THE INFORMER
TUESDAY NOVEMBER 26, 1968

BAIRD ON ABORTION

By Bill Baird

Special To The Informer

The world of abortion is a dirty, degrading, frightening, unhealthy world. In it, women die from trying to burn themselves with lye, from having their uteri torn up with coat hangers, from being turned out of a shaking abortionist's kitchen to bleed to death in the street.

It's a world of leering, indecent proposals, of women raped while under anaesthesia, of women treated like sides of beef in assembly line fashion by operators whose instruments are carried wrapped in rags in their pockets.

In a world of overpopulation, two-thirds of the people cannot eat properly. Ghetto children, born in poverty, grow up in tenement slums of despair. Rats are their living companions; the city streets are their schoolrooms; and the back alleys are their playgrounds.

Ten thousand die daily from starvation; but 5,000 more are born each hour to take their place. Our water resources are rapidly being depleted, to say nothing of our food supplies and the ability to produce sufficient quantities of food in a given period of time.

Men such as Presidents Eisenhower, Kennedy, and Johnson have called the population problem the world's greatest crisis; yet, the Federal government, which spends $170 million on a supersonic aircraft and $50 million on rat control, allows only $35 million for population control.

Over 50% of our nation is under the age of twenty-five--the generation of social awareness and concern for their fellow man. Can you imagine what it will be like in ten or twenty years? Demographers estimate that in the not-too-distant future there will be one square foot of earth for each person. And in addition to the land, food, and air supply, can you imagine the emotional strain of living, working, and trying to seek reaction in a vast pushing shoving, sea of humanity?

It's a world where the rich and middle class get what breaks there are, while the poor get what's left over. The "Battered Child Syndrome," where babies are beaten, maimed, abused because they are unwanted and unloved; the addicted baby, born of a heroin-addicted mother, a baby who dies within three to four days an agonizing death from withdrawal symptoms; the quack abortion deaths, whose underlying causes are fear, ignorance, poverty, or all three--are all so unnecessary, murderously unnecessary.

But there is hope. The Parents' Aid Society runs a free abortion counselling service, where anyone may get help with their pregnancy problems. We run this service because we believe that it is a woman's basic right to determine when and if she wishes to become a mother.

But we have also taken this fight for women's rights to the courts. In Massachusetts I have tested the constitutionality of the Massachusetts anti-birth control law, which forbids unmarried women the right to receive birth control information and materials. During a lecture at BU in April 1967, I was arrested and have been convicted for showing a birth control pill and giving an unmarried woman Emko foam. The case is now before the Massachusetts Supreme Court, and if my conviction is upheld, I could spend up to ten years in jail.

This is where you can help. Here is your opportunity to do something not only for yourself, but for others. Help change this law. Help the people of the ghettos; but also, help yourself. Just because you are sophisticated enough to get around the law, don't let the law exist, just because it doesn't hurt you directly.

In the Union Link is a table where you can sign up to help fight this discrimination. Sign the petition, show your support, and be at the courthouse in Government Center on Monday, December 2 at 9:00 am to show the legislators your concern for these injustices. This archaic law has not been before the Supreme Court since 1917. You have a great opportunity to speak out on whom you want to own your body--you or the state.

It takes courage to speak out against injustice, but it takes a special kind of guts to fight it also. Which do you have?

Court Hears Appeals on Baird, State Drug Law

Boston Globe Dec 3, 1968

7 Justices Told Birth Control Wrong

The Massachusetts law making it a crime to distribute information on birth control and abortion was taken under advisement yesterday by state Supreme Judicial Court.

Arguments were heard by the court's full panel of seven judges in an hour long debate on an appeal by William R. Barid, 34, of Hempstead, N.Y.

Baird was found guilty in Suffolk Superior Court Oct. 17, 1967, on charges of violating the law after he discussed birth control articles and exhibited them at a Boston University student assembly on April 7, 1967. If his conviction is upheld Baird faces a maximum sentence of five years in prison and a $1000 fine.

The court will probable deliver its finding sometime early in January.

Baird was indicted under provisions of the "Crimes against Chastity laws, which date from 1897.

Defense Atty, Joseph J. Balliro argued that the law violates Baird's constitutional right to free speech and interferes with an individuals "private right" to protect his health and his life.

Balliro told Chief Justice Raymond S. Wilkins and the court's six associate justices: "Unless this statute is struck down, we will continue to be faced with a very monstrous thing, the effects of unwanted pregnancies."

He argued that such pregnancies present a far greater problem than venereal disease or in morality.

Balliro said that the present law "amounts to a complete, broad and sweeping proscription against any and all birth control activities."

Baird, who has been free on bail pending the appeal, was accompanied to the court by his wife and two of his children.

Approximately 20 supporters marched outside the courthouse, some carrying signs calling for abolition of the law..

Asst. Dist. Atty. Joseph R. Nolan, who prosecuted Baird at the Superior Court trial, said that the object of the state law 'certainly is morality and morals. "

Referring to Baird's speech before the Boston University students, many of them coeds, Nolan said:

'If ever there was an open invitation to promiscuity and sexual license it could not have been better made than by the defendant's own remarks.

"The argument that freer birth control information will reduce illegitimacies is unsound," Nolan said.

He argued that any change in the present law should come from the Legislature and not from the courts.

Jail for Pot Use Called Out of Date

The Massachusetts narcotics law which bans marijuana as a harmful drug and provides jail terms for possession of pot was challenged as out of date and unconstitutional yesterday in arguments before the Supreme Judicial Court.

The arguments came as the full bench of the High Court heard cases involving Joseph D. Leis, 26, and Ivan Weiss, 25, both of Philadelphia, who were convicted in March, 1967 of possession of five pounds of marijuana. The two men were taken into custody on March 11, 1967 when they claimed a trunk containing the drug at Logan International Airport.

The case attracted national attention when Superior Court Chief Justice G. Joseph Tauro held a three weeks hearing at which experts testified concerning the use and effects of marijuana.

In arguments before Supreme Court Chief Justice Raymond S. Wilkins and six associate justices, Special Asst. Dist. Atty. James D. St. Clair warned that the "great weight of medical opinion is that marijuana is a harmful and dangerous drug." St. Clair argued that "there is no constitutional right to smoke marijuana."

Joseph S. Oteri, counsel for Leis and Weiss, in urging the court to invalidate the state drug law as far as marijuana is concerned, said that "the legislature should update the law in the might of modern scientific knowledge. A person should have a right to choose his own intoxicant," Oteri said in arguing that the effect of marijuana is less harmful than that of alcohol.

"A million and a half students have been using this drug," Oteri said. He argued that marijuana "has potentional harm to a miniscule number, and to a vast number has no danger."

St. Clair said that medical testimony given at the Superior Court hearing last year showed that "marijuana is more dangerous than alcohol. There is a clear association between marijuana and hard narcotics, and to say that one does not lead to the other is shutting our eyes to the reality of the situation," St. Clair said.

St. Clair said that the present Massachusetts drug law which includes marijuana in its ban "is a constitutional exercise of the police power for protection of the health, safety, and welfare of the public."

Oteri attacked the law as being unconstitutional because "the severity of the sentence alone is enough to make it cruel and unusual punishment. This whole business of arresting kids for being present and for possessing small amounts of marijuana is creating a drain on our potential resources," he said.

"We are making felons or potential felons out of our future leaders," Oteri told the justices.

CHRONICLE
NORTH ATTLEBORO, MASS.
(E) 4,730

MAR 23 1970 New England Newsclip

U.S. Judge Turns Down Baird Plea

BOSTON (UPI) — A federal District Court judge denied today a petition of habeas corpus by William R. Baird, a birth control crusader serving a three-month jail term for distributing a birth control device to an unmarried coed.

Baird had sought his release from the Charles Street Jail, claiming the state laws under which he was convicted violated his constitutional rights of free speech.

However, Judge Anthony Julian said his court agreed with the Massachusetts Supreme Court which ruled that the "bestowal of a contraceptive foam to a young woman" in a Boston University audience" April 7, 1967, added nothing to the understanding of the lecture (Baird was giving) and was not an exercise of a right guaranteed under the First Amendment."

The judge said, therefore, Baird "is not in custody in violation of the constitution and laws of the United States."

HERALD NEWS
FALL RIVER, MASS.
(E) 41,946

MAR 23 1970 New England Newsclip

Baird Stays In Jail

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Baird, 37, of Hempstead, N.Y., has about seven weeks to go on his jail sentence.

Boston Globe
SUNDAY, AUGUST 8, 1971

Baird charged with 'endangering morals' of girl, 14 months

United Press International

HEMPSTEAD, N.Y. — Birth-control dvocate William R. Baird said yesterday is arrest on charges of corrupting a 14-nonth-old girl, by exposing her to a lec-ure on means of contraception and abor-ion, proves "my political enemies want to mear me with a morals charge."

Baird and Nancy Manfredonia, 28, nother of the baby girl whose morals he is harged with endangering, were arraigned nd released in their own recognizance ter spending Friday night in Suffolk ounty (N.Y.) jails.

They are to be tried Sept. 30 in the 1st strict Court in Hauppauge, N.Y.

Mrs. Manfredonia, with her husband, ter, and their infant daughter were in e audience at a meeting in Huntington, Y., where Baird spoke Friday night.

The meeting was interrupted by three tectives and two uniformed patrolmen oking for minors whose morals might ve been impaired by what police called graphic displays of methods of birth trol and means of self abortion."

Baird was arrested for making the lec-re and Mrs. Manfredonia for bringing e infant to hear it. No one else was rested.

A police spokesman said the two were rged under a state law penalizing any-who "knowingly acts in a manner ely to be injurious to the physical, men-or moral welfare" of a child.

"That covers everything from mo-ing to dirty movies to not caring for hild properly," he said.

Mrs. Manfredonia was scornful about charge. "My child can hardly say e than Mama and Dada, let alone un-stand what is going on at a meeting," said, adding that she brought the in-t to the meeting because she couldn't l a baby sitter.

Baird, whose outspoken advocacy of h control has gotten him in trouble in ral states, also was taken aback by the action.

"I usually plan my arrests for test against birth control laws," he said. dded sarcastically that "if the police were interested in the child, they wouldn't have left a diaphragm, a box of birth control pills and a coil (seized at the lecture) in front of her at the station house."

Newsday
THE LONG ISLAND NEWSPAPER
10 CENTS SATURDAY AUGUST 7, 1971

Abortion Advocate Jailed: An Infant Was in Audience

Newsday Photo by Dick Hansmann

Suffolk police interrupted a lecture on abortion and birth control in Huntington last night to arrest the speaker, William Baird, and Mrs. Nancy Ann Manfredonia, who had her 14-month-old daughter with her. The police charged Baird and the mother with endangering the welfare of a minor. At left, Peter Manfredonia ministers to the welfare of daughter Kathryn. Page 5.

Baird, who lives in Hempstead, and Mrs. Manfredonia, who lives in Central Islip, are Liberal candidates for supervisor in their towns. The communities are in different counties, however, and Mrs. Manfredonia said she and Baird had never met.

Newsday Tuesday, February 1, 1972

Village's Abortion Ban Struck Down

By Jerry Morgan

Hempstead Village's ban on abortions in clinics that are not affiliated with hospitals was struck down yesterday in a unanimous decision by the Appellate Division of State Supreme Court.

The decision by the four-judge panel could affect other local abortion bans because it said that "the state has not conferred the power upon a village to enact an ordinance of this kind . . . The regulation of the practice of medicine, and there can be no doubt that such is the effect of this ordinance, is not a matter of an inherently local nature and has never, as far as we can perceive, been considered to fall under the autority of the village level of government." The justices said that local authority concerning health and welfare was limited to local problems soch as sewage, rubbish disposal and the removal of health hazards.

Laws similar to that of Hempstead Village are in effect in the Towns of North Hempstead, Oyster Bay and Hempstead, and in the Cities of Glen Cove and Long Beach. In Suffolk County, non-hospital abortions have been restricted in Huntington and Babylon Towns, and the county health board has banned non-hospital abortions. Hempstead Village's law, which limits abortions to hospitals and clinics with hospital affiliations was the first of its kind when it was passed in March. The law was challenged by William Baird, who operates a private clinic in the village, but it was upheld in October in State Supreme Court. Yesterday's decision was on an appeal of that ruling.

The village attorney Saul Horowitz, said when notified of the decision that he would have to discuss the possibility of an appeal to the Court of Appeals, the state's highest court, with the mayor and board of trustees. But, he siad, "our law was the first and others were patterned after it, so it might directly affect them."

Hempstead Mayor Dalton Miller said: "If this is the decision, we have an obligation to the citizens of the village to appeal. There is a hospital in the village where abortions can be done. I am not happy with the report."

Baird, however, was happy. "This is the best news I've had all year," he said. "This decision reflects our thinking at the very outset." Baird said his clinic would be open tomorrow.

William Cohn, attorney for the Eastgate Clinic in Garden City, which is fighting the Town of Hempstead's law, said last night: "This will make my case stronger. It's very interesting. I'm happy about it, you can quote me on that." Hempstead Town Attorney Howard Levitt said: "Naturally, that is a separate case, so it won't automatically apply to the town ordinance. But, at the same time, of course, the law we have is patterned exactly after the village's. The contents are identical. I think what will happen is that we will probably go into court with them on an agreed set of facts and see if it [the decision] applies equally to the town."

The town has two abortion clinics, Eastgate and a clinic run by Dr. Saul Bilik in Westbury.

The October decision by State Supreme Court Justice Sol Wachtler, upholding the village's law, contradicted a State Supreme Court in Rockland County, which overturned a similar local ban.

Long Island Press
April 17, 1978
11

Baird arrested delivering a letter

Abortion advocate Bill Baird of Valley Stream, L.I., was arrested on disorderly conduct charges in Washington, D.C. yesterday. He was released on $253 bail and ordered to appear in a Virginia court on Monday morning.

Baird was seized while standing in the hallway of Washington's Marriott Twin Bridges Hotel. He was waiting to deliver a letter to representatives of the National Bishops Conference, which was meeting at the hotel.

The letter asked the bishops, among other things, to "stop inflammatory rhetoric calling pro-abortionists murderers and baby-drowners," and to "stop breaking section 3C of law 5.01" — a federal statute forbidding lobbying by tax-exempt groups.

Baird also requested permission to show the bishops a 10-minute "educational" film on abortion.

Joseph Horgas, a private detective hired for the conference by either the bishops or the hotel, made the arrest. Baird claimed he was standing outside the conference room when Horgas suddenly shouted, "Get out of here, you're under arrest."

The abortion advocate was answering a reporter's question on how many women he has aided, and he thinks his revelation that 62 per cent of them were Catholic "might have set Horgas off."

Horgas is a Catholic who opposes abortion, Baird claims. The bishops said they had nothing to do with the arrest.

"This is as poor a move by the police as when they arrested me for corrupting the morals of a 14-month old baby," Baird said. "They can jail me or kill me, but they won't stop the abortion movement."

If convicted, he faces a possible one year jail term. Baird is represented by American Civil Liberties Union lawyers Philip Hirschkop and Dick Croodes. The arrest was his eighth.

of Greater Law

Abortion
Bill Baird resumes his battle

By SUSAN BATTLES

Birth control and abortion advocate Bill Baird, who touched down in Lawrence at about this time last year when he caused a furor with his opinions, is back in Massachusetts causing another storm of controversy.

The boyish-looking father of four has opened an abortion clinic on Boylston Street in Boston, and has announced that pregnant females aged 13 and older who want abortions may have them performed by his staff of three doctors, all imported from New York.

Speaking from his birth control and abortion clinic in Hempstead, N.Y. Tuesday night, Baird said he opened his Boston facility on Nov. 15, and has already aborted women from Greater Lawrence as well as women from other parts of the Eastern seaboard.

"I'm again at war with the Roman Catholic Church," Baird said, recalling the incident in Lawrence last year when the Brotherhood of Temple Emanuel withdrew his Man of the Year Award because of threats of an economic boycott from area Catholics and members of the local Right to Life group.

Baird said he has filed suit in the U.S Federal Court asking that all Massachusetts Board of Health regulations regarding abortion be declared unconstitutional.

Those regulations, he said, include age limits which deny minors the right to an abortion without parental consent.

The state health board's regulations also require certain kinds of equipment which, Baird said, are unnecessary, extremely expensive, not required during normal childbirth, and not required in other states.

He said childbirth in Massachusetts isn't regulated—babies can be delivered in homes and in the back seats of taxis as well as in the hospital; vasectomies for males can also be given at home, in a doctor's office, in clinics, or, if the patient chooses, in the hospital.

But when it comes to abortion, he said, the state has devised all kinds of regulations which, he said, are blatantly unconstitutional.

BILL BAIRD... 'I'm again at war with the Roman Catholic Church.'

Baird said he has also filed a $3 million damage suit against Rhode Island state Senator Erich Taylor, who, on a radio program on WMEX in Boston referred to Baird as a "murderer" Sen. Taylor is prominent in Rhode Island's Right to Life movement.

"This is the first time in this country that a person must prove in court that abortion is murder," Baird said. Up until now, he said, persons could and did make accusations like Sen. Taylor's without fear of legal reprisal.

The long-term birth control crusader said he hasn't forgotten his experience in Lawrence last year. He ranks it as one of the more incredible in his career of fighting for the right of women to control their own bodies.

He said the withdrawal of the Temple's award ranks with his eight separate imprisonments in five different states for a variety of "crimes."

Baird said he challenges the members of the local Right to Life group to an open debate any time they wish to air their opinions in a public forum.

Baird said that since the controversy in the city in October 1972, he has never been invited to Merrimack Valley either to speak or debate even though he tried for weeks to get a public forum together to discuss the abortion issue after the Man of the Year award was withdrawn.

"I would like the people in Lawrence to know that as conservative as they may be, their sex drive is no different from that of people in New York—they are having sexual intercourse as much as people in New York, and women are getting pregnant and are needing help," Baird declared.

Although his clinic in Boston is only a few weeks old, people from Lawrence are already coming to it, because its existence has spread through word-of-mouth, he said.

He emphasized that his clinic does free pregnancy testing which is strictly confidential, and that no teenager has to be afraid her parents will be notified or consulted in any way

Baird said he often finds himself defending his position on abortion, not only on moral but on financial grounds. He says both his clinics are strictly non-profit—the only income he makes is through speaking engagements.

Next week, Baird said, he plans to be at his Boston clinic to oversee its operation. He said he had to staff the clinic with New York doctors who are licensed to practice in Massachusetts because he hasn't yet found any in Massachusetts who care to abort 13 year-olds, since it is as yet considered illegal.

Baird pointed out that the Federal court has 20 days to make a ruling on his suit against the state Board of Health.

"I ve never lost a case in 10 years." he said.

Pro-abortion walkers arrive at Statehouse

GREAT BARRINGTON — The six-day, cross-state "Abortion Freedom March" by 11 Simon's Rock Early College students ended at the Statehouse in Boston yesterday when the students presented to a governor's aide petitions supporting the "right of minors" to have abortions without parental consent.

Sally B. Unger, a Simon's Rock student who organized the march on behalf of women's rights advocate Bill Baird, said the group spoke for about 15 minutes with David S. Liederman, chief secretary to Gov. Michael S. Dukakis, and asked that the governor make a statement about the rights of minors seeking abortions.

Ms. Unger said three male and eight female students participated in the march, which began in Westfield last Thursday.

She said they stayed in private homes and churches en route.

Pro-choice Baird sees 'death of abortion law'

DURHAM — Bill Baird, a major figure in the pro-choice movement for 18 years, warned a University of New Hampshire audience last night that a woman's right to an abortion is in jeopardy.

"You are witnessing the death of the abortion law in the next two to three years unless people like yourselves get outraged and fight back," Baird said.

Citing many recent high-level government appointments by President Reagan and activities of groups such as the Moral Majority, Baird said, "We're going to be in for a very rough time unless we raise our voices in protest."

If abortion is outlawed, Baird predicted women again will die from using coat hangers and other unsafe devices to terminate unwanted pregnancies.

However, Baird, who owns clinics that have been bombed, said he probably will bow out of the pro-choice fight in a year or two.

"Everyone has a breaking point," Baird said, recalling his arrests, court battles and struggles in the pro-choice movement.

One case involving Baird reached the U.S. Supreme Court and was cited in the landmark decision overturning laws prohibiting abortion.

Baird, whose speech was sponsored by the UNH Chapter of the National Abortion Rights Action League, characterized his support of abortion laws as a "freedom fight," adding that "unless women are free, none of us are free."

In his talk, which was attended by an audience of about 300, Baird had harsh words for the Roman Catholic Church and many anti-abortion organizations that he called a "well-financed minority."

Baird asked, "Have you ever heard of anyone from our side invading a right-to-life headquarters?"

He said, "The mentality of the opposition" and protest activities done "in the name of God" are "unlike anything you've ever seen until you do battle with them."

Baird told members of the audience who opposed abortion that he'd defend their right to reject abortion but that he'd didn't beleive they should have the legal right to tell him what to believe.

Citing the case of Somersworth's Joseph Borges, who was accused of criminal trespass, criminal threatening and assault at the Portsmouth Feminist Health Center, Baird said, "I'd never dare do what that man did."

Baird urged the audience of predominantly women, "If what I say makes sense, fight back."

FRAMINGHAM, MASS.
D. 50,300

APR 24 1981

New England Newsclip

Baird resumes battle

Abortion consent law final

Planned Pkd

By RUTH YOUNGBLOOD
United Press International

BOSTON — Desperate unwed teen-agers found their abortions scheduled for today cancelled with nowhere to turn except concerned counselors trying to explain a law requiring them to obtain consent from their parents or a Superior Court judge.

Abortion rights advocate William Baird, calling the state supreme court's refusal to block the abortion consent law "a tremendous blow to the freedom of young people," set up "Teen-Age Hotlines" and resumed his seven-year-old legal battle.

The justices Thursday voted 3-2 to deny the requests of Baird and the Planned Parenthood League of Massachusetts for a preliminary injunction halting enforcement of the controversial law necessitating parental or judicial approval in advance for abortions for unmarried women under 18.

Attorneys for Baird then filed a motion for an evidentiary hearing before the high court challenging the 1980 statute.

A spot check of Boston area clinics indicated several scheduled abortions on minors were cancelled, with the agitated patients asking, "What should we do?"

Most youngsters were unaware that the law had gone into effect.

"My parents are very strict," said one frantic girl who asked to remain anonymous. "They'd never approve of an abortion, and how am I supposed to get out of school without them knowing to see a judge?" she asked.

Six counselors manned the phones at Baird's Boston abortion clinic, patiently explaining the stipulations of the statute and the technicalities of obtaining an attorney while Planned Parenthood provided a similar service.

A spokesman for the 9,500 member Massachusetts Medical Society said the organization will study the law and issue appropriate guidelines to physicians.

Violation of the law by a doctor is treated as a misdemeanor; there are no penalties for the minor.

The one-paragraph order issued by the supreme court Thursday said, "There has been an insufficient showing on this record of irreparable harm" to warrant an injunction.

Nicki Nichols Gamble, executive director of Planned Parenthood, said, "We're going to monitor developments with an eye toward litigation."

Describing the law's stipulations as "horrible for women of any age," Ms. Gamble said her group "will be taking another look at this when we have records of hardship."

Ms. Gamble, "appalled at what this is going to mean for young women unable to speak with their parents," said they'll have to "appeal to an absolute stranger in a black robe."

"Some will go out of state, some will carry unwanted children to term and some will obtain abortions illegally," Ms. Gamble predicted.

BROCKTON ENTERPRISE AND
BROCKTON TIMES
BROCKTON, MA
D. 69,560

AUG 29 1981

New
England
Newsclip

Bill Baird's a tired man, but refuses to quit

By AMY BLOTCHER
Enterprise Staff

Practically every word out of Bill Baird's mouth, even the words used to partially describe what he is — abortion activist — is controversial.

During his 18 years of fighting for women's rights to freedom of choice for abortion and birth control, he has also been described as a devil, a murderer, a "corrupter of morals" and a perpetrator of "crimes against chastity."

After 18 years, Bill Baird is tired. . . tired but still fighting.

"It wears you down," he said during an interview this week. Baird was in Brockton approaching churches and schools about the possibility of giving lectures this fall. "It hurts when I read that I'm a devil or a murderer."

Yet, Baird is not about to forsake his cause, a cause for which he has been jailed eight times in five states for talking about birth control. His name has been placed on two cases before the U.S. Supreme Court.

Although national polls have said that 70 percent of the American people support legalized abortion, Baird worries that Right to Life activists may succeed in pushing through a Constitutional amendment that human life begins at conception, making abortion equivalent to murder.

Nineteen states of the 34 needed for ratification, including Massachusetts, have already passed amendments that human life begins at conception.

"You will see the death of your rights as a woman in the next two to three years, unless women become agressive," he predicted.

Baird believes the separation of church and state, one of the basic commandments of our society, is being eroded.

"The people of Massachusetts have been so brainwashed by the political arm of the Roman Catholic Church and few people have the guts to tell Humberto Cardinal Medeiros that we appreciate his viewpoint but he has no right to use his political base to force all Americans to believe by law that a fertilized egg is a person," Baird said.

Abortion, he said, agreeing for once with his pro-life opponents, is a moral issue. "It is a moral question, but a personal and a private one."

There is where any similarity in thinking between him and his opponents end. "I think it's evil to bring a baby into the world that you can't care for, won't love," he said.

According to Baird, there were two events that caused him to become, in his own words, a "social reformer." The first was the death of his sister, Louise, at age 12, when he was nine. She was recuperating from a ruptured appendix when she died of a cerebral hemorrhage while in the hospital. Baird said her death may have sensitized him to womens' needs, especially since a doctor originally misdiagnosed the case, saying the girl was suffering from menstruation cramps.

The second event occurred in the early 1960s, when as medical director for a pharmaceutical firm, he made a call at a hospital in New York and a woman who had attempted to abort herself died in his arms, a coat hanger still embedded in her uterus. The incident made him resolve to fight for legal abortion and birth control.

The Brooklyn-born Baird opened the first birth control - abortion center in the nation on Long Island in 1965 when the New York legislature liberalized its birth control laws. Today is is the director of two additional centers, a second one in New York and one on Boylston Street in Boston.

The centers provide counseling and birth control services to 90,000 patieants a years, with doctors and nurses performing a total of 10,000 abortions. Costs for an abortion range from zero to $175, depending on the individual's ability to pay.

Baird was jailed for the first time for exhibiting contraceptives in defiance of a New Jersey law in 1965.

In 1967, when only doctors in Massachusetts were allowed to distribute birth control devices, and then only to married couples, Baird gave a lecture at Boston University about birth control. When he gave a can of spermicidal foam to an unmarried 19-year-old, he was arrested. He was convicted and in 1970 spent 36 days in the Charles Street jail, "chasing rats out of my cell."

BILL BAIRD
. . . he refuses to quit

Advocate of abortion rights wants 'DMZs around clinics

THE SPRINGFIELD MORNING UNION 4/17/85

By KATHLEEN MELLEN

AMHERST — Bill Baird, advocate for women's rights to legally use birth control and have abortions, says the nation is facing a violent "shooting war" on the issues, but has not yet awakened to the fact.

Baird, whose abortion clinic in New York City was firebombed in 1979 with 50 patients and staff members on the premises, spoke Tuesday at the University of Massachusetts about the increasing number of bombings at clinics. To date, he said, 63 clinics have been damaged or totally destroyed by such bombings.

In response, Baird calls for what he calls a 50-foot 'DMZ' (demilitarized zone) in front of every abortion clinic in the country.

Fifteen years ago this week, Baird was arrested at Boston University for displaying a poster showing different methods used by women to abort unwanted children, including coat hangers and knitting needles.

□ □ □

Today, Baird said, young people don't even know about the methods that were used for many illegal abortions.

"This generation has been raised in a time when both abortion and birth control are legal," he said, but the right of women to choose these options is being drastically and violently attacked.

Baird places the blame for the attitude on what he calls "rightist terrorists" who have been psychologically and physically attacking clinic patients.

He also blamed President Reagan and the Catholic Church for their lack of tolerance on the abortion issue.

Reagan, said Baird, "has done more to set back human rights than any president in modern times."

He also called for the bishops of the Catholic Church to "learn tolerance" for the many people of different faiths whose religions do not condemn abortions.

"I believe in the right to demonstrate," said Baird, but "the right to freely walk in and out without being punched, kicked, spat upon or psychologically mugged" must be protected.

□ □ □

Baird said that the nation is now "on the verge of a shooting war and (doesn't) even know it." He said most abortion clinics now employ armed guards in order to protect themselves from violent attack.

In addition to the DMZ, Baird said he is encouraging clinics to take other precautionary measures including the use of metal screens on windows, peepholes and deadbolt locks on doors.

"We must defend ourselves. . . . If you hurt my clinic, I'll fight you to the death to protect it," said Baird.

Finally, Baird encouraged today's young people to become more active in ensuring their continued right to secure a safe and legal abortion.

"Young people today are spectators to the work now being done for their own freedom . . . a freedom being destroyed right under their noses," he said.

Baird tells FSC students 'freedom is under attack'

10/11/87 WORCESTER TELEGRAM

By LINDA KILLIAN
OF THE REGIONAL STAFF

FITCHBURG

When abortion rights activist Bill Baird asked several hundred Fitchburg State College students yesterday how many think women should have the right to choose an abortion, virtually every hand went up.

Baird was warmly received by the students, most of whom agree with him but when he began his fight 25 years ago for a woman's right to birth control information and to a safe, legal abortion he was not considered to be in the mainstream.

He was jailed eight times for speaking on those issues and involved in several Suprmeme Court cases challenging laws which restricted those rights.

Baird hasn't changed much, he's still fighting, only now more of the country is on his side.

HARD-FOUGHT RIGHTS

However, he said those hard-fought rights can quickly be taken away if a man like Robert Bork is confirmed to the Supreme Court.

"If you don't get involved, if you don't fight for your rights, can't you see how you lose those rights," Baird asked the students.

When Baird asked how many have written to their congressman or the Senate Judiciary Committee in opposition to Bork, only a few raised their hands.

Baird said he thinks the students have grown complacent about the rights they take for granted.

"Please wake up, your freedom is under attack like never before," he said.

He was first jailed in New York in 1965 for showing a diaphragm during a speech. Several years later he was arrested in Boston for displaying a condom and contraceptive foam in a public appearance.

OBTAIN INFORMATION

Since that time Supreme Court cases brought by Baird upheld an individual's right to obtain information about birth control the right of a minor to receive an abortion without the consent of her parents and laid the groundwork for the case legalizing abortion.

Twenty or even 10 years ago the display Baird showed the students of contraceptive devices would have been shocking.

Far more shocking to the students were the examples of implements women used for illegal abortions prior to the Supreme Court decision legalizing abortion.

The stories of knitting needles and coat hangers, used by women before many of the students were born, no doubt sounded almost improbable to them.

However, Baird contended Fitchburg hasn't changed all that much. When he visited the city 10 years ago he threatened to start an abortion clinic and he said by a call he made to Burbank Hospital yesterday there may still be a need for such a place.

THERAPUTIC ABORTIONS

Baird said when he called Burbank and asked about abortion services he was told only therapeutic abortions are performed there.

"We haven't gone very far in this country," said Baird.

Baird said he still gets death threats and points to the recent firebombing of abortion clinics, including his own on Long Island as evidence of those opposed to his ideas.

"I have to worry about being shot . . . I have to worry about being punched," he said.

About a dozen people protested outside the auditorium where Baird was speaking and listened to his speech.

One man holding a crucifix asked Baird, "Do you believe in the law of God as taught by Jesus Christ."

'FILLING THEM WITH LIES'

A small group waited until after his speech to challenge Baird.

"These are good kids and you're duping them and you're filling them full of lies," an older woman said to Baird.

"You are murdering a person when you perform an abortion. You hate God . . . you are getting even with God," said the woman, who refused to give her name.

Lynda Magner, a 20-year-old elementary education major from Woburn called—Baird "quite a guy."

She said she was very impressed with his speech and was shocked to think that he had been arrested at one time for disseminating information about birth control.

"I wouldn't choose to have an abortion but I think I should have the right to choose one if I want one," said one student.

She said she did not want to give her name because she has seen anti-abortion protesters stopping people going into a Worcester clinic and "I'm scared by these people."

'HAVE RIGHT TO CHOOSE'

"They're very quick to condemn everybody else," she said.

"I think they're way off. I just think we should have the right to choose," said Julie Heinze, a 19-year-old FSC sophmore from North Andover.

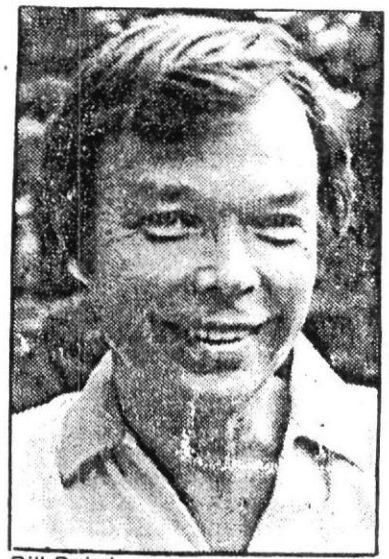
"Look at all the decent people who support abortion rights. Are all these people murderers?" Baird asked the students.

About 60 of the students were members of a Psychology of Human Sexuality class at FSC but the rest showed up because they were interested, said psychology professor Alan Bernstein.

"They have choices to make in their lives. The important thing is that they have the right to hear it," he said of the discussion between Baird and the anti-abortionists.

When he began the quest for reproductive rights, Baird said he never thought he would still be fighting 25 years later, but he admitted he doesn't know how to give up.

Many women and others on the same side of the issue have often disassociated themselves with Baird and characterized him as someone with a talent for self-promotion.



Bill Baird

But Baird, who runs non-profit abortion clinics in Boston and Long Island said he is certainly not in it for the money and it has even caused him to lose his family.

He also points to the time he has spent in jail as part of the heavy sacrifice he has made for the cause.

"I can't even get my own kids to get fired up" about the cause, he said.

Baird, who speaks frequently around the country, said he would like to ease up but he just doesn't see anyone willing to take up the fight.

"I have done a lot of good for this nation," said Baird.

"I'm certain 100 years from now he will be remembered as one of the historical figures," said Bernstein.

—AP Photo

BILL BAIRD: "The real root of the anti-abortion movement is to keep women at home waiting with the pipe and slippers. It's called control."

Bill Baird fears anti-abortion issue will start civil war

By DANA KENNEDY
Associated Press

BOSTON — Bill Baird says he's more worried than at any other time during the 26 years he has fought for birth control and abortion rights.

Baird said he fears that his work, which led in part to the 1973 Supreme Court decision legalizing abortion, might swiftly come undone. And he's concerned that no one understands what's at stake in the growing battle between anti- and pro-abortion activists.

"I see war," Baird said. "I see that this nation has a real potential to turn into Northern Ireland unless people take seriously this holy war being waged."

Baird, 56, predicts women are about to lose important civil rights allowing them to have abortions and to choose birth-control devices. He describes the onslaught against abortion as the result of an aggressive right-wing agenda initially promoted by the Reagan administration.

"The real root of the anti-abortion movement is to keep women at home waiting with the pipe and slippers," he said. "It's called control."

Baird says he began his crusade in the early 1960s when a woman died in his arms after a self-inflicted abortion attempt with an eight-inch coat hanger. Baird said he believes that American women might be forced to return to that era.

"I grieve over the fact that America seems fast asleep at the wheel," Baird said during a recent interview at his counseling and referral clinic in Boston. "Americans should wake up and learn that freedom isn't free."

Despite his years battling anti-abortion activists, Baird has never taken a public stance on the morality of choosing an abortion.

"And I never will," he said. "We men have been telling women what to do for too long. When I'm asked the question in debates, I always say, 'I'll never get pregnant, it isn't up to men to decide for women.' "

Baird often travels with a voluminous file of old press clippings that detail his brushes with the law — like his 1967 arrest for distributing contraceptives to Boston University students.

For a man closely associated with the once-revolutionary concept of sexual freedom, Baird leads a near-monastic life.

He has lived 400 miles apart from his wife and 4 children for almost 15 years. The decision to live separately came after his children became the target of death threats. Baird moved them to an undisclosed town somewhere in New England and lives alone "behind a six-foot-high fence" on New York's Long Island.

Baird's two other counseling clinics are in Hempstead and Hauppage on Long Island. His clinics do not offer abortions because they became too expensive to perform, he said.

Baird said he is "painfully lonely" and admitted that his children harbor some resentment over his work and the family's separation.

But nothing can stay him from his crusade. He said he recently worked night and day on behalf of a comatose New York woman who was allowed by a judge to have an abortion earlier this month over the objection of anti-abortion activists.

"I see myself as the candle that lights the darkness of ignorance and sexism," Baird said. "I don't have much money but I'm the most stubborn man you'll ever meet in your life."

Baird is most bitter about a 1971 incident in which he gave a lecture on birth control before an audience that included a mother and her 14-month-old child and was arrested for corrupting a minor.

He also served three months in prison for distributing contraceptives. He said he still "remembers how I felt standing in the ashes" after his Hempstead clinic was firebombed in 1979.

He has been shot at, spat at and reviled even by some feminists. But he will not be deterred.

"I will die fighting this cause," he said. "I eat, sleep and breathe your rights."

92 S.Ct. 1029
Supreme Court of the United States

Thomas S. EISENSTADT, Sheriff of
Suffolk County, Massachusetts, Appellant,
v.
William R. BAIRD.

No. 70—17.
|
Argued Nov. 17 and 18, 1971.
|
Decided March 22, 1972.

Synopsis

Habeas corpus proceeding. The United States District Court for the District of Massachusetts, 310 F.Supp. 951, dismissed petition, and petitioner appealed. The United States Court of Appeals for the First Circuit, 429 F.2d 1398, vacated the order of dismissal and remanded with instructions, and county sheriff appealed. The Supreme Court, Mr. Justice Brennan, held that Massachusetts statute permitting married persons to obtain contraceptives to prevent pregnancy but prohibiting distribution of contraceptives to single persons for that purpose violates equal protection clause.

Affirmed.

Mr. Justice Douglas filed a concurring opinion.

Mr. Justice White concurred in result and filed an opinion in which Mr. Justice Blackmun joined.

Mr. Chief Justice Burger filed a dissenting opinion.

Mr. Justice Powell and Mr. Justice Rehnquist took no part in consideration or decision of the case.

Procedural Posture(s): On Appeal.

****1030** ***438** Syllabus [*]

Appellee attacks his conviction of violating Massachusetts law for giving a woman a contraceptive foam at the close of his lecture to students on contraception. That law makes it a felony for anyone to give away a drug, medicine, instrument, or article for the prevention of conception except in the case of (1) a registered physician administering or prescribing it for a married person or (2) an active registered pharmacist furnishing it to a married person presenting a registered physician's prescription. The District Court dismissed appellee's petition for a writ of habeas corpus. The Court of Appeals vacated the dismissal, holding that the statute is a prohibition on contraception per se and conflicts 'with fundamental human rights' under Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510. Appellant, inter alia, argues that appellee ****1031** lacks standing to assert the rights of unmarried persons denied access to contraceptives because he was neither an authorized distributor under the statute nor a single person unable to obtain contraceptives. Held:

1. If, as the Court of Appeals held, the statute under which appellee was convicted is not a health measure, appellee may not be prevented, because he was not an authorized distributor, from attacking the statute in its alleged discriminatory application to potential distributees. Appellee, furthermore, has standing to assert the rights of unmarried persons denied access to contraceptives because their ability to obtain them will be materially impaired by enforcement of the statute. Cf. Griswold, supra; Barrows v. Jackson, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586. Pp. 1033—1035.

2. By providing dissimilar treatment for married and unmarried persons who are similarly situated, the statute violates the Equal Protection Clause or the Fourteenth Amendment. Pp. 1035—1039.

(a) The deterrence of fornication, a 90-day misdemeanor under Massachusetts law, cannot reasonably be regarded as the purpose of the statute, since the statute is riddled with exceptions making contraceptives freely available for use in premarital sexual ***439** relations and its scope and penalty structure are inconsistent with that purpose. Pp. 1035—1037.

(b) Similarly, the protection of public health through the regulation of the distribution of potentially harmful articles cannot reasonably be regarded as the of the law, since, if health were the rationale, the statute would be both discriminatory and overbroad, and federal and state laws already regulate the distribution of drugs unsafe for use except under the supervision of a licensed physician. Pp. 1036—1037.

(c) Nor can the statute be sustained simply as a prohibition on contraception per se, for whatever the rights of the individual to access to contraceptives may be, the rights

must be the same for the unmarried and the married alike. If under Griswold, supra, the distribution on contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible, since the constitutionally protected right of privacy inheres in the individual, not the marital couple. If, on the other hand, Griswold is no bar to a prohibition on the distribution of contraceptives, a prohibition limited to unmarried persons would be underinclusive and invidiously discriminatory. Pp. 1036—1039.

429 F.2d 1398, affirmed.

Attorneys and Law Firms

Joseph R. Nolan, Boston, Mass., for appellant.

Joseph D. Tydings, Baltimore, Md., for appellee.

Opinion

***440** Mr. Justice BRENNAN delivered the opinion of the Court.

Appellee William Baird was convicted at a bench trial in the Massachusetts Superior Court under Massachusetts General Laws Ann., c. 272, s 21, first, for exhibiting contraceptive articles in the course of delivering a lecture on contraception to a group of students at Boston University and, second, for giving a young woman a package of Emko vaginal foam at the close of his address. [1] The Massachusetts Supreme Judicial Court unanimously set aside the conviction for exhibiting contraceptives on the ground that it violated Baird's First Amendment rights, but by a four-to-three vote sustained the conviction for giving away the foam. Commonwealth v. Baird, 355 Mass. 746, 247 N.E.2d 574 (1969). Baird subsequently filed a petition for a federal writ of habeas corpus, which the ****1032** District Court dismissed. 310 F.Supp. 951 (1970). On appeal, however, the Court of Appeals for the First Circuit vacated the dismissal and remanded the action with directions to grant the writ discharging Baird. 429 F.2d 1398 (1970). This appeal by the Sheriff of Suffolk County, Massachusetts, followed, and we noted probable jurisdiction. 401 U.S. 934, 91 S.Ct. 921, 28 L.Ed.2d 213 (1971). We affirm.

Massachusetts General Laws Ann., c. 272, s 21, under which Baird was convicted, provides a maximum five-year term of imprisonment for 'whoever . . . gives away . . . any drug, medicine, instrument or article whatever ***441** for the prevention of conception,' except as authorized in s 21A. Under s 21A, '(a) registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. (And a) registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.' [2] As interpreted by the State Supreme Judicial ***442** Court, these provisions make it a felony for anyone, other than a registered physician or pharmacist acting in accordance with the terms of s 21A, to dispense any article with the intention that it be used for the prevention of conception. The statutory scheme distinguishes among three distinct classes of distributees—first, married persons may obtain contraceptives to prevent pregnancy, but only from doctors or druggists on prescription; second, single persons may not obtain contraceptives from anyone to prevent pregnancy; and, third, married or single persons may obtain contraceptives from anyone to prevent, not pregnancy, but the spread of disease. This construction of state law is, of course, binding on us. E.g., Groppi v. Wisconsin, 400 U.S. 505, 507, 91 S.Ct. 490, 491, 27 L.Ed.2d 571 (1971).

The legislative purposes that the statute is meant to serve are not altogether clear. In Commonwealth v. Baird, supra, the Supreme Judicial Court noted only the State's interest in protecting the health of its citizens: '(T)he prohibition in s 21,' the court declared, 'is directly related to' the State's goal of 'preventing the distribution of articles designed to prevent conception which may have undesirable, if not dangerous, physical consequences,' 355 Mass., at 753, 247 N.E.2d, at 578. In a subsequent decision, ****1033** Sturgis v. Attorney General, 358 Mass. 37, 260 N.E.2d 687, 690 (1970), the court, however, found 'a second and more compelling ground for upholding the statute'—namely, to protect morals through 'regulating the private sexual lives of single persons.' [3] The Court of Appeals, for reasons that will ***443** appear, did not consider the promotion of health or the protection of morals through the deterrence of fornication to be the legislative aim. Instead, the court concluded that the statutory goal was to limit contraception in and of itself—a purpose that the court held conflicted 'with fundamental human rights' under Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), where this Court struck down Connecticut's prohibition against the use of contraceptives as an unconstitutional infringement of the right of marital privacy. 429 F.2d, at 1401—1402.

We agree that the goals of deterring premarital sex and regulating the distribution of potentially harmful articles

cannot reasonably be regarded as legislative aims of ss 21 and 21A. And we hold that the statute, viewed as a prohibition on contraception per se, violates the rights of single persons under the Equal Protection Clause of the Fourteenth Amendment.

I

We address at the outset appellant's contention that Baird does not have standing to assert the rights of unmarried persons denied access to contraceptives because he was neither an authorized distributor under s 21A nor a single person unable to obtain contraceptives. There can be no question, of course, that Baird has sufficient interest in challenging the statute's validity to satisfy the 'case or controversy' requirement of Article III of the Constitution.[4] Appellant's argument, however, is that ***444** this case is governed by the Court's self-imposed rules of restraint, first, that 'one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional,' United States v. Raines, 362 U.S. 17, 21, 80 S.Ct. 519, 522, 4 L.Ed.2d 524 (1960), and, second, the 'closely related corollary that a litigant may only assert his own constitutional rights or immunities,' id., at 22, 80 S.Ct., at 523. Here, appellant contends that Baird's conviction rests on the restriction in 21A on permissible distributors and that that restriction serves a valid health interest independent of the limitation on authorized distributees. Appellant urges, therefore, that Baird's action in giving away the foam fell squarely within the conduct that the legislature meant and had power to prohibit and that Baird should not be allowed to attack the statute in its application to potential recipients. In any event, appellant concludes, since Baird was not himself a single person denied access to contraceptives, he should not be heard to assert their rights. We cannot agree.

The Court of Appeals held that the statute under which Baird was convicted is not a health measure. If that view is correct, we do not see how Baird ****1034** may be prevented, because he was neither a doctor nor a druggist, from attacking the statute in its alleged discriminatory application to potential distributees. We think, too, that our selfimposed rule against the assertion of third-party rights must be relaxed in this case just as in Griswold v. Connecticut, supra. There the Executive Director of the Planned Parenthood League of Connecticut and a licensed physician who had prescribed contraceptives for married persons and been convicted as accessories to the crime of using contraceptives were held to have standing to raise the constitutional rights of the patients with whom they had a professional relationship. ***445** Appellant here argues that the absence of a professional or aiding-and-abetting relationship distinguishes this case from Griswold. Yet, as the Court's discussion of prior authority in Griswold, 381 U.S., at 481, 85 S.Ct., at 1679, 14 L.Ed.2d 510, indicates, the doctor-patient and accessory-principal relationships are not the only circumstances in which one person has been found to have standing to assert the rights of another. Indeed, in Barrows v. Jackson, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953), a seller of land was entitled to defend against an action for damages for breach of a racially restrictive covenant on the ground that enforcement of the covenant violated the equal protection rights of prospective non-Caucasian purchasers. The relationship there between the defendant and those whose rights he sought to assert was not simply the fortuitous connection between a vendor and potential vendees, but the relationship between one who acted to protect the rights of a minority and the minority itself. Sedler, Standing to Assert Constitutional Jus Tertii in the Supreme Court, 71 Yale L.J. 599, 631 (1962). And so here the relationship between Baird and those whose rights he seeks to assert is not simply that between a distributor and potential distributees, but that between an advocate of the rights of persons to obtain contraceptives and those desirous of doing so. The very point of Baird's giving away the vaginal foam was to challenge the Massachusetts statute that limited access to contraceptives.

In any event, more important than the nature of the relationship between the litigant and those whose rights he seeks to assert is the impact of the litigation on the third-party interests.[5] In Griswold, 381 U.S., at 481, 85 S.Ct., at 1680, 14 L.Ed.2d 510, the ***446** Court stated: 'The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them.' A similar situation obtains here. Enforcement of the Massachusetts statute will materially impair the ability of single persons to obtain contraceptives. In fact, the case for according standing to assert third-party rights is stronger in this regard here than in Griswold because unmarried persons denied access to contraceptives in Massachusetts, unlike the users of contraceptives in Connecticut, are not themselves subject to prosecution and, to that extent, are denied a forum in which to assert their own rights. Cf. NAACP v. Alabama, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958); Burrows v. Jackson, supra.[6] The Massachusetts statute, unlike the

Connecticut law considered in **1035 Griswold, prohibits, not use, but distribution.

For the foregoing reasons we hold that Baird, who is now in a position, and plainly has an adequate incentive, to assert the rights of unmarried persons denied access to contraceptives, has standing to do so. We turn to the merits.

II

The basic principles governing application of the Equal Protection Clause of the Fourteenth Amendment are familiar. As The Chief Justice only recently explained in Reed v. Reed, 404 U.S. 71, 75—76, 92 S.Ct. 251, 253, 30 L.Ed.2d 225 (1971):

'In applying that clause, this Court has consistently recognized that the Fourteenth Amendment *447 does not deny to State the power to treat different classes of persons in different ways. Barbier v. Connolly, 113 U.S. 27, 5 S.Ct. 357, 28 L.Ed. 923 (1885); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911); Railway Express Agency v. New York, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533 (1949); McDonald v. Board of Election Commissioners, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969). The Equal Protection Clause of that amendment does, however, deny to State the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 64 L.Ed. 989 (1920).'

The question for our determination in this case is whether there is some ground of difference that rationally explains the different treatment accorded married and unmarried persons under Massachusetts General Laws Ann., c. 272, ss 21 and 21A.[7] For the reasons that follow, we conclude that no such ground exists.

First. Section 21 stems from Mass. Stat.1879, c. 159, s 1, which prohibited without exception, distribution of articles intended to be used as contraceptives. In *448 Commonwealth v. Allison, 227 Mass. 57, 62, 116 N.E. 265, 266 (1917), the Massachusetts Supreme Judicial Court explained that the law's 'plain purpose is to protect purity, to preserve chastity, to encourage continence and self restraint, to defend the sancity of the home, and thus to engender in the State and nation a virile and virtuous race of men and women.' Although the State clearly abandoned that purpose with the enactment of s 21A, at least insofar as the illicit sexual activities of married persons are concerned, see n. 3, supra, the court reiterated in Sturgis v. Attorney General, supra, that the object of the legislation is to discourage premarital sexual intercourse. Conceding that the State could, consistently with the Equal Protection Clause, regard the problems of extramarital and premarital sexual relations as '(e)vils . . . of different dimensions and proportions, requiring different remedies,' Williamson v. Lee Optical Inc., 348 U.S. 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563 (1955), we cannot agree that the deterrence of premarital sex may reasonably be regarded as the purpose of the Massachusetts law.

**1036 It would be plainly unreasonable to assume that Massachusetts has prescribed pregnancy and the birth of an unwanted child as punishment for fornication, which is a misdemeanor under Massachusetts General Laws Ann., c. 272, s 18. Aside from the scheme of values that assumption would attribute to the State, it is abundantly clear that the effect of the ban on distribution of contraceptives to unmarried persons has at best a marginal relation to the proffered objective. What Mr. Justice Goldberg said in Griswold v. Connecticut, supra, 381 U.S., at 498, 85 S.Ct., at 1689, 14 L.Ed.2d 510 (concurring opinion), concerning the effect of Connecticut's prohibition on the use of contraceptives in discouraging extramarital sexual relations, is equally applicable here. 'The rationality of this justification is dubious, particularly in light of the admitted widespread availability to all persons in the State of Connecticut, unmarried as well as married, of birth-control devices for the *449 prevention of disease, as distinguished from the prevention of conception.' See also id., at 505—507, 85 S.Ct., at 1689 (White, J., concurring in judgment). Like Connecticut's laws, ss 21 and 21A do not at all regulate the distribution of contraceptives when they are to be used to prevent, not pregnancy, but the spread of disease. Commonwealth v. Corbett, 307 Mass. 7, 29 N.E.2d 151 (1940), cited with approval in Commonwealth v. Baird, 355 Mass., at 754, 247 N.E.2d, at 579. Nor, in making contraceptives available to married persons without regard to their intended use, does Massachusetts attempt to deter married persons from engaging in illicit sexual relations with unmarried persons. Even on the assumption that the fear of pregnancy operates as a deterrent to fornication, the Massachusetts statute is thus so riddled with exceptions that

deterrence of premarital sex cannot reasonably be regarded as its aim.

Moreover, ss 21 and 21A on their face have a dubious relation to the State's criminal prohibition on fornication. As the Court of Appeals explained, 'Fornication is a misdemeanor (in Massachusetts), entailing a thirty dollar fine, or three months in jail. Massachusetts General Laws Ann. c. 272, s 18. Violation of the present statute is a felony, punishable by five years in prison. We find it hard to believe that the legislature adopted a statute carrying a five-year penalty for its possible, obviously by no means fully effective, deterrence of the commission of a ninety-day misdemeanor.' 429 F.2d, at 1401. Even conceding the legislature a full measure of discretion in fashioning means to prevent fornication, and recognizing that the State may seek to deter prohibited conduct by punishing more severely those who facilitate than those who actually engage in its commission, we, like the Court of Appeals, cannot believe that in this instance Massachusetts has chosen to expose the aider and abetter who simply gives away a contraceptive to ***450** 20 times the 90-day sentence of the offender himself. The very terms of the State's criminal statutes, coupled with the de minimis effect of ss 21 and 21A in deterring fornication, thus compel the conclusion that such deterrence cannot reasonably be taken as the purpose of the ban on distribution of contraceptives to unmarried persons.

Second. Section 21A was added to the Massachusetts General Laws by Stat. 1966, c. 265, s 1. The Supreme Judicial Court in Commonwealth v. Baird, supra, held that the purpose of the amendment was to serve the health needs of the community by regulating the distribution of potentially harmful articles. It is plain that Massachusetts had no such purpose in mind before the enactment of s 21A. As the Court of Appeals remarked, 'Consistent with the fact that the statute was contained in a chapter dealing with 'Crimes Against Chastity, Morality, Decency and Good Order,' it was cast only in terms of morals. A physician was forbidden to prescribe contraceptives even when needed for the protection of health. Commonwealth v. Gardner, 1938, 300 Mass. 372, 15 N.E.2d 222.' 429 F.2d, at 1401. Nor did the Court of Appeals 'believe ****1037** that the legislature (in enacting s 21A) suddenly reversed its field and developed an interest in health. Rather, it merely made what it thought to be the precise accommodation necessary to escape the Griswold ruling.' Ibid.

Again, we must agree with the Court of Appeals. If health were the rationale of s 21A, the statute would be both discriminatory and overbroad. Dissenting in Commonwealth v. Baird, 355 Mass., at 758, 247 N.E.2d, at 581, Justices Whittemore and Cutter stated that they saw 'in s 21 and s 21A, read together, no public health purpose. If there is need to have physician prescribe (and a pharmacist dispense) contraceptives, that need is as great for unmarried persons as for married persons.' ***451** The Court of Appeals added: 'If the prohibition (on distribution to unmarried persons) . . . is to be taken to mean that the same physician who can prescribe for married patients does not have sufficient skill to protect the health of patients who lack a marriage certificate, or who may be currently divorced, it is illogical to the point of irrationality.' 429 F.2d, at 1401. [8] Furthermore, we must join the Court of Appeals in noting that not all contraceptives are potentially dangerous. [9] As a result, if the Massachusetts statute were a health measure, it would not only invidiously discriminate against the unmarried, but also be overbroad with respect to the married, a fact that the Supreme Judicial Court itself seems to have conceded in Sturgis v. Attorney General. Mass., 260 N.E.2d at 690, where it noted that 'it may well be that certain contraceptive medication and devices constitute no hazard to health, in which event it could be argued that the statute swept too broadly in its prohibition.' 'In this posture,' as the Court of ***452** Appeals concluded, 'it is impossible to think of the statute as intended as a health measure for the unmarried, and it is almost as difficult to think of it as so intended even as to the married.' 429 F.2d, at 1401.

But if further proof that the Massachusetts statute is not a health measure is necessary, the argument of Justice Spiegel, who also dissented in Commonwealth v. Baird, 355 Mass., at 759, 247 N.E.2d, at 582, is conclusive: 'It is at best a strained conception to say that the Legislature intended to prevent the distribution of articles 'which may have undesirable, if not dangerous, physical consequences.' If that was the Legislature's goal, s 21 is not required' in view of the federal and state laws already regulating the distribution of harmful drugs. See Federal Food, Drug, and Cosmetic Act, s 503, 52 Stat. 1051, as amended, 21 U.S.C. s 353; Mass.Gen. Laws Ann., c. 94, s 187A, as amended. We conclude, accordingly, that, despite the statute's superficial earmarks as a health measure, health, on the face of the statute, may no more reasonably be regarded as its purpose than the deterrence of premarital sexual relations.

****1038** Third. If the Massachusetts statute cannot be upheld as a deterrent to fornication or as a health measure, may it, nevertheless, be sustained simply as a prohibition on contraception? The Court of Appeals analysis 'led inevitably to the conclusion that, so far as morals are concerned, it is

contraceptives per se that are considered immoral—to the extent that Griswold will permit such a declaration.' 429 F.2d, at 1401—1402. The Court of Appeals went on to hold, id., at 1402:

> 'To say that contraceptives are immoral as such, and are to be forbidden to unmarried persons who will nevertheless persist in having intercourse, means that such persons must risk for themselves an unwanted pregnancy, for the child, illegitimacy, and ***453** for society, a possible obligation of support. Such a view of morality is not only the very mirror image of sensible legislation; we consider that it conflicts with fundamental human rights. In the absence of demonstrated harm, we hold it is beyond the competency of the state.'

We need not and do not, however, decide that important question in this case because, whatever the rights of the individual to access to contraceptives may be, the rights must be the same for the unmarried and the married alike.

If under Griswold the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in Griswold the right of privacy in question inhered in the marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it 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. See Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969). [10] See also ***454** Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); Jacobson v. Massachusetts, 197 U.S. 11, 29, 25 S.Ct. 358, 362, 49 L.Ed. 643 (1905).

On the other hand, if Griswold is no bar to a prohibition on the distribution of contraceptives, the State could not, consistently with the Equal Protection Clause, outlaw distribution to unmarried but not to married persons. In each case the evil, as perceived by the State, would be identical, and the underinclusion would be invidious. Mr. Justice Jackson, concurring in Railway Express Agency v. New York, 336 U.S. 106, 112—113, 69 S.Ct. 463, 466, 93 L.Ed. 533 (1949), made the point:

> 'The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. ****1039** Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation.'

Although Mr. Justice Jackson's comments had reference to administrative regulations, the principle he affirmed has equal application to the legislation here. We hold that by providing dissimilar treatment for married and unmarried persons who are similarly situated, ***455** Massachusetts General Laws Ann., c. 272, ss 21 and 21A, violate the Equal Protection Clause. The judgment of the Court of Appeals is affirmed.

Affirmed.

Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Mr. Justice DOUGLAS, concurring.

While I join the opinion of the Court, there is for me a narrower ground for affirming the Court of Appeals. This to me is a simple First Amendment case, that amendment being applicable to the States by reason of the Fourteenth. Stromberg. v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117.

Under no stretch of the law as presently stated could Massachusetts require a license for those who desire to lecture on planned parenthood, contraceptives, the rights of women, birth control, or any allied subject, or place a tax on that privilege. As to license taxes on First Amendment rights we said in Murdock v. Pennsylvania, 319, U.S. 105, 115, 63 S.Ct. 870, 876, 87 L.Ed. 1292:

> 'A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.'

We held in Thomas v. Collins, 323 U.S. 516, 65 S.Ct., 315, 89 L.Ed. 430, that a person speaking at a labor union rally could not be required to register or obtain a license:

'As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights ***456** of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the State is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.

'. . . If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.' Id., at 539, 540, 65 S.Ct., at 327.

Baird addressed an audience of students and faculty at Boston University on the subject of birth control and overpopulation. His address was approximately one hour in length and consisted of a discussion of various contraceptive devices displayed by means of diagrams on two demonstration boards, as well as a display of contraceptive devices ****1040** in their original packages. In addition, Baird spoke of the respective merits of various contraceptive devices; overpopulation in the world; crises throughout the world due to overpopulation; the large number of abortions performed on unwed mothers; and quack abortionists and the potential harm to women resulting from abortions performed by quack abortionists. Baird also urged members of the audience to petition the Massachusetts Legislature and to make known their feelings ***457** with regard to birth control laws in order to bring about a change in the laws. At the close of the address Baird invited members of the audience to come to the stage and help themselves to the contraceptive articles. We do not know how many accepted Baird's invitation. We only know that Baird personally handed one woman a package of Emko Vaginal Foam. He was then arrested and indicted (1) for exhibiting contraceptive devices and (2) for giving one such device away. The conviction for the first offense was reversed, the Supreme Judicial Court of Massachusetts holding that the display of the articles was essential to a graphic representation of the lecture. But the conviction for the giving away of one article was sustained. 355 Mass. 746, 247 N.E.2d 574. The case reaches us by federal habeas corpus.

Had Baird not 'given away' a sample of one of the devices whose use he advocated, there could be no question about the protection afforded him by the First Amendment. A State may not 'contract the spectrum of available knowledge.' Griswold v. Connecticut, 381 U.S. 479, 482, 85 S.Ct. 1678, 1680, 14 L.Ed.2d 510. See also Thomas v. Collins, supra; Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070; Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042. However noxious Baird's ideas might have been to the authorities, the freedom to learn about them, fully to comprehend their scope and portent, and to weigh them against the tenets of the 'conventional wisdom,' may not be abridged. Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131. Our system of government requires that we have faith in the ability of the individual to decide wisely, if only he is fully apprised of the merits of a controversy.

'Freedom of discussion, if it would fulfill it historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.' Thornhill

v. Alabama, 310 U.S. 88, 102, 60 S.Ct. 736, 744, 84 L.Ed. 1093.

The teachings of Baird and those of Galileo might be ***458** of a different order; but the suppression of either is equally repugnant.

As Milton said in the Areopagitica, 'Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.'

It is said that only Baird's conduct is involved and United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672, is cited. That case involved a registrant under the Selective Service Act burning his Selective Service draft card. When prosecuted for that act, he defended his conduct as 'symbolic speech.' The Court held it was not.

Whatever may be thought of that decision on the merits, [1] O'Brien is not controlling here. The distinction between 'speech' and 'conduct' is a valid one, insofar as it helps to determine in a particular case whether the purpose of the activity was to aid in the communication of ideas, and whether the form of the communication so interferes with the rights of others that reasonable regulations may be imposed. [2] See ****1041** Public Utilities Comm'n v. Pollak, 343 U.S. 451, 467, 72 S.Ct. 813, 823, 96 L.Ed. 1068 (Douglas, J., dissenting). ***459** Thus, excessive noise might well be 'conduct'—a form of pollution—which can be made subject to precise, narrowly drawn regulations. See Adderley v. Florida, 385 U.S. 39, 54, 87 S.Ct. 242, 250, 17 L.Ed.2d 149 (Douglas, J., dissenting). But 'this Court has repeatedly stated, (First Amendment) rights are not confined to verbal expression. They embrace appropriate types of action . . .' Brown v. Louisiana, 383 U.S. 131, 141—142, 86 S.Ct. 719, 724, 15 L.Ed.2d 637.

Baird gave an hour's lecture on birth control and as an aid to understanding the ideas which he was propagating he handed out one sample of one of the devices whose use he was endorsing. A person giving a lecture on coyote-getters would certainly improve his teaching technique if he passed one out to the audience; and he would be protected in doing so unless of course the device was loaded and ready to explode, killing or injuring people. The same holds true in my mind for mouse-traps, spray guns, or any other article not dangerous per se on which speakers give educational lectures.

It is irrelevant to the application of these principles that Baird went beyond the giving of information about birth control and advocated the use of contraceptive articles. The First Amendment protects the opportunity to persuade to action whether that action be unwise or immoral, or whether the speech incites to action. See, e.g., Brandenburg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430; Edwards v. South Carolina, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697; Terminiello v. Chicago, supra.

In this case there was not even incitement to action. [3] There is no evidence or finding that Baird intended that the young lady take the foam home with her when he handed it to her or that she would not have examined the ***460** article and then returned it to Baird, had he not been placed under arrest immediately upon handing the article over. [4]

First Amendment rights are not limited to verbal expression. [5] The right to petition often involves the right to walk. The right of assembly may mean pushing or jostling. Picketing involves physical activity as well as a display of a sign. A sit-in can be a quiet, dignified protest that has First Amendment protection even though no speech is involved, as we held in Brown v. Louisiana, supra. Putting contraceptives on display is certainly an aid to speech and discussion. Handing an article under discussion to a member of the audience is a technique known to all teachers and is commonly used. A handout may be on such a scale as to smack of a vendor's marketing scheme. But passing one article to an ****1042** audience is merely a projection of the visual aid and should be a permissible adjunct of free speech. Baird was not making a prescription nor purporting to give medical advice. Handing out the article was not even a suggesion that the lady use it. At most it suggested that she become familiar with the product line.

I do not see how we can have a Society of the Dialogue, which the First Amendment envisages, if time-honored teaching techniques are barred to those who give educational lectures.

Mr. Justice WHITE, with whom Mr. Justice BLACKMUN joins, concurring in the result.

In Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), we reversed criminal convictions for advising married persons ***461** with respect to the use of contraceptives. As there applied, the Connecticut law, which forbade using contraceptives or giving advice on the subject, unduly invaded a zone of marital privacy protected by the Bill of Rights. The Connecticut law did not regulate the

manufacture or sale of such products and we expressly left open any question concerning the permissible scope of such legislation. 381 U.S., at 485, 85 S.Ct., at 1682.

Chapter 272, s 21, of the Massachusetts General Laws makes it a criminal offense to distribute, sell, or give away any drug, medicine, or article for the prevention of conception. Section 21A excepts from this prohibition registered physicians who prescribe for and administer such articles to married persons and registered pharmacists who dispense on medical prescription. [1]

***462** Appellee Baird was indicted for giving away Emko Vaginal Foam, a 'medicine and article for the prevention of conception . . ..' [2] The State did not purport to charge or convict Baird for distributing to an unmarried person. No proof was offered as to the marital status of the recipient. The gravamen of the offense charged was that Baird ****1043** had no license and therefore no authority to distribute to anyone. As the Supreme Judicial Court of Massachusetts noted, the constitutional validity of Baird's conviction rested upon his lack of status as a 'distributor and not . . . the marital status of the recipient.' Commonwealth v. Baird, 355 Mass. 746, 753, 247 N.E.2d 574, 578 (1969). The Federal District Court was of the same view. [3]

***463** I assume that a State's interest in the health of its citizens empowers it to restrict to medical channels the distribution of products whose use should be accompanied by medical advice. I also do not doubt that various contraceptive medicines and article are properly available only on prescription, and I therefore have no difficulty with the Massachusetts court's characterization of the statute at issue here as expressing 'a legitimate interest in preventing the distribution of articles designed to prevent conception which may have undesirable, if not dangerous, physical consequences.' Id., at 753, 247 N.E.2d, at 578. Had Baird distributed a supply of the so-called 'pill,' I would sustain his conviction under this statute. [4] Requiring a prescription to obtain potentially dangerous contraceptive material may place a substantial burden upon the right recognized in Griswold, but that burden is justified by a strong state interest and does not, as did the statute at issue in Griswold, sweep unnecessarily broadly or seek 'to achieve its goals by means having a maximum destructive impact upon' a protected relationship. Griswold v. Connecticut, 381 U.S., at 485, 85 S.Ct., at 1682.

Baird, however, was found guilty of giving away vaginal foam. Inquiry into the validity of this conviction does not come to an end merely because some contraceptives are harmful and their distribution may be restricted. Our general reluctance to question a State's judgment on matters of public health must give way where, as here, the restriction at issue burdens the constitutional ***464** rights of married persons to use contraceptives. In these circumstances we may not accept on faith the State's classification of a particular contraceptive as dangerous to health. Due regard for protecting constitutional rights requires that the record contain evidence that a restriction on distribution of vaginal foam is essential to achieve the statutory purpose, or the relevant facts concerning the product must be such as to fall within the range of judicial notice.

Neither requirement is met here. Nothing in the record even suggests that the distribution of vaginal foam should be accompanied by medical advice in order to protect the user's health. Nor does the opinion of the Massachusetts court or the State's brief filed here marshal facts demonstrating that the hazards of using vaginal foam are common knowledge or so incontrovertible that they may be noticed judicially. On the contrary, the State acknowledges that Emko is a product widely available without prescription. Given Griswold v. Connecticut, supra, and absent proof of the probable hazards of using vaginal foam, we could not sustain appellee's conviction had it been for selling or giving away foam to a married person. Just as in Griswold, where the right of married ****1044** persons to use contraceptives was 'diluted or adversely affected' by permitting a conviction for giving advice as to its exercise, id., at 481, 85 S.Ct., at 1679, so here, to sanction a medical restriction upon distribution of a contraceptive not proved hazardous to health would impair the exercise of the constitutional right.

That Baird could not be convicted for distributing Emko to a married person disposes of this case. Assuming, arguendo, that the result would be otherwise had the recipient been unmarried, nothing has been placed in the record to indicate her marital status. The State has maintained that marital status is irrelevant because an unlicensed person cannot legally dispense vaginal foam ***465** either to married or unmarried persons. This approach is plainly erroneous and requires the reversal of Baird's conviction; for on the facts of this case, it deprives us of knowing whether Baird was in fact convicted for making a constitutionally protected distribution of Emko to a married person.

The principle established in Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931), and consistently adhered to is that a conviction cannot stand where the 'record fail(s) to prove that the conviction was not founded upon a theory which could not constitutionally support a verdict.' Street v. New York, 394 U.S. 576, 586, 89 S.Ct. 1354, 1362, 22 L.Ed.2d 572 (1969). To uphold a conviction even 'though we cannot know that it did not rest on the invalid constitutional ground . . . would be to countenance a procedure which would cause a serious impairment of constitutional rights.' Williams v. North Carolina, 317 U.S. 287, 292, 63 S.Ct. 207, 210, 87 L.Ed. 279 (1942).

Because this case can be disposed of on the basis of settled constitutional doctrine, I perceive no reason for reaching the novel constitutional question whether a State may restrict or forbid the distribution of contraceptives to the unmarried. Cf. Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 345—348, 56 S.Ct. 466, 482—483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring).

Mr. Chief Justice BURGER, dissenting.

The judgment of the Supreme Judicial Court of Massachusetts in sustaining appellee's conviction for dispensing medicinal material without a license seems eminently correct to me and I would not disturb it. It is undisputed that appellee is not a physician or pharmacist and was prohibited under Massachusetts law from dispensing contraceptives to anyone, regardless of marital status. To my mind the validity of this restriction on dispensing medicinal substances is the only issue before the Court, ***466** and appellee has no standing to challenge that part of the statute restricting the persons to whom contraceptives are available. There is no need to labor this point, however, for everyone seems to agree that if Massachusetts has validly required, as a health measure, that all contraceptives be dispensed by a physician or pursuant to a physician's prescription, then the statutory distinction based on marital status has no bearing on this case. United States v. Raines, 362 U.S. 17, 21, 80 S.Ct. 519, 522, 4 L.Ed.2d 524 (1960).

The opinion of the Court today brushes aside appellee's status as an unlicensed layman by concluding that the Massachusetts Legislature was not really concerned with the protection of health when it passed this statute. Mr. Justice WHITE acknowledges the statutory concern with the protection of health, but finds the restriction on distributors overly broad because the State has failed to adduce facts showing the health hazards of the particular substance dispensed by appellee as distinguished from other contraceptives. Mr. Justice DOUGLAS' concurring opinion does not directly challenge the power of Massachusetts to prohibit laymen from dispensing contraceptives, but considers that appellee rather than dispensing the substance was resorting to a 'time-honored teaching ****1045** technique' by utilizing a 'visual aid' as an adjunct to his protected speech. I am puzzled by this third characterization of the case. If the suggestion is that appellee was merely displaying the contraceptive material without relinquishing his ownership of it, then the argument must be that the prosecution failed to prove that appellee had 'given away' the contraceptive material. But appellee does not challenge the sufficiency of the evidence, and himself summarizes the record as showing that 'at the close of his lecture he invited members of the audience . . . to come and help themselves.' On the other hand, if the concurring opinion means that the First Amendment protects the distribution ***467** of all articles 'not dangerous per se' when the distribution is coupled with some form of speech, then I must confess that I have misread certain cases in the area. See e.g., United States v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678, 20 L.Ed.2d 672 (1968); Cox v. Louisiana, 379 U.S. 536, 555, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965); Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502, 69 S.Ct. 684, 690, 93 L.Ed. 834 (1949).

My disagreement with the opinion of the Court and that of Mr. Justice WHITE goes far beyond mere puzzlement, however, for these opinions seriously invade the constitutional prerogatives of the States and regrettably hark back to the heyday of substantive due process.

In affirming appellee's conviction, the highest tribunal in Massachusetts held that the statutory requirement that contraceptives be dispensed only through medical channels served the legitimate interest of the State in protecting the health of its citizens. The Court today blithely hurdles this authoritative state pronouncement and concludes that the statute has no such purpose. Three basic arguments are advanced: First, since the distribution of contraceptives was prohibited as a moral matter in Massachusetts prior to 1966, it is impossible to believe that the legislature was concerned with health when it lifted the complete ban but insisted on medical supervision. I fail to see why the historical predominance of an unacceptable legislative purpose makes incredible the emergence of a new and valid one.[1] See ***468** McGowan v. Maryland, 366 U.S. 420, 445—449, 81 S.Ct. 1101, 1115—1117, 6 L.Ed.2d 393 (1961). The second argument, finding its origin in a dissenting opinion

in the Supreme Judicial Court of Massachusetts, rejects a health purpose because, '(i)f there is need to have a physician prescribe . . . contraceptives, that need is as great for unmarried persons as for married persons.' 355 Mass. 746, 758, 247 N.E.2d 574, 581. This argument confuses the validity of the restriction on distributors with the validity of the further restriction on distributees, a part of the statute not properly before the Court. Assuming the legislature too broadly restricted the class of persons who could obtain contraceptives, it hardly follows that it saw no need to protect the health of all persons to whom they are made available. Third, the Court sees no health purpose underlying the restriction on distributors because other state and federal laws regulate the distribution of harmful drugs. I know of no rule that all enactments relating to a particular purpose must be neatly consolidated in one package in the statute books for, if so, the United States Code will not pass **1046 muster. I am unable to draw any inference as to legislative purpose from the fact that the restriction on dispensing contraceptives was not codified with other statutory provisions regulating the distribution of medicinal substances. And the existence of nonconflicting, nonpre-emptive federal laws is simply without significance in judging the validity or purpose of a state law on the same subject matter.

It is possible, of course, that some members of the Massachusetts Legislature desired contraceptives to be dispensed only through medical channels in order to minimize their use, rather than to protect the health of their users, but I do not think it is the proper function of this Court to dismiss as dubious a state court's explication of a state statute absent overwhelming and irrefutable reasons for doing so.

*469 Mr. Justice WHITE, while acknowledging a valid legislative purpose of protecting health, concludes that the State lacks power to regulate the distribution of the contraceptive involved in this case as a means of protecting health. [2] The opinion grants that appellee's conviction would be valid if he had given away a potentially harmful substance, but rejects the State's placing this particular contraceptive in that category. So far as I am aware, this Court has never before challenged the police power of a State to protect the public from the risks of possibly spurious and deleterious substances sold within its borders. Moreover, a statutory classification is not invalid.

'simply because some innocent articles or transactions may be found within the proscribed class. The inquiry must be whether, considerating the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat.' Purity Extract & Tonic Co. v. Lynch, 226 U.S. 192, 204, 33 S.Ct. 44, 47, 57 L.Ed. 184 (1912).

But since the Massachusetts statute seeks to protect health by regulating contraceptives, the opinion invokes Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965), and puts the statutory classification to an unprecedented test: either the record must contain evidence supporting the classification or the health hazards of the particular contraceptive must be judicially noticeable. This is indeed a novel constitutional doctrine and not surprisingly no authority is cited for it.

Since the potential harmfulness of this particular medicinal substance has never been placed in issue in the *470 state or federal courts, the State can hardly be faulted for its failure to build a record on this point. And it totally mystifies me why, in the absence of some evidence in the record, the factual underpinnings of the statutory classification must be 'incontrovertible' or a matter of 'common knowledge.'

The actual hazards of introducing a particular foreign substance into the human body are frequently controverted, and I cannot believe that unanimity of expert opinion is a prerequisite to a State's exercise of its police power, no matter what the subject matter of the regulation. Even assuming no present dispute among medical authorities, we cannot ignore that it has become commonplace for a drug or food additive to be universally regarded as harmless on one day and to be condemned as perilous on the next. It is inappropriate for this Court to overrule a legislative classification by relying on the present consensus among leading authorities. The commands of the Constitution cannot fluctuate with the shifting tides of scientific opinion.

Even if it were conclusively established once and for all that the product **1047 dispensed by appellee is not actually or potentially dangerous in the somatic sense, I would still be unable to agree that the restriction on dispensing it falls outside the State's power to regulate in the area of health. The choice of a means of birth control, although a highly personal matter, is also a health matter in a very real sense, and I see nothing arbitrary in a requirement of medical supervision. [3] It is generally acknowledged that contraceptives vary in degree of effectiveness *471 and potential harmfulness. [4] There may be compelling health reasons for certain women to choose the most effective means of birth control available, no matter how harmless the less effective alternatives. [5] Others might be advised not to use a highly effective means of

contraception because of their peculiar susceptibility to an adverse side effect.[6] Moreover, there may be information known to the medical profession that a particular brand of contraceptive is to be preferred or avoided, or that it has not been adequately tested. Nonetheless, the concurring opinion would hold, as a constitutional matter, that a State must allow someone without medical training the same power to distribute this medicinal substance as is enjoyed by a physician.

It is revealing, I think, that those portions of the majority and concurring opinions rejecting the statutory limitation on distributors rely on no particular provision of the Constitution. I see nothing in the Fourteenth Amendment or any other part of the Constitution ***472** that even vaguely suggests that these medicinal forms of contraceptives must be available in the open market. I do not challenge Griswold v. Connecticut, supra, despite its tenuous moorings to the text of the Constitution, but I cannot view it as controlling authority for this case. The Court was there confronted with a statute flatly prohibiting the use of contraceptives, not one regulating their distribution. I simply cannot believe that the limitation on the class of lawful distributors has significantly impaired the right to use contraceptives in Massachusetts. By relying in Griswold in the present context, the Court has passed beyond the penumbras of the specific guarantees into the uncircumscribed area of personal predilections.

The need for dissemination of information on birth control is not impinged in the slightest by limiting the distribution of medicinal substances to medical and pharmaceutical channels as Massachusetts has done by statute. The appellee has succeeded, it seems, in cloaking his activities in some new permutation of the First Amendment although his conviction rests in fact and law on dispensing a medicinal substance without a license. I am constrained to ****1048** suggest that if the Constitution can be strained to invalidate the Massachusetts statute underlying appellee's conviction, we could quite as well employ it for the protection of a ‘curbstone quack,’ reminiscent of the ‘medicine man’ of times past, who attracted a crowd of the curious with a soapbox lecture and then plied them with ‘free samples' of some unproved remedy. Massachusetts presumably outlawed such activities long ago, but today's holding seems to invite their return.

All Citations

405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The Court of Appeals below described the recipient of the foam as ‘an unmarried adult woman.’ 429 F.2d 1398, 1399 (1970). However, there is no evidence in the record about her marital status.

2 Section 21 provides in full:

‘Except as provided in section twenty-one A, whoever sells, lends, gives away, exhibits or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars.’

Section 21A provides in full:

'A registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. A registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.

'A public health agency, a registered nurse, or a maternity health clinic operated by or in an accredited hospital may furnish information to any married person as to where professional advice regarding such drugs or articles may be lawfully obtained.

'This section shall not be construed as affecting the provisions of sections twenty and twenty-one relative to prohibition of advertising of drugs or articles intended for the prevention of pregnancy or conception; nor shall this section be construed so as to permit the sale or dispensing of such drugs or articles by means of any vending machine or similar device.'

3 Appellant suggests that the purpose of the Massachusetts statute is to promote marital fidelity as well as to discourage premarital sex. Under s 21A, however, contraceptives may be made available to married persons without regard to whether they are living with their spouses or the uses to which the contraceptives are to be put. Plainly the legislation has no deterrent effect on extramarital sexual relations.

4 This factor decisively distinguishes Tileston v. Ullman, 318 U.S. 44, 63 S.Ct. 493, 87 L.Ed. 603 (1943), where the Court held that a physician lacked standing to bring an action for declaratory relief to challenge, on behalf of his patients, the Connecticut law prohibiting the use of contraceptives. The patients were fully able to bring their own action. Underlying the decision was the concern that 'the standards of 'case or controversy' in Article III of the Constitution (not) become blurred,' Griswold v. Connecticut, 381 U.S. 479, 481, 85 S.Ct. 1678, 1679, 14 L.Ed.2d 510 (1965)—a problem that is not at all involved in this case.

5 Indeed, in First Amendment cases we have relaxed our rules of standing without regard to the relationship between the litigant and those whose rights he seeks to assert precisely because application of those rules would have an intolerable, inhibitory effect on freedom of speech. E.g., Thornhill v. Alabama, 310 U.S. 88, 97—98, 60 S.Ct. 736, 741—742, 84 L.Ed. 1093 (1940). See United States v. Raines, 362 U.S. 17, 22, 80 S.Ct. 519, 523, 4 L.Ed.2d 524 (1960).

6 See also Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), where a custodian, in violation of state law, furnished a child with magazines to distribute on the streets. The Court there implicitly held that the custodian had standing to assert alleged freedom of religion and equal protection rights of the child that were threatened in the very litigation before the Court and that the child had no effective way of asserting herself.

7 Of course, if we were to conclude that the Massachusetts statute impinges upon fundamental freedoms under Griswold, the statutory classification would have to be not merely rationally related to a valid public purpose but necessary to the achievement of a compelling state interest. E.g., Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); Loving v. Virginia, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967). But just as in Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971), we do not have to address the statute's validity under that test because the law fails to satisfy even the more lenient equal protection standard.

8 Appellant insists that the unmarried have no right to engage in sexual intercourse and hence no health interest in contraception that needs to be served. The short answer to this contention is that the same devices the distribution of which the State purports to regulate when their asserted purpose is to forestall pregnancy are available without any controls whatsoever so long as their asserted purpose is to prevent the spread of

disease. It is inconceivable that the need for health controls varies with the purpose for which the contraceptive is to be used when the physical act in all cases is one and the same.

9 The Court of Appeals stated, 429 F.2d, at 1401:

'(W)e must take notice that not all contraceptive devices risk 'undesirable . . . (or) dangerous physical consequences.' It is 200 years since Casanova recorded the ubiquitous article which, perhaps because of the birthplace of its inventor, he termed a 'redingote anglais.' The reputed nationality of the condom has now changed, but we have never heard criticism of it on the side of health. We cannot think that the legislature was unaware of it, or could have thought that it needed a medical prescription. We believe the same could be said of certain other products.'

10 In Stanley, 394 U.S., at 564, 89 S.Ct., at 1247, the Court stated:

'(A)lso fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.

"The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man.' Olmstead v. United States, 277 U.S. 438, 478, 48 S.Ct. 564, 572, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting).

'See Griswold v. Connecticut, supra; cf. NAACP v. Alabama (ex rel. Patterson) 357 U.S. 449, 462, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488 (1958).'

1 I have earlier expressed my reasons for believing that the O'Brien decision was not consistent with First Amendment rights. See Brandenburg v. Ohio, 395 U.S. 444, 455, 89 S.Ct. 1827, 1833, 23 L.Ed.2d 430 (concurring opinion).

2 In Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834, the Court upheld a state court injunction against peaceful picketing carried on in violation of a state 'anti-restraint-of-trade' law. Giboney, however, is easily distinguished from the present case. Under the circumstances there present, 'There was clear danger, imminent and immediate, that unless restrained, appellants would succeed in making (state antitrust) policy a dead letter . . .. They were exercising their economic power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade.' Id., at 503, 69 S.Ct. at 691 (footnote omitted; emphasis supplied). There is no such coercion in the instant case nor is there a similar frustration of state policy, see text at n. 4, infra. For an analysis of the state policies underlying the Massachusetts statute which Baird was convicted of having violated, see Dienes, The Progeny of Comstockery—Birth Control Laws Return to Court, 21 Am.U.L.Rev. 1, 3—44 (1971).

3 Even under the restrictive meaning which the Court has given the First Amendment, as applied to the States by the Fourteenth, advocacy of law violation is permissible 'except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.' Brandenburg v. Ohio, supra, n. 1, 395 U.S., at 447, 89 S.Ct., at 1829.

4 This factor alone would seem to distinguish O'Brien, supra as that case turned on the Court's judgment that O'Brien's 'conduct' frustrated a substantial governmental interest.

5 For a partial collection of cases involving action that comes under First Amendment protection see Brandenburg v. Ohio, supra, n. 1, 395 U.S., at 455—456, 89 S.Ct., at 1833—1834 (concurring opinion).

1 Section 21 provides as follows:

'Except as provided in section twenty-one one A, whoever sells, lends, gives away, exhibits or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars.'

Section 21A makes these exceptions:

'A registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. A registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.

'A public health agency, a registered nurse, or a maternity health clinic operated by or in an accredited hospital may furnish information to any married person as to where professional advice regarding such drugs or articles may be lawfully obtained.

'This section shall not be construed as affecting the provisions of sections twenty and twenty-one relative to prohibition of advertising of drugs or articles intended for the prevention of pregnancy or conception; nor shall this section be construed so as to permit the sale or dispensing of such drugs or articles by means of any vending machine or similar device.'

2 The indictment states:

'The Jurors for the Commonwealth of Massachusetts on their oath present that William R. Baird, on the sixth day of April, in the year of our Lord one thousand nine hundred and sixty-seven, did unlawfully give away a certain medicine and article for the prevention of conception to wit: Emko Vaginal Foam, the giving away of the said medicine and article by the said William R. Baird not being in accordance with, or authorized or permitted by, the provisions of Section 21A of Chapter 272, of the General Laws of the said Commonwealth.'

3 'Had s 21A authorized registered physicians to administer or prescribe contraceptives for unmarried as well as for married persons, the legal position of the petitioner would not have been in any way altered. Not being a physician he would still have been prohibited by s 21 from 'giving away' the contraceptive.' 310 F.Supp. 951, 954 (Mass.1970).

4 The Food and Drug Administration has made a finding that birth control pills pose possible hazards to health. It therefore restricts distribution and receipt of such products in interstate commerce to properly labeled packages that must be sold pursuant to a prescription. 21 CFR s 130.45. A violation of this law is punishable by imprisonment for one year, a fine of not more than $10,000, or both. 21 U.S.C. ss 331, 333.

1 The Court places some reliance on the opinion of the Supreme Judicial Court of Massachusetts in Sturgis v. Attorney General, 358 Mass. 37, 260 N.E.2d 687 (1970), to show that s 21A is intended to regulated morals rather than public health. In Sturgis the state court rejected a challenge by a group of physicians to that part of the statute prohibiting the distribution of contraceptives to unmarried women. The court accepted the State's

interest in 'regulating the private sexual lives of single persons,' that interest being expressed in the restriction on distributees. Mass., 260 N.E.2d., at 690. The purpose of the restriction on distributors was not in issue.

2 The opinion of the Court states in passing that if the restriction on distributors were in fact intended as a health measure, it would be overly broad. Since the Court does not develop this argument in detail, my response is addressed solely to the reasoning in the opinion of Mr. Justice WHITE, concurring in the result.

3 For general discussions of the need for medical supervision before choosing a means of birth control, see Manual of Family Planning and Contraceptive Practice 47—53 (M. Calderone ed. 1970); Advanced Concepts in Contraception 22—24 (F. Hoffman & R. Kleinman ed. 1968).

4 See U.S. Commission on Population Growth and the American Future, Population and the American Future, pt. II, pp. 38—39 (Mar. 16, 1972); Manual of Family Planning supra, at 268—274, 316, 320, 342, 346; Jaffe, Toward the Reduction of Unwanted Pregnancy, 174 Science 119, 121 (Oct. 8, 1971); G. Hardin, Birth Control 128 (1970); E. Havemann, Birth Control (1967). The contraceptive substance dispensed by appellee, vaginal foam, is thought to be between 70% and 80% effective. See Jaffe, supra, at 121; Dingle & Tietze, Comparative Study of Three Contraceptive Methods, 85 Amer. J. Obst. & Gyn. 1012, 1021 (1963). The birth control pill, by contrast, is thought to be better than 99% effective. See Havemann, Birth Control, supra.

5 See Perkin, Assessment of Reproductive Risk in Nonpregnant Women—A Guide to Establishing Priorities for Contraceptive Care, 101 Amer. J. Obst. & Gyn. 709 (1968).

6 See Manual of Family Planning supra, at 301, 332—333, 336—340.

99 S.Ct. 3035
Supreme Court of the United States

Francis X. BELLOTTI, Attorney General
of Massachusetts, et al., Appellants,
v.
William BAIRD et al.
Jane HUNERWADEL, etc., Appellant,
v.
William BAIRD et al.

Nos. 78–329, 78–330.
|
Argued Feb. 27, 1979.
|
Decided July 2, 1979.
|
Rehearing Denied Oct. 1, 1979.
|
See 444 U.S. 887, 100 S.Ct. 185.

Synopsis

Action was brought challenging constitutionality of Massachusetts statute regulating the access of minors to abortions. On remand from United States Supreme Court, the district court certified questions for the Massachusetts Supreme Judicial Court. Upon receiving a response, the United States District Court for the District of Massachusetts, 450 F.Supp. 997, declared the statute unconstitutional. The Supreme Court, in separate opinions by Mr. Justice Powell and Mr. Justice Stevens, held that Massachusetts statute requiring pregnant minor seeking an abortion to obtain the consent of her parents or to obtain judicial approval following notification to her parents unconstitutionally burdened the right of the pregnant minor to seek an abortion.

Affirmed.

Mr. Chief Justice Burger, Mr. Justice Stewart, and Mr. Justice Rehnquist joined in the opinion of Mr. Justice Powell.

Mr. Justice Brennan, Mr. Justice Marshall, and Mr. Justice Blackmun joined in the opinion of Mr. Justice Stevens concurring in the judgment.

Mr. Justice Rehnquist filed a concurring opinion.

Mr. Justice White filed a dissenting opinion.

****3037 *622** *Syllabus* [*]

A Massachusetts statute requires parental consent before an abortion can be performed on an unmarried woman under the age of 18. If one or both parents refuse such consent, however, the abortion may be obtained by order of a judge of the superior court "for good cause shown." In appellees' class action challenging the constitutionality of the statute, a three-judge District Court held it unconstitutional. Subsequently, this Court vacated the District Court's judgment, *Bellotti v. Baird*, 428 U.S. 132, 96 S.Ct. 2857, 49 L.Ed.2d 844, holding that the District Court should have abstained and certified to the Massachusetts Supreme Judicial Court appropriate questions concerning the meaning of the statute. On remand, the District Court certified several questions to the Supreme Judicial Court. Among the questions certified was whether the statute permits any minors—mature or immature—to obtain judicial consent to an abortion without any parental consultation whatsoever. The Supreme Judicial Court answered that, in general, it does not; that consent must be obtained for every nonemergency abortion unless no parent is available; and that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. Another question certified was whether, if the superior court finds that the minor is capable of making, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, the court may refuse its consent on a finding that a parent's, or its own, contrary decision is a better one. The Supreme Judicial Court answered in the affirmative. Following the Supreme Judicial Court's judgment, the District Court again declared the statute unconstitutional and enjoined its enforcement.

Held: The judgment is affirmed. Pp. 3043–3052; 3053–3055.

D.C., 450 F.Supp. 997, affirmed.

Mr. Justice POWELL, joined by Mr. Chief Justice BURGER, Mr. Justice STEWART, and Mr. Justice REHNQUIST, concluded that:

1. There are three reasons justifying the conclusion that the constitutional ***623** rights of children cannot be equated with those of ****3038** adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding

role of parents in the upbringing of their children. Pp. 3043–3046.

2. The abortion decision differs in important ways from other decisions facing minors, and the State is required to act with particular sensitivity when it legislates to foster parental involvement in this matter. Pp. 3046–3047.

3. If a State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes, or that even if she is not able to make this decision independently, the desired abortion would be in her best interests. Such a procedure must ensure that the provision requiring parental consent does not in fact amount to an impermissible "absolute, and possibly arbitrary, veto." *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74, 96 S.Ct. 2831, 2843, 49 L.Ed.2d 788. Pp. 3047–3049.

4. The Massachusetts statute, as authoritatively interpreted by the Supreme Judicial Court, unduly burdens the right to seek an abortion. The statute falls short of 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 of every instance, whether or not in the pregnant minor's best interests, without affording her 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. Pp. 3049–3052.

Mr. Justice STEVENS, joined by Mr. Justice BRENNAN, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN, concluded that the Massachusetts statute is unconstitutional because under the statute, as written and as construed by the Massachusetts Supreme Judicial Court, no minor, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent of either both parents or a superior court judge, thus making the minor's abortion decision subject in every instance to an absolute third-party veto. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788, controlling. Pp. 3038–3040.

Attorneys and Law Firms

***624** Garrick F. Cole, Boston, Mass., for appellants in No. 78–329, by Brian A. Riley, Boston, Mass., for appellant in No. 78–330.

Joseph J. Balliro and John H. Henn, Boston, Mass., for appellees in both cases.

Opinion

Mr. Justice POWELL announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice REHNQUIST joined.

These appeals present a challenge to the constitutionality of a state statute regulating the access of minors to abortions. They require us to continue the inquiry we began in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), and *Bellotti v. Baird*, 428 U.S. 132, 96 S.Ct. 2857, 49 L.Ed.2d 844 (1976).

***625** I

A

On August 2, 1974, the Legislature of the Commonwealth of Massachusetts passed, over the Governor's veto, an Act pertaining to abortions performed within the State. 1974 Mass. Acts, ch. 706. According to its title, the statute was intended to regulate abortions "within present constitutional limits." Shortly before the Act was to go ****3039** into effect, the class action from which these appeals arise was commenced in the District Court [1] to enjoin, as unconstitutional, the provision of the Act now codified as Mass.Gen.Laws Ann., ch. 112, § 12S (West Supp.1979). [2]

Section 12S provides in part:
"If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents [to an abortion to be performed on the mother] is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent

of the mother's guardian or other ***626** person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient. The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files."

Physicians performing abortions in the absence of the consent required by § 12S are subject to injunctions and criminal penalties. See Mass.Gen.Laws Ann., ch. 112, §§ 12Q, 12T, and 12U (West Supp.1979).

A three-judge District Court was convened to hear the case pursuant to 28 U.S.C. § 2281 (1970 ed.), repealed by Pub.L. 94–381, § 1, 90 Stat. 1119.[3] Plaintiffs in the suit, appellees in both the cases before us now, were William Baird; Parents Aid Society, Inc. (Parents Aid), of which Baird is founder and director; Gerald Zupnick, M. D., who regularly performs abortions at the Parents Aid clinic; and an unmarried minor, identified by the pseudonym "Mary Moe," who, at the commencement of the suit, was pregnant, residing at home with her parents, and desirous of obtaining an abortion without informing them.[4]

Mary Moe was permitted to represent the "class of unmarried minors in Massachusetts who have adequate capacity to give a valid and informed consent [to abortion], and who do not wish to involve their parents." *Baird v. Bellotti*, 393 F.Supp. 847, 850 (Mass.1975) (*Baird*). Initially there was some confusion whether the rights of minors who wish abortions without parental involvement but who lack "adequate capacity" to give such consent also could be adjudicated in ***627** the suit. The District Court ultimately determined that Dr. Zupnick was entitled to assert the rights of these minors. See *Baird v. Bellotti*, 450 F.Supp. 997, 1001, and n. 6 (Mass.1978).[5]

****3040** Planned Parenthood League of Massachusetts and Crittenton Hastings House & Clinic, both organizations that provide counseling to pregnant adolescents, and Phillip Stubblefield, M. D. (intervenors),[6] appeared as *amici curiae* on behalf of the plaintiffs. The District Court "accepted [this group] in a status something more than *amici* because of reservations about the adequacy of plaintiffs' representation [of the plaintiff classes in the suit]." *Id.*, at 999 n. 3.

Defendants in the suit, appellants here in No. 78–329, were the Attorney General of Massachusetts and the District Attorneys of all counties in the State. Jane Hunerwadel was permitted to intervene as a defendant and representative of the class of Massachusetts parents having unmarried minor daughters who then were, or might become, pregnant. She and the class she represents are appellants in No. 78–330.[7]

Following three days of testimony, the District Court issued an opinion invalidating § 12S. *Baird I, supra*. The court rejected appellees' argument that all minors capable of becoming pregnant also are capable of giving informed consent ***628** to an abortion, or that it always is in the best interests of a minor who desires an abortion to have one. See 393 F.Supp., at 854. But the court was convinced that "a substantial number of females under the age of 18 are capable of forming a valid consent," *id.*, at 855, and "that a significant number of [these] are unwilling to tell their parents." *Id.*, at 853.

In its analysis of the relevant constitutional principles, the court stated that "there can be no doubt but that a female's constitutional right to an abortion in the first trimester does not depend upon her calendar age." *Id.*, at 855–856. The court found no justification for the parental consent limitation placed on that right by § 12S, since it concluded that the statute was "cast not in terms of protecting the minor, . . . but in recognizing independent rights of parents." *Id.*, at 856. The "independent" parental rights protected by § 12S, as the court understood them, were wholly distinct from the best interests of the minor.[8]

B

Appellants sought review in this Court, and we noted probable jurisdiction. *Bellotti v. Baird*, 423 U.S. 982, 96 S.Ct. 390, 46 L.Ed.2d 301 (1975). After briefing and oral argument, it became apparent that § 12S was susceptible of a construction that "would avoid or substantially modify the federal constitutional challenge to the statute." *Bellotti v. Baird*, 428 U.S. 132, 148, 96 S.Ct. 2857, 2866, 49 L.Ed.2d 844 (1976) (*Bellotti*). We therefore vacated the judgment of the District Court, concluding that it should have abstained and certified to the Supreme Judicial Court of Massachusetts appropriate questions concerning the meaning of § 12S, pursuant to existing ***629** procedure in that State. See Mass.Sup.Jud.Ct. Rule 3:21.

On remand, the District Court certified nine questions to the Supreme Judicial Court.[9] These were answered in an ***630** opinion ****3041** styled *Baird v. Attorney General*, 371 Mass. 741, 360 N.E.2d 288 (1977) (*Attorney General*). Among the

more important aspects of § 12S, as authoritatively construed by the Supreme Judicial Court, are the following:

1. In deciding whether to grant consent to their daughter's abortion, parents are required by § 12S to consider exclusively what will serve her best interests. See *id.*, at 746–747, 360 N.E.2d, at 292–293.

2. The provision in § 12S that judicial consent for an abortion shall be granted, parental objections notwithstanding, "for good cause shown" means that such consent shall be granted if found to be in the minor's best interests. The judge "must disregard all parental objections, and other considerations, which are not based exclusively" on that standard. *Id.*, at 748, 360 N.E.2d, at 293.

3. Even if the judge in a § 12S proceeding finds "that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion," he is entitled to withhold consent "in circumstances where he determines that the best interests of the minor will not be served by an abortion." *Ibid.*, 360 N.E.2d, at 293.

4. As a general rule, a minor who desires an abortion may not obtain judicial consent without first seeking both parents' consent. Exceptions to the rule exist when a parent is not available or when the need for the abortion constitutes " 'an emergency requiring immediate action.' "[10] *Id.*, at 750, 360 N.E.2d, at 294. Unless a parent is not available, he must be notified of any judicial proceedings brought under § 12S. *Id.*, at 755–756, 360 N.E.2d, at 297.

***631** 5. The resolution of § 12S cases and any appeals that follow can be expected to be prompt. The name of the minor and her parents may be held in confidence. If need be, the Supreme Judicial Court and the superior courts can promulgate rules or issue orders to ensure that such proceedings are handled expeditiously. *Id.*, at 756–758, 360 N.E.2d, at 297–298.

6. Massachusetts Gen.Laws Ann., ch. 112, § 12F (West Supp.1979), which provides, *inter alia*, that certain classes of minors may consent to most kinds of medical care without parental approval, does not apply to abortions, except as to minors who ****3042** are married, widowed, or divorced. See 371 Mass., at 758–762, 360 N.E.2d, at 298–300. Nor does the State's common-law "mature minor rule" create an exception to § 12S. *Id.*, at 749–750, 360 N.E.2d, at 294. See n. 27,*infra*.

C

Following the judgment of the Supreme Judicial Court, appellees returned to the District Court and obtained a stay of the enforcement of § 12S until its constitutionality could be determined. *Baird v. Bellotti*, 428 F.Supp. 854 (Mass.1977) (*Baird II*). After permitting discovery by both sides, holding a pretrial conference, and conducting further hearings, the District Court again declared § 12S unconstitutional and enjoined its enforcement. *Baird v. Bellotti*, 450 F.Supp. 997 (Mass.1978) (*Baird III*). The court identified three particular aspects of the statute which, in its view, rendered it unconstitutional.

First, as construed by the Supreme Judicial Court, § 12S requires parental notice in virtually every case where the parent is available. The court believed that the evidence warranted a finding "that many, perhaps a large majority of 17-year olds are capable of informed consent, as are a not insubstantial number of 16-year olds, and some even younger." *Id.*, at 1001. In addition, the court concluded that it would not be in ***632** the best interests of some "immature" minors—those incapable of giving informed consent—even to inform their parents of their intended abortions. Although the court declined to decide whether the burden of requiring a minor to take her parents to court was, *per se*, an impermissible burden on her right to seek an abortion, it concluded that Massachusetts could not constitutionally insist that parental permission be sought or notice given "in those cases where a court, if given free rein, would find that it was to the minor's best interests that one or both of her parents not be informed . . . ." *Id.*, at 1002.

Second, the District Court held that § 12S was defective in permitting a judge to veto the abortion decision of a minor found to be capable of giving informed consent. The court reasoned that upon a finding of maturity and informed consent, the State no longer was entitled to impose legal restrictions upon this decision. *Id.*, at 1003. Given such a finding, the court could see "no reasonable basis" for distinguishing between a minor and an adult, and it therefore concluded that § 12S was not only "an undue burden in the due process sense, [but] a discriminatory denial of equal protection [as well]." *Id.*, at 1004.

Finally, the court decided that § 12S suffered from what it termed "formal overbreadth," *ibid.*, because the statute failed explicitly to inform parents that they must consider only the minor's best interests in deciding whether to grant consent.

The court believed that, despite the Supreme Judicial Court's construction of § 12S, parents naturally would infer from the statute that they were entitled to withhold consent for other, impermissible reasons. This was thought to create a "chilling effect" by enhancing the possibility that parental consent would be denied wrongfully and that the minor would have to proceed in court.

Having identified these flaws in § 12S, the District Court considered whether it should engage in "judicial repair." *Id.*, at 1005. It declined either to sever the statute or to give ***633** it a construction different from that set out by the Supreme Judicial Court, as that tribunal arguably had invited it to do. See *Attorney General*, 371 Mass., at 745–746, 360 N.E.2d, at 292. The District Court therefore adhered to its previous position, declaring § 12S unconstitutional and permanently enjoining its enforcement.[11] ****3043** Appellants sought review in this Court a second time, and we again noted probable jurisdiction. 439 U.S. 925, 99 S.Ct. 307, 58 L.Ed.2d 317 (1978).

II

A child, merely on account of his minority, is not beyond the protection of the Constitution. As the Court said in *In re Gault*, 387 U.S. 1, 13, 87 S.Ct. 1428, 1436, 18 L.Ed.2d 527 (1967), "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[12] This observation, of course, is but the beginning of the analysis. The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: "[C]hildren have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination ***634** of a State's duty towards children." *May v. Anderson*, 345 U.S. 528, 536, 73 S.Ct. 840, 844, 97 L.Ed. 1221 (1953) (concurring opinion). The unique role in our society of the family, the institution by which "we inculcate and pass down many of our most cherished values, moral and cultural," *Moore v. East Cleveland*, 431 U.S. 494, 503–504, 97 S.Ct. 1932, 1938, 52 L.Ed.2d 531 (1977) (plurality opinion), requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

A

The Court's concern for the vulnerability of children is demonstrated in its decisions dealing with minors' claims to constitutional protection against deprivations of liberty or property interests by the State. With respect to many of these claims, we have concluded that the child's right is virtually coextensive with that of an adult. For example, the Court has held that the Fourteenth Amendment's guarantee against the deprivation of liberty without due process of law is applicable to children in juvenile delinquency proceedings. *In re Gault, supra*. In particular, minors involved in such proceedings are entitled to adequate notice, the assistance of counsel, and the opportunity to confront their accusers. They can be found guilty only upon proof beyond a reasonable doubt, and they may assert the privilege against compulsory self-incrimination. *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *In re Gault, supra*. See also *Ingraham v. Wright*, 430 U.S. 651, 674, 97 S.Ct. 1401, 1414, 51 L.Ed.2d 711 (1977) (corporal punishment of school-children implicates constitutionally protected liberty interest); cf. *Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975) (Double Jeopardy Clause prohibits prosecuting juvenile as an adult after an adjudicatory finding in juvenile court that he had violated a criminal statute). ***635** Similarly, in *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975), the Court held that children may not be deprived of certain property interests without due process.

These rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable ****3044** from those of adults. Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults. In order to preserve this separate avenue for dealing with minors, the Court has said that hearings in juvenile delinquency cases need not necessarily " 'conform with all of the requirements of a criminal trial or even of the usual administrative hearing.' " *In re Gault, supra*, 387 U.S., at 30, 87 S.Ct., at 1445, quoting *Kent v. United States*, 383 U.S. 541, 562, 86 S.Ct. 1045, 1057, 16 L.Ed.2d 84 (1966). Thus, juveniles are not constitutionally entitled to trial by jury in delinquency adjudications. *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971). Viewed together, our cases show that although children generally are protected

by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, . . . sympathy, and . . . paternal attention." *Id.*, at 550, 91 S.Ct., at 1989 (plurality opinion).

B

Second, the Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. [13]

***636** *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968), illustrates well the Court's concern over the inability of children to make mature choices, as the First Amendment rights involved are clear examples of constitutionally protected freedoms of choice. At issue was a criminal conviction for selling sexually oriented magazines to a minor under the age of 17 in violation of a New York state law. It was conceded that the conviction could not have stood under the First Amendment if based upon a sale of the same material to an adult. *Id.*, at 634, 88 S.Ct. 1277. Notwithstanding the importance the Court always has attached to First Amendment rights, it concluded that "even where there is an invasion of protected freedoms 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . .,' " *id.*, at 638, 88 S.Ct., at 1280, quoting *Prince v. Massachusetts*, 321 U.S. 158, 170, 64 S.Ct. 438, 444, 88 L.Ed. 645 (1944). [14] The Court was convinced that the New York Legislature rationally could conclude that the sale to children of the magazines in question presented a danger against which they should be guarded. *Ginsberg, supra*, at 641, 88 S.Ct., at 1281. It therefore rejected the ***637** argument that the ****3045** New York law violated the constitutional rights of minors. [15]

C

Third, the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors. [16] But an additional and more important justification for state deference to parental control over children is that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925). "The duty to prepare the child for 'additional obligations' . . . ***638** must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." *Wisconsin v. Yoder*, 406 U.S. 205, 233, 92 S.Ct. 1526, 1542, 32 L.Ed.2d 15 (1972). This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.

We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is something we expect the State *not* to attempt in a society constitutionally committed to the ideal of individual liberty and freedom of choice. Thus, "[i]t is cardinal with us 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 hinder.*" *Prince v. Massachusetts, supra*, 321 U.S., at 166, 64 S.Ct., at 442 (emphasis added).

Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." *Ginsberg v. New York, supra*, 390 U.S., at 639, 88 S.Ct., at 1280.

Properly understood, then, the tradition of parental authority is not inconsistent ****3046** with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual ***639** participation in a free society meaningful and rewarding. [17] Under the Constitution, the State can "properly

conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." *Ginsberg v. New York*, 390 U.S., at 639, 88 S.Ct., at 1280. [18]

III

With these principles in mind, we consider the specific constitutional questions presented by these appeals. In § 12S, Massachusetts has attempted to reconcile the constitutional right of a woman, in consultation with her physician, to choose to terminate her pregnancy as established by *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), and *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), with the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child. As noted above, § 12S was before us in *Bellotti I*, 428 U.S. 132, 96 S.Ct. 2857, 49 L.Ed.2d 844 (1976), where we remanded the case for interpretation of its provisions by the Supreme Judicial Court of Massachusetts. We previously had held in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), that a State could not lawfully authorize an absolute parental veto over the decision of a minor to terminate her pregnancy. *Id.*, at 74, 96 S.Ct., at 2843. In ***640** *Bellotti, supra*, we recognized that § 12S could be read as "fundamentally different from a statute that creates a 'parental veto,' " 428 U.S., at 145, 96 S.Ct., at 2865, thus "avoid[ing] or substantially modify[ing] the federal constitutional challenge to the statute." *Id.*, at 148, 96 S.Ct., at 2866. The question before us—in light of what we have said in the prior cases—is whether § 12S, as authoritatively interpreted by the Supreme Judicial Court, provides for parental notice and consent in a manner that does not unduly burden the right to seek an abortion. See *id.*, at 147, 96 S.Ct., at 2866.

Appellees and intervenors contend that even as interpreted by the Supreme Judicial Court of Massachusetts, § 12S does unduly burden this right. They suggest, for example, that the mere requirement of parental notice constitutes such a burden. As stated in Part II above, however, parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor. [19] It may further determine, as a ****3047** general proposition, that such consultation is particularly desirable with respect to the abortion decision—one that for some people raises profound moral and religious concerns. [20] As Mr. Justice STEWART wrote in concurrence in *Planned Parenthood of Central Missouri v. Danforth, supra*, at 91, 96 S.Ct., at 2851:

"There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried ***641** pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." (Footnote omitted.) [21]

***642** But we are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions that may be made during minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter.

A

The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman, see *Roe v.* ****3048** *Wade,* 410 U.S., at 153, 93 S.Ct., at 726, 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.

Yet, an abortion may not be the best choice for the minor. The circumstances in which this issue arises will vary widely. In a given case, alternatives to abortion, such as marriage to the father of the child, arranging for its adoption, or assuming the responsibilities of motherhood with the assured support of ***643** family, may be feasible and relevant to the minor's best interests. Nonetheless, the abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences.

For these reasons, as we held in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S., at 74, 96 S.Ct., at 2843, "the 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." Although, as stated in Part II, *supra*, such deference to parents may be permissible with respect to other choices facing a minor, 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." 428 U.S., at 74, 96 S.Ct., at 2843. We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure [22] whereby authorization for the abortion can be obtained.

A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes; [23] or ***644** 2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. 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*. *Ibid.*

B

It is against these requirements that § 12S must be tested. We observe ****3049** initially that as authoritatively construed by the highest court of the State, the statute satisfies some of the concerns that require special treatment of a minor's abortion decision. It provides that if parental consent is refused, authorization may be "obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary." A superior court judge presiding over a § 12S proceeding "must disregard all parental objections, and other considerations, which are not based exclusively on what would serve the minor's best interests." [24] ***645** *Attorney General*, 371 Mass., at 748, 360 N.E.2d, at 293. The Supreme Judicial Court also stated: "Prompt resolution of a [§ 12S] proceeding may be expected. . . . The proceeding need not be brought in the minor's name and steps may be taken, by impoundment or otherwise, to preserve confidentiality as to the minor and her parents. . . . [W]e believe that an early hearing and decision on appeal from a judgment of a Superior Court judge may also be achieved." *Id.*, at 757–758, 360 N.E.2d, at 298. The court added that if these expectations were not met, either the superior court, in the exercise of its rulemaking power, or the Supreme Judicial Court would be willing to eliminate any undue burdens by rule or order. *Ibid.* [25]

Despite these safeguards, which avoid much of what was objectionable in the statute successfully challenged in *Danforth*, § 12S falls short of constitutional standards in certain respects. We now consider these.

***646** (1)

Among the questions certified to the Supreme Judicial Court was whether § 12S permits any minors—mature or immature—to obtain judicial consent to an abortion without any parental consultation whatsoever. See n. 9, *supra.* The state court answered that, in general, it does not. "[T]he consent required by [§ 12S must] be obtained for every nonemergency abortion where the mother is less than eighteen years of age and unmarried." *Attorney General, supra*, at 750, 360 N.E.2d, at 294. The text of § 12S itself states an exception to this rule, making consent unnecessary from any parent who has "died or has deserted his or her family." [26] The Supreme Judicial Court construed the statute as containing an

additional exception: Consent **3050 need not be obtained "where no parent (or statutory substitute) is available." *Ibid.* The court also ruled that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. [27] *Id.*, at 755–756, 360 N.E.2d, at 297.

*647 We think that, construed in this manner, § 12S would impose an undue burden upon the exercise by minors of the right to seek an abortion. As the District Court recognized, "there are parents who would obstruct, and perhaps altogether prevent, the minor's right to go to court." *Baird III*, 450 F.Supp., at 1001. There is no reason to believe that this would be so in the majority of cases where consent is withheld. But 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. It would be unrealistic, therefore, to assume that the mere existence of a legal right to seek relief in superior court provides an effective avenue of relief for some of those who need it the most.

We conclude, therefore, that under state regulation such as that undertaken by Massachusetts, every minor must have the opportunity—if she so desires—to go directly to a court without first consulting or notifying her parents. 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 *648 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.

There is, however, an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision. Also, as we have observed above, parents naturally take an interest in the welfare of their children—an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents. These factors properly may be taken into account by a court called upon to determine whether an abortion in fact is in a minor's best interests. If, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement. On the other hand, the court may deny the abortion request of an immature minor in the absence of parental consultation **3051 if it concludes that her best interests would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate. But this is the full extent to which parental involvement may be required. [28] For the reasons stated above, the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court.

(2)

Section 12S requires that both parents consent to a minor's abortion. The District Court found it to be "custom" to perform other medical and surgical procedures on minors with the consent of only one parent, and it concluded that "nothing about abortions . . . requires the minor's interest to be treated *649 differently." *Baird I*, 393 F.Supp., at 852. See *Baird III, supra*, at 1004 n. 9.

We are not persuaded that, as a general rule, the requirement of obtaining both parents' consent unconstitutionally burdens a minor's right to seek an abortion. The abortion decision has implications far broader than those associated with most other kinds of medical treatment. At least when the parents are together and the pregnant minor is living at home, both the father and mother have an interest—one normally supportive—in helping to determine the course that is in the best interests of a daughter. Consent and involvement by parents in important decisions by minors long have been recognized as protective of their immaturity. In the case of the abortion decision, for reasons we have stated, the focus of the parents' inquiry should be the best interests of their daughter. As every pregnant minor is entitled in the first instance to go directly to the court for a judicial determination without prior parental notice, consultation, or consent, the general rule with respect to parental consent does not unduly burden the constitutional right. Moreover, where the pregnant minor goes to her parents and consent is denied, she still must have recourse to a prompt judicial determination of her maturity or best interests. [29]

(3)

Another of the questions certified by the District Court to the Supreme Judicial Court was the following: "If the superior court finds that the minor is capable [of making], and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent

based on a finding that a parent's, or its own, contrary decision ***650** is a better one?" *Attorney General*, 371 Mass., at 747 n. 5, 360 N.E.2d, at 293 n. 5. To this the state court answered: "[W]e do not view the judge's role as limited to a determination that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion. Certainly the judge must make a determination of those circumstances, but, if the statutory role of the judge to determine the best interests of the minor is to be carried out, he must make a finding on the basis of all relevant views presented to him. We suspect that the judge will give great weight to the minor's determination, if informed and reasonable, but in circumstances where he determines that the best interests of the minor will not be served by an abortion, the judge's determination should prevail, assuming that his conclusion is supported by the evidence and adequate findings of fact." *Id.*, at 748, 360 N.E.2d, at 293.

The Supreme Judicial Court's statement reflects the general rule that a State may require a minor to wait until the age of ****3052** majority before being permitted to exercise legal rights independently. See n. 23, *supra*. But we are concerned here with the exercise of a constitutional right of unique character. See*supra*, at 3047–3048. As stated above, if the minor satisfies a court that she has attained sufficient maturity to make a fully informed decision, she then is entitled to make her abortion decision independently. We therefore agree with the District Court that § 12S cannot constitutionally permit judicial disregard of the abortion decision of a minor who has been determined to be mature and fully competent to assess the implications of the choice she has made. [30]

***651** IV

Although it satisfies constitutional standards in large part, § 12S falls short of them 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. [31] Accordingly, we affirm the judgment of the District Court insofar as it invalidates this statute and enjoins its enforcement. [32]

Affirmed.

Mr. Justice REHNQUIST, concurring.

I join the opinion of Mr. Justice POWELL and the judgment of the Court. At ****3053** such time as this Court is willing to ***652** reconsider its earlier decision in*Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976), in which I joined the opinion of Mr. Justice WHITE, dissenting in part, I shall be more than willing to participate in that task. But unless and until that time comes, literally thousands of judges cannot be left with nothing more than the guidance offered by a truly fragmented holding of this Court.

Mr. Justice STEVENS, with whom Mr. Justice BRENNAN, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN join, concurring in the judgment.

In *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147, the Court held that a woman's right to decide whether to terminate a pregnancy is ***653** entitled to constitutional protection. In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 72–75, 96 S.Ct. 2831, 2842–2843, 49 L.Ed.2d 788, the Court held that a pregnant minor's right to make the abortion decision may not be conditioned on the consent of one parent. I am persuaded that these decisions require affirmance of the District Court's holding that the Massachusetts statute is unconstitutional.

The Massachusetts statute is, on its face, simple and straightforward. It provides that every woman under 18 who has not married must secure the consent of both her parents before receiving an abortion. "If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the Superior Court for good cause shown." Mass.Gen.Laws Ann., ch. 112, § 12S (West Supp.1979).

Whatever confusion or uncertainty might have existed as to how this statute was to operate, see *Bellotti v. Baird*, 428 U.S. 132, 96 S.Ct. 2857, 49 L.Ed.2d 844, has been eliminated by the authoritative construction of its provisions by the Massachusetts Supreme Judicial Court. See *Baird v. Attorney General*, 371 Mass. 741, 360 N.E.2d 288 (1977). The statute was construed to require that every minor who wishes an abortion must first seek the consent of both parents, unless a parent is not available or unless the need for the abortion constitutes " 'an emergency requiring immediate action.' " *Id.*, at 750, 360 N.E.2d, at 294. Both parents, so long as they are available, must also receive notice of judicial proceedings

brought under the statute by the minor. In those proceedings, the task of the judge is to determine whether the best interests of the minor will be served by an abortion. The decision is his to make, even if he finds "that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion." *Id.*, at 748, 360 N.E.2d, at 293. Thus, no minor in Massachusetts, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent ***654** of either both her parents or a superior court judge. In every instance, the minor's decision to secure an abortion is subject to an absolute third-party veto. [1]

In *Planned Parenthood of Central Missouri v. Danforth, supra*, this Court invalidated statutory provisions requiring the consent of the husband of a married woman and of one parent of a pregnant minor to an abortion. As to the spousal consent, the Court concluded that "we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy, when the State itself lacks that right." 428 U.S., at 70, 96 S.Ct. at 2841. And as to the parental consent, the Court held that "[j]ust 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 ****3054** 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.*, at 74, 96 S.Ct., at 2843. These holdings, I think, equally apply to the Massachusetts statute. The differences between the two statutes are few. Unlike the Missouri statute, Massachusetts requires the consent of both of the woman's parents. It does, of course, provide an alternative in the form of a suit initiated by the woman in superior court. But in that proceeding, the judge is afforded an absolute veto over the minor's decisions, based on his judgment of her best interests. In Massachusetts, then, as in Missouri, the State has imposed an "absolute limitation on the minor's right to obtain an abortion," *id.*, at 90, 96 S.Ct., at 2851 (STEWART, J., concurring), applicable to every pregnant minor in the State who has not married.

***655** The provision of an absolute veto to a judge—or, potentially, to an appointed administrator [2]—is to me particularly troubling. The constitutional right to make the abortion decision affords protection to both of the privacy interests recognized in this Court's cases: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." *Whalen v. Roe*, 429 U.S. 589, 599–600, 97 S.Ct. 869, 876, 51 L.Ed.2d 64 (footnotes omitted). It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties. In Massachusetts, however, every minor who cannot secure the consent of both her parents —which under *Danforth* cannot be an absolute prerequisite to an abortion—is required to secure the consent of the sovereign. As a practical matter, I would suppose that the need to commence judicial proceedings in order to obtain a legal abortion would impose a burden at least as great as, and probably greater than, that imposed on the minor child by the need to obtain the consent of a parent. [3] Moreover, once this burden is met, the only standard provided for the judge's decision is the best interest of the minor. That standard provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor—particularly when contrary to her own informed and reasonable decision —is fundamentally at odds ***656** with privacy interests underlying the constitutional protection afforded to her decision.

In short, it seems to me that this litigation is governed by *Danforth* ; to the extent this statute differs from that in *Danforth*, it is potentially even more restrictive of the constitutional right to decide whether or not to terminate a pregnancy. Because the statute has been once authoritatively construed by the Massachusetts Supreme Judicial Court, and because it is clear that the statute as written and construed is not constitutional, I agree with Mr. Justice POWELL that the District Court's judgment should be affirmed. Because his opinion goes further, however, and addresses the constitutionality of an abortion statute that Massachusetts has not enacted, I decline to join his opinion. [4]

****3055** Mr. Justice WHITE, dissenting.

I was in dissent in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 94–95, 96 S.Ct. 2831, 2853, 49 L.Ed.2d 788 (1976), on the issue of the validity of requiring the consent of a parent when an unmarried woman under 18 years of age seeks an abortion. I continue to have the views I expressed there and also agree with much of what Mr. Justice STEVENS said in dissent in that ***657** case. *Id.*, at 101–105, 96 S.Ct. at 2855–2857. I would not, therefore, strike down this Massachusetts law.

But even if a parental consent requirement of the kind involved in *Danforth* must be deemed invalid, that does not

condemn the Massachusetts law, which, when the parents object, authorizes a judge to permit an abortion if he concludes that an abortion is in the best interests of the child. Going beyond *Danforth*, the Court now holds it unconstitutional for a State to require that in all cases parents receive notice that their daughter seeks an abortion and, if they object to the abortion, an opportunity to participate in a hearing that will determine whether it is in the "best interests" of the child to undergo the surgery. Until now, I would have thought inconceivable a holding that the United States Constitution forbids even notice to parents when their minor child who seeks surgery objects to such notice and is able to convince a judge that the parents should be denied participation in the decision.

With all due respect, I dissent.

All Citations

443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 The court promptly issued a restraining order which remained in effect until its decision on the merits. Subsequent stays of enforcement were issued during the complex course of this litigation, with the result that Mass.Gen.Laws Ann., ch. 112, § 12S (West Supp.1979), never has been enforced by Massachusetts.

2 As originally enacted, § 12S was designated as § 12P of chapter 112. In 1977, the provision was renumbered as § 12S, and the numbering of subdivisions within the section was eliminated. No changes of substance were made. We shall refer to the section as § 12S throughout this opinion.

3 The proceedings before the court and the substance of its opinion are described in detail in *Bellotti v. Baird*, 428 U.S. 132, 136–143, 96 S.Ct. 2857, 2861–2864, 49 L.Ed.2d 844 (1976).

4 Three other minors in similar circumstances were named in the complaint, but the complaint was dismissed as to them for want of proof of standing. That decision has not been challenged on appeal.

5 Appellants argue that these "immature" minors never were before the District Court and that the court's remedy should have been tailored to grant relief only to the class of "mature" minors. It is apparent from the District Court's opinions, however, that it considered the constitutionality of § 12S as applied to all pregnant minors who might be affected by it. We accept that the rights of this entire category of minors properly were subject to adjudication.

6 In 1978, the District Court permitted postjudgment intervention by these parties, who now appear jointly before this Court as intervenor-appellees.

7 As their positions are closely aligned, if not identical, appellants in Nos. 78–329 and 78–330 are hereinafter referred to collectively as appellants.

8 One member of the three-judge court dissented, arguing that the decision of the majority to allow Mary Moe to proceed in the case without notice to her parents denied them their parental rights without due process of law, and that § 12S was consistent with the decisions of this Court recognizing the propriety of parental control over the conduct of children. See 393 F.Supp., at 857–865.

9 The nine questions certified by the District Court, with footnotes omitted, are as follows:

"1. What standards, if any, does the statute establish for a parent to apply when considering whether or not to grant consent?

"a) Is the parent to consider 'exclusively . . . what will serve the child's best interest'?

"b) If the parent is not limited to considering exclusively the minor's best interests, can the parent take into consideration the 'long-term consequences to the family and her parents' marriage relationship'?

"c) Other?

"2. What standard or standards is the superior court to apply?

"a) Is the superior court to disregard all parental objections that are not based exclusively on what would serve the minor's best interests?

"b) If the superior court finds that the minor is capable, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision is a better one?

"c) Other?

"3. Does the Massachusetts law permit a minor (a) 'capable of giving informed consent,' or (b) 'incapable of giving informed consent,' 'to obtain [a court] order without parental consultation'?

"4. If the court answers any of question 3 in the affirmative, may the superior court, for good cause shown, enter an order authorizing an abortion, (a), without prior notification to the parents, and (b), without subsequent notification?

"5. Will the Supreme Judicial Court prescribe a set of procedures to implement c. 112, [§ 12S] which will expedite the application, hearing, and decision phases of the superior court proceeding provided thereunder? Appeal?

"6. To what degree do the standards and procedures set forth in c. 112, § 12F (Stat.1975, c. 564), authorizing minors to give consent to medical and dental care in specified circumstances, parallel the grounds and procedures for showing good cause under c. 112, [§ 12S]?

"7. May a minor, upon a showing of indigency, have court-appointed counsel?

"8. Is it a defense to his criminal prosecution if a physician performs an abortion solely with the minor's own, valid, consent, that he reasonably, and in good faith, though erroneously, believed that she was eighteen or more years old or had been married?

"9. Will the Court make any other comments about the statute which, in its opinion, might assist us in determining whether it infringes the United States Constitution?"

10 Section 12S itself dispenses with the need for the consent of any parent who "has died or has deserted his or her family."

11 The dissenting judge agreed that the State could not permit a judge to override the decision of a minor found to be mature and capable of giving informed consent to an abortion. He disagreed with the remainder of the court's conclusions: the best-interests limitation on the withholding of parental consent in the Supreme Judicial Court's opinion, he argued, must be treated as if part of the statutory language itself; and he read the

evidentiary record as proving that only rarely would a pregnant minor's interests be disserved by consulting with her parents about a desired abortion. He also noted the value to a judge in a § 12S proceeding of having the parents before him as a source of evidence as to the minor's maturity and what course would serve her best interests. See *Baird III*, 450 F.Supp., at 1006–1020.

12 Similarly, the Court said in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74, 96 S.Ct. 2831, 2843, 49 L.Ed.2d 788 (1976):

"Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."

13 As Mr. Justice STEWART wrote of the exercise by minors of the First Amendment rights that "secur[e] . . . the liberty of each man to decide for himself what he will read and to what he will listen," *Ginsberg v. New York*, 390 U.S. 629, 649, 88 S.Ct. 1274, 1285, 20 L.Ed.2d 195 (1968) (concurring in result):

"[A]t least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. It is only upon such a premise, I should suppose, that a State may deprive children of other rights—the right to marry, for example, or the right to vote—deprivations that would be constitutionally intolerable for adults." *Id.*, at 649–650, 88 S.Ct., at 1286 (footnotes omitted).

14 In *Prince* an adult had permitted a child in her custody to sell religious literature on a public street in violation of a state child-labor statute. The child had been permitted to engage in this activity upon her own sincere request. 321 U.S., at 162, 64 S.Ct., at 440. In upholding the adult's conviction under the statute, we found that "the interests of society to protect the welfare of children" and to give them "opportunities for growth into free and independent well-developed men and citizens," *id.*, at 165, 64 S.Ct., at 442, permitted the State to enforce its statute, which "[c]oncededly . . . would be invalid," *id.*, at 167, 64 S.Ct., at 442, if made applicable to adults.

15 Although the State has considerable latitude in enacting laws affecting minors on the basis of their lesser capacity for mature, affirmative choice, *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969), illustrates that it may not arbitrarily deprive them of their freedom of action altogether. The Court held in *Tinker* that a schoolchild's First Amendment freedom of expression entitled him, contrary to school policy, to attend school wearing a black armband as a silent protest against American involvement in the hostilities in Vietnam. The Court acknowledged that the State was permitted to prohibit conduct otherwise shielded by the Constitution that "for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others." *Id.*, at 513, 89 S.Ct., at 740. It upheld the First Amendment right of the schoolchildren in that case, however, not only because it found no evidence in the record that their wearing of black armbands threatened any substantial interference with the proper objectives of the school district, but also because it appeared that the challenged policy was intended primarily to stifle any debate whatsoever—even nondisruptive discussions—on important political and moral issues. See *id.*, at 510, 89 S.Ct., at 738.

16 See, *e. g.*, Mass.Gen.Laws Ann., ch. 207, §§ 7, 24, 25, 33, 33A (West 1958 and Supp.1979) (parental consent required for marriage of person under 18); Mass.Gen.Laws Ann., ch. 119, § 55A (West Supp.1979) (waiver of counsel by minor in juvenile delinquency proceedings must be made through parent or guardian).

17 See Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Children to Their "Rights," 1976 B.Y.U.L.Rev. 605.

18 The Court's opinions discussed in the text above—*Pierce, Yoder, Prince,* and *Ginsberg* —all have contributed to a line of decisions suggesting the existence of a constitutional parental right against undue, adverse interference by the State. See also *Smith v. Organization of Foster Families*, 431 U.S. 816, 842–844, 97 S.Ct.

2094, 2109, 53 L.Ed.2d 14 (1977); *Carey v. Population Services International*, 431 U.S. 678, 708, 97 S.Ct. 2010, 2028, 52 L.Ed.2d 675 (1977) (opinion of POWELL, J.); *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972); *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). *Cf. Parham v. J. R.*, 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979); *id.,* at 621, 99 S.Ct., at 2513 (STEWART, J., concurring in result).

19 In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S., at 75, 96 S.Ct., at 2844, "[w]e emphasize[d] that our holding . . . [did] not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."

20 The expert testimony at the hearings in the District Court uniformly was to the effect that parental involvement in a minor's abortion decision, if compassionate and supportive, was highly desirable. The findings of the court reflect this consensus. See *Baird I*, 393 F.Supp., at 853.

21 Mr. Justice STEWART's concurring opinion in *Danforth* underscored the need for parental involvement in minors' abortion decisions by describing the procedures followed at the clinic operated by the Parents Aid Society and Dr. Gerald Zupnick:

"The counseling . . . occurs entirely on the day the abortion is to be performed . . . . It lasts for two hours and takes place in groups that include both minors and adults who are strangers to one another . . . . The physician takes no part in this counseling process . . . . Counseling is typically limited to a description of abortion procedures, possible complications, and birth control techniques . . . .

"The abortion itself takes five to seven minutes . . . . The physician has no prior contact with the minor, and on the days that abortions are being performed at the [clinic], the physician . . . may be performing abortions on many other adults and minors . . . . On busy days patients are scheduled in separate groups, consisting usually of five patients . . . . After the abortion [the physician] spends a brief period with the minor and others in the group in the recovery room . . . ." 428 U.S., at 91–92, n. 2, 96 S.Ct., at 2851 n. 2, quoting Brief for Appellants in *Bellotti I*, O.T.1975, No. 75–73, pp. 43–44.

In *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), and *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973), we emphasized the importance of the role of the attending physician. Those cases involved adult women presumably capable of selecting and obtaining a competent physician. In this case, however, we are concerned only with minors who, according to the record, may range in age from children of 12 years to 17-year-old teenagers. Even the latter 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.

22 As § 12S provides for involvement of the state superior court in minors' abortion decisions, we discuss the alternative procedure described in the text in terms of judicial proceedings. We do not suggest, however, that a State choosing to require parental consent could not delegate the alternative procedure to a juvenile court or an administrative agency or officer. Indeed, much can be said for employing procedures and a forum less formal than those associated with a court of general jurisdiction.

23 The nature of both the State's interest in fostering parental authority and the problem of determining "maturity" makes clear why the State generally may resort to objective, though inevitably arbitrary, criteria such as age limits, marital status, or membership in the Armed Forces for lifting some or all of the legal disabilities of minority. Not only is it difficult to define, let alone determine, maturity, but also the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under

parental guidance and discipline have ended. As discussed in the text, however, the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors.

24 The Supreme Judicial Court held that § 12S imposed this standard on the superior court in large part because it construed the statute as containing the same restriction on parents. See *supra*, at 3041. The court concluded that the judge should not be entitled "to exercise his authority on a standard broader than that to which a parent must adhere." *Attorney General*, 371 Mass., at 748, 360 N.E.2d, at 293.

Intervenors argue that, assuming state-supported parental involvement in the minor's abortion decision is permissible, the State may not endorse the withholding of parental consent for any reason not believed to be in the minor's best interests. They agree with the District Court that, even though § 12S was construed by the highest state court to impose this restriction, the statute is flawed because the restriction is not apparent on its face. Intervenors thus concur in the District Court's assumption that the statute will encourage parents to withhold consent for impermissible reasons. See *Baird III*, 450 F.Supp. at 1004–1005; *Baird II*, 428 F.Supp., 854, 855–856 (Mass.1977).

There is no basis for this assertion. As a general rule, the interpretation of a state statute by the State's highest court "is as though written into the ordinance itself," *Poulos v. New Hampshire*, 345 U.S. 395, 402, 73 S.Ct. 760, 765, 97 L.Ed. 1105 (1953), and we are obliged to view the restriction on the parental-consent requirement "as if [§ 12S] had been so amended by the [Massachusetts] legislature." *Winters v. New York*, 333 U.S. 507, 514, 68 S.Ct. 665, 669, 92 L.Ed. 840 (1948).

25 Intervenors take issue with the Supreme Judicial Court's assurances that judicial proceedings will provide the necessary confidentiality, lack of procedural burden, and speed of resolution. In the absence of any evidence as to the operation of judicial proceedings under § 12S—and there is none, since appellees successfully sought to enjoin Massachusetts from putting it into effect—we must assume that the Supreme Judicial Court's judgment is correct.

26 The statute also provides that "[i]f both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient."

27 This reading of the statute requires parental consultation and consent more strictly than appellants themselves previously believed was necessary. In their first argument before this Court, and again before the Supreme Judicial Court, appellants argued that § 12S was not intended to abrogate Massachusetts' common-law "mature minor" rule as it applies to abortions. See 428 U.S., at 144, 96 S.Ct., at 2864. They also suggested that, under some circumstances, § 12S might permit even immature minors to obtain judicial approval for an abortion without any parental consultation. See 428 U.S., at 145, 96 S.Ct., at 2865; *Attorney General, supra*, 371 Mass., at 751, 360 N.E.2d, at 294. The Supreme Judicial Court sketched the outlines of the mature minor rule that would apply in the absence of § 12S: "The mature minor rule calls for an analysis of the nature of the operation, its likely benefit, and the capacity of the particular minor to understand fully what the medical procedure involves. . . . Judicial intervention is not required. If judicial approval is obtained, however, the doctor is protected from a subsequent claim that the circumstances did not warrant his reliance on the mature minor rule, and, of course, the minor patient is afforded advance protection against a misapplication of the rule." *Id.*, at 752, 360 N.E.2d, at 295. "We conclude that, apart from statutory limitations which are constitutional, where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth." *Id.*, at 754, 360 N.E.2d, at 296. The Supreme Judicial Court held that the common-law mature minor rule was inapplicable to abortions because it had been legislatively superseded by § 12S.

28 Of course, if the minor consults with her parents voluntarily and they withhold consent, she is free to seek judicial authorization for the abortion immediately.

29 There will be cases where the pregnant minor has received approval of the abortion decision by one parent. In that event, the parent can support the daughter's request for a prompt judicial determination, and the parent's support should be given great, if not dispositive, weight.

30 Appellees and intervenors have argued that § 12S violates the Equal Protection Clause of the Fourteenth Amendment. As we have concluded that the statute is constitutionally infirm for other reasons, there is no need to consider this question.

31 Section 12S evidently applies to all nonemergency abortions performed on minors, without regard to the period in pregnancy during which the procedure occurs. As the court below recognized, most abortions are performed during the early stages of pregnancy, before the end of the first trimester. See *Baird III*, 450 F.Supp., at 1001; *Baird I*, 393 F.Supp., at 853. This coincides approximately with the pre-viability period during which a pregnant woman's right to decide, in consultation with her physician, to have an abortion is most immune to state intervention. See *Roe v. Wade*, 410 U.S., at 164–165, 93 S.Ct., at 732.

The propriety of parental involvement in a minor's abortion decision does not diminish as the pregnancy progresses and legitimate concerns for the pregnant minor's health increase. Furthermore, the opportunity for direct access to court which we have described is adequate to safeguard throughout pregnancy the constitutionally protected interests of a minor in the abortion decision. Thus, although a significant number of abortions within the scope of § 12S might be performed during the later stages of pregnancy, we do not believe a different analysis of the statute is required for them.

32 The opinion of Mr. Justice STEVENS, concurring in the judgment, joined by three Members of the Court, characterizes this opinion as “advisory” and the questions it addresses as “hypothetical.” Apparently, this is criticism of our attempt to provide some guidance as to how a State constitutionally may provide for adult involvement—either by parents or a state official such as a judge—in the abortion decisions of minors. In view of the importance of the issue raised, and the protracted litigation to which these parties already have been subjected, we think it would be irresponsible simply to invalidate § 12S without stating our views as to the controlling principles.

The statute before us today is the same one that was here in *Bellotti I*. The issues it presents were not then deemed “hypothetical.” In a unanimous opinion, we remanded the case with directions that appropriate questions be certified to the Supreme Judicial Court of Massachusetts “concerning the meaning of [§ 12S] and the procedure it imposes.” 428 U.S., at 151, 96 S.Ct., at 2868. We directed that this be done because, as stated in the opinion, we thought the construction of § 12S urged by appellants would “avoid or substantially modify the federal constitutional challenge to the statute.” *Id.*, at 148, 96 S.Ct., at 2866. The central feature of § 12S was its provision that a state-court judge could make the ultimate decision, when necessary, as to the exercise by a minor of the right to an abortion. See *Id.*, at 145, 96 S.Ct. at 2865. We held that this “would be fundamentally different from a statute that creates a ‘parental veto’ [of the kind rejected in *Danforth*.]” *Ibid*. (footnote omitted). Thus, all Members of the Court agreed that providing for decisionmaking authority in a judge was not the kind of veto power held invalid in *Danforth.* The basic issues that were before us in *Bellotti I* remain in the case, sharpened by the construction of § 12S by the Supreme Judicial Court.

1 By affording such a veto, the Massachusetts statute does far more than simply provide for notice to the parents. See *post*, at 3055 (WHITE, J., dissenting). Neither *Danforth* nor this case determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto.

2 See *ante*, at 3048 n. 22.

3 A minor may secure the assistance of counsel in filing and prosecuting her suit, but that is not guaranteed. The Massachusetts Supreme Judicial Court in response to the question whether a minor, upon a showing of indigency, may have court-appointed counsel, "construe[d] the statutes of the Commonwealth to authorize the appointment of counsel or a guardian ad litem for an indigent minor at public expense, if necessary, if the judge, *in his discretion*, concludes that the best interests of the minor would be served by such an appointment." *Baird v. Attorney General*, 371 Mass. 741, 764, 360 N.E.2d 288, 301 (1977) (emphasis added).

4 Until and unless Massachusetts or another State enacts a less restrictive statutory scheme, this Court has no occasion to render an advisory opinion on the constitutionality of such a scheme. A real statute—rather than a mere outline of a possible statute—and a real case or controversy may well present questions that appear quite different from the hypothetical questions Mr. Justice POWELL has elected to address. Indeed, there is a certain irony in his suggestion that a statute that is intended to vindicate "the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child," see *ante*, at 3046, need not require notice to the parents of the minor's intended decision. That irony makes me wonder whether any legislature concerned with parental consultation would, in the absence of today's advisory opinion, have enacted a statute comparable to the one my Brethren have discussed.