for young people who face discrimination based on race, gender identity, disability, lack of housing, immigration status, and other identities.

The case of Garza v. Hargan, 874 F.3d 735 (2017), demonstrates what happens when structural racism, xenophobia, and policy meet to hinder a young person’s human and constitutional right to reproductive decision-making. “Jane Doe” like thousands of other “unaccompanied minors” who have come to the U.S. seeking asylum, was in the custody of the U.S. Office of Refugee Resettlement in Texas. She was able to get through the hurdles of both scheduling an abortion and obtaining a judicial bypass from a Texas court. But the Office of Refugee Resettlement refused to allow Ms. Doe to leave the facility to get an abortion. The D.C. Circuit Court of Appeals, en banc, reversed a panel decision that would have further delayed or entirely prevented Ms. Doe from obtaining an abortion. Ultimately, while Ms. Doe was able to get the abortion she needed, this court battle highlighted the numerous burdens – some authorized by legislatures, others not – that immigrant youth in detention, custody, or in the midst of legal proceedings must face when seeking abortion care.

The Global Pandemic Heightens the Burdens Forced Parental Involvement Imposes On Young People
The confusion, delay, and lack of abortion access young people already face in the 37 states with forced parental involvement laws has worsened as the COVID-19 pandemic unfolds in the United States. As of this writing, the Fifth Circuit Court of Appeals has overturned an injunction against Texas’ newly-instituted order closing abortion clinics, allowing that unconstitutional and dangerous law to go into effect, making it harder for all people, including young people, who need abortions in that state to get the care they need. In other states, courts are closed, and while some have issued orders ensuring ongoing access to judicial bypass proceedings, others have not addressed it. Similarly, courts lack clarity on who and how petitioners in judicial bypass proceedings can appear remotely. And, as people around the country comply with stay-at-home orders, the ability of young people to protect their privacy and confidentiality while navigating these processes is further strained.

Young People’s Reproductive Autonomy Should Be Paramount

Many judges, court personnel, and lawyers strive to make courts accessible to young people facing judicial bypass proceedings, and work to ensure that young people’s constitutional rights are respected. But as If/When/How: Lawyering for Reproductive Justice explains in its 2019 report “Supporting, Empowering, and Listening to Youth,” parental involvement laws are ambiguous, cumbersome, and poorly implemented across the United States. The ultimate impact of this patchwork of laws and procedures is to undermine young people’s ability get the abortion care they need, endangering their health.

This is unacceptable. Young people’s self-determination of their reproductive lives is not simply hortatory. It is a constitutional right.

 Accordingly, We, the Undersigned, Demand an End to Forced Parental Involvement Laws
As officers of the court, we oppose forced parental involvement laws that require young people either to involve a parent or seek a judge’s permission to have an abortion. These laws unconstitutionally burden young people’s rights to self-determine their reproductive lives. Further, they misuse our court system to further an agenda that disrespects young people’s autonomy and ignores their constitutional rights.

**Further, We Recommend That State Legislatures Take the Following Immediate Actions**

State governors and attorneys general should immediately suspend enforcement of forced parental involvement laws during the nationwide response to the COVID-19 pandemic, as those laws impose additional risks to young people and burdens on the court system.

State legislatures must repeal all forced parental involvement laws, because they do not serve their stated purpose of involving parents in young people’s health care decisions, and instead deny young people access to timely care and put their health at risk.

Pending repeal, states should equip every court that hears judicial bypass proceedings with the technology to handle remote hearings, or permit them to forego bypass hearings and grant default orders.

Young people have the right to self-determination of their reproductive lives. We urge states to take the actions above, and call for our colleagues in the legal profession to join our effort to fight for an end to forced parental involvement in young people’s reproductive decisions.
Signed,

If/When/How: Lawyering for Reproductive Justice

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