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I. INTRODUCTION

Since the United States Supreme Court's decision in *Roe v. Wade* in 1973, there has been an ongoing battle regarding women's right to choose to have an abortion and how far the government is allowed to go in regulating that choice.[1] In the state of Ohio, there has been a decline in the number of abortions over the past decade, which is likely attributable to three factors: (1) "there have been more than 15 legislative changes" in Ohio restricting abortion at the patient and provider level since 2010; (2) from 2010 to 2018, five of sixteen Ohio abortion clinics have been closed, and others no longer perform surgical abortions or have become involved in litigation; and (3) individuals have better access to contraceptives and more effective forms of contraception.[2] In 2017, Ohio was classified as extremely hostile to abortion rights in comparison to other states based on the number of abortion restrictions enacted.[3] Examples of recent abortion restrictions in Ohio include Substitute Senate Bill 23 in 2019, commonly referred to as the "heartbeat bill," which bans abortions as early as six weeks of gestation, and Senate Bill 260 in 2021, the "telemedicine abortion ban," which bans doctors from using telemedicine options to prescribe abortion medication to patients.[4]

Alongside the overall decline in abortions in Ohio, the prevalence of minors obtaining abortions has steadily declined in the state of Ohio since 2013.[5] In 2019, approximately 2.7% of induced abortions (538 of 20,102) in

1. Roe v. Wade, 410 U.S. 113 (1973).

2. Alison H. Norris et al., *Abortion Access in Ohio's Changing Legislative Context, 2010-2018*, 110 AMER. J. PUB. HEALTH, 1228, 1228-29 (2020).

3. Elizabeth Nash et al., *Policy Trends in the States, 2017*, GUTTMACHER INST. (Jan. 2, 2018), https://www.guttmacher.org/article/2018/01/policy-trends-states-2017.

4. Sub. S.B. 23, 133rd Ohio Gen. Assemb. (Ohio 2019); S.B. 260, 133rd Ohio Gen. Assemb. (Ohio 2021).

5. *Induced Abortions in Ohio,* Figure 5: Induced Abortion Rates per 1,000 Women, by Age Group and Year, Ohio Residents, 2002-2019, OHIO DEPT. OF HEALTH (2019) (showing that, in 2002, minors between the ages of fifteen and seventeen had induced abortions at a rate of 8.6 per 1,000 women, and that in 2019, minors between the ages of fifteen and seventeen had induced abortions at a rate of 2.0 per 1,000 women). Prior to 2013, Ohio did not have a reporting category specific to minors under the age of eighteen. The state had previously included minors in the under twenty years old category when reporting

Ohio were obtained by women under the age of eighteen.[6] Ohio requires parental notice, written consent, or a juvenile court order for a minor to legally obtain an abortion.[7] In a study of 439 young women (between the ages of twelve and twenty-one) seeking abortions, 51% percent included their parents in their decision and 49% did not.[8] The study found that the degree of financial and emotional dependence and the quality and nature of their family's communication was closely related to teenagers' decisions to confide in their parents about seeking abortions.[9] Ohio does not collect information regarding the frequency and outcome of judicially sought abortions, and the last time this information was obtained was in 2003 through a public records request made by the Akron Beacon Journal.[10] Additionally, it is unknown how many minors travel out of state for abortions.[11] Globally, without access to safe abortions, 15% of all unsafe abortions (3.2 million of 22 million) take place among girls under the age of twenty.[12] In regard to abortions in the United States, "[t]he risk of death associated with childbirth is approximately 14 times higher than that with abortion."[13] Therefore, "[l]egal induced abortion[s] [are] markedly safer" medical procedures than childbirth.[14]

This paper will first explore the development of the judicial bypass procedure for minor women seeking abortions without parental notice or consent in the state of Ohio.[15] Next, this article will discuss the discretionary nature of judges' determinations of whether a minor is "sufficiently mature"

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abortions for the state of Ohio. *Induced Abortions in Ohio,* Table 1: Induced Abortions Summary Table, OHIO DEPT. OF HEALTH (2013).

6. *Induced Abortions in Ohio,* Table 1: Induced Abortions Summary Table, OHIO DEPT. OF HEALTH (2019); OHIO REV. CODE ANN. § 3701.79 (2021). In the state of Ohio, physicians are required to report certain information about induced abortions to the Ohio Department of Health on confidential forms which include demographics, medical history, and information about the medical procedure. From these forms, the Ohio Department of Health is required to produce statistical reports annually regarding induced abortions.

7. § 2919.12.

8. Mary S. Griffin-Carlson & Kathleen J. Mackin, *Parental Consent: Factors Influencing Adolescent Disclosure Regarding Abortion*, 28 ADOLESCENCE, 1, 6 (1993).

9. *Id.* at 7-8.

10. Phil Trexler, *Abortion Fiery Issue for Judges: Juveniles Often Take Cases to Counties Likely to Grant Parental Bypass Requests*, AKRON BEACON J., Nov. 9, 2003, at A1.

11. *Id.*

12. Cecilia Espinoza et al., *Abortion Knowledge, Attitudes and Experiences Among Adolescent Girls: A Review of the Literature*, 28 SEXUAL & REPROD. HEALTH MATTERS 175 (2020).

13. Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215 (2012).

14. *Id.* at 215 ("The pregnancy-associated mortality rate among women who delivered live neonates was 8.8 deaths per 100,000 live births. The mortality rate related to induced abortion was 0.6 deaths per 100,000 abortions . . . [and] pregnancy-related complications were more common with childbirth than with abortion.").

15. *See infra* Part II.

enough to make this decision.[16] This article will then move into a discussion and analysis of what "sufficiently mature" means by looking at appellate court case law in Ohio.[17] Lastly, this article will discuss whether judges are in the best position to make the determination of whether a pregnant minor is sufficiently mature, given the lack of statutory and judicial guidance regarding what that term actually means and the judges' lack of training and expertise in adolescent development.[18]

II. OHIO LAWS REGULATING MINORS SEEKING ABORTION

In 1985, "[t]he Ohio Legislature . . . enacted Amended Substitute House Bill 319 (H.B. 319), which . . . ma[de] it a criminal offense, except in four specified circumstances, for a physician or other person to perform an abortion on an unmarried and unemancipated woman under 18 years of age.".[19] This bill amended section 2919.12 of the Ohio Revised Code and created sections 2151.85 and 2505.073.[20] The first circumstance allows a physician to perform an abortion if he or she provides "at least twenty-four hours actual notice, in person or by telephone, to one of the woman's parents, her guardian, or her custodian" of the physician's intention to perform the abortion.[21] Alternatively, if the woman and another relative, such as an adult brother or sister, stepparent, or grandparent, each file an affidavit in the juvenile court stating that the minor fears "physical, sexual, or severe emotional abuse" from one of her parents, then the physician may notify the minor's adult brother, sister, stepparent, or grand-parent in lieu of the parent.[22] If the physician or provider is unable to give notice "after a reasonable effort," he or she may perform the abortion after "giving at least forty-eight hours constructive notice . . . by both certified and ordinary mail."[23] The second circumstance allows a physician to perform an abortion if the minor woman's parent, guardian, or custodian consents to the abortion in writing.[24]

The third and fourth circumstances "allow[] a physician to perform an abortion without notifying one of the minor's parents or receiving the parent's consent if a juvenile court issues an order authorizing the minor to consent, or if a juvenile court or court of appeals, by its inaction, provides constructive

16. *See infra* Part III.
17. *See infra* Part IV.
18. *See infra* Part V.
19. Ohio v. Akron Ctr. for Reprod. Health, 497 U.S. 502, 507 (1990).
20. *Id.*; *see* §§ 2919.12, 2151.85, 2505.073.
21. § 2919.12(B)(1)(a)(i).
22. *Id.* §§ 2919.12(B)(1)(a)(i)-(B)(1)(b).
23. *Id.* § 2919.12(B)(2).
24. *Id.* § 2919.12(B)(1)(a)(ii).

authorization for the minor to consent."[25] The minor woman must allege either one or both of the following: (1) she is mature enough to decide "to have an abortion without the notification of her parents, guardian, or custodian;" and/or (2) "one or both of her parents, her guardian, or her custodian was engaged in a pattern of physical, sexual, or emotional abuse . . . , or that the notification of her parents, guardian, or custodian otherwise is not in her best interest."[26] The court must make a finding by clear and convincing evidence that the minor is either "sufficiently mature" to make this decision or that there is evidence of abuse, or that notifying her parents is otherwise not in her best interest.[27]

III. CASE LAW ON JUDICIAL BYPASS IN OHIO

a. Ohio v. Akron Center for Reproductive Health [28]

In 1986, in the days leading up to the effective date of H.B. 319, the Akron Center for Reproductive Health, Dr. Max Pierre Gaujean, and an unmarried, unemancipated minor, Rachael Roe, "brought a facial challenge to the constitutionality of the [new law] in the United States District Court for the Northern District of Ohio."[29] The District Court first issued a preliminary injunction and then a permanent injunction barring the state from enforcing the statute.[30] The Court of Appeals for the Sixth Circuit upheld the District Court's findings and concluded that H.B. 319 had the following "six constitutional defects," relat[ing] to (1) "the sufficiency of the expedited procedures," (2) "the guarantee of anonymity," (3) "the constructive authorization provisions," (4) "the clear and convincing evidence standard," (5) "the pleading requirements," and (6) "the physician's personal obligation to give notice to one of the minor's parents."[31] The State of Ohio appealed the Sixth Circuit's decision in its entirety and ended up winning on appeal.[32]

The Supreme Court of the United States looked at the adequacy of the judicial bypass procedure in H.B. 319 and found that it satisfied "the requirements identified for parental consent statutes in *Danforth, Bellotti, Ashcroft,* and *Akron.*"[33] The Court found that "[t]he Ohio statute . . . does not impose an undue, or otherwise unconstitutional, burden on a minor seeking

25. *Akron*, 497 U.S. at 508 (internal citations omitted); *see* §§ 2919.12(B)(1)(a)(iii)-(B)(1)(a)(iv).
26. § 2151.85(A)(4).
27. § 2151.85(C).
28. *Akron,* 497 U.S. at 502.
29. *Id.* at 509.
30. *Id.*; Akron Ctr. for Reprod. Health v. Rosen, 633 F.Supp. 1123, 1144-45 (1986).
31. *Akron*, 497 U.S. at 509-10; Akron Ctr. for Reprod. Health v. Slaby, 854 F.2d 852, 854 (1988).
32. *Akron*, 497 U.S. at 506-07, 510.
33. *Id.* at 510.

an abortion."[34] The Court further stated that "[i]t is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both compassionate and mature."[35] Justice Scalia filed a concurring opinion.[36] He stated that "the Constitution contains no right to abortion" and that "[t]he Court should end its disruptive intrusion into this field as soon as possible."[37] Justice Stevens, who concurred in part and concurred in the judgment, further acknowledged the tension between the "requirement that the treating physician notify the minor's parent" and the Court's decision in *Akron v. Akron Center for Reproductive Health*,[38] and concluded, "that a State may not require the attending physician to personally counsel an abortion patient."[39] Following this recognition of tension, Justice Stevens stated that "the possibility that this provision was motivated more by a legislative interest in placing obstacles in the woman's path to an abortion, than by a genuine interest in fostering informed decision[-]making" cannot be overlooked.[40] Justice Blackmun, with whom Justice Brennan and Justice Marshall joined, dissented from the Court's opinion.[41] The dissent criticized the statute by stating that "[t]he State of Ohio has acted with particular insensitivity in enacting the statute," "[it] has created a tortuous maze," and "[it] has failed utterly to show that it has any significant state interest in deliberately placing its pattern of obstacles in the path of the pregnant minor seeking to exercise her constitutional right to terminate a pregnancy."[42]

b. In re Jane Doe 1[43]

In December of 1990, following the decision of the Supreme Court of the United States upholding the constitutionality of the judicial bypass procedure outlined in H.B. 319, the Supreme Court of Ohio heard its first case involving judicial bypass.[44] The issue, in that case, was "whether the trial court abused its discretion in finding that [the unemancipated minor] did not prove by clear and convincing evidence that: (1) she is sufficiently mature and well enough informed to decide whether to have an abortion without parental notification;

34. *Id.* at 519-20.
35. *Id.* at 520.
36. *Id.* at 521 (Scalia, J., concurring).
37. *Akron*, 497 U.S. at 520-21.
38. *Akron* v. Akron Ctr. for Reprod. Health Inc., 462 U.S. 416 (1983).
39. *Akron*, 497 U.S. at 524 (Stevens, J., concurring).
40. *Id.* (citing Maher v. Roe, 431 U.S. 464, 474 (1977) (internal citation omitted)).
41. *Id.* at 524 (Blackmun, J., dissenting).
42. *Id.* at 525-26.
43. In re Jane Doe 1, 566 N.E.2d 1181 (Ohio 1990).
44. *Id.* at 1182.

and/or (2) that parental notification of her desire to have an abortion is not in her best interest."[45]

This case involved a seventeen-year-old unemancipated minor who sought an abortion through the judicial bypass process, was a senior in high school with a 3.0 grade point average, planned on attending college, worked "twenty to twenty-five hours per week," paid her own automobile and telephone expenses, obtained her own medical care, and "was active in team sports."[46] Her complaint was filed in Hamilton County, and she alleged that she was both "mature and well enough informed" to make the decision to have an abortion and "that parental notification of her desire to have an abortion [was] not . . . in her best interest."[47] At the hearing, Jane Doe testified alongside expert witness, Dr. Joseph Rauh, the director of the Division of Adolescent Medicine at Children's Hospital Medical Center in Cincinnati, Ohio.[48] Jane Doe testified to the facts stated above, as well as to the fact that she had already "had an abortion with her mother's consent" in June of 1990 "without her father's knowledge."[49] She further testified that her father told her he would cut her off financially if she ever became pregnant, which she said would probably cause her to leave home, secure full-time employment, and possibly leave high school.[50] Additionally, Jane stated "that her father had once struck her so hard that bruises were left on her body" when she came home late, and another time he struck her for getting "Ds" on her report card.[51] Dr. Rauh testified that he believed Jane understood the risks of having an abortion and that allowing her to make the decision regarding having an abortion without parental notice was "consistent with good medical judgment."[52] Furthermore, Jane and Dr. Rauh affirmed that each of Jane's pregnancies was by two different men and that she had been on birth control but discontinued its use.[53]

The trial court dismissed Jane Doe's complaint because it did not find that she was "sufficiently mature" to make the decision and because there was "not sufficient evidence of a pattern of physical, or sexual abuse, or emotional abuse" by either parent.[54] The court of appeals and Supreme Court of Ohio found that dismissal of Jane Doe's complaint was not an abuse of the trial

45. *Id*.
46. *Id.* at 1189 (Brown, J., dissenting).
47. *Id.* at 1182 (majority opinion).
48. *In re Jane Doe 1*, 566 N.E.2d at 1182.
49. *Id.*
50. *Id.* (Douglas, J., dissenting).
51. *Id.*
52. *Id.* at 1182, syllabus.
53. *In re Jane Doe 1*, 566 N.E.2d at 1184.
54. *Id.* at 1182, syllabus.

court's discretion.[55] The Supreme Court of Ohio declined to adopt Jane Doe's proposed six-factor test which included:

> a. Age. Minors fifteen and older should generally be held to possess sufficient maturity to consent to their own abortion without notice to the parent;
>
> b. Overall intelligence. The minor should possess sufficient intelligence to understand her situation and her options;
>
> c. Ability to accept responsibility. Examples could be drawn from life at home, in school or elsewhere;
>
> d. Ability to assess the future impact of her present choices;
>
> e. Whether the minor is making an affirmative personal decision and not be forced into her decision by a third person;
>
> f. Whether the minor will understand the benefits and risks of the abortion procedure and apply that understanding when making her decision.[56]

Justice Wright concurred with the syllabus law and the outcome of the case and acknowledged that Jane Doe's proposed factors (b) through (f) seemed appropriate.[57] Chief Justice Moyer, Justice Douglas, and Justice Brown each issued dissenting opinions in this case.[58] Chief Justice Moyer felt that the Court had missed an opportunity to provide guidance to lower courts regarding the undefined term "sufficiently mature" when it declined "to adopt the following factors of indicia of a minor's maturity:"

> (1) age,
>
> (2) overall intelligence,
>
> (3) emotional stability,
>
> (4) credibility and demeanor as a witness,
>
> (5) ability to accept responsibility,

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55. *Id.*
56. *Id.* at 1185 n.2.
57. *Id.* at 1185 (Wright, J., concurring).
58. *In re Jane Doe 1*, 566 N.E.2d at 1185-89 (Moyer, C.J., dissenting; Douglas, J., dissenting; Brown, J., dissenting).

(6) ability to assess the future impact of her present choices,

(7) ability to understand the medical consequences of abortion and apply that understanding to her decision, and

(8) an undue influence by another on the minor's decision.[59]

Justice Brown also referred to these factors in his dissent and noted they had "been adopted by the Superior Court of the Commonwealth of Massachusetts," which had a similar parental notice law.[60] Justice Douglas took issue with the Court's failure to provide guidance for the interpretation of R.C. 2151.85 when there had already been three different interpretations of how to apply the statute among lower courts in Ohio.[61] Additionally, he found it difficult to see how the "best interest" prong was not satisfied when the trial court had heard testimony of Jane Doe getting struck for staying out late and getting "Ds" on her report card.[62] Justice Brown's dissenting opinion highlighted the necessity for the eight factors mentioned above for determining maturity and the need to look at the minor's "entire life, and not just the events which brought her into court."[63] He further criticized the lack of written opinion from the trial court and the appellate court's conclusory statements that lacked reasoning.[64] Then, based on the facts of the case, Justice Brown stated, "[i]f she is not a 'mature minor,' then who is?"[65]

IV. CONSIDERATIONS OF PREGNANT MINORS

Based on Ohio's statutory scheme, the judicial bypass process is a daunting task for a pregnant minor to face in the wake of an unexpected pregnancy. In a 2020 study, researchers interviewed twenty adolescents about their experiences with the judicial bypass process in Texas.[66] The study found that the judicial bypass process acts as a punishment and enables state actors such as judges and guardian ad litems (GALs) to humiliate these young women for their decisions.[67] It also found the process contained logistical burdens, such as arranging transportation, taking time away from school, work, and home without their parents finding out, and, in one case, a minor had to find a new clinic because by the time the court granted the bypass she

59. *Id.* at 1185-86 (Moyer, C.J., dissenting).
60. *Id.* at 1185-86, 1188 (Moyer, C.J., dissenting; Brown, J., dissenting).
61. *Id.* at 1187 (Douglas, J., dissenting).
62. *Id.*
63. *In re Jane Doe 1*, 566 N.E.2d at 1188 (Brown, J., dissenting).
64. *Id.* at 1189 (Brown, J., dissenting).
65. *Id*.
66. Kate Coleman-Minahan et al., *Young Women's Experiences Obtaining Judicial Bypass for Abortion in Texas*, 64. J. ADOLESCENT HEALTH 20 (2020).
67. *Id.*

had advanced past the gestational age limit of her initial clinic.[68] In speaking with participants who described the process as "nerve-racking," "intimidating," and humiliating, researchers found the process to be highly unpredictable and traumatic for these young women.[69] Although the study was not conducted in Ohio, it highlights the experiences of young women attempting to navigate the judicial bypass process.[70]

Additionally, there are inconsistencies in how judges handle judicial bypass cases. In an interview with the Akron Beacon Journal in 2003, Summit County Juvenile Court Judge Linda Tucci Teodosio provided that she holds judicial bypass hearings in her chambers.[71] She indicated that they are "intentionally informal" and they typically "last about 30 minutes."[72] She acknowledged granting most requests but admitted that it caused her to feel "guilty."[73] In the same article, a Republican, Baptist Ohio judge was known as having always said no to any teenage girl wanting an abortion without notifying her parents.[74] The article also mentioned that most abortion providers in the state would steer pregnant minors to specific counties to petition for judicial bypass.[75] Since the article was published, the Ohio legislature has modified the statute that enabled minors to petition the court in which the abortion provider was located to only their county of residence or a surrounding county.[76] This is yet another example of an Ohio legislative action placing a further restriction on minors' abortion rights.

Another article highlighted additional stories from other states regarding the broad discretion in which judges are empowered to decide whether a pregnant minor is mature enough to make the decision to have an abortion without parental involvement.[77] In a Florida case, a 17-year-old was asked whether she thought about her decision in church or considered that "she might regret [getting] an abortion when she looked at her children in the future."[78] In another Florida case, a judge urged the pregnant minor to think about "how distressed her Catholic parents would be if they discovered her secret abortion."[79] The article mentioned a third Florida case in which the judge denied the minor's petition because her testimony that she was not

68. *Id.*
69. *Id.*
70. *Id.*
71. Trexler, *supra* note 10, at A1.
72. *Id.*
73. *Id.*
74. *Id.*
75. Trexler, *supra* note 10, at A1.
76. Am. H.B. 63, 129th Ohio Gen. Assemb. (Ohio 2011).
77. Molly Redden, *This is How Judges Humiliate Pregnant Teens Who Want Abortions*, MOTHER JONES (2014).
78. *Id.*
79. *Id.*

"financially or emotionally equipped to raise a child . . . proved she [was not] mature enough to choose [to have an] abortion."[80] Alabama has a law that recognizes "the right of judges to appoint lawyers to represent" the unborn fetus in judicial bypass proceedings.[81] In some of these cases, the girls' fetuses are given names.[82] For example, in one case an attorney representing a girl's fetus referenced the fetus throughout his questioning as "Baby Ashley" and stated, "You say that you are aware that God instructed you not to kill your own baby, . . . [b]ut you want to do it anyway?"[83] Although these stories are not from within the state of Ohio, it is not hard to imagine the potentiality of similar lines of questioning or proposals for unborn fetus legal representation that may have already or could come up in future cases.

These limited examples highlight only a small portion of judicial bypass cases in which information has been obtained regarding these proceedings.[84] Such hearings are supposed to be confidential for the benefit of the minor's privacy.[85] However, the confidential nature of these proceedings makes it harder to discover when judges have abused their discretion or based their decision on arbitrary factors they deem personally significant, such as the minor's or their parents' religious beliefs. These cases show instances in which judges have seemingly based their decisions to deny petitions based on moral grounds rather than an objective standard of maturity.[86] Legislatures often view judicial bypass procedures as a viable alternative for minors seeking to obtain abortions without notifying parents or guardians, but, in reality, it is easy to see how the process can be an obstacle for minors seeking abortions depending on where they live and what judge is asking them questions and hearing their cases.

V. WHAT IS "SUFFICIENTLY MATURE"?

A judge can grant a pregnant minor's petition for obtaining an abortion without parental notice if the court finds by clear and convincing evidence:

> (a) That the complainant is sufficiently mature and well enough informed to intelligently decide to have an abortion without the notification of her parents, guardian, or custodian;
>
> (b) That one or both of her parents, her guardian, or her custodian was engaged in a pattern of physical, sexual, or emotional abuse

80. Redden, *supra* note 77.
81. *Id.*
82. *Id.*
83. *Id.*
84. *See id.*
85. Redden, *supra* note 77.
86. *Id.*

> against her, or that the notification of her parents, guardian, or custodian otherwise is not in her best interest.[87]

The statute lacks clarity as to what "sufficiently mature" means, and when given the opportunity to provide more guidance by establishing factors for judges to consider when making such a determination, the Supreme Court of Ohio declined to do so.[88] In *In re Jane Doe 1,* the Supreme Court of Ohio did not explicitly state what it deemed as being immature, but the plurality listed favorable facts that seemed to indicate a finding of maturity before abruptly detailing less favorable evidence.[89] More specifically, the plurality emphasized that the pregnant minor had already had an abortion earlier within the same year by another man and that she had been on birth control but discontinued it.[90]

Since that decision in 1990, there have only been a handful of cases that have reached appellate courts in Ohio.[91] In a Summit County case from 2002, a visiting judge dismissed a complaint of a seventeen-year-old mother of two because she felt the teen was "using this court as a means of birth control."[92] In 2003, a Hamilton County attorney indicated that teenage girls would regularly seek abortions and initiate the judicial bypass process in other counties due to a longstanding history of denials and subsequent appeals.[93] The same attorney stated that the issue was that judges in Hamilton County had been "view[ing] pregnancy as evidence of immaturity," and even though that was not the correct legal standard, appealing their decisions took a lot of "time and effort."[94]

In 2005, the First District Court of Appeals reversed a trial court's decision to dismiss a pregnant minor's complaint.[95] The appellate court found that, in addition to her being ten weeks away from turning eighteen, her maturity and intelligence were demonstrated by:

> (1) Jane Doe's testimony about her desire to avoid a potential and probable conflict with her parents; (2) her academic standing and intelligence; (3) her musical talent and desire to teach music; (4) her participation in extracurricular school activities; (5) her acceptance by a college; (6) her part-time employment and saving for college

87. §§ 2151.85(A)(4)(a)-(b), (C)(1).
88. *In re Jane Doe 1*, 566 N.E.2d at 1185-86 (Moyer, CJ., dissenting).
89. *Id.* at 1184 (majority opinion).
90. *Id.*
91. *See infra* Part V.
92. Trexler, *supra* note 10, at A1.
93. *Id*.
94. *Id.*
95. *See generally* In re: Jane Doe, No. C–050133, 2005 WL 736666 (Ohio Ct. App., 1st Dist. April 1, 2005).

> expenses; (7) her counseling about the options other than termination of pregnancy; (8) her consideration and understanding of the risks and benefits of abortion or foster care and the options to abortion; and (9) her introspection and freedom from coercion related to the consequences of her decision[.][96]

Although the juvenile court did not state that the GAL's testimony had influenced its decision to dismiss the complaint, the appellate court felt it was important to mention in their opinion.[97] The GAL stated that the minor was articulate and intelligent, and therefore, knew she could potentially become pregnant from a one-time unprotected sexual encounter, which the GAL used to support her disapproval of the minor's application.[98]

In 2011, the Seventh District Court of Appeals also reversed a trial court's decision to dismiss a pregnant minor's complaint.[99] In this case, the appellate court used the eight factors from Justice Brown's dissenting opinion in *In re Jane Doe 1* in determining whether the trial court had abused its discretion.[100] The minor was about to turn eighteen, maintained good grades in school, had no indications of emotional instability, had no issues regarding her credibility, accepted responsibility for her pregnancy and her choices, researched her options, understood the medical risks associated with having an abortion, acknowledged that the decision to have an abortion was her own, and she was not pressured or influenced by outside parties.[101] Justice DeGenaro's dissent in the case took issue with leading questions at trial, the minor's internet research on the medical procedure and its potential side effects, the lack of consultation with a medical professional for information, that she had continued having sex when she ran out of birth control, and alternative protection failed.[102] These two cases illustrate the continued inconsistency in which courts throughout Ohio either do or do not consider any set of specific factors for determining the maturity of minors in judicial bypass cases.[103]

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96. *Id.* at ¶¶ 2,19.
97. *Id.* at ¶ 21.
98. *Id.* at ¶¶ 21-23.
99. *See generally* In re Jane Doe, No. 11 CO 34, 2011 WL 6164526, (Ohio Ct. App., 7th Dist. Dec. 7, 2011).
100. *Id.* at ¶ 11.
101. *Id.* at ¶ 12.
102. *Id.* at ¶¶ 44-46 (DeGenaro, J., dissenting).
103. *See generally In re: Jane Doe,* 2005 WL 736666, ¶¶ 1, 13; *In re Jane Doe,* 2011 WL 6164526, ¶¶ 1, 11.

VI. SOCIAL SCIENCES FIND THAT MANY PREGNANT MINORS SEEKING ABORTION ARE MATURE ENOUGH TO DECIDE TO HAVE AN ABORTION

As outlined by the statute, the judgment as to whether a pregnant minor is mature enough to make the decision to have an abortion without consultation of either a parent or guardian is determined on a case-by-case basis.[104] From a social science perspective, developmental psychologists view that decision somewhat differently.[105] In "Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and Alleged APA 'Flip-Flop'," the authors discussed clearing up the confusion regarding the American Psychological Association's (APA) positions taken in *Roper v. Simmons* (2005) and *Hodgson v. Minnesota* (1990).[106] The distinction between the two is that in one instance a minor committing a criminal act is acting on impulse, emotional arousal, or peer pressure without any consultation, which indicates that they are less mature than adults.[107] In the case of minors seeking an abortion, the decision-making process is more deliberate and reasoned, where emotional and social influences are mitigated through consultation.[108] The article found that for medical decision-making, legal decision-making, and decisions about participating in research studies, "adolescents are likely to be just as capable of mature decision making as adults, at least by the time they are 16."[109] This supports the argument that seeking an abortion in and of itself should be evidence of the minor's maturity.[110] Furthermore, a minor navigating the steps to seek an abortion without notifying a parent or guardian through filing a petition to begin the judicial bypass process should be considered in evaluating their level of maturity.[111] For many of these young women, approaching this process can be traumatic and anxiety-inducing as it is their first interaction with the legal system.

A study in Iowa from the 1990s sampled 111 minor girls who received abortions at four Iowa abortion clinics ranging from ages 13 to 17.[112] The study was conducted prior to the enactment of Iowa's parental involvement law, and it found that 56% of respondents told at least one of their parents or

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104. §§ 2151.85(A)(4)(a)-(b), (C)(1).

105. *See generally* Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AMERICAN PSYCHOLOGIST 583 (Oct. 2009).

106. *See generally id.*

107. *Id.* at 586.

108. *Id.*

109. *Id.* at 592.

110. Steinberg et al., *supra* note 105, at 592.

111. *Id.*

112. *See generally* Amy Butler & Deb Bailey, *The Maturity and Competence of Girls Obtaining Abortions: Are Parental Involvement Laws Needed?* 7 J. OF POLICY PRACTICE, 58, 66 (2008).

guardians of their intention to obtain an abortion while 44% of the minor girls told neither parent.[113] The study found that the minors who did not tell a parent or guardian of their intention to obtain an abortion were more likely than girls who did tell a parent or guardian "to be high school seniors, to have good grades, to have high educational aspirations, and to have engaged in volunteer work during the previous year."[114] The article concluded by stating that "parental involvement law are unnecessarily restrictive" because "they violate adolescents' right to confidential services and self-determination."[115] Although the study was not conducted in Ohio, the information collected provides insight as to the demographics of pregnant minors who do not wish to notify their parent or guardian of their intention to get an abortion.[116] This study found that many pregnant teens involve their parents in their decision-making process regarding this subject matter.[117] However, for the ones who chose not to involve their parent or guardian, there are factors among these pregnant minors that objectively lean toward maturity.[118] In the state of Ohio, there needs to be data collection on minors seeking abortion through the judicial bypass procedures and an evaluation of judges' reasoning in utilizing their discretion to make a "maturity" determination should be conducted.[119] Without any data or information regarding judges' reasoning in these cases beyond the few appellate court decisions in Ohio and commentary collected through news and media sources about minors' experiences, there is no way to know how many pregnant minors are being unfairly and negatively impacted by the judicial bypass process in Ohio.[120]

Both of these articles mentioned above are from social science publications.[121] The first article based its analysis on information from developmental psychologists who understand adolescent development.[122] The second study's audience was social workers and social work students and it urged them to become involved as advocates at the policy level for minors' abortion rights in pursuit of the best interest of their clients.[123] Although these were not produced by legal scholars, both professions are trained to have vast expertise in adolescent development and they look at a breadth of information

113. *Id.* at 69.
114. *Id.* at 58.
115. *Id.* at 78.
116. *See id.* at 69.
117. Butler & Bailey, *supra* note 112, at 62.
118. *Id.* at 74.
119. *See generally id.* at 60.
120. *See generally In re: Jane Doe*, 2005 WL 736666, at ¶ 1; *In re Jane Doe*, 2011 WL 6164526, at ¶ 1; Redden, *supra* note 78.
121. *See generally*, Steinberg et al., *supra* note 105; Butler & Bailey, *supra* note 112.
122. *See* Steinberg, *supra* note 106, at 585.
123. Butler & Bailey, *supra* note 112, at 77.

when determining the maturity of a minor.[124] Neither profession looks at a singular aspect of a minor and decides that that is the one thing that will make the minor automatically mature or immature.[125]

In the legal field, judges are trained to know law and apply it to the case in front of them.[126] Throughout their educational careers, judges are not required to take coursework on the development of adolescents, so what qualifies them to determine the maturity of a pregnant minor?[127] As evidenced by the caselaw mentioned previously in this comment, judges sometimes make the decision as to whether a pregnant minor is mature based on a minor's testimonial response to a singular question or on some moral grounds.[128] There is no uniformity in how the maturity standard is applied.[129] Other states that do not have parental notification laws allow for a doctor or a counselor to ensure that the minor fully understands their decision and its consequences.[130] Although Ohio's judicial bypass statute will not be repealed anytime soon, the Supreme Court of Ohio should begin data collection on these cases and the Ohio General Assembly should provide additional guidance as to what judges may and may not ask of pregnant minors during these proceedings.[131] In the same way that there are rape shield statutes, there should be some level of sexual privacy protection for these minors.[132] Judges should not be allowed to go through questioning that shames a minor for the number of sexual partners she has had or for her decision to not take birth control.[133] Judges should also not be allowed to ask pregnant minors about their parents' religious beliefs in an attempt to shame and guilt-trip minors into changing their minds.[134] Additionally, these cases should involve input from someone trained in adolescent development such as a social worker, counselor, or developmental psychologist.[135] These professions could objectively evaluate the maturity status of the minor to make the decision without parental or guardian involvement and provide their findings to the court.[136] On top of assessing the maturity of the pregnant minor, these

124. *See* Steinberg et al., *supra* note 105, at 61; Butler & Bailey, *supra* note 112, at 58.
125. *See generally*, Steinberg et al., *supra* note 105, at 584; Butler & Bailey, *supra* note 112, at 71.
126. See *In re: Jane Doe,* 2005 WL 736666, at ¶ 1; *In re Jane Doe*, 2011 WL 6164526, at ¶ 1.
127. Butler & Bailey, *supra* note 112, at 61; *In re: Jane Doe*, 2005 WL 736666, at ¶ 1; *In re Jane Doe*, 2011 WL 6164526, at ¶ 1.
128. Trexler, *supra* note 10, at A1; Redden, *supra* note 78;
129. Steinberg et al., *supra* note 105, at 584; Butler & Bailey, *supra* note 112, at 61-62.
130. Butler & Bailey, *supra* note 112, at 77.
131. § 2151.85(A)(4)(a)-(b); *In re: Jane Doe*, 2005 WL 736666, at ¶ 1; *In re Jane Doe*, 2011 WL 6164526, at ¶ 1.
132. Butler & Bailey, *supra* note 112, at 77.
133. *In re: Jane Doe*, 2005 WL 736666, at ¶ 7.
134. *Id.* at ¶ 9; *In re Jane Doe*, 2011 WL 6164526, at ¶ 4.
135. Butler & Bailey, *supra* note 112, at 77.
136. *Id.*

professions could also assist in assessing the risks of potential physical, sexual, and emotional abuse that the minor has suffered or may suffer if her parent or guardian were to find out about her decision to have an abortion.[137]

VII. CONCLUSION

It is unknown how many judicial bypass cases are filed annually and their dispositions because courts in Ohio are not required to report such data to the Supreme Court of Ohio.[138] Without any oversight, there may still be certain counties in which judges deny all judicial bypass requests.[139] Upon a dismissal of a complaint for an abortion, the minor must decide whether to appeal the decision.[140] If they do not appeal, cases in which a judge may have abused their discretion do not come to light and the minor is forced to notify their parent, guardian, or custodian of their intention to get an abortion.[141] Given the lack of guidance and caselaw, judges are given broad discretion to take into consideration what they subjectively deem pertinent to determining whether a minor is "sufficiently mature."[142] Based on the caselaw referenced above, it appears that at the trial court level you can have numerous facts that are favorable toward a finding of maturity, but it only takes one or two "bad" or "immature" facts for a judge to dismiss a complaint.[143] Based on the information provided by the APA's position and understanding of developmental psychology, judges who are tasked with handling adjudications and judicial bypass cases are not in the best position for making a determination as to whether a minor is "sufficiently mature."[144] On one hand, judges are asked to move juveniles based on the juvenile's criminal conduct to adult criminal court based on the seriousness of the crime, but here, in the abortion context, the seriousness of the decision to have an abortion calls for a judge to delve into a minor's sexual activity, contraceptive use, understanding of medical procedure, and risks involved in having an abortion.[145] Any unsatisfactory answer can result in dismissal.[146] The subjective nature of this determination creates a highly unpredictable process for pregnant minors, when there should either be a set list of factors that

137. *Id.* at 66, 77.
138. *See* Trexler, *supra* note 10, at A1.
139. *See id.*
140. § 2151.85(E).
141. *See supra* Part II.
142. *See supra* Part III.
143. *See id*.
144. *See supra* Part V.
145. *See supra* Part IV.
146. *See supra* Part III.

judges must apply or there should be additional outside involvement from professionals trained in adolescent development.[147]

147. *See supra* Parts IV, V, VI.