CHAPTER ONE: PRELUDE
CHILD, PARENTS OR STATE: WHO DECIDES

A. THE JUDICIAL ALLOCATION OF POWER BETWEEN PARENTS AND STATE.

McIntire, Parenthood Training or Mandatory Birth Control: Take Your Choice, Psychology Today 34 (Oct. 1973)

Few parents like to be told how to raise their children, and even fewer will like the idea of someone telling them whether they can have children in the first place. But that’s exactly what I am proposing—the licensing of parenthood. Of course, civil libertarians and other liberals will claim this would infringe the parents’ rights to freedom of choice and equal opportunity. But what about the rights of children? Surely the parents’ competence will influence their children’s freedom and opportunity. Today, any couple has the right to try parenting, regardless of how incompetent they might be. No one seems to worry about the unfortunate subjects of their experimenting.

The idea of licensing parenthood is hardly new. But until recently, our ignorance of environmental effects, our ignorance of contraception, and our selfish bias against the rights of children have inhibited public discussion of the topic. In recent years, however, psychologists have taught us just how crucial the effect of the home environment can be, and current research on contraception appears promising.

Successful control of parenthood will require a contraceptive that remains in effect until it is removed or counteracted by the administration of a second drug.

The child victim

Clearly, we will soon have the technology necessary to carry out a parenthood licensing program, and history tells us that whenever we develop a technology, we inevitably use it. We should now be concerned with developing the criteria for good parenthood. In some extreme cases we already have legal and social definitions. We obviously consider child abuse wrong, and look upon those who physically mistreat their children as bad parents. In some states the courts remove children from the custody of parents convicted of child abuse.
A recent series of studies of child-abusing parents concluded that such people are generally ignorant of proper child-abusing practices. They also noted that many child-abusing parents had been victims of abuse and neglect in their own youth. Thus our lack of control over who can be parents magnifies the problem with each generation.

In the case of child-abusing parents, the state attempts to prevent the most obvious physical mistreatment of children. At this extreme, our culture does demand that parents prove their ability to provide for the physical well-being of their children. But our culture makes almost no demands when it comes to the children's psychological well-being and development. Any fool can be now raise a child anyway he or she pleases, and it's none of our business. The child becomes the unprotected victim of whoever gives birth to him.

Ironically, the only institutions that do attempt to screen parents are the adoption agencies, although their screening can hardly be called scientific. Curiously enough, those who oppose a parent-licensing law usually do not oppose the discriminating policies practiced by the adoption agencies. It seems that our society cares more about the selection of a child's second set of parents than it does about this original parents. In other words, our culture insists on insuring a certain quality of parenthood for adopted children, but if you want to have one of your own, feel free.

Supermarket Scenario

A mother and daughter enter a supermarket. An accident occurs when the daughter pulls the wrong orange from the pile and 37 oranges are given their freedom. The mother grabs the daughter, shakes her vigorously, and slaps her. What is your reaction? Do you ignore the incident? Do you consider it a family squabble and none of your business? Or, do you go over and advise the mother not to hit her child? If the mother rejects your advice, do you physically restrain her? If she persists, do you call the police? Think about your answers for a moment.

Now let me change one detail. The girl was not that mother's daughter. Do you feel different? Would you act differently? Why? Do "real" parents have the right to abuse their children because they "own" them? Now let me change another detail. Suppose the daughter was 25 years old, and yelled, "Help me! Help me!" Calling the police sounded silly when I first suggested it. How does it sound with a mere change in the age of the victim?

Now let's go back to the original scene where we were
dealing with a small child. Were you about to advise the mother or insist? Were you going to say she shouldn't or couldn't? It depends on whose rights you're going to consider. If you think about the mother's right to mother as she sees fit, then you advise; but if you think about the child's right as a human being to be protected from the physical assault of this woman, then you insist. The whole issue is obviously tangled in a web of beliefs about individual rights, parental rights, and children's rights. We tend to think children deserve what they get or at least must suffer it. Assault and battery, verbal abuse, and even forced imprisonment become legal if the victims are children.

When I think about the issue of children's rights, and the current development of new contraceptives, I see a change coming in this country. I'm tempted to make the following prediction in the form of a science-fiction story.

**Motherhood in the 90s**

"Lock" was developed as a semipermanent contraceptive in 1985. One dose of Lock and a woman became incapable of ovulation until the antidote "Unlock" was administered. As with most contraceptives, Lock required a prescription, with sales limited by the usual criteria of age and marital status.

Gradually, however, a subtle but significant distinction became apparent. Other contraceptives merely allowed a woman to protect herself against pregnancy at her own discretion. Once Lock was administered, however, the prescription for Unlock required an active decision to allow the possibility of pregnancy.

By 1988, the two drugs were being prescribed simultaneously, leaving the Unlock decision in the hands of potential mothers. Of course, problems arose. Mothers smuggled Lock to their daughters and the daughters later asked for Unlock. Women misplaced the Unlock and had to ask for more. Faced with the threat of a black market, the state set up a network of special dispensaries for the contraceptive and its antidote. When the first dispensaries opened in 1989, they dispensed Lock rather freely, since they could always regulate the use of Unlock. But it soon became apparent that special local committees would be necessary to screen applications for Unlock. "After all," the dispensary officials asked themselves, "how would you like to be responsible for this person becoming a parent?"

**Protect our children**

---

1 Or, perhaps the 21 century. ed.
That same year, 1989, brought the school-population riots. Overcrowding had forced state education officials to take some action. Thanks to more efficient educational techniques, they were able to consider reducing the number of years of required schooling. This, however, would have thrown millions of teenagers out onto the already overcrowded job market, which would make the unions unhappy. Thus, rather than shortening the entire educational process, the officials decided to shorten the school day into two half-day shifts. That led to the trouble.

Until then people had assumed that schools existed primarily for purpose of education. But the decision to shorten the school day exposed the dependence of the nation's parents on the school as the great baby sitter of their offspring. Having won the long struggle for daycare centers, and freedom from diapers and bottles, [parents] were horrified at the prospect of a few more hours of responsibility every day until their children were 18 or 21. They took to the streets.

In Richmond, Virginia, a neighborhood protest over the shortened school day turned into a riot. One of the demonstrators picked up a traffic sign near the school that cautioned drivers to "Protect Our Children," and found herself leading the march toward city hall. Within a week that sign became the national slogan for the protesters, as well as for the Lock movement. It came to mean not only protecting our children from overcrowding and lack of supervision, but also protecting them from pregnancy.

Because of the school-population riots, distribution of Lock took on the characteristics of an immunization program under the threat of an epidemic. With immunization completed, the state could control the birth rate like a water faucet by the distribution of Unlock. However, this did not solve the problem of deciding who should bear the nation's children.

Congress takes over

To settle the issue, Congress appointed a special blue-ribbon commission of psychologists, psychiatrists, educators and clergy to come with acceptable criteria for parenthood, and a plan for a licensing program. The commission issued its report in 1994. Based upon its recommendations, Congress set up a Federal regulatory agency to administer a national parenthood-licensing program similar to driver-training and licensing procedures.

The agency now issues study guides for the courses, and sets the required standards of child-rearing knowledge. Of course, the standards vary for parents, teachers, and child-care professionals, depending upon the degree of responsibility involved. The courses and exams are conducted by local
community colleges, under the supervision of the Federal agency. Only upon passing the exams can prospective parents receive a prescription for Unlock.

Distribution of Lock and Unlock is now strictly regulated by the Federal agency's local commissions. Since the records of distribution are stored in Federal computer banks, identification of illegitimate pregnancies (those made possible by the unauthorized use of Unlock) has become a simple matter. Parents convicted of this crime are fined, and required to begin an intensive parenthood-training program immediately. If they do not qualify by the time their child is born, the child goes to a community childcare program until they do.

**Drawing the battle lines**

As might be expected, the parent-licensing program has come under attack from those who complain about the loss of their freedom to create and raise children according to their own choice and beliefs. To such critics, the protect-our-children of Lock the faction argues: "It is absurd to require education and license to drive a car, but allow anybody to raise our most precious possession or to add to the burden of this possession without demonstrating an ability to parent."

"But the creation of life is in the hands of God," says the freedom-and-right-to-parent-faction (referred to by their opposition as the "far-right-people").

"Nonsense," say the Lock people. "Control over life creation was acquired with the first contraceptive. The question is whether we use it with intelligence or not."

"But that question is for each potential parent to answer as an individual," say the far-right-people.

The Lock people answer: "Those parents ask the selfish question of whether they want a child or not. We want to know if the child will be adequately cared for---by them and by the culture."

The far-right respond, "God gave us bodies and all their functions. We have a right to the use of those functions. Unlock should be there for the asking. Why should the Government have a say in whether I have a child?"

"Because the last century has shown that the Government will be saddled with most of the burden of raising your child," say the Lock people. "The programs, the colleges, the parks and planning commissions---they will be burdened with your child. That's why the Government should have a say. The extent of the Government's burden depends on your ability to raise your child. If you screw it up, the society and Government will suffer. That's why they should screen potential parents."
From the right again: "The decision of my spouse and myself is sacred. It's none of their damn business."

But the Locks argue: "If you raised your child in the wilderness and the child's malfunctions punished no one but yourselves, it would be none of their damn business. But if your child is to live with us, be educated by us, suffered by us, add to the crown of us, we should have a say."

**How to rear a child**

I can understand how some people might find this story either far-fetched or frightening...The times are changing. With the population problems now upon us, we can no longer afford the luxury of allowing any two fools to add to our numbers whenever they please. Psychologists have by now established that some child-rearing principles that should be part of every parent's knowledge. An objective study of these principles need not involve the prying, subjective investigation now used by adoption agencies. It would merely insure that potential parents be familiar with the principles of sound child-rearing. Examinations and practical demonstrations would test their knowledge. Without having state agents check every home (and, of course, we would never accept such "Big Brother" tactics) there could be no way to enforce the use of that knowledge. But insistence on the knowledge would itself save a great deal of suffering by the children.

The following list suggests a few of the topics with which every parent should be familiar:

1. Principles of sound nutrition and diet.
2. Change in nutritional requirements with age.
4. Principles of behavioral development: normal range of ages at which behavioral capabilities might be expected, etc.
5. Principles of learning and language acquisition.
6. Principles of immediacy and consistency that govern parent's reactions to children's behavior.
7. Principles of modeling and imitation: how children learn from and copy their parents' behavior.
8. Principles of reinforcement: how parent and peer reactions regard a child's behavior, and which rewards should be used.
9. Principles of punishment: how parents' reactions can be used to punish or discourage bad behavior.
10. Response-cost concept: how to "raise the cost" or create unpleasant consequences in order to make undesirable behavior more "expensive" or difficult.
11. Extinction procedures and adjunctive behavior: if rewards for good behavior cease, children may "act up" just to fill the time.
12. Stimulus-control generalization: children may act up in some situations, and not in others, because of different payoffs. For example, Mommy may give the child candy to stop a tantrum, whereas Daddy may ignore it or strike a child.

Most of us have some familiarity with the principles at the beginning of this list, but many parents have little knowledge of the other topics. Some psychologists would obviously find my list biased toward behavior modification, but their revisions or additions to the list only strengthen my argument that our science has a great deal to teach that would be relevant to a parenthood-licensing program.

Misplaced priorities

Of course the word licensing suggest that the impersonal hand of Government may control individual lives, and that more civil servants will be paid to meddle in our personal affairs. But consider for a moment that for our safety and well-being we already license pilots, salesmen, scuba divers, plumbers, electricians, teachers, veterinarians, cab drivers, soil testers and television repairmen. To protect pedestrians, we accept restrictions on the speed with which we drive our cars. Why, then, do we encourage such commotion, chest thumping, and cries of oppression when we try to protect the well-being of children by controlling the most crucial determiner of that well-being, the competence of their parents? Are our TV sets and toilets more important to us than our children? Can you imagine the public outcry that would occur if adoption agencies offered their children on a first-come-first-served basis, with no screening process for applicants? Imagine some drunk stumbling up and saying, "I'll take that cute little blond-haired girl over there."

We require appropriate education for most trades and professions, yet stop short at parenthood because it would be an infringement on the individual freedom of the parent. The foolishness of this position will become increasingly apparent the more confident we become in our knowledge about child-rearing.

The first step toward a parenthood law will probably occur when child-abuse offenders will be asked or required to take "Lock" as an alternative to, or in addition to, being tried in court. Or the court may also offer the child abuser the alternative of a remedial training program such as the traffic courts now use. The next step may be the broadening of the term "child abuse" to include ignorant mistreatment of a psychological nature. Some communities may add educational programs to marriage-license requirements, while others may add parenthood training to existing courses in baby care.
When the Government gets around to setting criteria for proper childrearing, these must be based upon a very specific set of principles of nutrition, hygiene, and behavior control. They cannot be based on bias and hearsay. Some of the criteria now used by adoption agencies, such as reference from neighbors and friends, cannot be considered objective. We don't interview your neighbors when you apply for a driver's license, and it shouldn't be done for a parent's license either. But just as a citizen must now demonstrate knowledge and competence to drive a car, so ought he to demonstrate ability to parent as well. Proof of exposure to education is not enough. We are not satisfied merely with driver training courses, but demand a driver's test as well. We should require the same standards of parents.

We can hope that as progress occurs in the technology of contraception and the knowledge of child-rearing principles, the current "right to parent" will be re-evaluated by our society. Perhaps we can construct a society that will also consider the rights that children have to a humane and beneficial upbringing.

**Note: Licensing Parents?**

1. For a thought provoking essay, highly favorable to the licensing of parents, see LaFollette, *Licensing Parents*, 2 Phil. & Pub.Aff. 182 (1980). LaFollette's main goal in the essay is to demonstrate that the licensing of parents is not only theoretically desirable but workable as well. He promotes social and philosophical justifications for his positions without focusing on the legal implications of such a program. For discussions of LaFollette's thesis, see Frisch, *On Licentious Licensing: A Reply to Hugh LaFollette*, 11 Phil. & Pub.Aff. 173 (1981); Mangel, *Licensing Parents: How Feasible?* 22 Fam.L.Q. 17 (1988).


"These days it is not unimaginable that a long-lasting contraceptive (along the lines of "Norplant") could indeed be included as part of the battery of "immunizations" given to children. (And if a contraceptive were included, it is possible that school authorities would far more effectively insist on compliance with the required immunization laws than they do today).

"Told to assume that this strategy is technologically feasible, a substantial majority of Americans might well favor the idea of mandatory contraception for minors (although some would surely object vigorously on the ground that this would promote teenage
sexual activity). But if "Lock" did not automatically wear out on one's eighteenth birthday, surely the proposal would run into a political firestorm.

"Moreover, even if administrators could be counted on to act in good faith, would not the anticipated number of false positives and false negatives make it intolerable that some third party would be deciding who could become pregnant and who could impregnate? Imagine, for example, that all a person had to do to get "Unlock" was to obtain counselling about parenting; even then, there is good reason to believe that the counselors would have considerable difficulty in deciding who to encourage to decline "Unlock." If nothing else, the experiences of being pregnant or knowing that you made someone pregnant, and then of having your child born, can be transforming for many people in unpredictable ways--making irresponsible those who it was anticipated would have coped well.

"The actual 'Unlock' proposal imagined a requirement that people would have to go through a parenting education course in order to get it. But there is little reason to believe that any formal parenting education that would be required would have an important positive effect on those subject to it--given, for example, the evidence on the lack of effectiveness of mandatory formal driver's education as a condition of obtaining a driving license. Its main tendency, rather, would probably be to screen out those who generally did not do well in school."

PIERCE v. SOCIETY OF THE SISTERS
268 U.S. 510 (1925)

Mr. Justice McREYNOLDS delivered the opinion of the Court.

These appeals are from decrees which granted preliminary orders restraining appellants from threatening or attempting to enforce the Compulsory Education Act adopted November 7, 1922.

The challenged act, effective September 1, 1926, requires every parent, guardian, or other person having control or charge or custody of a child between 8 and 16 years to send him 'to a public school for the period of time a public school shall be held during the current year' in the district where the child resides; and failure so to do is declared a misdemeanor. There are exemptions--not specially important here--for children who are not normal, or who have completed the eighth grade, or whose parents or private
teachers reside at considerable distances from any public school, or who hold special permits from the county superintendent. The manifest purpose is to compel general attendance at public schools by normal children, between 8 and 16, who have not completed the eighth grade. And without doubt enforcement of the statute would seriously impair, perhaps destroy, the profitable features of appellees' business and greatly diminish the value of their property.

Appellee, the Society of Sisters, is an Oregon corporation organized in 1880, with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, and acquire necessary real and personal property. It has long devoted its property and effort to the secular and religious education and care of children, and has acquired the valuable good will of many parents and guardians. The Compulsory Education Act of 1922 has already caused the withdrawal from its schools of children who would otherwise continue, and their income has steadily declined. The appellants, public officers, have proclaimed their purpose strictly to enforce the statute.

After setting out the above facts, the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that unless enforcement of the measure is enjoined the corporation's business and property will suffer irreparable injury.

Appellee Hill Military Academy is a private corporation organized in 1908 under the laws of Oregon, engaged in owning, operating, and conducting for profit an elementary, college preparatory, and military training school for boys between the ages of 5 and 21 years. By reason of the statute and threat of enforcement appellee's business is being destroyed and its property depreciated; parents and guardians are refusing to make contracts for the future instruction of their sons, and some are being withdrawn.

The Academy's bill alleges that the challenged Act contravenes the corporation's rights guaranteed by the Fourteenth Amendment and that unless appellants are restrained from proclaiming its validity and threatening to enforce it irreparable injury will result. The prayer is for an appropriate injunction.

The matter was heard by three judges. The court ruled that the Fourteenth Amendment guaranteed appellees against the deprivation of their property without due process of law consequent
upon the unlawful interference by appellants with the free choice of patrons, present and prospective. It declared the right to conduct schools was property and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places. Also, that appellees' schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage and thereby destroy appellees' business and property.

No question is raised concerning the power of the state to reasonably regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

The inevitable practical result of enforcing the act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the state of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students, or the state. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

Under the doctrine of *Meyer v. Nebraska*, 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A. L. R. 1146, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The 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.

The decrees below are affirmed.

**Note and Questions on *Pierce***

1. The constitutional importance of *Pierce*, especially in establishing the constitutional framework for American education,
would be difficult to exaggerate. Whose rights are being vindicated? Is the concern with the private school's proprietary rights or the parent's rights to rear their children, or both?

2. Are there any arguments that would justify a public school monopoly? Are there arguments that would deny to the state the ability to dictate compulsory education? Could the state require the child to attend some school either public or private? In other words, could the state forbid “home schooling?” Does the state have the right to accredit the school? Dictate its curriculum?

PRINCE v. MASSACHUSETTS
321 U.S. 158 (1944)

Mr. Justice RUTLEDGE delivered the opinion of the Court. The case brings for review another episode in the conflict between Jehovah’s Witnesses and state authority. This time Sarah Prince appeals from convictions for violating Massachusetts' child labor laws, by acts said to be a rightful exercise of her religious convictions.

When the offenses were committed she was the aunt and custodian of Betty M. Simmons, a girl nine years of age. Originally there were three separate complaints. They were, shortly, for (1) refusal to disclose Betty's identity and age to a public officer whose duty was to enforce the statutes; (2) furnishing her with magazines, knowing she was to sell them unlawfully, that is, on the street; and (3) as Betty's custodian, permitting her to work contrary to law. The complaints were made, respectively, pursuant to Sections 79, 80 and 81 of Chapter 149, Gen.Laws of Mass. (Ter.Ed.). The Supreme Judicial Court reversed the conviction under the first complaint on state grounds; but sustained the judgments founded on the other two.² 313 Mass. 223, 46 N.E.2d 755. They present the only questions for our decision. These are whether Sections 80 and 81, as applied, contravene the Fourteenth Amendment by denying or abridging appellant's freedom of religion and by denying to her the equal protection of the laws.

Sections 80 and 81 form parts of Massachusetts’ comprehensive child labor law. They provide methods for enforcing

² Appellant received moderate fines on each complaint, first in the District Court of Brockton, then on pleas of not guilty by trial de novo without a jury in the Superior Court for Plymouth County. Motions to dismiss and quash the complaints, for directed findings, and for rulings, were made seasonably and denied by the Superior Court.
the prohibitions of Section 69, which is as follows:

No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place.

Section 80 and 81, so far as pertinent, read:

Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both.' (Section 80)

Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive, **shall for a first offence be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than five days, or both; * * * . (Section 81)

Mrs. Prince, living in Brockton, is the mother of two young sons. She also has legal custody of Betty Simmons who lives with them. The children too are Jehovah's Witnesses and both Mrs. Prince and Betty testified they were ordained ministers. The former was accustomed to go each week on the streets of Brockton to distribute 'Watchtower' and 'Consolation,' according to the usual plan. She had permitted the children to engage in this activity previously, and had been warned against doing so by the school attendance officer, Mr. Perkins. But, until December 18, 1941, she generally did not take them with her at night.

That evening, as Mrs. Prince was preparing to leave her home, the children asked to go. She at first refused. Childlike, they resorted to tears and, motherlike, she yielded. Arriving downtown, Mrs. Prince permitted the children 'to engage in the preaching work with her upon the sidewalks.' That is, with specific reference to Betty, she and Mrs. Prince took positions about twenty feet apart near a street intersection. Betty held up in her hand, for passersby to see, copies of 'Watch Tower' and 'Consolation.' From her shoulder hung the usual canvas magazine bag, on which was printed 'Watchtower and Consolation 5 cents per copy.' No one accepted a copy from Betty that evening and she received no money. Nor did her aunt. But on other occasions, Betty had received funds and given out copies.

Mrs. Prince and Betty remained until 8:45 p.m. A few
minutes before this Mr. Perkins approached Mrs. Prince. A discussion ensued. He inquired and she refused to give Betty's name. However, she stated the child attended the Shaw School. Mr. Perkins referred to his previous warnings and said he would allow five minutes for them to get off the street. Mrs. Prince admitted she supplied Betty with the magazines and said, "(N)either you nor anybody else can stop me * * *. This child is exercising her God-given right and her constitutional right to preach the gospel, and no creature has a right to interfere with God's commands.' However, Mrs. Prince and Betty departed. She remarked as she went, "I'm not going through this any more. We've been through it time and time again. I'm going home and put the little girl to bed." It may be added that testimony, by Betty, her aunt and others, was offered at the trials, and was excluded, to show that Betty believed it was her religious duty to perform this work and failure would bring condemnation "to everlasting destruction at Armageddon."

As the case reaches us, the questions are no longer open whether what the child did was a 'sale' or an 'offer to sell' within Section 69 or was 'work' within Section 81. The state court's decision has foreclosed them adversely to appellant as a matter of state law. The only question remaining therefore is whether, as construed and applied, the statute is valid.

[Appellant's argument rests] squarely on freedom of religion under the First Amendment, applied by the Fourteenth to the states. She buttresses this foundation, however, with a claim of parental right as secured by the due process clause of the latter Amendment. Cf. Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446. These guaranties, she thinks, guard alike herself and the child in what they have done. Thus, two claimed liberties are at stake. One is the parent's, to bring up the child in the way he should go, which for appellant means to teach him the tenets and the practices of their faith. The other freedom is the child's, to observe these; and among them is 'to preach the gospel * * * by public distribution' of 'Watchtower' and 'Consolation,' in conformity with the scripture: 'A little shall lead them.'

To make accommodation between these freedoms and an exercise of state authority always is delicate. On one side is the obviously earnest claim for freedom of conscience and religious practice. With it is allied the parent's claim to authority in her own household and in the rearing of her children. The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against
these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on.

The rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief, as against preponderant sentiment and assertion of state power voicing it, have had recognition here. Previously in *Pierce v. Society of Sisters*, 268 U.S. 510, this Court had sustained the parent's authority to provide religious with secular schooling, and the child's right to receive it, as against the state's requirement of attendance at public schools. And in *Meyer v. Nebraska*, 262 U.S. 390, children's rights to receive teaching in languages other than the nation's common tongue were guarded against the state's encroachment. It 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. *Pierce v. Society of Sisters*, supra. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. *Reynolds v. United States*, 98 U.S. 145; *Davis v. Beason*, 133 U.S. 333. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The catalogue is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

But it is said the state cannot do so here. This, first,
because when state action impinges upon a claimed religious freedom, it must fall unless shown to be necessary for or conducive to the child’s protection against some clear and present danger, and, it is added, there was no such showing here. The child's presence on the street, with her guardian, distributing or offering to distribute the magazines, it is urged, was in no way harmful to her, nor in any event more so than the presence of many other children at the same time and place, engaged in shopping and other activities not prohibited. Accordingly, in view of the preferred position the freedoms of the First Article occupy, the statute in its present application must fall. And, finally, it is said, the statute is, as to children, an absolute prohibition, not merely a reasonable regulation, of the denounced activity.

Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid. But the mere fact a state could not wholly prohibit this form of adult activity, whether characterized locally as a 'sale' or otherwise, does not mean it cannot do so for children. Such a conclusion granted would mean that a state could impose no greater limitation upon child labor than upon adult labor. Or, if an adult were free to enter dance halls, saloons, and disreputable places generally, in order to discharge his conceived religious duty to admonish or dissuade persons from frequenting such places, so would be a child with similar convictions and objectives, if not alone then in the parent's company, against the state's command.

The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment, especially in public places, and the possible harms arising from other activities subject to all the diverse influences of the street. It is too late now to doubt that legislation appropriately designed to reach such evils is within the state’s police power, whether against the parents claim to control of the child or one that religious scruples dictate contrary action.

It is true children have rights, in common with older people, in the primary use of highways. But even in such use streets afford dangers for them not affecting adults. And in other uses, whether in work or in other things, this difference may be magnified. This is so not only when children are unaccompanied but certainly to
some extent when they are with their parents. What may be wholly permissible for adults therefore may not be so for children, either with or without their parents’ presence.

Street preaching, whether oral or by handing out literature, is not the primary use of the highway, even for adults. While for them it cannot be wholly prohibited, it can be regulated within reasonable limits in accommodation to the primary and other incidental uses. But, for obvious reasons, notwithstanding appellant's contrary view, the validity of such a prohibition applied to children not accompanied by an older person hardly would seem open to question. The case reduces itself therefore to the question whether the presence of the child's guardian puts a limit to the state's power. That fact may lessen the likelihood that some evils the legislation seeks to avert will occur. But it cannot forestall all of them. The zealous though lawful exercise of the right to engage in propagandizing the community, whether in religious, political or other matters, may and at times does create situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Other harmful possibilities could be stated, of emotional excitement and psychological or physical injury. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves. Massachusetts has determined that an absolute prohibition, though one limited to streets and public places and to the incidental uses proscribed, is necessary to accomplish its legitimate objectives. Its power to attain them is broad enough to reach these peripheral instances in which the parent's supervision may reduce but cannot eliminate entirely the ill effects of the prohibited conduct. We think that with reference to the public proclaiming of religion, upon the streets and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms, and the rightful boundary of its power has not been crossed in this case.

In so ruling we dispose also of appellant's argument founded upon denial of equal protection. It falls with that based on denial of religious freedom, since in this instance the one is but another phrasing of the other. Shortly, the contention is that the street, for Jehovah's Witnesses and their children, is their church, since their conviction makes it so; and to deny them access to it for religious purposes as was done here has the same effect as excluding altar boys, youthful choristers, and other children from the edifices in which they practice their religious beliefs and
worship. The argument hardly needs more than statement, after what has been said, to refute it. However Jehovah's Witnesses may conceive them, the public highways have not become their religious property merely by their assertion. And there is no denial of equal protection in excluding their children from doing there what no other children may do.

Our ruling does not extend beyond the facts the case presents. We neither lay the foundation "for any, (that is, every) state intervention in the indoctrination and participation of children in religion' which may be done 'in the name of their health and welfare' nor give warrant for 'every limitation on their religious training and activities.' The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court. These and all others except the public proclaiming of religion on the streets, if this may be taken as either training or indoctrination of the proclaimer, remain unaffected by the decision.

The judgment is affirmed.

Affirmed.

Justices JACKSON, ROBERTS, FRANKFURTER and MURPHY dissent.

Questions on Prince v. Massachusetts

1. The Court states that a child labor prohibition, such as Section 69 applied in Prince, would not be constitutional if applied to adult Jehovah's witnesses. Why should the state’s power be greater vis-a-vis children? What reasons does the Court give for its conclusion that "the validity of such a prohibition applied to children not accompanied by an older person hardly would seem open to question"? Do you agree with the conclusion? What reasons can you give? Do these reasons apply if the child is accompanied by an adult? A parent or guardian?

2. Was there a showing in Prince of actual risk or harm to this particular child? Do the justifications for preventing child labor apply to the facts of this case? Is there any harm on the facts of Prince to any substantial state interest?

3. Does the Court in Prince define the outer limits of the state's power to constrict parental freedom because of the state's interest in protecting the child? What do you think those limits are?
Prior to trial, the attorney for respondents wrote the State Superintendent in an effort to explore the possibilities for a compromise settlement. Among other possibilities, he suggested that perhaps the State Superintendent could administratively determine that the Amish could satisfy the compulsory-attendance law by establishing their own vocational training plan similar to one that has been established in Pennsylvania. Supp.App. 6. Under the Pennsylvania plan, Amish children of high school age are required to attend an Amish vocational school for three hours a week, during which time they are taught such subjects as English, mathematics, health, and social studies by an Amish teacher. For the balance of the week, the children perform farm and household duties under parental supervision, and keep a journal of their daily activities. The major portion of the curriculum is home projects in agriculture and homemaking. See generally J. Hostetler & G. Huntington, Children in Amish Society: Socialization and Community Education, c. 5 (1971). A similar program has been instituted in Indiana. Ibid. See also Iowa Code §299.24 (1971); Kan.Stat.Ann. §72--1111 (Supp. 1971). The Superintendent rejected this proposal on the ground that it would not afford Amish children 'substantially equivalent education' to that offered in the schools of the area. Supp.App. 6.

3 Prior to trial, the attorney for respondents wrote the State Superintendent of Public Instruction in an effort to explore the possibilities for a compromise settlement. Among other possibilities, he suggested that perhaps the State Superintendent could administratively determine that the Amish could satisfy the compulsory-attendance law by establishing their own vocational training plan similar to one that has been established in Pennsylvania. Supp.App. 6. Under the Pennsylvania plan, Amish children of high school age are required to attend an Amish vocational school for three hours a week, during which time they are taught such subjects as English, mathematics, health, and social studies by an Amish teacher. For the balance of the week, the children perform farm and household duties under parental supervision, and keep a journal of their daily activities. The major portion of the curriculum is home projects in agriculture and homemaking. See generally J. Hostetler & G. Huntington, Children in Amish Society: Socialization and Community Education, c. 5 (1971). A similar program has been instituted in Indiana. Ibid. See also Iowa Code §299.24 (1971); Kan.Stat.Ann. §72--1111 (Supp. 1971). The Superintendent rejected this proposal on the ground that it would not afford Amish children 'substantially equivalent education' to that offered in the schools of the area. Supp.App. 6.
given in some detail, beginning with the Swiss Anabaptists of the 16th century who rejected institutionalized churches and sought to return to the early, simple, Christian life de-emphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities.

Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a `worldly' influence in conflict with their beliefs.

Formal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environment hostile to Amish beliefs with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing, and elementary mathematics, these traits, skills, and attitudes admittedly fall within the category of those best learned through example and 'doing' rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism. In short, high school attendance with teachers who are not of the Amish faith--and may even be hostile to it--interposes a serious barrier to the integration of the Amish child into the Amish religious community. Dr. John Hostetler, one of the experts on Amish society, testified that the modern high
school is not equipped, in curriculum or social environment, to impart the values promoted by Amish society.

The Amish do not object to elementary education through the first eight grades as a general proposition because they agree that their children must have basic skills in the 'three R's' in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period. While Amish accept compulsory elementary education generally, wherever possible they have established their own elementary schools. In the Amish belief higher learning tends to develop values they reject as influences that alienate man from God.

On the basis of such considerations, Dr. Hostetler testified that compulsory high school attendance could not only result in great psychological harm to Amish children, because of the conflicts it would produce, but would also, in his opinion, ultimately result in the destruction of the Old Order Amish church community as it exists in the United States today. The testimony of Dr. Donald A. Erickson, an expert witness on education, also showed that the Amish succeed in preparing their high school age children to be productive members of the Amish community. He described their system of learning through doing the skills directly relevant to their adult roles in the Amish community as 'ideal' and perhaps superior to ordinary high school education. The evidence also showed that the Amish have an excellent record as law-abiding and generally self-sufficient members of society.

[A] State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, `prepare (them) for additional obligations.' 268 U.S., at 535, 45 S.Ct., at 573.

It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. In evaluating these claims we must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent.
A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief.

Giving no weight to such secular considerations, however, we see that the record in this case abundantly supports the claim that the traditional way of life of the Amish is one of deep religious conviction, shared by an organized group, and intimately related to daily living. That the Old Order Amish daily life and religious practice stem from their faith is shown by the fact that it is in response to their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, `be not conformed to this world . . ..' This command is fundamental to the Amish faith. Moreover, for the Old Order Amish, religion is not simply a matter of theocratic belief. As the expert witnesses explained, the Old Order Amish religion pervades and determines virtually their entire way of life. Their religious beliefs and what we would today call 'life style' have not altered in fundamentals for centuries. Their way of life in a church-oriented community, separated from the outside world and 'worldly' influences, their attachment to nature and the soil, is a way inherently simple and uncomplicated, albeit difficult to preserve against the pressure to conform. Their rejection of telephones, automobiles, radios, and television, their mode of dress, of speech, their habits of manual work do indeed set them apart from much of contemporary society; these customs are both symbolic and practical.

As the record so strongly shows, the values and programs of the modern secondary school are in sharp conflict with the fundamental mode of life mandated by the Amish religion. The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

The impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs. Compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious
practice as they exist today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region.⁹

In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents’ entire mode of life support the claim that enforcement of the State’s requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents’ religious beliefs.

III

We turn, then, to the State’s broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way.

The State advances two primary arguments in support of its system of compulsory education. It notes, as Thomas Jefferson pointed out early in our history, that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions.

However, the evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests. Respondents’ experts testified at trial, without challenge, that the value of all education must be assessed in terms of its capacity to prepare the child for life. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the

⁹ Some States have developed working arrangements with the Amish regarding high school attendance. See n. 3, supra. However, the danger to the continued existence of an ancient religious faith cannot be ignored simply because of the assumption that its adherents will continue to be able, at considerable sacrifice, to relocate in some more tolerant State or country or work out accommodations under threat of criminal prosecution. Forced migration of religious minorities was an evil that lay at the heart of the Religion Clauses. See, e.g., Everson v. Board of Education, 330 U.S. 1, 9–10, 67 S.Ct. 504, 508–509, 91 L.Ed. 711 (1947); Madison, Memorial and Remonstrance Against Religious Assessments, 2 Writings of James Madison 183 (G. Hunt ed. 1901).
preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith.

The State attacks respondents' position as one fostering 'ignorance' from which the child must be protected by the State. No one can question the State's duty to protect children from ignorance but this argument does not square with the facts disclosed in the record. The Amish community has been a highly successful social unit within our society, even if apart from the conventional 'mainstream.' Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms.

The State, however, supports its interest in providing an additional one or two years of compulsory high school education to Amish children because of the possibility that some such children will choose to leave the Amish community, and that if this occurs they will be ill-equipped for life. The State argues that if Amish children leave their church they should not be in the position of making their way in the world without the education available in the one or two additional years the State requires. However, on this record, that argument is highly speculative. There is no specific evidence of the loss of Amish adherents by attrition, nor is there any showing that upon leaving the Amish community Amish children, with their practical agricultural training and habits of industry and self-reliance, would become burdens on society because of educational shortcomings. Indeed, this argument of the State appears to rest primarily on the State's mistaken assumption, already noted, that the Amish do not provide any education for their children beyond the eighth grade, but allow them to grow in 'ignorance.' To the contrary, not only do the Amish accept the necessity for formal schooling through the eighth grade level, but continue to provide what has been characterized by the undisputed testimony of expert educators as an 'ideal' vocational education for their children in the adolescent years.

The independence and successful social functioning of the Amish community for a period approaching almost three centuries and more than 200 years in this country are strong evidence that there is at best a speculative gain, in terms of meeting the duties of citizenship, from an additional one or two years of compulsory formal education. Against this background it would require a more particularized showing from the State on this point to justify the severe interference with religious freedom such additional compulsory attendance would entail.

We should also note that compulsory education and child labor laws find their historical origin in common humanitarian instincts, and that the age limits of both laws have been
coordinated to achieve their related objectives. In the context of this case, such considerations, if anything, support rather than detract from respondents' position. The origins of the requirement for school attendance to age 16, an age falling after the completion of elementary school but before completion of high school, are not entirely clear. But to some extent such laws reflected the movement to prohibit most child labor under age 16 that culminated in the provisions of the Federal Fair Labor Standards Act of 1938. The 16-year education limit reflects, in substantial measure, the concern that children under that age not be employed under conditions hazardous to their health, or in work that should be performed by adults.

The requirement of compulsory schooling to age 16 must therefore be viewed as aimed not merely at providing educational opportunities for children, but as an alternative to the equally undesirable consequence of unhealthful child labor displacing adult workers, or, on the other hand, forced idleness. The two kinds of statutes—compulsory school attendance and child labor laws—tend to keep children of certain ages off the labor market and in school; this regimen in turn provides opportunity to prepare for a livelihood of a higher order than that which children could pursue without education and protects their health in adolescence.

In these terms, Wisconsin's interest in compelling the school attendance of Amish children to age 16 emerges as somewhat less substantial than requiring such attendance for children generally. For, while agricultural employment is not totally outside the legitimate concerns of the child labor laws, employment of children under parental guidance and on the family farm from age 14 to age 16 is an ancient tradition that lies at the periphery of the objectives of such laws. There is no intimation that the Amish employment of their children on family farms is in any way deleterious to their health or that Amish parents exploit children at tender years.

Finally, the State, on authority of Prince v. Massachusetts, argues that a decision exempting Amish children from the State's requirement fails to recognize the substantive right of the Amish child to a secondary education, and fails to give due regard to the power of the State as parens patriae to extend the benefit of secondary education to children regardless of the wishes of their parents. Taken at its broadest sweep, the Court's language in Prince, might be read to give support to the State's position. However, the Court was not confronted in Prince with a situation comparable to that of the Amish as revealed in this record; this is shown by the Court's severe characterization of the evils that it thought the legislature could legitimately associate with child labor,
even when performed in the company of an adult. 321 U.S., at 169--170, 64 S.Ct., at 443--444.

This case, of course, is not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred. The record is to the contrary, and any reliance on that theory would find no support in the evidence.

Our holding today in no degree depends on the assertion of the religious interest of the child as contrasted with that of the parents. It is the parents who are subject to prosecution here for failing to cause their children to attend school, and it is their right of free exercise, not that of their children, that must determine Wisconsin's power to impose criminal penalties on the parent. The dissent argues that a child who expresses a desire to attend public high school in conflict with the wishes of his parents should not be prevented from doing so. There is no reason for the Court to consider that point since it is not an issue in the case. The children are not parties to this litigation. The State has at no point tried this case on the theory that respondents were preventing their children from attending school against their expressed desires, and indeed the record is to the contrary. 21 The State's position from the outset has been that it is empowered to apply its compulsory-attendance law to Amish parents in the same manner as to other parents—that is, without regard to the wishes of the child. That is the claim we reject today.

Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary. Recognition of the claim of the State in such a proceeding would, of course, call into question traditional concepts of parental control over the religious upbringing and education of their minor children recognized in this Court's past decisions. It is clear that such an intrusion by a State into family decisions in the area of religious training would give rise to grave questions of religious freedom comparable to those raised here and those presented in Pierce v. Society of Sisters, 268 U.S.

---

21 The only relevant testimony in the record is to the effect that the wishes of the one child who testified corresponded with those of her parents. Testimony of Frieda Yoder, Tr. 92--94, to the effect that her personal religious beliefs guided her decision to discontinue school attendance after the eighth grade. The other children were not called by either side.
What we have said should meet the suggestion that the decision of the Wisconsin Supreme Court recognizing an exemption for the Amish from the State's system of compulsory education constituted an impermissible establishment of religion. In *Walz v. Tax Commission*, the Court saw the three main concerns against which the Establishment Clause sought to protect as `sponsorship, financial support, and active involvement of the sovereign in religious activity.' 397 U.S. 664, 668, 90 S.Ct. 1409, 1411, 25 L.Ed.2d 697 (1970). Accommodating the religious beliefs of the Amish can hardly be characterized as sponsorship or active involvement. The purpose and effect of such an exemption are not to support, favor, advance, or assist the Amish, but to allow their centuries-old religious society, here long before the advent of any compulsory education, to survive free from the heavy impediment compliance with the Wisconsin compulsory-education law would impose. Such an accommodation `reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall.' *Sherbert v. Verner*, 374 U.S. 398, 409, 83 S.Ct. 1790, 1797, 10 L.Ed.2d 965 (1963).

On this record we neither reach nor decide those issues.

However read, the Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a `reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment. To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens. But in this case, the Amish have introduced persuasive evidence undermining the arguments the State has advanced to support its claims in terms of the welfare of the child and society as a whole.

We cannot accept a parens patriae claim of such all-encompassing scope and with such sweeping potential for broad and unforeseeable application as that urged by the State.

V

For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16.

Nothing we hold is intended to undermine the general applicability of the State's compulsory school-attendance statutes or to limit the power of the State to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocational education under
parental and church guidance by the Old Order Amish or others similarly situated. The States have had a long history of amicable and effective relationships with church-sponsored schools, and there is no basis for assuming that, in this related context, reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental guidance, provided always that state regulations are not inconsistent with what we have said in this opinion.\(^{23}\) Affirmed.

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

Mr. Justice STEWART, with whom Mr. Justice BRENNAN joins, concurring.

This case in no way involves any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wish to do so. As the Court points out, there is no suggestion whatever in the record that the religious beliefs of the children here concerned differ in any way from those of their parents. Only one of the children testified. The last two questions and answers on her cross-examination accurately sum up her testimony:

Q. So I take it then, Frieda, the only reason you are not going to school, and did not go to school since last September, is because of your religion?
A. Yes.
Q. That is the only reason?
A. Yes.’ (Emphasis supplied.)

It is clear to me, therefore, that this record simply does not present the interesting and important issue discussed in Part II of the dissenting opinion of Mr. Justice DOUGLAS. With this observation, I join the opinion and the judgment of the Court.

Mr. Justice WHITE, with whom Mr. Justice BRENNAN and Mr. Justice STEWART join, concurring.

Cases such as this one inevitably call for a delicate

---

23 Several States have now adopted plans to accommodate, Amish religious beliefs through the establishment of an ‘Amish vocational school.’ See n. 3, supra. These are not schools in the traditional sense of the word. As previously noted, respondents attempted to reach a compromise with the State of Wisconsin patterned after the Pennsylvania plan, but those efforts were not productive. There is no basis to assume that Wisconsin will be unable to reach a satisfactory accommodation with the Amish in light of what we now hold, so as to serve its interests without impinging on respondents’ protected free exercise of their religion.
balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

This would be a very different case for me if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State. Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight and since the deviation from the State's compulsory-education law is relatively slight, I conclude that respondents' claim must prevail, largely because 'religious freedom--the freedom to believe and to practice strange and, it may be, foreign creeds--has classically been one of the highest values of our society.' Braunfeld v. Brown, 366 U.S. 599, 612, 81 S.Ct. 1144, 1150, 6 L.Ed.2d 563 (1961) (Brennan, J., concurring and dissenting).

The importance of the state interest asserted here cannot be denigrated, however:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. Brown v. Board of Education, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954)."

In the present case, the State is rather attempting to nurture and develop the human potential of its children, whether Amish or non-Amish: to expand their knowledge, broaden their sensibilities, kindle their imagination, foster a spirit of free inquiry, and increase their human understanding and tolerance. It is possible that most Amish children will wish to continue living the rural life of their parents, in which case their training at home will adequately equip them for their future role. Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians, and for these occupations, formal training will be necessary. There is evidence in the record that many children desert the Amish faith when they come of age. A State has a legitimate interest not only in seeking to develop the latent talents of its children but also in seeking to prepare them for the life style that they may later choose, or at least to provide them with an option other than the life they have led in the past. In the
circumstances of this case, although the question is close, I am unable to say that the State has demonstrated that Amish children who leave school in the eighth grade will be intellectually stultified or unable to acquire new academic skills later. The statutory minimum school attendance age set by the State is, after all, only 16.

I join the Court because the sincerity of the Amish religious policy here is uncontested, because the potentially adverse impact of the state requirement is great, and because the State's valid interest in education has already been largely satisfied by the eight years the children have already spent in school.

**Questions on Yoder**

1. Does *Yoder* overrule *Prince*? How is *Prince* characterized and distinguished in *Yoder*? Does absence from public school risk "harm" to the "health" of the child, "public safety, peace, order or welfare?" If not, what then is the justification for compulsory secondary attendance?

2. Does the state have a legitimate interest in "seeking to develop the latent talents of its children" and "in seeking to prepare them for a lifestyle which they may later choose" as Justice White's concurring opinion suggests? Does the majority deal with this issue? The Wisconsin Supreme Court squarely decided that to "force a worldly education on all Amish children, the majority of whom do not want or need it, in order to confer a dubious benefit on the few who might later reject their religion is not a compelling interest." *State v. Yoder*, 49 Wis.2d 430, 182 N.W.2d 539 (1971).

3. *Yoder* can be seen as a case in which there is a conflict between the state and the Amish parents over how the children would be socialized. Is eight years of schooling sufficient to satisfy the two interests advanced by the state to justify compulsory education: the need to prepare children for citizenship and economic self-reliance? Will two years matter?

4. What if parents have sincere religious objections to sending their children to public school, but they are not part of a self-contained and largely self-sufficient religious community for which an eighth-grade education and on-the-job training is sufficient? Should it be unconstitutional to enforce a compulsory education law against Pentecostal parents who keep their five school-age children home to be educated by their mother, who is not a professional teacher,
because the parents do not want their children exposed to the corrupting influence of people who do not share their religious beliefs?

B. WHAT VOICE FOR THE CHILD?

The majority in Yoder sidestepped analyzing the possible conflict between the views of the Amish children and the views of their parents about the children's best interests. Should the majority have sought to identify the independent interests of the children? How? Should the children have been separately represented in the litigation? Are there disadvantages to this sort of inquiry? Consider the views advanced by Mr. Justice Douglas.

WISCONSIN v. YODER
406 U.S. 205 (1972)

... Mr. Justice DOUGLAS, dissenting in part.

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that, despite the Court's claim, the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

It is argued that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

First, respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense to the prosecution. It is, of course, beyond question that the parents have standing as defendants in a criminal prosecution to assert the religious interests of their children as a defense. Although the lower courts and a majority of this Court assume an identity of interest between parent and child, it is clear that they have treated the religious
interest of the child as a factor in the analysis.

Second, it is essential to reach the question to decide the case, not only because the question was squarely raised in the motion to dismiss, but also because no analysis of religious-liberty claims can take place in a vacuum. If the parents in this case are allowed a religious exemption, the inevitable effect is to impose the parents' notions of religious duty upon their children. Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views. As in Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645, it is an imposition resulting from this very litigation. As the child has no other effective forum, it is in this litigation that his rights should be considered. And, if an Amish child desires to attend high school, and is mature enough to have that desire respected, the State may well be able to override the parents' religiously motivated objections.

Religion is an individual experience. It is not necessary, nor even appropriate, for every Amish child to express his views on the subject in a prosecution of a single adult. Crucial, however, are the views of the child whose parent is the subject of the suit. Frieda Yoder has in fact testified that her own religious views are opposed to high-school education. I therefore join the judgment of the Court as to respondent Jonas Yoder. But Frieda Yoder's views may not be those of Vernon Yutzy or Barbara Miller. I must dissent, therefore, as to respondents Adin Yutzy and Wallace Miller as their motion to dismiss also raised the question of their children's religious liberty.

II

This issue has never been squarely presented before today. Our opinions are full of talk about the power of the parents over the child's education. See Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070. And we have in the past analyzed similar conflicts between parent and State with little regard for the views of the child. See Prince v. Massachusetts, supra. Recent cases, however, have clearly held that the children themselves have constitutionally protectible interests.

These children are `persons' within the meaning of the Bill of Rights. We have so held over and over again. On this important and vital matter of education, I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer.
To do so he will have to break from the Amish tradition.\(^2\)

It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. If he is harnessed to the Amish way of life by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.

The views of the two children in question were not canvassed by the Wisconsin courts. The matter should be explicitly reserved so that new hearings can be held on remand of the case.

**Question on the Yoder dissent**

1. Is Justice Douglas correct that the children's rights are necessarily implicated in this case? If the parent is being criminally prosecuted, why are the religious views of the child "crucial?" On the other hand, under the majority opinion, how would a child who disagreed with his parents' views vindicate his rights? If the parent kept the child home after eighth grade, would the child bring suit against his parents? Who would pay for the suit? Who would be guardian ad litem?

2. Justice Douglas asserts that "where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit an imposition of parents' notions of religious duty without canvassing the child's views." When is the child "mature enough"? Is the child "mature enough" by definition if able to express disagreement. Or, does Justice Douglas have in

\(^2\) A significant number of Amish children do leave the Old Order. Professor Hostetler notes that "(t)he loss of members is very limited in some Amish districts and considerable in others." J. Hostetler, *Amish Society* 226 (1968). In one Pennsylvania church, he observed a defection rate of 30%. Ibid. Rates up to 50% have been reported by others. Casad, *Compulsory High School Attendance and the Old Order Amish: A Commentary on State v. Garber*, 16 Kan.L.Rev. 423, 434 n. 51 (1968).
mind an independent evaluation, perhaps case-by-case of each Amish child's maturity.

3. If an Amish child were to express disagreement with parental notions of religious duty, what would Douglas' view require the lower court to do? Do as the child wants? Apply the Wisconsin compulsory education statute? Or have the court evaluate what is best for the child? What if the parents said they would not want the child living at home if he were to attend a secular high school?

4. Just what are the limits of parental power to impose their views on their children?

5. *In re Gault*, 387 U.S. 1 (1967), is the wellspring for children's rights discussions today. The case held that the child had due process rights in juvenile court to notice of the charges against him, to counsel and to confrontation, cross examination and protection from self-incrimination. These rights existed regardless of the parental or state desires to the contrary. The cases earlier in this chapter reflect the tension between two principles: (A) The family has a broad range of authority over the child, and the parent-child relationship itself has a constitutional dimension; and (B) The state has legitimate interest in child-rearing, and need not treat children like adults. The *Yoder* dissent and *Gault* raise a possible third principle: Young people may have rights of their own, some of which are of constitutional dimension. *Gault*’s principle thus represents a third point in the triangular relationship between the child, the family, and the state.

**GINSBERG v. NEW YORK.**

390 U.S. 629 (1968)

Mr. Justice BRENNAN delivered the opinion of the Court.

This case presents the question of the constitutionality on its face of a New York criminal obscenity statute which prohibits the sale to minors under 17 years of age of material defined to be obscene on the basis of its appeal to them whether or not it would be obscene to adults.

Appellant and his wife operate Sam's Stationery and Luncheonette' in Bellmore, Long Island. They have a lunch counter, and, among other things, also sell magazines including some so-called `girlie' magazines. Appellant was prosecuted under two informations, each in two counts, which charged that he
personally sold a 16-year-old boy two `girlie' magazines on each of two dates in October 1965, in violation of § 484--h of the New York Penal Law, McKinney's Consol.Laws, c. 40. He was found guilty on both counts. The judge found (1) that the magazines contained pictures which depicted female `nudity' in a manner defined in subsection 1(b), that is `the showing of *** female *** buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple * * *, and (2) that the pictures were `harmful to minors' in that they had, within the meaning of subsection 1(f) `that quality of *** representation *** of nudity ** * (which) *** (i) predominantly appeals to the prurient, shameful or morbid interest of minors, and (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors.' He held that both sales to the 16-year-old boy therefore constituted the violation under §484--h of `knowingly to sell *** to a minor' under 17 of `(a) any picture *** which depicts nudity *** and which is harmful to minors,' and `(b) any *** magazine *** which contains *** (such pictures) *** and which, taken as a whole, is harmful to minors.' We affirm.

I.

The `girlie' picture magazines involved in the sales here are not obscene for adults. But §484--h does not bar the appellant from stocking the magazines and selling them to persons 17 years of age or older, and therefore the conviction is not invalid under our decision in Butler v. State of Michigan, 352 U.S. 380, 77 S.Ct. 524, 1 L.Ed.2d 412.

Obscenity is not within the area of protected speech or press. Roth v. United States, 354 U.S. 476, 485, 77 S.Ct. 1304, 1309, 1 L.Ed.2d 1498. The three-pronged test of subsection 1(f) for judging the obscenity of material sold to minors under 17 is a variable from the formulation for determining obscenity under Roth. Appellant's primary attack upon §484--h is leveled at the power of the State to adapt this formulation to define the material's obscenity on the basis of its appeal to minors, and thus exclude material so defined from the area of protected expression. He makes no argument that the magazines are not `harmful to minors' within the definition in subsection 1(f). Thus `(n) o issue is presented *** concerning the obscenity of the material involved.'

The New York Court of Appeals upheld the Legislature's power to employ variable concepts of obscenity' in a case in which
the same challenge to state power to enact such a law was also addressed to §484--h. *Bookcase, Inc. v. Broderick*, 18 N.Y.2d 71, 271 N.Y.S.2d 947, 218 N.E.2d 668,

(M)aterial which is protected for distribution to adults is not necessarily constitutionally protected from restriction upon its dissemination to children. In other words, the concept of obscenity or of unprotected matter may vary according to the group to whom the questionable material is directed or from whom it is quarantined. Because of the State’s exigent interest in preventing distribution to children of objectionable material, it can exercise its power to protect the health, safety, welfare and morals of its community by barring the distribution to children of books recognized to be suitable for adults.’

Appellant’s attack is not that New York was without power to draw the line at age 17. Rather, his contention is the broad proposition that the scope of the constitutional freedom of expression secured to a citizen to read or see material concerned with sex cannot be made to depend upon whether the citizen is an adult or a minor. He accordingly insists that the denial to minors under 17 of access to material condemned by §484--h, insofar as that material is not obscene for persons 17 years of age or older, constitutes an unconstitutional deprivation of protected liberty.

We have no occasion in this case to consider the impact of the guarantees of freedom of expression upon the totality of the relationship of the minor and the State. It is enough for the purposes of this case that we inquire whether it was constitutionally impermissible for New York, insofar as §484--h does so, to accord minors under 17 a more restricted right than that assured to adults. We conclude that we cannot say that the statute invades the area of freedom of expression constitutionally secured to minors.

Appellant argues that there is an invasion of protected rights under §484--h constitutionally indistinguishable from the Oregon statute interfering with children’s attendance at private and parochial schools, which was struck down in *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070; and the statute compelling children against their religious scruples to give the flag salute, which was struck down in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628. We reject that argument. We do not regard New York’s regulation in defining obscenity on the basis of its appeal to minors under 17 as involving an invasion of such minors’ constitutionally protected freedoms. Rather §484--h simply adjusts the definition of obscenity ‘to social realities by permitting the appeal of this type of material to be assessed in terms of the sexual interests * * *’ of such minors. *Mishkin v. State of New York*, 383 U.S. 502, 509, 86 S.Ct. 958, 16 L.Ed.2d 56; *Bookcase, Inc. v. Broderick*, supra, 18
N.Y.2d, at 75, 271 N.Y.S.2d, at 951, 218 N.E.2d, at 671. That the State has power to make that adjustment seems clear, for we have recognized 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 ***.' Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 170, 64 S.Ct. 438, 444, 88 L.Ed. 645.

Two interests justify the limitations in §484--h upon the availability of sex material to minors under 17, at least if it was rational for the legislature to find that the minors' exposure to such material might be harmful. First of all, 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. `It 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. Commonwealth of Massachusetts, supra, at 166, 64 S.Ct., at 442. The legislature could properly conclude that parents and others, teachers for example, who have this primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility. Indeed, subsection 1(f)(ii) of §484--h expressly recognizes the parental role in assessing sex-related material harmful to minors according `to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.' Moreover, the prohibition against sales to minors does not bar parents who so desire from purchasing the magazines for their children.

The State also has an independent interest in the well-being of its youth. Judge Fuld, now Chief Judge Fuld, also emphasized its significance in the earlier case of People v. Kahan, 15 N.Y.2d 311, 258 N.Y.S.2d 391, 206 N.E.2d 333, which had struck down the first version of §484--h on grounds of vagueness. In his concurring opinion, 15 N.Y.2d, at 312, 258 N.Y.S.2d, at 392, 206 N.E.2d, at 334, he said:

While the supervision of children's reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them. It is, therefore, altogether fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards, broader than those embodied in legislation aimed at controlling dissemination of such material to adults.

In Prince v. Commonwealth of Massachusetts, supra, 321 U.S., at 165, 64 S.Ct., at 441, this Court, too, recognized that the
State has an interest `to protect the welfare of children' and to see that they are `safeguarded from abuses.' The only question remaining, therefore, is whether the New York Legislature might rationally conclude, as it has, that exposure to the materials proscribed by §484--h constitutes such an `abuse.'

Section 484--e of the law states a legislative finding that the material condemned by §484--h is `a basic factor in impairing the ethical and moral development of our youth and a clear and present danger to the people of the state.' It is very doubtful that this finding expresses an accepted scientific fact. But obscenity is not protected expression and may be suppressed without a showing of the circumstances which lie behind the phrase `clear and present danger' in its application to protected speech. *Roth v. United States*, supra, 354 U.S., at 486--487, 77 S.Ct., at 1309--1310. To sustain state power to exclude material defined as obscenity by §484--h requires only that we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors. In *Meyer v. State of Nebraska*, supra, 262 U.S., at 400, 43 S.Ct., at 627, we were able to say that children's knowledge of the German language `cannot reasonably be regarded as harmful.' That cannot be said by us of minors' reading and seeing sex material. To be sure, there is no lack of `studies' which purport to demonstrate that obscenity is or is not `a basic factor in impairing the ethical and moral development of *** youth and a clear and present danger to the people of the state.' But the growing consensus of commentators is that `while these studies all agree that a causal link has not been demonstrated, they are equally agreed that a causal link has not been disproved either.' We do not demand of legislatures `scientifically certain criteria of legislation.' *Noble State Bank v. Haskell*, 219 U.S. 104, 110, 31 S.Ct. 186, 187, 55 L.Ed. 112. We therefore cannot say that §484--h, in defining the obscenity of material on the basis of its appeal to minors under 17, has no rational relation to the objective of safeguarding such minors from harm.

Mr. Justice STEWART, concurring in the result.

A doctrinaire, knee-jerk application of the First Amendment would, of course, dictate the nullification of this New York statute. But that result is not required, I think, if we bear in mind what it is that the First Amendment protects.

The First Amendment guarantees liberty of human expression in order to preserve in our Nation what Mr. Justice Holmes called a `free trade in ideas.' To that end, the Constitution protects more than just a man's freedom to say or write or publish
what he wants. It secures as well the liberty of each man to decide for himself what he will read and to what he will listen. The Constitution guarantees, in short, a society of free choice. Such a society presupposes the capacity of its members to choose. When expression occurs in a setting where the capacity to make a choice is absent, government regulation of that expression may co-exist with and even implement First Amendment guarantees.

I think a State may permissibly determine that, at 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.

I cannot hold that this state law, on its face, violates the First and Fourteenth Amendments.

Mr. Justice FORTAS, dissenting.

This is a criminal prosecution. Sam Ginsberg and his wife operate a luncheonette at which magazines are offered for sale. A 16-year-old boy was enlisted by his mother to go to the luncheonette and buy some `girlie' magazines so that Ginsberg could be prosecuted. He went there, picked two magazines from a display case, paid for them, and walked out. Ginsberg's offense was duly reported. Ginsberg was prosecuted and convicted. The court imposed only a suspended sentence. But as the majority here points out, under New York law this conviction may mean that Ginsberg will lose the license necessary to operate his luncheonette.

The two magazines that the 16-year-old boy selected are vulgar `girlie' periodicals. However tasteless and tawdry they may be, we have ruled (as the Court acknowledges) that magazines indistinguishable from them in content and offensiveness are not `obscene' within the constitutional standards heretofore applied. These rulings have been in cases involving adults.

The Court avoids facing the problem whether the magazines in the present case are `obscene' when viewed by a 16-year-old boy, although not 'obscene' when viewed by someone 17 years of age or older. It says that Ginsberg's lawyer did not choose to challenge the conviction on the ground that the magazines are not 'obscene.' He chose only to attack the statute on its face. Therefore, the Court reasons, we need not look at the magazines and determine whether they may be excluded from the ambit of the
First Amendment as 'obscene' for purposes of this case.

In my judgment, the Court cannot properly avoid its fundamental duty to define 'obscenity' for purposes of censorship of material sold to youths, merely because of counsel's position. By so doing the Court avoids the essence of the problem; for if the State's power to censor freed from the prohibitions of the First Amendment depends upon obscenity, and if obscenity turns on the specific content of the publication, how can we sustain the conviction here without deciding whether the particular magazines in question are obscene?

The Court certainly cannot mean that the States and cities and counties and villages have unlimited power to withhold anything and everything that is written or pictorial from younger people. But it here justifies the conviction of Sam Ginsberg because the impact of the Constitution, it says, is variable, and what is not obscene for an adult may be obscene for a child. This it calls 'variable obscenity.' I do not disagree with this, but I insist that to assess the principle--certainly to apply it--the Court must define it. We must know the extent to which literature or pictures may be less offensive than Roth requires in order to be 'obscene' for purposes of a statute confined to youth. See Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957).

I agree that the State in the exercise of its police power--even in the First Amendment domain--may make proper and careful differentiation between adults and children. But I do not agree that this power may be used on an arbitrary, free-wheeling basis. This is not a case where, on any standard enunciated by the Court, the magazines are obscene, nor one where the seller is at fault.

The conviction of Ginsberg on the present facts is a serious invasion of freedom. To sustain the conviction without inquiry as to whether the material is 'obscene,' in face of this Court's asserted solicitude for First Amendment values, is to give the State a role in the rearing of children which is contrary to our traditions and to our conception of family responsibility. It begs the question to present this undefined, unlimited censorship as an aid to parents in the rearing of their children. This decision does not merely protect children from activities which all sensible parents would condemn. Rather, its undefined and unlimited approval of state censorship in this area denies to children free access to books and works of art to which many parents may wish their children to have uninhibited access. For denial of access to these magazines, without any standard or definition of their allegedly distinguishing characteristics, is also denial of access to great works of art and literature.
Discussion of Ginsberg

1. Why should there be a different obscenity standard for children? (a) What rationale does the majority of the Court in Ginsberg offer to explain why the standards for obscenity for children should be different from those applicable for adults? Does the Court describe to what extent the standards for children may be different? Does the Court in Ginsberg simply assert the propriety of a “two-tier” obscenity test, and then reduce all further questions to determining whether a legislative definition of “children’s obscenity” is irrational?

To what extent does a minor’s own First Amendment rights constrain the state’s power to limit a minor’s access to written or pictorial materials? Because of the nature of Ginsberg’s challenge to the statute, the court did not concern itself with the question whether a minor might have the constitutional right to buy "girlie" magazines. In Erznoznik v. Jacksonvile, 422 U.S. 205 (1975), the Court later indicated that while the First Amendment rights of minors are not coextensive with those of adults, "minors are entitled to a significant measure of First Amendment protection" and that under the Ginsberg variable obscenity standard "all nudity" in films "cannot be deemed as obscene even as to minors."

(b) Why should the world of children not be included fully in the system of free expression? Is it so clear that immaturity requires the imposition of different rulings? Would the issue be different if we were talking about exposing children to violent movies or "subversive" political literature?

2. Effects on children:

Did the court in Ginsberg find that exposure to materials depicting sexual acts was harmful to minors? What evidence of harm was considered by the Court? Did the Court merely decide that "it was not irrational" for the legislature to find exposure harmful? Consider the relevance of the uncertain state of the social science evidence to the question facing the Court in Ginsberg. Does uncertainty justify a separate standard for children? Who should decide whether children should be exposed to the risk? Parents? The legislature? The courts? If one accepts the principle that the legislature may define a separate standard for children, what limits are there (if any) on this legislative power?

3. Role of parents:

Does the Court’s suggestion that "constitutional interpretation" has consistently recognized the parents' claim to authority in child rearing place Ginsberg in the Pierce-Yoder tradition that parents decide for children? Or, does the suggestion
that the state has an independent interest in the well-being of its youth align Ginsberg with Prince in asserting the power of the state to protect children even over parental opposition? May the state intervene to prevent a child's access to such materials when:

a. The parents deliberately provide the child with "objectionable" reading?
b. The parents often leave objectionable reading lying around the house?
c. The parent accompanies the child to the drugstore and buys objectionable reading selected by the child?
d. The parents give the child an note addressed to the drugstore clerk, saying that the child has their permission to buy sexually oriented readings?

Should any of these provide grounds for a child neglect proceeding?

Does the parent’s power under the New York law to purchase soft-core magazines for their children create an inevitable conflict between parents who wish for their children to be free to choose and parents who want to protect their children from sexual materials? Effective protection for those parents who do not want their children to be exposed might require a flat prohibition on possession by minors: children might otherwise show the materials to each other. On the other hand, allowing parents to buy for their children does not enable permissive parents to allow the child to decide what material is of interest to the child. Children may be inhibited from revealing to the permissive parent their interest in or ignorance of some materials because of embarrassment or fear of parental disapproval.

Ginsberg is only one example of where the law constrains the liberty. There are a number of other state-enforced restrictions on the liberty of minors, including child labor restrictions, the regulation of driving privileges, juvenile consumption of alcoholic beverages and juvenile curfews. Should any of these laws be subject to the ability of parents to decide differently for their child?
In re JANE DOE 1
57 Ohio St.3d 135, 566 N.E.2d 1181 (1991)

Appellant, "Jane Doe," 1 is a seventeen-year-old female minor living with her parents in Hamilton County. On November 8, 1990, appellant filed this action in the Court of Common Pleas of Hamilton County, Juvenile Division, seeking court approval to have an abortion without notification to her parent, guardian or custodian. In her complaint, appellant alleged that she is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without parental notification, and further, that parental notification of her desire to have an abortion would not be in her best interest.

A hearing was held by the court on November 13, 1990, wherein appellant testified on her own behalf along with an expert witness, Dr. Joseph Rauh, who is the director of the Division of Adolescent Medicine at Children’s Hospital Medical Center in Cincinnati. At the hearing, appellant testified that she is a senior in high school and maintains a 3.0 grade point average. Appellant has been involved in sports in high school, plans to attend college and has worked in various jobs since she was sixteen. Appellant further testified that she is responsible for obtaining her own medical care. In June 1990, appellant had an abortion with her mother's consent but without her father's knowledge. Appellant testified that she feared that her father would beat her if he found out she is pregnant and wants to obtain an abortion, and that her mother would tell her father if her mother knew that appellant had become pregnant again. Appellant also testified that her father had struck her in the past for coming home late at night and for having a bad report card from school.

Dr. Rauh testified that he believes that appellant understands the risks of obtaining an abortion, and that letting her decide whether to have an abortion without parental notification was consistent with good medical judgment.

At the conclusion of the testimony, the court held that appellant was "* * * not sufficiently mature to make a judgment called for by * * * [R.C. 2151.85]." The court further found "* * * that there is not sufficient evidence of a pattern of physical, or sexual abuse, or emotional abuse of the complainant by her father or her mother so that notification of one of them will produce the threat that is alleged. * * * " The court therefore dismissed the

---

1 R.C. 2151.85(F) provides in relevant part that "[e]ach hearing under this section shall be conducted in a manner that will preserve the anonymity of the complainant. * * * "
Upon appeal, the court of appeals affirmed, finding that the evidence supported the trial court's finding that appellant failed to prove the allegations of her complaint by clear and convincing evidence.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

SWEENEY, Justice.

The determinative issue before us is whether the court of appeals was correct in affirming the dismissal of appellant's complaint seeking authorization to obtain an abortion without parental notification pursuant to R.C. 2151.85. Stated differently, we must determine whether the trial court abused its discretion in finding that appellant did not prove by clear and convincing evidence that: (1) she is sufficiently mature and well enough informed to decide whether to have an abortion without parental notification; and/or (2) that parental notification of her desire to have an abortion is not in her best interest. Since we find that the trial court did not abuse its discretion in ruling as it did, we affirm the judgment of the court of appeals below.

R.C. 2151.85 provides in pertinent part:

(A) A woman who is pregnant, unmarried, under eighteen years of age, and unemancipated and who wishes to have an abortion without the notification of her parents, guardian, or custodian may file a complaint in the juvenile court of the county in which she has a residence or legal settlement, in the juvenile court of any county that borders to any extent the county in which she has a residence or legal settlement, or in the juvenile court of the county in which the hospital, clinic, or other facility in which the abortion would be performed or induced is located, requesting the issuance of an order authorizing her to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian.

The complaint shall be made under oath and shall include all of the following:

(1) A statement that the complainant is pregnant;
(2) A statement that the complainant is unmarried, under eighteen years of age, and unemancipated;
(3) A statement that the complainant wishes to have an abortion without the notification of her parents, guardian, or custodian;
(4) An allegation of either or both of the following:

(a) That the complainant is sufficiently mature and well enough informed to intelligently decide whether to have an abortion without the notification of her parents, guardian, or custodian;

(b) That one or both of her parents, her guardian, or her custodian was engaged in a pattern of physical, sexual, or emotional abuse against her, or that the notification of her parents, guardian, or custodian otherwise is not in her best interest.
*** (C)(1) If the complainant makes only the allegation set forth in division (A)(4)(a) of this section and if the court finds, by clear and convincing evidence, that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian. If the court does not make the finding specified in this division, it shall dismiss the complaint.

(2) If the complainant makes only the allegation set forth in division (A)(4)(b) of this section and if the court finds, by clear and convincing evidence, that there is evidence of a pattern of physical, sexual, or emotional abuse of the complainant by one or both of her parents, her guardian, or her custodian, or that the notification of the parents, guardian, or custodian of the complainant otherwise is not in the best interest of the complainant, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the notification of her parents, guardian, or custodian. If the court does not make the finding specified in this division, it shall dismiss the complaint.

(3) If the complainant makes both of the allegations set forth in divisions (A)(4)(a) and (b) of this section, the court shall proceed as follows:

(a) The court first shall determine whether it can make the finding specified in division (C)(1) of this section and, if so, shall issue an order pursuant to that division. If the court issues such an order, it shall not proceed pursuant to division (C)(3)(b) of this section. If the court does not make the finding specified in division (C)(1) of this section, it shall proceed pursuant to division (C)(3)(b) of this section.

(b) If the court pursuant to division (C)(3)(a) of this section does not make the finding specified in division (C)(1) of this section, it shall proceed to determine whether it can make the finding specified in division (C)(2) of this section and, if so, shall issue an order pursuant to that division. If the court does not make the finding specified in division (C)(2) of this section, it shall dismiss the complaint.

Last year, the United States Supreme Court upheld the facial validity of R.C. 2151.85 on Fourteenth Amendment due process grounds. Ohio v. Akron Center for Reproductive Health (1990), 497 U.S. ----, 110 S.Ct. 2972, 111 L.Ed.2d 405.

A review of the foregoing statutory framework reveals that the juvenile court is vested with a certain amount of discretion in determining whether the minor is sufficiently mature to make the decision to terminate a pregnancy without parental notification, and/or whether parental notification of the minor's desire to obtain an abortion would be in her best interest. While the correctness of a juvenile court's dismissal of a complaint brought under R.C. 2151.85 must be scrutinized on a case-by-case basis, a reviewing court must evaluate the trial court's determination under an abuse
of discretion standard.

When applying the abuse of discretion standard, a reviewing court is not free to merely substitute its judgment for that of the trial court.

Above all, a reviewing court should be guided by a presumption that the findings of a trial court are correct, since the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.

In reviewing the testimony proffered in the cause sub judice under this standard, we believe that the trial judge did not abuse his discretion in finding that appellant did not sustain her burden in proving, by clear and convincing evidence, the allegations outlined in R.C. 2151. 85(A)(4)(a) or (A)(4)(b).

With regard to the allegation made by appellant that she is sufficiently mature and well enough informed to decide whether to have an abortion without parental notification, the trial court had several factors to weigh as proffered by appellant and Dr. Rauh. On the one hand, appellant is a senior in high school who plans to attend college, and is a person who had a prior experience in the termination of a pregnancy. On the other hand, appellant testified that she had an abortion in June 1990, and is seeking to have another one performed less than a year later. Moreover, appellant testified that each pregnancy was the result of intercourse with a different man. In addition, Dr. Rauh testified that appellant was on a program of birth control, but discontinued it. In light of the foregoing testimony, it was not unreasonable, arbitrary or unconscionable for the trial judge to dismiss the complaint by essentially finding that appellant did not prove her "maturity" allegation by clear and convincing evidence.

With respect to the second allegation in appellant's complaint and at the hearing, i.e., that parental notification would not be in her best interest, or that her father was engaged in a pattern of physical and emotional abuse against her, there was relatively little testimony proffered before the court. While appellant testified that her father threatened to not support her if she ever got pregnant, and that he struck her on two occasions--once for coming home late when she was thirteen or fourteen and another time for getting bad grades on her report card--we do not believe that the trial judge abused his discretion in finding that this did not indicate a pattern of physical, sexual or emotional abuse by either parent, or that parental notification was otherwise not in appellant's best interest. In sum, such evidence, as held by the trial court, was not clear and convincing in establishing the necessity to dispense with parental notification.
Lastly, we note that appellant urges this court to adopt what is essentially a six-factor test for juvenile courts to weigh as factors that are "indicative of a minor's maturity or competence to give informed consent."2

While appellant's proposal appears comprehensive in spelling out the various factors that juvenile court judges would in all likelihood consider when evaluating a complaint brought under R.C. 2151.85, we decline to expand the statutory parameters enacted by the General Assembly, since such expansion would clearly involve a legislative function.

Based on all of the foregoing, we hold that absent an abuse of discretion by the juvenile court, the dismissal of a complaint brought by an unemancipated pregnant minor seeking authorization to have an abortion pursuant to R.C. 2151.85 shall not be disturbed.

Accordingly, the judgment of the court of appeals is hereby affirmed.

Judgment affirmed.

DOUGLAS, Justice, dissenting.

I respectfully dissent from the majority decision because I believe that this court has missed its first (and now maybe only) opportunity to reconcile conflicting decisions and interpretations from various district courts of appeals on the serious question presented. It goes without argument, of course, that one of this court's primary responsibilities is to settle conflicts between the districts and to set guidelines for the bench and bar on matters of great general interest and statewide concern. The matter before us is just such an issue.

While some would like to make this case one of pro-abortion versus anti-abortion or pro-choice versus pro-life, it is nothing of the sort. What we have before us is a case of statutory interpretation--and only statutory interpretation. The issue of whether abortion is lawful has been decided by the United States Supreme Court in *Roe v. Wade* (1973), 410 U.S. 113, 93 S.Ct.

---

2 Appellant's proposed factors are as follows: a. Age. Minors fifteen and older should generally be held to possess sufficient maturity to consent to their own abortion without notice to the parent; b. Overall intelligence. The minor should possess sufficient intelligence to understand her situation and her options; c. Ability to accept responsibility. Examples could be drawn from life at home, in school or elsewhere; d. Ability to assess the future impact of her present choices; e. Whether the minor is making an affirmative personal decision and not being forced into her decision by a third person; f. Whether the minor will understand the benefits and risks of the abortion procedure and apply that understanding when making her decision."
705, 35 L.Ed.2d 147, and unless and until that court does something different with that case, this court is bound by the precedent established. Likewise, the General Assembly of Ohio now also has the power, legislatively, to determine the issue. See *Webster v. Reproductive Health Services* (1989), 492 U.S. 490, 109 S.Ct. 3040, 106 L.Ed.2d 410. To date, the General Assembly has taken no action.

Since under present law there is a constitutional right to terminate a pregnancy and that right was being exercised, without parental notification, by young women below the age of eighteen years, the General Assembly of Ohio, in its infinite wisdom, determined that parental notification should be required before such pregnancy could be terminated. In pursuance thereof, the General Assembly enacted R.C. 2919.12(B)(1)(a), which provides that: "No person shall knowingly perform or induce an abortion upon a woman who is pregnant, unmarried, under eighteen years of age, and unemancipated * * * " unless at least one of several exceptions is satisfied.

One of the exceptions is found in R.C. 2919.12(B)(1)(a)(iii) and provides that parental notification is not necessary if "[a] juvenile court pursuant to section 2151.85 of the Revised Code issues an order authorizing the woman to consent to the abortion without notification of one of her parents, her guardian, or her custodian[.]

In *Bellotti v. Baird*, (1979), 443 U.S. 622, 99 S.Ct. 3035, 61 L.Ed.2d 797, the court set forth requirements that must be satisfied before legislation providing procedures for bypassing parental involvement would meet constitutional muster. The court said that any such legislation for a bypass procedure must allow the minor to show that she possesses the maturity and information to make her abortion decision, in consultation with her physician, without regard to her parents' wishes. Id. at 643, 99 S.Ct. at 3048. Further, the court said that even if the minor is not mature enough to make the abortion decision herself, then the bypass procedure must allow for a court to determine whether an abortion without parental intervention would be in the minor's best interest. Id. at 644, 99 S.Ct. at 3048.

Recognizing these requirements, the Ohio General Assembly enacted R.C. 2151.85, which gives a minor the option of seeking the approval of a juvenile court in order to bypass parental notification. R.C. 2151.85 was enacted to meet the exception provided for in R.C. 2919.12(B)(1)(a)(iii). R.C. 2151.85 has the two prongs required by *Bellotti* and was found to meet constitutional muster in the case of *Ohio v. Akron Center for Reproductive Health* (1990), 497 U.S. 502, 110 S.Ct. 2972, 111 L.Ed.2d 405.
It is this statute, R.C. 2151.85, that we are called upon to interpret and to set standards and guidelines to assure its statewide consistent interpretation. I find that it is not only necessary—it is urgent that we do so. We have now seen cases from at least Cuyahoga, Hamilton and Lucas Counties and we have seen at least three different interpretations of how the statute is to be applied. That is why I feel so strongly that we must set standards that will aid our trial courts and courts of appeals in their very delicate and difficult deliberations.

The complaint of the minor must allege [that it is in the minor's best interest to have an abortion] in order for the issue to be before the court. R.C. 2151.85(C). Of course, if a minor is found to have satisfied the first prong, then the second prong is never reached. If, however, the minor alleges both prongs, but does not meet the "maturity" standard, then the trial court is required to determine whether an abortion without parental involvement would be in the minor's "best interest." R.C. 2151.85(C)(3)(b). Jane Doe placed in issue the second prong of the statute.

In the case at bar, the record shows that the only testimony before the court relating to this second prong was that Jane Doe's father has a prior history of violence when he became upset with Jane's conduct. He had specifically warned her that he would cut off her support if she ever got pregnant. By Jane's testimony it was established that her father had once struck her so hard that bruises were left on her body. This was when she had come home late. Her father also struck her when she received "Ds" on her report card. If her father cuts off her financial support, it will, Jane says, probably cause her to leave home, secure full-time employment and possibly leave high school and give up or at least delay her plans for further education. Jane testified that if her father discovered that she was pregnant and that she desired an abortion, there was " * * * no telling what he would do to me. I mean, I know he would probably beat me 'cause he has in the past. But that was over something minor. And for something this big to happen, he would respond in the same way."

From this record, it is difficult to see how the "best interest" prong of the statute was not satisfied. In any event, we should set forth these procedures so as to promote as clear an understanding of R.C. 2151.85 as is possible.

Because the lead opinion fails to set forth standards for the uniform application of the statute throughout this state and for the guidance of those who have to make these difficult decisions before they reach this court, I respectfully dissent.
HERBERT R. BROWN, Justice, dissenting.

R.C. 2151.85 provides that an unemancipated female minor may have an abortion without informing her parents if she proves by clear and convincing evidence, R.C. 2151.85(C)(1), that she "is sufficiently mature and well enough informed to intelligently decide to have an abortion without the notification of her parents, guardian, or custodian," R.C. 2151.85(A)(4)(a). This requirement was held to be constitutional by the United States Supreme Court in *Ohio v. Akron Center for Reproductive Health* (1990), 497 U.S. 502, 110 S.Ct. 2972, 111 L.Ed.2d 405. Since then, the juvenile and appellate courts of this state have struggled, without the benefit of a standard from this court, to determine if the minor is "sufficiently mature."

In this case, we are presented with the opportunity to provide guidance to the lower courts. Such guidance is necessary in order to develop a record (in future cases) which will allow for meaningful appellate review.

In this case, the majority has found no abuse of discretion in the finding below that "Jane Doe" was not "sufficiently mature" under R.C. 2151.85(C)(1). Presumably, the majority did not reach this determination out of thin air. Presumably, the majority used some standard. Thus, it troubles me that the majority refuses to articulate the standard (whatever it may be) on which it has resolved the case. I fear that the standard—which the majority has used but will not reveal—does violence to both the legislative intent of the relevant statute and to the constitutional rights of the appellant.

Because the majority has failed to articulate a standard, and because the majority has upheld a decision which I believe to be an abuse of discretion, I must respectfully dissent.

---

I

Standard for Determining Maturity

In enacting R.C. 2151.85(A)(4)(a), the General Assembly recognized that, while most minors would benefit from the "guidance and understanding" of their parents, *Akron Center*, supra, at ---, 110 S.Ct. at 2972, 111 L.Ed.2d at 424, some are mature enough to be able to make the abortion decision alone.

The determination of whether a minor is "mature" should be made based on how she has conducted her entire life, and not just on the events which have brought her into court. While maturity cannot be determined by resort to a simple, bright-line test, it is possible to identify certain factors which are indicia of maturity, and which may be used to focus the inquiry. These are: (1) the minor's age, (2) overall intelligence, (3) emotional stability, (4) credibility and demeanor as a witness, (5) ability to accept responsibility, (6)
ability to assess the future impact of her present choices, (7) ability to understand the medical consequences of abortion and apply that understanding to her decision, and (8) any undue influence by another on the minor's decision.

No one of these factors is, by itself, dispositive, and its relative importance will vary from case to case. In some cases, there will be other areas, not listed here, into which the court will need to inquire. The juvenile court has a responsibility to insure that the relevant facts are fully developed in the record so that it can make an informed determination. C.f. Matter of Mary Moe, (1988), 26 Mass.App. 915, 916, 523 N.E.2d 794, 795 (court erred in refusing to hear evidence on minor's medical condition before determining if waiver was in her best interests). A meaningful record cannot be developed when we refuse to articulate the factors which must be considered in making a "maturity" decision.

II

Necessity of a Written Opinion

In the instant case, the trial court, after making its findings, simply stated that the complaint would be dismissed, and the court of appeals affirmed without stating its reasoning, other than to say, "that the evidence herein does support the trial court's finding ***." Conclusory statements such as these give us little on which to base our review. If the application is denied at any level, the court should be required to set forth its findings, reasoning, and conclusions in a written opinion.

III

Merits of the Instant Case

As the majority notes, the record indicates that Jane Doe is a seventeen-year-old high school senior. She works twenty to twenty-five hours per week, and pays for her automobile and telephone expenses, and medical care. She is active in team sports, yet she has been able to maintain a 3.0 grade point average. She is preparing to attend college.

Courts in other states with similar statutes have found minors to be "sufficiently mature" on less evidence of maturity. See, e.g., Matter of Anonymous (Ala.Civ.App.1987), 515 So.2d 1254 (seventeen-year-old dropout with full-time job planning to take GED). Yet, without elaboration, the majority concludes that this overwhelming evidence of maturity is outweighed by the tragic fact that this is Jane Doe's second unwanted pregnancy. I cannot agree. If the fact of suffering an unwanted pregnancy can be characterized as "immature" and then used to outweigh any amount of evidence to the contrary, there is no point to the statutory exemption from parental notification. The record before us clearly and convincingly shows that Jane Doe is "sufficiently
mature" within the meaning of R.C. 2151.85(A)(4)(a). If she is not a "mature minor," then who is?

Accordingly, I would reverse the judgment of the court below and grant Jane Doe's application.

**Note: Rights of Minors**

1. See, however, *In re Complaint of Jane Doe*, 83 Ohio App.3d 98, 613 N.E.2d 1112 (1993). A 17-year-old high school senior was sufficiently mature and well enough informed to decide whether to terminate her pregnancy without notifying her parents. The minor testified that she was taking college preparatory classes and maintained a 3.6 grade point average while working 13 hours per week and staying involved in several extracurricular activities. The money she earned from her job went to help pay for her college education which she would begin in the fall. She had the support of her steady boyfriend and could confide in an aunt, but felt that if she told her mother of her pregnancy, her mother would lose all trust in her. The Ohio Court of Appeals noted that it could not perceive of what other evidence she could have presented before the trial court, which had dismissed her request to have an abortion without parental notification, to establish her maturity.

2. For first amendment rights of minors see the discussion in *Tinker v. Des Moines Independent Community School District* 393 U.S. 503 (1969). The case was limited with regard to in-school activities in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). The Court held that: (1) high school paper that was published by students in journalism class did not qualify as a "public forum," so that school officials retained right to impose reasonable restrictions on student speech in paper, and (2) high school principal's decision to excise two pages from the student newspaper, on grounds that the articles unfairly impinged on privacy rights of pregnant students and others, did not violate students' speech rights. In *Bethel School District v. Fraser*, 478 U.S. 675 (1986), a student filed civil rights action after he was disciplined for language used in nominating speech at a student assembly. The Supreme Court, Chief Justice Burger, held that: (1) school district acted entirely within its permissible authority in imposing sanctions upon student in response to his offensively lewd and indecent speech, which had no claim to First Amendment protection, and (2) school disciplinary rule proscribing obscene language and free speech admonitions of teachers gave adequate warnings to student that his lewd speech could subject him to sanctions.