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Seeking an Abortion in Foster Care:
Challenges Foster Youth Face in Judicial Bypass
Proceedings as Observed by Attorneys

By Malena Solin



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Preceptor: Francis Fabre
Second Reader: Andrew Abbott

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Abstract

Many states in the U.S. require parental consent for minors to obtain abortions, creating barriers for minors in foster care who often must obtain judicial approval for an abortion through a process called judicial bypass. Scholars agree that judicial bypass requirements present emotional and logistical obstacles and that foster youth face heightened consequences for limited abortion access, yet there is little scholarship on foster youths' particular experiences of judicial bypass proceedings. In this paper, I investigate attorneys' observations of foster youths' judicial bypass processes as compared to those of minors not in foster care. Using semi-structured interviews with attorneys who represent minors in judicial bypass hearings, I find that foster youth face unique challenges in the judicial bypass process due a higher potential for retraumatization at court and surveillance by the foster care system. Further, I find that in attorneys' experiences, judges approve nearly all judicial bypass petitions in states where abortion is legal, indicating that the process creates barriers to abortion access primarily through challenges associated with arriving at court rather than through judicial decision. Based on these findings, I argue that state legislatures should minimize foster youths' involvement with the judicial bypass process by allowing foster parents and case workers to provide consent for minors' abortions or by repealing parental consent laws and thereby eliminating the judicial bypass requirement. The findings presented here give insight into the challenges foster youth face in obtaining reproductive healthcare following the Supreme Court *Dobbs v. Jackson Women's Health Organization* decision and reflect recent legislative shifts toward affording minors more autonomy in abortion decisions.

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Introduction

“There is such a misconception around what a judicial bypass is and what it means for people. I think people think of it as, well, yes, of course, parents should consent [to minors’ abortions]. Parents need to know. This is for the safety of teens. They think the judicial bypass is a great workaround for people that don’t have parents that would consent or don’t have parents period, when in reality it is a pretty insurmountable barrier to overcome and it does stop people from getting an abortion altogether.”

– Gabriella, Judicial Bypass Attorney

Gabriella’s perspective illustrates some of the primary misconceptions regarding abortion access for youth in foster care and the limitations of judicial bypass proceedings. Youth in foster care in the United States tend to face greater challenges in accessing abortions than their peers, in part due to complications arising from laws in 27 states requiring parental consent for minors to obtain abortions. In states that require one or both parents’ consent for minors to receive abortions, the only option for a minor who cannot obtain parental consent is to get a judge’s approval through a process called a judicial bypass proceeding. During a judicial bypass hearing, a judge will determine whether a minor is “mature enough and well enough informed” to make the decision to obtain an abortion on their own, although there is no further federal guidance for judges’ determinations, allowing for significant judicial discretion and bias (Silverstein 2007, Wallis 2014). The process of obtaining judicial approval requires time, travel to court, and a hearing in which a minor answers questions about their family situation and sexual habits. Therefore, judicial bypass requirements contribute to the barriers to abortion access that foster youth encounter.

Recent attention to abortion access following the *Dobbs v. Jackson Women’s Health Organization* Supreme Court decision of 2022 highlights challenges faced by many marginalized groups in seeking access to abortion (Palacio 2022), such as children in foster care, a group that is disproportionately comprised of children of color (Foster 2012). For foster youth, limiting

abortion access perpetuates a cycle in which they experience high rates of teen pregnancy, barriers to accessing abortion care and therefore a higher likelihood of carrying unwanted pregnancies to term, and finally a higher-than-average risk that their children will be removed into state care (Wallis 2014). Given the severe consequences associated with limiting abortion access for minors in foster care, I wanted to investigate how foster youth experience judicial bypass proceedings, which scholars have suggested create emotional and logistical barriers for minors seeking abortions (Ehrlich 2006, Janiak et al. 2019). While there is significant scholarship describing how minors experience the judicial bypass process and face challenges at court (Veith 1994, Coleman-Minahan et al. 2019, Hasselbacher and Truehart 2021), there is little research at the intersection of judicial bypass experiences and the specific challenges that foster youth face as a result of limited abortion access. This paper unites these two areas of interest to investigate how foster youth experience the judicial bypass process, given the high stakes of their abortion-seeking, as observed by attorneys.

To answer the question of how attorneys have observed foster youths' experiences of the judicial bypass process as compared to those of minors not in foster care, this study analyzes semi-structured interviews with eight attorneys who represent minors in judicial bypass hearings and who work in child welfare law and policy at a national scale. These expert attorneys reported that surveillance of minors in foster care causes fear and anxiety among foster youth attempting to miss school and travel to court for a hearing. Participating attorneys also described the traumatic court experiences that foster youth endure throughout the judicial bypass process, and emphasized the potential for foster youth to be retraumatized at court given their previous negative experiences of the court system due to their family situations. Attorneys also expressed frustration with the judicial bypass requirement, feeling that it was pointless due to its high

success rate; participants reported that, although exact data is not released, judges tend to grant permission for nearly every abortion requested through a judicial bypass proceeding in states where abortion remains legal post-*Dobbs*.¹ Therefore judicial bypass proceedings serve primarily as barriers to abortion access that inflict psychological harm on minors in foster care and increase the length of a time-sensitive process, with the same outcome as if there was no judicial bypass requirement.

To demonstrate the failure of the judicial bypass procedure in its supposed aims as well as the harm it inflicts on minors, and particularly foster youth, I situate the challenges inherent to the judicial bypass process in Lipsky's (2010) framework of service rationing. Lipsky's framework helps to articulate how judicial bypass proceedings impose high psychological and time costs on pregnant minors in foster care, resulting in the limiting of abortion access not through judicial approval or denial, but through emotional and logistical barriers to the "service" of access to an abortion. Applying Lipsky's service rationing framework, I first address the logistical challenges that minors, and particularly minors in foster care, face in obtaining judicial approval for an abortion. Next, I discuss the emotional barriers the process imposes with respect to Lipsky's suggestion that psychological costs could discourage potential clients, or in this case foster youth, from seeking a service. Finally, I address attorneys' outrage at the challenges foster youth face in judicial bypass proceedings, expressed with such adjectives as "stupid," "crazy," and "senseless" given the majority success rate of the hearings.

I conclude that the judicial bypass process is effectively a "rubber stamp," and that it functions primarily as a political tool to give the impression that judges act as responsible adult decision-makers for minors' individual abortion cases. In reality, states with parental consent

¹ Information on states that have implemented abortion bans is accurate to this study's completion date in April of 2024. However, the legal landscape for reproductive rights in the United States is rapidly changing, and abortion legality by state may shift.

laws, and therefore judicial bypass options, are not limiting minors' ability to make an abortion decision to those who are "mature." Rather, parental consent laws are harmful to minors and do not serve their purpose of encouraging minors to tell their parents about their abortion decisions (Hasselbacher and Truehart 2021, De Londras et al. 2023, Blum et al. 1987), and the judicial bypass process necessitated by parental consent laws creates challenges for one of the most vulnerable populations—pregnant minors in foster care—without serving its intended purpose of encouraging careful adult involvement in minors' decisions. Therefore, I propose that state legislatures should consider minimizing foster youths' involvement in the judicial bypass process by either allowing foster parents and caseworkers to consent for foster youths' abortions or by repealing parental consent laws, thereby eliminating the judicial bypass requirement and the harm it inflicts on minors in foster care.

Legal History of Abortion Access and Reproductive Care for Minors

While the legal history of abortion access in the United States dates to English common law, under which abortion before a woman could feel fetal movement was allowed, this review of legal history will begin with *Roe v. Wade*, the landmark Supreme Court case that overturned laws in many states that had criminalized abortion beginning in the mid-to-late nineteenth century (*Roe v. Wade*). *Roe v. Wade*, in overturning a Texas law that criminalized abortion, famously began a new era in abortion law in 1973 (Ehrlich 2006). Decided on the basis of the Texas law's violation of plaintiff Jane Roe's right to personal privacy, *Roe v. Wade* legalized abortion but did not establish it as an absolute right, instead allowing that "a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health" (*Roe v. Wade*).

The decision angered anti-abortion groups, citizens, and politicians, thus inspiring new legislative efforts to undermine access to abortion. One such piece of legislation aimed at reducing abortion access was the Hyde Amendment, passed by Congress in 1977 to restrict the use of federal funds for abortions under programs such as Medicaid only to instances in which carrying the fetus to full term would endanger the life of the mother. In 1978, exceptions for rape and incest were added to the Hyde Amendment (“The Hyde Amendment” 2022). In addition to restricting abortion access for those relying on federally funded medical care, some states enacted laws to limit abortion access, such as parental or spousal consent laws. Missouri was one of the first states to enact such laws, requiring pregnant women to obtain spousal consent and minors to obtain parental consent to receive an abortion (Ehrlich 2006). These laws were challenged with the 1976 Supreme Court case *Planned Parenthood of Central Missouri v. Danforth*, in which the court ruled that “the State may not impose a blanket provision” (*Planned Parenthood of Central Missouri v. Danforth*) for parental consent. The *Danforth* case deemed Missouri’s parental consent law unconstitutional on the basis of minors retaining individual constitutional rights, although it implied that a less extreme parental consent law could be constitutional. The conclusion to the question the court raised with regard to a more lenient parental consent law in *Danforth* arrived with *Bellotti v. Baird* in 1979.

The most relevant legal precedent in the debate on access and parental consent for minors’ abortions, *Bellotti v. Baird* ruled that parental consent laws are constitutional given “the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding role of parents in the upbringing of their children” (*Bellotti v. Baird*). However, Justice Lewis Powell’s plurality opinion on the case established a limitation to parental consent laws with the following provision: states that maintain parental

consent laws must offer an alternative procedure through which minors may obtain judicial consent in the absence of parental consent, explaining that “a pregnant minor is entitled in such a proceeding to show . . . that she is mature enough and well enough informed to make her abortion decision” (*Bellotti v. Baird*). The proceeding to which Justice Powell alluded became the current judicial bypass procedure, sometimes referred to as the *Bellotti* bypass procedure (Veith 1994), which allows minors to get judicial approval for an abortion without parental consent. The judicial bypass requirement made parental consent laws more palatable and therefore allowed their continuation, while catering to critics of *Roe* and *Danforth* who wanted stricter abortion control for minors.

Despite new legislation restricting abortion access for some women and the precedent set in *Bellotti v. Baird* for the constitutionality of parental consent laws, the decision of *Roe v. Wade* remained largely unchallenged in the Supreme Court until 1992. With the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, in which a group of physicians sought to overturn five provisions of the Pennsylvania Abortion Control Act of 1982 (including a parental consent law), there was an opportunity for a more conservative court to strike down *Roe* (*Planned Parenthood of Southeastern Pa. v. Casey*, Ehrlich 2006). However, the court affirmed the constitutional right to abortion established in *Roe v. Wade*, only limiting abortion access by allowing states to restrict abortion after fetal viability rather than after the first trimester as had been established in *Roe* (*Planned Parenthood of Southeastern Pa. v. Casey*, Ehrlich 2006). *Casey* upheld *Roe*, reinforcing the precedent for the constitutionality of the right to abortion until *Roe v. Wade* was overturned in 2022 with the case *Dobbs v. Jackson Women’s Health Organization*. Originating in a lawsuit filed by the Jackson Women’s Health Organization challenging Mississippi’s Gestational Age Act, which banned abortions after 15 weeks, the *Dobbs* majority

opinion by Justice Samuel Alito found that “The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision,” (*Dobbs v. Jackson Women’s Health Organization*) thus overruling *Roe*.

With the overturn of *Roe*, 14 states implemented total abortion bans, and seven others currently have bans in place that restrict abortion after a gestational duration of less than 18 weeks (“State Bans” 2024). Minors’ rights to abortion were reversed to a similar extent as adults’ in states where abortion was banned, although most states with gestational duration bans maintain parental consent laws for abortions that take place before the cut-off (“State Bans” 2024; “Parental Involvement” 2023). Parental consent laws remain in effect in 27 states, in 11 of which abortion remains legal after the gestational duration of 18 weeks (“Parental Involvement” 2023; “State Bans” 2024). The ongoing requirement of the judicial bypass proceeding as an alternative to parental consent laws speaks to a continued commitment to the 1979 compromise of *Bellotti v. Baird* between minors as dependents under care of their parents and minors requiring independent constitutional rights (Ehrlich 2006). The concept of children as independent citizens with constitutional rights, including the right to court-assigned counsel, originated with the children’s rights movement of the 1960s, which Guggenheim (2005) presents in opposition to the legal tradition of exercising significant adult control and decision-making over the category of “minors.” Despite advancements in the field of children’s rights, the constitutional commitment to minors as dependents subject to their parents is broadly upheld by the law, indicating that minors in state care are subject to state foster care systems.

The Cycle of Teen Pregnancy, Limited Abortion, and Child Removal for Foster Youth

Since *Roe v. Wade* was overturned in 2022, studying abortion access has become more complex and of greater significance to many researchers in the United States (Palacio 2022). Youth in foster care are uniquely limited by abortion bans, as they have historically encountered greater barriers to abortion access than their peers and they lack the support systems that could help most youth navigate abortion bans after *Dobbs* (Wallis 2014, Boonstra 2011, Singer 2013). Scholars agree that judicial bypass requirements in particular are a great limitation to abortion access for foster youth (Wallis 2014, Veith 1994, Ehrlich 2006).

Wallis (2014) asserts that limiting abortion access for foster youth contributes to generational cycles of removal of children into state care: foster youth are more likely to become pregnant as teenagers and to not have a choice as to whether they become parents, frequently leading to the removal of their children into the care of the state based on abuse and neglect accusations that arise from failed state support systems and assessments. These children of foster youth will also grow up in foster care and thus be more likely to experience teen pregnancy and repeat the pattern of their parents (Wallis 2014).

Adolescent Pregnancy and Child Removal

While national data on pregnancy rates for foster youth is not collected, there is a scholarly consensus that adolescents in foster care have higher rates of pregnancy than their peers (Manlove et al. 2011, Wallis 2014). Regional datasets, such as the Midwest Evaluation of the Adult Functioning of Former Foster Youth, created by Chapin Hall at the University of Chicago, confirm higher teen pregnancy rates for foster youth in addition to higher rates of repeat teen pregnancy (Dworsky and Courtney 2010). Additionally, the data suggest that

remaining in foster care beyond age 18 could reduce teen pregnancy rates among foster youth: Dworsky and Courtney (2010) find that extending foster care until the age of 21 may reduce instances of pregnancy in the foster youth population.

Some scholars have argued that the reason for high teen pregnancy rates among foster youth is the inadequate sex education they receive as a result of moving between placements, administrative errors in state foster care systems, and the religious beliefs of agency workers and foster parents, leading to a lack of understanding of pregnancy and sexually transmitted diseases (Wallis 2014, Boonstra 2011). Dworsky and Courtney (2010) suggest that foster youths' high pregnancy rates may be partially explained by a lack of close relationships with adults who could provide education and other support, given that when adolescents maintain close relationships with adults, teen pregnancy rates are lower, age of first sexual intercourse is higher, and contraceptive use increases. In addition to often lacking close adult relationships, youth in foster care are more likely to have experienced sexual abuse as children, which is also correlated with higher teen pregnancy rates (Noll 2009). Finally, Boonstra (2011) suggests that foster youth may attempt to create the ideal family that they did not have with their birth parents, intentionally having children as teenagers to demonstrate that they could be better parents than their parents were.

High rates of adolescent pregnancy among foster youth, coupled with the challenges this population faces in obtaining abortion access, result in foster youth raising children while in foster care themselves, making their children targets for state removal (Wallis 2014). Wallis (2014) suggests that the likelihood of this removal is, in part, due to legislation that prioritizes child safety over family integrity, referring to the Adoption and Safe Families Act ("ASFA") of 1997 which exemplified a legislative trend of the late 1990s in which federal law attempted to

shield children from unnoticed or unpunished abuse by encouraging child removal. The ASFA required that “reasonable efforts shall be made to preserve and reunify families” (“Adoption and Safe Families Act of 1997”) rather than the previously employed language of “diligent efforts,” initiating a legal landscape that favored child removal (Wallis 2014). While the intention of the ASFA was to prevent harm to vulnerable children, Cammett et al. (2003) argue that the result has been an increase in child removals due to neglect, most often a proxy for poverty, and a shift toward child removal as the default. This shift in the legal landscape puts the children of parenting foster youth at a higher risk for removal into state care given that parenting foster youth are at increased risk of placement instability, inadequate healthcare, and other resources necessary to maintain the health and well-being of themselves and their children (Wallis 2014).

Wallis (2014) argues that state foster care systems fail to provide alternatives to foster youth at risk of entering this cycle of teen pregnancy and child removal, as they create environments where sex education is not prioritized, abortions are challenging to obtain, and parenting is often unsafe and unsuccessful. Without lessening barriers to abortion for foster youth, states perpetuate this cycle, which further disadvantages foster youth, given that abortion denial has been shown to diminish educational and financial outcomes (Ralph 2019, Miller 2023). This risk of removal for the children of foster youth indicates that limiting abortion, for foster youth in particular, can have generational consequences, as their children may grow up in foster care themselves where they too will be more likely to become pregnant as teenagers and will have limited access to abortion (Manlove et al. 2011, Dworsky and Courtney 2010, Wallis 2014).

Judicial Bypass: A Barrier to Abortion Access for Foster Youth

Barriers that foster youth face in seeking an abortion are often determined by the state in which they reside and include recent abortion bans put in place after *Dobbs*, the cost of an abortion, a lack of Medicaid funding for abortions due to the Hyde Amendment, and parental consent laws (Palacio 2022, Wallis 2014). Judicial bypass proceedings, necessitated by parental consent laws, are highlighted by scholars as one of the most significant barriers to abortion access for minors in foster care, due in part to the humiliation they cause: there is a scholarly consensus that the judicial bypass process is humiliating and gives anti-abortion judges an opportunity to discredit pregnant minors' opinions (Veith 1994, Wallis 2014, Coleman-Minahan et al. 2019). Coleman-Minahan et al. (2019) find that judicial bypass proceedings are essentially a punishment for pregnant minors, placing them in trauma-inducing situations that could lead to worsened health outcomes. Traumatic experiences for minors in court can include invasive questions from judges into minors' sexual experiences and reasons for not wanting to raise a child (Ehrlich 2006). Ehrlich (2006), through interviews with minors who underwent the judicial bypass process in Massachusetts, finds that, although many minors sought judicial bypass out of a sense of discomfort with discussing sexual experiences with their parents, they were forced to discuss these sensitive topics with judges in order to prove their maturity. Ehrlich (2006) also finds that the logistical problems of transportation to court and leaving school for a hearing were intimidating to minors.

Logistical court issues and a reliance on individual judges' beliefs and schedules also increase the complexity and unpredictability of judicial bypass proceedings for pregnant minors (Coleman-Minahan et al. 2019, Hasselbacher and Truehart 2021). Silverstein (2007) finds, through interviews with court personnel, that court employees are often uneducated on the

procedures for a judicial bypass and that judges can choose not to take judicial bypass hearings they wish to avoid, creating confusion and delays throughout the process. The judicial bypass process can take up to three weeks without being deemed unconstitutional (Wallis 2014), and Janiak et al.'s (2019) data from the 2010s show that minors who undergo judicial bypass proceedings have a longer wait time between their first call to an abortion clinic and the date upon which they receive an abortion than those who are not required to obtain a judicial bypass. In addition to slowing a time-sensitive process, Wallis (2014) asserts that judicial bypass procedures exacerbate the stress and harm that can come to a pregnant minor in the foster care system through the maturity standard that judges use to determine whether a minor can obtain an abortion.

Veith (1994) finds that judges' personal views on abortion can be central to their determination in judicial bypass hearings given the unspecified maturity standard created as a result of the *Bellotti v. Baird* decision. Justice Powell's plurality opinion for *Bellotti v. Baird* requires that a minor would have to demonstrate that she is "mature enough and well enough informed to make her abortion decision," allowing judges to make subjective maturity judgments without further federal guidance (Silverstein 2007, Wallis 2014). While maturity assessments presume that minors are often incapable of making the decision to have an abortion, Friedman et al. (2015) find that the common characteristics of minors seeking abortions through judicial bypass proceedings do not have the expected qualities of an unprepared or immature youth. Rather, most minors seeking judicial bypass are over the age of 16, are in long-term relationships, work part-time jobs, and have consulted with a trusted adult on the decision to have an abortion (Friedman 2015). Therefore, even when minors have given thoughtful consideration to their abortion decision, they must undergo a challenging and traumatic process

to obtain the same outcome as if they were 18 or older, as most judicial bypasses are approved (Veith 1994). Veith (1994) finds that, based on surveys of minors who have undergone judicial bypass proceedings, nearly all judicial bypasses are granted, calling the procedure “a pointless rubber-stamp.”

Studies of judicial bypass proceedings have highlighted the difficulties the procedure presents for minors seeking abortions in states with parental consent laws in terms of time, transportation to court, and emotional challenges associated with the experience (Wallis 2014, Janiak et al. 2019, Coleman-Minahan et al. 2019). However, there is little scholarly attention paid to foster youths’ experiences of judicial bypass proceedings post-*Dobbs*. This study will investigate the unique challenges foster youth encounter in the judicial bypass process.

Data and Methods

To examine attorneys’ understandings of how minors experience judicial bypass proceedings, with particular attention to difficulties of the process unique to youth in foster care, I conducted eight semi-structured interviews with attorneys working in child welfare law. The interviews took place in February and March of 2024 with eight attorneys working in states with and without abortion bans currently in place. My choice to interview attorneys rather than youth in foster care themselves had two significant benefits: protection of youth in foster care from further traumatic experiences and adequate access to participants for recruitment. I elected to recruit both attorneys representing foster youth in judicial bypass proceedings and attorneys who work at national child welfare law organizations who would be more familiar with policy changes and impact litigation in the field. I identified a list of national youth law organizations and providers for judicial bypass hearing representation through professional connections,²

² As a pre-law undergraduate, I have completed internships in the field that provided me with connections.

Google searches of “judicial bypass [state]” or “judicial bypass attorney [state],” and consulting a list of judicial bypass assistance providers provided by Horvath and Frietsche (2023). I sent emails and LinkedIn messages to contacts I identified using publicly posted emails and profiles, as well as those shared with me through connections, and followed up with those who did not respond within a week and a half, contacting more individuals at the organizations of interest if I did not receive responses from my initial contacts. If employees’ contact information was unavailable for a particular organization, I submitted contact forms provided on organizations’ websites. I also used snowball sampling, asking participants at the end of their interviews if they knew of other attorneys working in the field of judicial bypass who might be interested in participating in the study.

Given that the field of judicial bypass representation is small and that the attorneys I sought out often work in high-demand, stressful environments, scheduling interviews could be challenging. However, I completed eight interviews after reaching out to 38 attorneys individually, as well as the administrations of two national providers of judicial bypass hearing representation and six state-specific organizations. The field of judicial bypass representation is limited (there are very few judicial bypass cases per year, as few as 20 in some states, as reported by my participants, though the official data on these proceedings is often unpublished for privacy reasons) and even more specialized when narrowed to attorneys who have represented foster youth in judicial bypass hearings, as my participants overwhelmingly acknowledged. My participants consisted of four attorneys who represent or represented minors in judicial bypass hearings as their primary occupation (two of whom have also engaged in academic research on the topic of judicial bypass), two attorneys who work in child welfare law at a broader scale with a focus on youth in foster care who have worked on judicial bypass advocacy, and two attorneys

who represent minors in judicial bypass hearings in a volunteer capacity outside of their primary occupations. The two attorneys who volunteer to represent minors in judicial bypass hearings both began this volunteer work after the *Dobbs* decision as a way to support reproductive justice work in their respective states, which did not implement bans post-*Dobbs*. Of these eight attorneys, seven were women, reflecting the female-dominated fields of reproductive justice and child welfare work.

While the focus of this paper is on attorneys who represent minors in states where abortion is legal, given that most abortions occur in those states, the inclusion of some participants from states with abortion bans allows for meaningful comparison. My participants consisted of six attorneys working in states where abortion is legal but parental consent is required, as well as two attorneys working in states with abortion bans. These attorneys had expert experience working with minors seeking judicial bypass and minors in foster care, and their perspectives were based on numerous experiences of judicial bypass hearings. For instance, one attorney organically referenced details from 12 cases in her interview, as well as mentioning that she had represented as many as 70 youth before managing the training and assignment of new judicial bypass attorneys.

Given the small field of judicial bypass representation intersecting with abortion access for foster youth and the expert nature of my participants, my eight semi-structured interviews were sufficient to reach theoretical saturation for my research. I used Small's (2009) strategy of sequential interviewing, treating each interview as a case study that could demonstrate theoretical replication, until I reached saturation with the themes and perspectives I had identified. Small's theory for qualitative research cases, coupled with Aspens and Corte's (2019) suggestion that interview-based research should allow for the flexibility to make adjustments and

theoretical changes while the research is being conducted, allowed me to follow up on themes that had arisen in earlier interviews more thoroughly in later interviews and to finish my data collection when I reached theoretical saturation. By the end of the interview process, I was no longer receiving new or unexpected information on foster youths' experiences of judicial bypass processes from participants.

Since judicial bypass cases are highly confidential, attorneys did not disclose personal information or identifiable details from cases they worked on to protect youths' privacy. However, attorneys did describe scenes at court that, combined with their overall assessments of judicial bypass proceedings for foster youth, provided sufficient material for analyzing how foster youths' experiences in judicial bypass hearings differ from those of their peers not in foster care. After interviewing attorneys over Zoom with a flexible interview guide,³ having obtained attorneys' consent to record the interviews, I used Otter.ai to transcribe interviews (which were typically about 30 minutes long). I then made revisions to the transcripts by hand to account for errors made by the transcription software. I assigned pseudonyms to participants and removed the names of their places of residence and the organizations at which they worked to protect their privacy, and therefore the privacy of the minors with whom they worked. Next, I completed a round of preliminary digital hand-coding of the transcripts, followed by thematic coding to analyze whether, according to the experts I interviewed, foster youth experience judicial bypass proceedings in a different and perhaps more challenging way than their peers not in foster care.

Findings and Analysis

My findings suggest that judicial bypass proceedings in states that have not banned abortion post-*Dobbs* create unique barriers to abortion access for youth in foster care. Judicial

³ For the complete interview guide, see Appendix.

bypass proceedings require abortion seekers to leave school and travel to court alone during school hours, a particular obstacle for foster youth who are under what many participants described as “surveillance.” Once at court, minors can be faced with traumatic experiences during hearings, including violations of privacy, insensitive judges, invasive questioning, and often “retraumatization,” as youth in foster care may have already endured traumatic experiences at court due to their familial situations. Given both the potential for traumatic experiences and the majority success rate of judicial bypass hearings in states that have not banned abortion, the attorneys I interviewed expressed near universal outrage at the judicial bypass requirement. They called the process “stupid,” “crazy,” a needless requirement with “no benefit,” and only one, Rowan, offered a more favorable view, though said she only supported the procedure because she had observed that everyone who followed the correct steps was approved.

Similar to Rowan, the majority of participants in this study reported that in states where abortion is legal, judges tend to grant nearly all judicial bypass petitions. One attorney, Erin, initially concurred with this finding, though later expressed a concern about portraying judges as “rubber stamping” petitions, for fear of injuring public opinion of a judge in her state. Nevertheless, all participants confirmed that the general expectation in states where abortion is legal is that judicial bypass hearings will be successful. While this is not the case in states with gestational duration bans, as participants noted that judges in those states are often expected to reject petitions due to personal anti-abortion views if a judicial bypass hearing can be completed before the gestational duration limit, in the states where most abortions take place post-*Dobbs* judicial bypass proceedings tend to be approved. Although data on these proceedings is unpublished for the sake of minors’ privacy, it appears, based on expert attorneys’ observations, that judicial bypass proceedings in states without abortion bans do not limit abortion access

through parental involvement or judicial decision. Rather, they impose restrictions on minors' abortions by creating logistical and emotional barriers that are exacerbated for minors in foster care.

Lipsky's theory of service rationing (2010) provides a framework for describing judicial bypass proceedings as a formality that discourages foster youth from seeking abortions where parental consent is required due to complex logistical and emotional barriers rather than judicial decisions. Lipsky describes how public goods and services, though technically unlimited in their demand, may be rationed by street-level bureaucrats, workers who are given high levels of discretion and authority by their organizations. For Lipsky, street-level bureaucrats, such as judges, may impose costs on potential clients to discourage their use of the public good or service when the street-level bureaucrats are at workload capacity. Significant costs could include time spent seeking a service or an information barrier, where potential clients do not fully understand the systems and processes they are navigating which complicates their ability to receive the service.

Lipsky also notes that psychological costs are present in service rationing and that they include "the degradation implicit in inquiries into sexual behavior, childbearing preferences" (Lipsky 2010), and other personal matters. While the service rationing that Lipsky addresses is typically aimed at controlling demand for certain public services to avoid overworking the street-level bureaucracy, which does not appear to be the case for judges who hear judicial bypass cases, Lipsky's theory describes many elements of the judicial bypass process.

Analyzing judicial bypass processes as examples of Lipsky's service rationing frames the challenges foster youth face as costs to obtaining a service that have little to do with the service itself and more to do with the bureaucracy that controls it. The cost of time for a minor seeking

an abortion, an inherently time-sensitive process, could alienate a minor in need of a judicial bypass, as Lipsky describes that long court wait times inherently assert the higher value of a court or judge's time as compared to a citizen awaiting service.

Given that judicial bypass proceedings limit abortion access primarily through service rationing rather than judicial denial, the judicial bypass requirement is unsuccessful at requiring adult involvement in minors' abortion decisions in the way the public and politicians expect. (Even in states with gestational duration abortion bans where judges are more likely to reject a judicial bypass petition, some participants suggested that minors would likely travel to another state and obtain an abortion after receiving a judicial bypass denial). Participants repeatedly reported that there is a popular misconception regarding parental consent laws and judicial bypass proceedings, among those who are aware of their existence, that parental involvement laws will encourage minors to tell their parents about their abortion decisions and that, in the event that a minor does not have parents they can involve, a judge will act as a parental figure and assist the minor in assessing their best option. However, participants agreed that parental involvement laws do not encourage minors to tell their parents, supporting Blum et al.'s (1987) finding that parental consent laws do not significantly increase the likelihood that a minor will inform a parent about their choice to have an abortion. Participants also emphasized that judicial bypass decisions tend to reflect judges' political views on abortions, explaining why most judicial bypass proceedings—those in states where abortion is not banned—are approved.

Therefore, the judicial bypass process is a challenging endeavor for a minor, and particularly one in foster care, that aligns more closely with a service rationing model than with parental connection and involvement. Rather than ensuring that a minor receives appropriate adult guidance, the judicial bypass reflects its origin as an addition to parental consent laws

designed to ensure the laws' constitutionality and effectively placate opposition to minors making independent abortion decisions. To illustrate how judicial bypass proceedings limit abortion access through logistical and emotional barriers rather than judicial decisions, resulting in a needless process that inflicts trauma on a vulnerable population without access to parental consent, I will first analyze participants' descriptions of challenges associated with arriving at court and enduring the courtroom experience for youth in foster care. Next, I will address the overwhelming outrage attorneys expressed at the pointlessness of the process, and particularly the numerous observations that most judicial bypass petitions are approved based on judges' personal views on abortion. Finally, I will discuss the perspective held by most participants that there are many misconceptions circulating about parental consent laws and judicial bypass proceedings, which indicates that judicial bypass proceedings are used primarily as a political tool rather than a service to aid pregnant minors.

Barriers to Arriving at Court: Logistical Challenges for Foster Youth

Minors in foster care are highly surveilled, according to multiple participants, indicating that leaving school and traveling to court, tasks already challenging for a minor to complete without parental support or detection, present greater difficulties for foster youth. Even when minors in foster care have the support of their caseworkers in obtaining an abortion, those state workers can be misinformed about the judicial bypass process which could cause more logistical challenges. Additionally, minors are often unaware of how to obtain legal representation and what will happen during a hearing, creating increased stress and fear throughout the process and exemplifying what Lipsky (2010) would describe as the imposition of an information barrier. Lipsky's proposed time and psychological costs, too, are represented in the challenges foster

youth face in leaving school, traveling to court, and arranging a hearing. All of these tasks can cause minors to experience fear and anxiety, creating psychological barriers to obtaining an abortion with judicial approval that enhance the logistical challenges they already face.

Charlie, Eliana, Gabriella, and Ingrid discussed in depth the challenges associated with obtaining transportation to court as a minor, and particularly a minor in foster care. Charlie emphasized the surveillance and fear that youth in foster care might experience during travel: “The things that adult women can do like fly to another state is pretty impossible for most teenagers and completely impossible for kids who are being surveilled by the foster care system. So those kids are losing their rights.” In addition to usually being unable to travel to another state that does not require parental consent, Charlie noted that foster youth could face removal from their current placement if it were discovered that they had lied to foster parents with anti-abortion views and traveled to court by themselves. Beyond fear of discovery, logistical transportation limitations often seem insurmountable, according to attorneys.

Several participants emphasized that there are few options for foster youth to travel to court undetected. Given that foster youth typically do not have access to a car, transportation options are often limited to public transportation and rideshare services. Public transportation can at times be unreliable or intimidating for minors, according to Eliana, who noted that some teens were late to court because they had gotten lost in transit and that for some of them it was their first time taking public transportation by themselves. Uber is also inaccessible for minors, according to Charlie, since creating an Uber account requires a credit card and few minors, and even fewer minors in foster care, can access a credit card covertly for that purpose. Ingrid also raised safety concerns regarding sending a minor in an Uber alone: “I don’t really want to send a 14 year old girl in an Uber across town when nobody knows where she is. That doesn’t seem

safe.” Attorneys agreed that safe, reliable transportation to court was often challenging for minors to access, and minors’ ability to acquire transportation can be hindered even further by their limited opportunities to speak with attorneys before the hearing to strategize about transportation, as well as other aspects of the process.

Minors, and especially those in foster care, are so thoroughly surveilled, according to many participants, that any communication prior to the hearing is a risk given that foster parents or caseworkers could be present when a minor receives a call or could check the minor’s email or text messages. Even communicating with the minor before the hearing to strategize about safer transportation options can have negative consequences, according to Ingrid and Gabriella. Therefore, participants reported having between one and three phone conversations with minors before their court dates to prepare them for hearings and discuss transportation to court as well as how to leave school without parental notification.

Missing school for a judicial bypass hearing poses significant difficulties for minors in foster care who must contend with their guardians being notified of any absence, as is the case for all minors. However, foster youth are at a particular disadvantage due to heightened surveillance. Ashley suggested that missing school could be particularly challenging for a minor in foster care, given certain harsher rules or obligations that foster youth endure as a result of the child welfare system:

Another thing I find interesting is policies around surveillance of young people in foster care as well. I think that’s just another obstacle we found just in the sense of them being able to miss school or go after school to try to obtain care or something... Depending on where a young person in foster care is placed or whose custody they’re actually in, there can be specific policies as well that impact oversight and make it even more difficult for them to be able to go to a judicial bypass hearing. Some of them may also not feel comfortable disclosing certain things to the person that they are staying with, or just may not have another trusted adult around them.

The lack of a trusted adult, while being housed in an environment with strict rules that is highly surveilled, hinders foster youths' ability to attend judicial bypass hearings in ways that their peers not in foster care are less likely to encounter. Charlie also highlighted the important role close relationships with adults at school can play for minors seeking judicial bypass, another area where foster youth are at a disadvantage due to frequent school changes and placement instability. She commented on bias against young people in foster care in schools given their lack of long-term relationships with adults on campus:

For foster youth, it's much more front of mind, being surveilled, and they're really worried. You know, kids get caught skipping school. Some of them say, "Yeah, I'm just gonna play hooky," where some of them will go to teachers and guidance counselors who they have a relationship with and get out of school. Foster kids often don't have that relationship because they've only been in that school for this year, or maybe this month, so they have nobody to go to. And if they're caught playing hooky, it's not, "Oh, they're playing hooky," it's, "Oh, this kid is a bad seed." So they have many of the same fears as kids not in foster care but it's exacerbated because of their situation and because of the trauma that courts have brought to their life.

Charlie's description of how placement instability in foster care contributes to biased evaluations of foster youths' character indicates that the experience of getting out of school for a hearing as a foster youth could serve as a greater psychological barrier to abortion access than it would for a minor not in foster care.

The anxiety and repercussions surrounding missing school for a hearing, though less traumatic than being questioned by an insensitive judge during a hearing, can inflict lasting psychological damage on a young person seeking an abortion, according to participants. Eliana recalled a judicial bypass client expressing her regret and shame at lying to get out of school for her hearing:

Some schools have these systems where if a student is not present they rotate dial their parents...I had a teen once say to me, "I've never lied before. And I've lied more to try to

get to court and go through this process.” She felt really ashamed of that. They’ve talked about how they feel like they’re gonna throw up. It’s...it’s really traumatizing.

The fear and anxiety that leaving school without parental notification causes for minors increases trauma associated with the experience, which can be caused by school policies that notify parents or guardians immediately if a minor is not in school. While these policies might be aimed at protecting minors, such school policies subject minors to increased surveillance while they attempt to undergo a process that is already highly traumatic and anxiety-inducing. Charlie, Eliana, and Ingrid all expressed frustration with schools’ parental notification of a minor’s absence, as the notification can often violate minors’ privacy and, according to Charlie, has resulted in broken confidentiality concerning minors’ abortions through judicial bypass proceedings.

Even when minors in foster care are less concerned about privacy violations because they have supportive caseworkers, logistical challenges that cause them unnecessary stress can arise due to poor training and education of state workers. Daniel researched how foster youths’ caseworkers are educated on handling teen pregnancy in each state with parental consent laws and discovered that many states provide outdated information to their foster care caseworkers regarding judicial bypass proceedings. He recalled that in one state, where parental consent laws had been in place and were later repealed, the state had not updated its caseworker manuals. Despite the state no longer requiring parental consent, and therefore a judicial bypass for foster youth, the manuals continued to instruct caseworkers to consult with an attorney if they were responsible for a minor who wanted an abortion. Daniel remarked, “There’s a kind of a potential privacy violation right there when that child doesn’t actually, or that young person, you know, 16 year-old even, doesn’t need permission from anybody.” The lack of information resulting in further invasion of privacy and stress to minors could be easily avoidable with proper education,

according to Daniel, and puts foster youth in unnecessarily emotionally challenging situations caused by what Lipsky (2010) would describe as an information barrier.

In addition to the stress a caseworker's misinformation might cause, minors' own lack of information on court procedures can pose challenges. Obtaining legal representation and getting access to identification are logistically burdensome and also impose an information barrier on abortion access for minors. Rowan expressed concern for minors who do not realize they can reach out to attorneys through non-profit organizations and might instead be provided a court-appointed attorney, which could be stressful given the short notice inherent to judicial bypass hearings. In some cases, Rowan explained that finding an attorney is "sometimes hard, because it has to be done in an urgent situation," and can be complicated by the practice of the two largest providers of judicial bypass representation in the country to use volunteer attorneys to represent minors. Volunteer attorneys, like Rowan, have to be prepared to leave their primary work in the middle of the day and on short notice to represent a minor in a judicial bypass hearing, as they are asked to take on a case with a week or less to prepare. Given that most minors do not have significant knowledge of the U.S. court system or of retaining an attorney, according to Rowan and other participants, this process can pose a barrier. Similarly, minors' lack of information regarding court practices might lead to logistical challenges that create problems navigating the courts' bureaucracy, such as a minor not having identification or not having access to their ID, as Ingrid recalled. These logistical barriers often cause minors fear and anxiety that they will not be granted an abortion, which is particularly traumatic for those in foster care who might have already endured challenging situations at court or who might have less robust support systems.

Psychological Barriers: Emotional Challenges for Foster Youth

Fear, anxiety, anger, and trauma were major themes amongst participants' descriptions of the judicial bypass process for foster youth. These emotions could arise from challenging experiences in the courtroom, often due to insensitive judges, as well as minors' fears that their confidentiality would be broken, that guardians would discover the abortion and retaliate, or that a judge might deny their abortion and the minor would be forced to become a parent.

Psychological harm caused by these fears, as well as invasive questions into minors' sexual behavior, which Lipsky (2010) specifically articulates as a psychological cost used in service rationing, is an obstacle for minors in foster care to access abortions in a timely and safe manner.

Participants reported that foster youth face uniquely traumatic experiences throughout the judicial bypass process given their family histories. Ashley suggested that telling a judge about one's pregnancy is "retraumatizing or can be triggering," especially as a minor in foster care who may not have had substantial sex education or who may have experienced a sexual assault. Gabriella added that for a minor moving between placements and families the process "just adds to the trauma and instability that they're already facing." Charlie described how returning to court for a minor in foster care could lead to their reliving some of the most emotionally devastating moments of their lives:

This is where perhaps the worst thing of their life happened to them: that they were taken away from their parents. Kids, even with the worst parents, love their parents, and being separated from their parents, even if it's something you have to do, is incredibly traumatic. And that is all tied up in the courts... "The judge took me away from my parents, and now I'm going to a judge to help me in this most difficult period of my time."

Charlie's description of the trauma a foster youth may already have endured at court does not promise a positive experience of a judicial bypass hearing. Rather, the psychological cost might dissuade a minor in foster care from attempting to access the service of judicial approval, to use

Lipsky's (2010) framework, as minors in foster care are primed to distrust judges and the court system, according to participants.

Both Eliana and Charlie recalled reassuring minors who distrusted the court system and were convinced that they would be the exception to a judge's record of consistently approving judicial bypass petitions. Eliana explained that, despite informing teens that 99 percent of cases were approved in her state where abortion remains legal, minors were often concerned that their case would be the only one that was denied:

Planned Parenthood counselors would tell the teens that [their judicial bypass was likely to be approved], I would tell the teens that, and invariably, they would say, "I just was sure I was gonna be the one teen they were gonna say no to. They wouldn't like me." It's scary, you know...most people don't associate court with good things. For a teenager, the people who go to court are in trouble, they've done something wrong.

The anxiety that minors experience around being perceived as unworthy or troubled and therefore being unable to access an abortion also heightens their fears. Charlie described similar observations as Eliana, having told minors that they were facing a judge who "has never, ever denied a petition," yet the adolescents she represented continued to express concerns. These concerns often centered on the future they would face in the event of a denial, which would require them to carry a pregnancy to term. Rowan articulated this fear, explaining, "They're nervous about the whole thing. I mean if they don't get this granted that means they're forced to have a baby." This anxiety regarding the requirement to carry a pregnancy, give birth, and potentially parent, is only heightened by concerns over being judged poorly, given the stigma of pregnancy and abortion for minors.

The stigmatization of teenage pregnancy and abortion, exacerbated by the influence of a judge who could deem the minor immature and therefore unable to make informed decisions, creates, according to participants, an environment in the courtroom that feels punishing rather

than helpful or encouraging. Eliana noted that “[Going to court] is deeply stigmatizing. It marks abortion as a bad choice,” regardless of the hearing’s outcome. Gabriella agreed, recalling that many minors she had worked with, including those in foster care or not living with their biological parents, experienced so much shame that the hearing became, for them, a punishment for seeking an abortion:

They were very scared, and I think that they felt, you know, the stigma of an unplanned pregnancy as a teenager. Having to go through this process re-stigmatized it and validated any kind of stigmatization and shame that they already felt. I think that it acted almost as a punishment towards getting the procedure itself.

The feeling of being punished, already challenging for a minor who may have navigated significant logistical and emotional barriers to arrive at court, could be even worse for a minor in foster care who might face greater repercussions for seeking an abortion against the wishes of their guardians.

Foster youth often, according to Charlie, experience fear of retaliation from social workers and foster parents if their abortion-seeking is discovered. While Ashley, Gabriella, and Rowan noted that many minors living with their parents or in abusive households fear retaliation if their parents discover that they want an abortion, Charlie explained that there are also fears of retaliation specific to foster youth surrounding the judicial bypass system, given that foster youth are involved in a system that is invested in surveillance. Some foster youth are concerned that they will be punished if a case worker discovers their efforts to subvert this system’s surveillance, and Charlie proposed one perspective of a foster youth seeking a judicial bypass: “Well, I don’t want to tell anybody, certainly not my social worker, because I want to reunite with my mother. And I don’t want this to be seen as a reason why I shouldn’t go back to her.” In addition to addressing the fear of continual separation from biological parents, Charlie described

how foster youth might be more concerned about retaliation from guardians who learn of their abortion due to histories of placement instability:

With foster kids, they may be afraid they're gonna lose their placement and that's even more problematic. They may be for the first time in a placement where they're really happy and they don't want it to move and they don't want to change schools. Or they may be in a really terrible placement, but it'll be made more terrible if the foster mom knows that you're out having sex.

Foster youths' fears around their current living situations worsening due to foster parents discovering their abortions highlights the challenges children in foster care experience with changing placements where they often have "no social structure" according to Charlie. Without a trusted adult, or sometimes even a friend, given that placement changes often require frequent school changes, minors in foster care experiencing anxiety-inducing challenges have fewer resources for support, yet they face even more difficulties during hearings than their peers not in foster care.

As Charlie mentioned previously, minors in foster care may have already experienced court proceedings in relation to their familial situations, which creates unique anxieties around going to court. Charlie and Eliana both described a concern they observed specifically in foster youth at court: the fear that they would encounter someone they knew and would therefore be recognized, violating their privacy. With the potential to encounter state and social workers who may have been involved with some portion of a minors' child welfare case, foster youth are at a greater risk for being recognized at court, according to Charlie and Eliana. Charlie also noted that "Everybody knew, these teenagers, why they were there, so there were all these people staring at them," describing how court officials and workers immediately assumed that a teenage girl in the courthouse alone was seeking a judicial bypass. Combining this unavoidable confidentiality breach with foster youths' previous involvement with the court system and higher

likelihood of being recognized, foster youth have good reason to be more concerned than their peers about their abortion or judicial bypass being discovered while at court, according to Charlie.

In addition to the fear of a confidentiality breach by going to court, minors often face psychologically challenging obstacles once their hearings begin. Participants reported that most judges in states where abortion was not banned tended to be friendly, considerate, and would approve all or nearly all judicial bypass petitions. However, nearly every participant provided anecdotes about the occasional insensitive judge. Participants in states where abortion is banned explained that most judges tended to deny judicial bypass requests pre-*Dobbs* (or post-*Dobbs* if the ban only applied to a certain timeframe, for example after six weeks). Although participants were often interested in highlighting what they perceived to be injustices faced by minors at the hands of insensitive judges, they also tended to acknowledge the efforts of many judges to make the hearing less challenging, although the attorneys agreed that even with a sensitive judge, minors were nervous and uncomfortable at their hearings.

Ingrid confirmed that the hearing process could be traumatic even with a prepared, kind judge, given that minors seeking abortions without parental consent are often in inherently traumatic situations before the hearing begins. Answering invasive questions or listening to an attorney provide a summary of their case could be upsetting, and Ingrid recalled one case in which the minor began to cry after just hearing the details of her situation summarized:

The judge was just super great, you know, like very trauma informed, very sympathetic, very encouraging and uplifting for the young person, and tried to make it as painless as possible. But it was still a very intense experience. My client was sitting there in the courtroom, having to listen to me tell her story, which was fairly traumatic, and hearing it all sort of summarized, you know, the reality of her life, she just started crying.

Reliving the details of traumatic experiences often causes stress and pain for minors undergoing the judicial bypass process, according to participants. With anticipated invasive questioning from judges, minors are often required to prepare explanations for their situations prior to their hearings, aiming to prove that they are “mature enough and well enough informed,” as dictated by the *Bellotti v. Baird* decision, to make their own choices.

According to attorneys, judges ask minors to explain details about their relationships with their parents and why they are not seeking parental consent for an abortion, in addition to questions regarding their relationship with the person who got them pregnant, whether they used contraceptives, what they are going to change going forward to avoid future unwanted pregnancies. Judges might also ask questions about a minors’ extracurricular activities and responsibilities to assess their maturity, according to Rowan. Anxiety about providing the “right” answers to these questions that will not result in a denial of their judicial bypass petition, in addition to reliving harmful experiences, indicates that being questioned by a judge is an intimidating obstacle for minors to overcome when seeking a judicial bypass, according to Gabriella:

You’re asked invasive questions by judges, and as a teenager who maybe has never even been to a gynecology appointment before, who maybe has never had sex ed, or has never had to talk about things like that, that’s a very uncomfortable and traumatizing experience. You are having to go and sit in front of a judge who you’ve never met before and you don’t know anything about the court process. Most adults never know anything about the court processes in this country. It’s a very traumatic thing to go through for teens.

Often lacking sex education due to frequent school changes, and having few close relationships with supportive adults, foster youth endure traumatic experiences during judicial bypass hearings even when judges attempt to show consideration. Eliana recalled, “Some of them thought they were being really kind and would say things like ‘What’s your favorite subject?’ I still remember

a teen said, ‘Oh, math.’ And so [the judge] asked about the Pythagorean Theorem and you could see this panic of like, ‘Oh my god, what if I don’t know the answer to that?’” Eliana’s description of the minor’s anxiety around answering a question incorrectly—even one that has little bearing on the particulars of why she was at court—illustrates the fear minors face in judicial bypass hearings where every interaction with a judge feels critical to their ability to get an abortion.

The fear and anxiety minors experience in the courtroom only worsens with insensitive judges who have made racist remarks as well as shamed minors for sexual activity, according to participants. These judges often express anti-abortion sentiments to the minor and both Ashley and Charlie had encountered judges who recommended that minors first visit anti-abortion pregnancy crisis centers before receiving a judicial bypass. Charlie also recalled an overtly racist comment from a judge who said to a minor that he would be “worried that your father with his Latin temper will hunt me down. And well, I guess, I guess, people like you mature earlier in the tropics.” Describing the interaction, Charlie added that the minor “had lived in Boston her entire life.” This racism from a judge, as well as what participants described as an expectation for sexist and shaming language, escalates the traumatic experience for minors, and especially those in foster care, which is disproportionately comprised of children of color (Foster 2012).

Insensitive comments shaming minors for sexual activity were also prevalent among respondents’ descriptions of the courtroom experience during a judicial bypass hearing. Charlie recalled a judge saying, “if you just kept your knees together,” and Rowan also described a judge’s inaccurate comments regarding a minor’s future sexual behavior and potential pregnancy. After a judge asked a minor, “Why didn’t you use contraception? Are you going to use it in the future?” Rowan explained, “My judge even said to the minor—this was an inappropriate comment—you know, I’m granting it this time but...it will be harder to get a second time.” Not

only was the judge's comment threatening, but it was also inaccurate. The records of judicial bypass cases are sealed and so no previous judicial bypass should affect a hearing's outcome or even be discussed during a hearing, according to Rowan. Eliana echoed Rowan's experience with judges asking minors about their future sexual behavior, which added to the discomfort they already felt at having to explain their situations. Gabriella confirmed this discomfort:

As the process would go on, I would see them shrink and I would see that shame seep into someone who's very young, who's just trying to do what's right for them. So I think it can be a very debilitating process. It can put people in very high risk situations and also, depending on where the judges were, very traumatic situations, because some of the judges were obviously very against abortion in general.

Gabriella practiced in a state where abortion is now banned and where she often encountered judges who would deny judicial bypass hearings seemingly on the basis of their personal beliefs regarding abortion, rather than the federal maturity standard. Judges who are biased against minors seeking abortions, either due to the stigma of teenage pregnancy or anti-abortion views, have intimidated minors in judicial bypass hearings with warnings such as "You know, you might die because of the abortion," according to Charlie. Through these practices they have caused psychological harm to minors, and particularly to those in foster care, that could inhibit their ability to seek an abortion, supporting Lipsky's (2010) suggestion that psychological harm caused by invasive questioning regarding sexual behavior and child bearing preferences could act as a deterrent for someone seeking a public service.

A Pointless Obstacle: Attorneys' Outrage at Judicial Bypass Proceedings

Attorneys tended to express frustration at the injustices the judicial bypass process inflicts on minors, and particularly minors in foster care, given success rates for judicial bypass hearings. Participants acknowledged that in states where abortion is legal and judges tend to be pro-choice,

judicial bypass proceedings are all or nearly all successful. While these high success rates are uncommon in states with gestational duration bans currently in place, and were uncommon in states pre-*Dobbs* where abortion is now entirely banned, participants reported that most abortions occur in states where abortion is not banned. Participants explained that abortion funds could sometimes cover travel expenses for minors to travel to states where abortion is not banned to obtain an abortion and judicial bypass (if necessary). Therefore, participants agreed that most judicial bypass proceedings impacting minors occur in states where abortion is legal and where judges tend to grant nearly all judicial bypass requests.

Given the logistical and emotional challenges inherent to the judicial bypass process, and the specific dangers of retraumatization for youth in foster care, most participants were outraged at the process, which they often deemed senseless given that most petitions post-*Dobbs* are approved. Judicial bypass hearings, according to participants, serve primarily to impose harsh psychological and time costs on pregnant minors, which inhibit their access to judicial approval for abortions. It is the logistical and emotional complications associated with obtaining a judicial bypass that restrict foster youths' abortion access in these cases rather than judges' decisions, suggesting that Lipsky's (2010) service rationing framework remains fitting.

Eliana asserted that "There's no benefit...zero" to judicial bypass proceedings, supported by Charlie's frustrations with the "stupid...senseless process." Charlie emphasized her frustration with judicial bypass proceedings, explaining, "It is time consuming. It delays people's abortions. It is traumatic. Who goes to court? Criminals go to court. Why should these young women be considered criminals?" Charlie was concerned with the psychological cost to minors of feeling as though the judicial bypass process is a punishment. This punishment is, in Charlie's view, arbitrarily inflicted on minors based on their parents' views or lack of access to their

parents. For a minor without access to parental consent or support, this punishment is hurtful and the hearing is daunting. Charlie recalled that in one case a minor had an illegal abortion to avoid the judicial bypass process which resulted in her death.

Outraged at the unnecessary traumatic experiences, and even death, that minors in foster care face due to judicial bypass requirements in the place of parental consent, Charlie and other participants explained that they understood the foundations of the process to be nonsensical. Most participants described the maturity standard that originated in *Bellotti v. Baird* as illogical. It is unreasonable, in the opinions of Charlie, Rowan, Ingrid, Eliana, and Daniel, for a judge to deem a minor too immature to make the decision to have an abortion but therefore mature enough to have a baby. Ingrid described the maturity standard as “wild,” and Rowan called it “silly,” although Rowan was the only participant to speak positively about judicial bypass proceedings when asked about her general impressions of the process.

Rowan’s perspective that the judicial bypass process works well was an outlier among participants; however, her explanation for holding this view aligned with other participants’ comments on the overwhelming success rates for judicial bypass proceedings in states where abortion is legal. Rowan explained that she did not support parental consent laws but that she was pleased that judicial bypass existed as an alternative for minors without access to their parents, like foster youth: “I think it’s crazy that [the judicial bypass] has to exist because of what the laws are, but I think it’s important that it does exist. I think it is a great program and it’s honestly not that hard to get judicial bypass for someone. You have to follow these steps and you get it. So I think it’s pretty well done.” Rowan’s enthusiastic response was unique, but when compared with the reasoning provided by other participants, her views do not completely contradict her peers: Rowan believes that judicial bypass processes work well because, in her

experience, all petitions have been approved. Her experience supports other participants' evaluations of why the process is illogical (if judges approve all or most petitions and therefore do not directly impact abortion access, then why is the hearing necessary?) and her frustration with the "silly" maturity standard and difficulties that minors face in undergoing the process align with other participants' perspectives.

Rowan's peers in states where abortion is legal described similar experiences of the judicial bypass process as a formality in which the judges nearly always grant approval for a minor's abortion. Despite Erin's aforementioned reluctance to describe judicial bypass proceedings as "rubber-stamped" by judges out of concern for their reputations, most attorneys supported Veith's (1994) description of the judicial bypass proceeding as "a pointless rubber-stamp." Eliana reported that in her state, where abortion remains legal, "unlike in more abortion-hostile states, almost all teens are found mature." She said if she could guess, the success rate for judicial bypass petitions would be 99 percent in her state. Ingrid also confirmed that judges tend to grant approval for all petitions in her state, in which abortion is also legal, reporting, "In the last year, we have won all of the hearings where we've represented young people." Ingrid works full time at the central provider of judicial bypass representation in her state, often coordinating attorneys in many counties and organizing referrals, indicating that her assessment of her state's success rate is well informed. Charlie, too, organizes representation for judicial bypass hearings in her state, in addition to representing minors herself, and summarized the data her organization had unofficially collected over the past 43 years:

Out of the potentially, I think, about 25,000 petitions we've had since 1981, there have been 17, denials. 15 of which were overturned within a day or two by an appeals court or another judge, one young woman went out of state, and only one denial was upheld on appeal...All these young women who we should care about, because they can't tell their parents, or they can't tell their social worker, or they can't do extra work. Why are they

made to, you know, have delay and be treated traumatically, even by the nicest judges? It is a terrible, traumatic situation.

Charlie's data, which includes decades predating the significant drop in teen pregnancy in the 2000s (Kearney and Levine 2015), accounting for the high numbers of petitions in the 1980s and '90s, confirms the observations of her peers that judges in states where abortion is currently legal tend to approve judicial bypass petitions. Given these high success rates, Charlie expressed frustration with the psychological costs imposed on minors whose judicial bypass decisions were effectively determined before they entered the courtroom.

In states where abortion remains legal post-*Dobbs*, Charlie, Ingrid, Eliana, and Erin's experiences of nearly 100 percent success rates for judicial bypass petitions appear commonplace; however, some participants referenced lower success rates pre-*Dobbs* in states where abortion is now banned. Before the *Dobbs* decision, judicial bypass proceedings were not as universally successful given that abortions, and therefore judicial bypass proceedings, still occurred more frequently in states where abortion is now banned and where, as participants reported, judges are more likely to hold anti-abortion views. Ashley reported that in a state that has a six-week abortion ban currently in place, judges are "blatantly rejecting" judicial bypass petitions that are received in time. She also explained that some states where judges tend to deny judicial bypass petitions more frequently also maintain requirements for minors undergoing the judicial bypass process aimed at discouraging them from choosing an abortion:

Some states that are traditionally conservative, or with more severe bans...will require a young person to have gone to a clinic, in some cases what we know as crisis pregnancy centers, or like fake pregnancy clinics. I know people have been using those terms interchangeably nowadays, but some states will actually require that young people meet with someone at a crisis pregnancy center before they meet with a judge. And so because of those very technical pieces of legislation, it will make it even more difficult or delay access to timely care.

Delays to care in states with bans applicable after a specified number of weeks can result in limited abortion access, exaggerated by the addition of time spent on a judicial bypass hearing, which has been shown to delay abortions (Janiak et al. 2019). Combined with the increased probability for a judicial bypass denial in states where abortion is now banned, delays may inspire minors in foster care without the ability to obtain parental consent to leave their state in order to seek an abortion if possible.

Gabriella described helping minors travel to seek abortions while working at an organization that provides judicial bypass representation as well as funds for travel and medical costs in a state where abortion is currently banned:

We had many clients that would be denied, and we knew, you know, they would come in and do their intake in X county, and we knew that that judge would be difficult and would most likely deny. Sometimes we could try to get around that: we would have to build up their case, we'd have to find them a good lawyer. But there were times when, you know, and again, this is prior to *Dobbs*, where we'd have to help the caller pay to travel to Louisiana or New Mexico, because it was just not going to happen in [my state], which is obviously extremely difficult for a young person to do. It's extremely difficult for an adult to do, but for a young person who is, again, hiding this for fear of abuse, or becoming unhoused, it was really difficult.

Although Gabriella emphasized the challenges associated with traveling out of state for an abortion, which are heightened for foster youth who are more aggressively surveilled according to Ashley and Charlie, the option to travel to another state confirmed for participants that a judge's decision in a judicial bypass hearing is not the absolute determining factor in whether a minor will be able to obtain an abortion that it might seem to be. Participants emphasized how judges' decisions were less significant than the emotional and logistical barriers to abortion in determining whether a minor without access to their parents would have an abortion. Whether the judge effectively "rubber-stamps" judicial bypass petitions in states where abortion is legal or denies petitions in states where abortion is banned (and where very few, if any, judicial bypass

proceedings occur today given the bans), attorneys argued that the procedure was largely meaningless with regard to helping minors make decisions or regulating their abortion-seeking through judicial approval. However, judicial bypass proceedings are not entirely pointless: they serve a political purpose by appearing to the public and legislators as a method of ensuring that minors' abortion decisions occur only with adult consent and supervision.

Judicial Bypass as Political Tool: Confusion and Misinformation Regarding Judicial Approval

Participants reported that politicians and the general public, including minors who may eventually need to access a judicial bypass, are largely unaware of parental consent laws and their implications for judicial bypass proceedings. In particular, citizens tend to be unaware of the high percentage of judicial bypass cases that are approved, suggesting that these laws serve primarily as a political tool to give the impression that minors' abortion access is restricted through judges' individualized assessments of their maturity. Participants explained that even legislators and law professors can be unfamiliar with the reality of judicial bypass proceedings: that hearings are typically successful post-*Dobbs* and that they impose emotional and logistical challenges on minors, some of whom have already endured traumatic experiences at court and have no parents to ask for consent.

Given the aforementioned high psychological and time costs as well as information barriers that limit access to abortion for foster youth, judicial bypass proceedings serve as rationing mechanisms for the "service" of approval for an abortion, using Lipsky's (2010) framework. Instead of obtaining approval on the basis of a judge's individualized decision and assistance, minors in foster care today must undergo a potentially traumatic process to obtain consent for an abortion that is, in almost every case, guaranteed. Therefore, limitations to

abortion access originate in the emotional and logistical barriers that minors face rather than in an adult's assessment of a minor's maturity. The public perception, among the few who are aware of judicial bypass proceedings, that a judicial bypass is an effective alternative to parental consent, is incorrect according to participants. Rather, judicial bypass proceedings have effectively become political tools that convince citizens that judges help minors whose parents are unavailable to make abortion decisions, when in reality attorneys agree that judicial bypass proceedings are harmful to minors and fail at their stated intention of replacing parental consent.

Misinformation around judicial bypass proceedings delivers the political benefit of placating citizens who believe teenagers should not choose to have an abortion on their own at the cost of the mental, and sometimes physical, well-being of foster youth. Erin suggested that parental consent laws, and therefore judicial bypass proceedings, remain acceptable to the public because citizens in states where abortion is legal continue to want adult involvement in a minor's abortion decision: "I think no matter how liberal people are, there's still a different standard when it comes to minors. And I think that's why the judicial bypass is still required." Gabriella supported Erin's assessment as to why judicial bypass proceedings remain in place, explaining, "I think a lot of people look at judicial bypass and they think, well, parents need to consent to their child's care. But the reality is, you know, it acts as a very debilitating barrier to health care that a teenager at that time is fully capable of consenting to on their own." Gabriella suggested that supporters of parental consent laws, and therefore the judicial bypass, are unaware of the "reality" of the harm the proceedings cause to minors.

While the idea of parental consent and judicial approval might satisfy some citizens' beliefs that minors need adult involvement to make important decisions, Ashley echoed her peers in highlighting the difficulties associated with the process:

People get sort of stuck on the parental rights aspect of it, and feel very strongly about that sort of parental rights perspective. And folks try to, you know, justify judicial bypass in the sense of, “Oh, for people who need it, it’s there.” But especially when you think of foster care young people, and their ability to access...young people are already really vulnerable and have so many obstacles, so many hoops to jump through just to make it before a court in a judicial bypass hearing.

Ashley confirmed, as did other participants, that when the public considers the value of parental consent laws and judicial bypass proceedings, the limitations and traumatic experiences foster youth face as a result of them are not immediately apparent. Instead, people value maintaining parental rights and ensuring adult involvement in minors’ decisions without realizing that judicial bypass proceedings fail to achieve these goals. Rather, the hearings create, according to Ingrid, “a huge barrier to care” that is forgotten in the political interest of prohibiting minors from making independent abortion decisions in states with parental consent laws.

In her discussion of whether judges “rubber-stamp” judicial bypass petitions, Erin also addressed the political importance of judicial bypass proceedings for people who believe that minors should receive adult supervision for their decisions. Erin explained that she had never heard of a judicial bypass petition being rejected in her state, but then expressed concern for judges’ reputations:

I mean, there might be groups that would, you know, try to get [judges] out of there, basically. That’s why I would be very cautious in reporting. I mean, these are elected officials, so I would be concerned that some organization could say, you know, “We’re a group of parents and I don’t want my child to have an abortion without me knowing and, you know, this judge just rubber-stamps every request.”

With this concern, Erin highlighted the political negotiations present in the maintenance or rejection of judicial bypass proceedings: parental consent laws satisfy citizens and politicians who believe that minors should not make abortion decisions alone, giving the impression that abortion access for youth is controlled by adult decisions.

This misconception—that parental consent laws are effective at controlling minors and that judicial bypass requirements encourage judges’ careful involvement in individual decisions—is held by officials in the legal, legislative, and child welfare fields. Judicial bypass proceedings are little understood, according to participants, given the few cases that occur per year. The negative impacts of the judicial bypass on foster youth are even lesser known, explaining some of the confusion regarding whether judicial bypass proceedings benefit youth. Daniel suggested that “the overlap is very narrow” between judicial bypass and foster youth experts, indicating that “you kind of have to piece it together” that judicial bypass proceedings are unsuccessful at their intended aim. However, participants described how even law professors and politicians can be unaware of how judicial bypass requirements impact minors. Gabriella explained that a law professor once provided inaccurate information to her and fellow students in a constitutional law class:

My very progressive law professor was like, “Well, you know, we have this great alternative in judicial bypass,” and I was like, “um, no.” It’s really, very difficult. You know, we would have a guardian ad litem⁴ appointed to the teen clients who were pastors, for example, who were very against abortion and actively tried to convince the teen not to go through with it. So I would just say, I think it’s a very large misconception that it’s like an easy, doable workaround to getting parental consent.

The law professor’s understanding of judicial bypass as a helpful alternative for minors whose parents will not consent overlooks, according to Gabriella, the foster youth population that does not have parents who can consent and who face traumatic experiences at court attempting to navigate their “great alternative.”

⁴ The Cornell Law School Legal Information Institute (2024) defines “guardian ad litem” as “a person appointed by a court to look after and protect the interests of someone who is unable to take care of themselves, typically a minor or someone who is determined to be legally incompetent.”

Charlie also described how she had to educate politicians about the realities of judicial bypass proceedings. She confirmed Erin's observation that even abortion supporters tend to believe that minors should not decide to abort on their own:

We had a meeting with some of the progressive senators, including somebody who's like one of the most pro-choice senators, but [the senator said], "Oh, gee, I think kids should talk to somebody, and it's not that difficult." And so first of all, we laid out to them what it really meant. And then when I said they're all allowed, she said, "You mean they're going through all this just to get it allowed?" I said "Yeah," so we did not get rid of it entirely, but we reduced the age.

Charlie successfully advocated for the age of the parental consent requirement in her state to be reduced from 18 to 16, such that only minors 16 and younger are subject to the law. However, in order to achieve this change, she had to educate politicians who believed they were acting in the best interest of minors by imposing judicial bypass requirements on them. Once Charlie explained that judicial bypass proceedings were not effectively encouraging adult support for minors' decision-making, but were instead creating logistical and emotional barriers for minors without parents who could consent, the senators recognized that the laws imposed unnecessary burdens and supported the effort to reduce the number of minors undergoing the judicial bypass process in Charlie's state.

The senators' change in perspective reflects their understanding that minors' abortion access is not governed by a judge acting like a parent to help a minor make careful decisions; rather, as participants suggested, judges approve nearly all judicial bypass petitions. Limitations to abortion access for minors derive primarily from the emotional and logistical barriers they encounter in attempting to complete a judicial bypass hearing. Therefore, what appears to be a universal requirement for adult involvement in minors' abortion decisions for states with parental consent laws acts as a traumatic barrier and punishment for minors who do not have parents that can or will consent, according to participants.

Policy Implications

Expert attorneys' experiences with the judicial bypass process indicate that the requirement harms minors, and particularly foster youth, while typically providing the same outcome—legal access to an abortion—that minors in states where abortion is legal would have without the judicial bypass requirement. Therefore, I propose that states should avoid forcing foster youth to undergo the judicial bypass process through either allowing foster parents and caseworkers to consent to minors' abortions or repealing parental consent laws altogether. Wisconsin and Nebraska have allowed foster parents to consent to minors' abortions in certain circumstances, such as when the minors' parents' parental rights have been terminated (“Confidentiality/Minor Consent Laws” 2018, “Foster Parents” 2013). Other states that maintain parental consent laws could do the same, or allow foster parents and caseworkers to give permission for foster youths' abortions in all cases, to minimize traumatic experiences for a population that is less likely to have access to parents who can consent. However, this option is insufficient to protect all minors in foster care from enduring the challenges of the judicial bypass process, as foster parents and caseworkers can hold anti-abortion views, in which case foster youth would still have to get judicial approval to obtain an abortion. My participants also noted that foster youth can be concerned about communicating their abortion plans to foster parents or caseworkers for fear of losing their placement or facing other forms of retaliation. Therefore, the optimal legislative change to protect minors from harmful judicial bypass experiences is to remove the requirement entirely.

States legislatures should consider repealing parental consent laws given that the laws do not achieve their intended purpose. Parental consent laws are not effective at encouraging children to tell their parents about their abortion decisions (Hasselbacher and Truehart 2021,

Blum et al. 1987), as some of my participants noted, or at replacing parental consent with considerate judicial assistance. Instead, parental consent laws often force minors in foster care, and other minors who cannot get parental consent, to undergo a challenging court procedure. Since the *Dobbs* ruling, judicial bypass proceedings primarily take place in liberal states where abortion is legal and where judicial bypass hearings are almost entirely successful, according to my participants. Given the high success rates for judicial bypass proceedings, the process acts primarily as a device for service rationing (Lipsky 2010) rather than an encouragement of adult assistance in minors' decision-making. Therefore, parental consent laws, and the judicial bypass proceedings they necessitate, are unsuccessful at achieving their intended goals and should no longer be maintained given the harm they inflict on vulnerable minors.

Judicial bypass hearings typically only limit a minor's access to abortion through the requirements of transportation to the court, receiving permission to get out of school, accidental parental notification, or fears and anxieties around going to court. These logistical and emotional barriers are more extreme for minors in foster care who face greater surveillance and the possibility of retraumatization. If parental consent laws, and therefore judicial bypass requirements, must be maintained, officials should consider policy improvements to reduce the barriers minors, and particularly foster youth, face in arriving at and completing a hearing.

States that maintain the judicial bypass requirement for minors who cannot obtain parental consent should implement transportation services and improved training for judges to mitigate psychological costs imposed on minors seeking judicial bypass. If courts provided transportation to judicial bypass hearings, minors would not have to endure as much anxiety around acquiring safe, reliable transportation to court and could avoid some of the potential privacy violations created by asking for assistance with transportation. Other fears and anxieties

could be reduced by improving judicial training to ensure that all judges hearing judicial bypass cases are trauma-informed. However, attorneys who represent foster youth shared that even questioning from the most sensitive judges produces fear, anxiety, and shame in minors, and particularly those in foster care. Based on attorneys' experiences working with minors in judicial bypass hearings, eliminating judicial bypass requirements remains the preferred method of reducing harm inflicted on minors in foster care.

Overturning parental consent laws and the requirement for judicial bypass proceedings would diminish the role of parental involvement in minors' abortion decisions, supporting the movement for a child's right to independent decision-making that originated in the 1960s (Guggenheim 2005). There is also recent precedent for overturning or reducing parental consent laws: Illinois repealed parental involvement laws in 2021 and Massachusetts reduced the age for its parental consent requirement in 2020 ("Illinois Expands Access" 2022, Kimball et al. 2023). Although the reproductive rights environment in the U.S. is rapidly changing and anti-abortion advocates would oppose a decrease in abortion restrictions for minors, legislators in states that maintain parental consent laws should consider adjusting to recent legislative shifts toward increased autonomy for minors in states where abortion remains legal. Given that neither parental consent laws nor judicial bypass proceedings have been shown to succeed at assisting minors in decision-making without inflicting significant harm on vulnerable populations, the laws should be repealed.

Conclusion

Significant changes to the legal landscape of minors' abortion access since the *Dobbs* decision in 2022 suggest that parental consent laws and the judicial bypass proceedings that

necessarily accompany them have become obsolete. States where abortion remains legal that maintain parental consent laws are not encouraging considerate adult involvement in minors' abortions, but rather inflicting harm on minors, and particularly foster youth, who seek nearly guaranteed judicial approval for abortions. While maintaining parental consent laws and judicial bypass proceedings might placate some voters who incorrectly assume that judges in states where abortions take place do not "rubber-stamp" minors' abortion decisions, parental consent laws and judicial bypass proceedings harm vulnerable minors (Hasselbacher and Truehart 2021, De Londras et al. 2023). Attorneys' understandings of judicial bypass proceedings indicate that the proceedings, and the parental consent laws from which they originate, should be overturned post-*Dobbs*.

While judicial bypass hearings are intended to determine whether a minor is "mature enough and well enough informed" (*Bellotti v. Baird*) to make the decision to have an abortion, the outcomes of these hearings tend to reflect judges' personal views. In states where abortion remains legal post-*Dobbs*, judges approve nearly all judicial bypass petitions, leading expert attorneys who represent youth in judicial bypass hearings to feel frustrated at the challenges minors undergo for the same result as if the judicial bypass requirement did not exist. These attorneys agree that the judicial bypass process is particularly arduous for foster youth, who are highly surveilled by state systems and may face retraumatization at court. Therefore, the rationing of abortion access that judicial bypass proceedings inflict more harshly impacts minors in foster care, who are less likely to have access to parents who can consent to an abortion than their peers not in foster care.

Limiting abortion access for foster youth in particular has consequences for generational cycles of high teen pregnancy rates, undesired pregnancies carried to term, and removal of foster

youths' children into state care (Manlove et al. 2011, Dworsky and Courtney 2010, Wallis 2014).

Therefore, forcing minors in foster care to undergo the judicial bypass process, which has been shown to be trauma-inducing and time consuming, encourages a continuation of this cycle.

While attorneys who represent minors in judicial bypass proceedings agree that the hearings are particularly harmful to foster youth, future research should investigate how minors in foster care themselves perceive their experiences in judicial bypass hearings. Although minors in foster care seeking abortions are highly vulnerable and therefore may be inaccessible, previous research has been conducted with non-foster youth minors who have undergone judicial bypass proceedings (Ehrlich 2006). Once foster youth who have experienced judicial bypass proceedings post-*Dobbs* reach the age of majority they might be able to contribute valuable insight. Their perspectives could provide further justification for eliminating judicial bypass requirements in a post-*Dobbs* legal landscape by highlighting how the process imposes logistical and emotional barriers to seeking judicial approval.

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Appendix

Interview Guide

Opening

Thank you for talking to me today. I am interested in hearing about your perspective on judicial bypass proceedings, but first I wanted to remind you that there are no right or wrong answers and you are not required to answer any question that you do not want to. You may stop the interview at any point. This study should not violate the privacy of or inflict harm on minors in foster care who are seeking abortions or have had abortions through judicial bypass proceedings, as I am not asking about specific cases and respect the confidentiality required of these cases. Given that the confidentiality requirements of your cases will be upheld, there are minimal risks associated with participating in this study. I will not use your real name or the names of any organizations you mention, but there is a possibility that someone familiar with certain organizations and individuals might be able to find identifying characteristics in the final product, though I will do my best to omit any identifying characteristics. The benefits of participating in this study include contributing to research that has the potential to increase awareness of the challenges that foster youth face in seeking reproductive healthcare within the current legal environment. Do you have any questions?

Do you mind if I record our conversation to transcribe it later?

Work Experience and Background

1. Can you tell me a bit about where you work?
2. What made you interested in your current job?

1. What inspired you to get involved with child welfare work?
3. What kind of cases do you typically work on?
 1. Are you directly representing individual children? Policy work? Class action?
 2. *If only indirect work:* Do you have any prior experience working directly with individual children? *If necessary:* Can you tell me about that experience? Have you worked with children in foster care specifically?
4. *Omit for organizations that only take cases having to do with reproductive health.* Do you have any experience on cases having to do with reproductive healthcare?

Child Welfare Law Post-Roe v. Wade

5. Has the *Dobbs v. Jackson* decision affected your work? If so, how?
6. *If in a state with parental consent laws:* Has there been any shift in the type of cases your organization has taken on or the type of cases you work on since *Dobbs v. Jackson*?
 1. *If not:* Is that due to the organization's normal case flow? Do you anticipate any changes going forward?
7. *If in a state without parental consent laws:* While parental consent laws aren't a concern for children in your state, has there been any shift in the type of cases your organization has taken on or the type of cases you work on since *Dobbs v. Jackson*?
 1. *If not:* Is that due to the organization's normal case flow? Do you anticipate any changes going forward?
8. How, if at all, do you think the major concerns in child welfare law have changed since *Dobbs v. Jackson*?

Foster Youth and Abortion

9. Do you think the *Dobbs v. Jackson* has changed the reproductive healthcare landscape for foster youth in particular?
10. Do you or have you worked with youth in foster care dealing with reproductive healthcare issues?
11. How would a foster youth's path to an abortion typically differ from that of a youth not in foster care?
 1. Are there barriers to abortion access specific to foster youth?
 2. How does this vary between your state and other states?

Judicial Bypass Proceedings

12. What is your overall impression of judicial bypass proceedings for minors' abortions?
13. How, if at all, do you think the motivation for bypassing parental consent impacts the proceeding's outcome?
14. Have you ever been involved with representing minors in judicial bypass proceedings?
 1. *If yes:* What is that experience like? Are you frequently involved in judicial bypass proceedings? Do you do it through your current organization?
 2. *If no:* Would you ever consider representing a minor in a judicial bypass hearing?
15. Based on personal experience, research, professional connections, etc., what do you think the judicial bypass process does well?
16. What could be improved about the judicial bypass process?
17. How is going through the judicial bypass process as a foster youth different than for someone living with their biological parents?

1. For adolescents living with parents who will not consent, what are the challenges particular to their situations? What are the challenges particular to the situations of foster youth?
 2. Do foster youth typically have support from caseworkers, foster parents, etc.?
 3. How does past trauma in court and dealing with the state factor in?
18. Do you think the judicial bypass process accomplishes what it sets out to do?

Closing

Your answers have been really helpful. Thank you so much for your time. Before we wrap things up, is there anything you would like to add or anything you think I should have asked you? Do you have any questions for me? Do you know of anyone else who might be interested in speaking to me about judicial bypass proceedings?

Thank you very much.