

Bellotti v. Baird (1979)

On 2 July 1979, the United States Supreme Court decided *Bellotti v. Baird*, ruling that a Massachusetts law that prohibited minors from obtaining abortions without parental consent was unconstitutional. That law prohibited minors from receiving abortions without permission from both of their parents or a superior court judge. Under that law, if one or both of the minor's parents denied consent, the minor could petition a superior court judge who would determine whether the minor was competent enough to make the decision to abort on her own. In addition to judging the minor's competency, a superior court judge could also determine whether the abortion was in the minor's best interest. The Supreme Court upheld a lower court's decision and ruled that the existing Massachusetts law was unconstitutional. The Supreme Court's ruling on *Bellotti v. Baird* affirmed that minors had the right to choose an abortion and that the decision to abort was personal and could not be overridden or vetoed by a third party.

The main question of *Bellotti v. Baird* was whether the Massachusetts law unconstitutionally restricted the right of minors to seek an abortion. In 1973, six years prior to *Bellotti v. Baird*, the Supreme Court decision on *Roe v. Wade* made abortion during the first trimester of pregnancy a legal right. Due to that precedent, new laws could not overly restrict a woman's right to have an abortion. In 1974, the government of Massachusetts passed a law regulating minors' rights to abortion. The law required a minor seeking an abortion to obtain consent of both her parents. If one or both of her parents did not give their consent, the minor could petition a superior court judge to grant her permission to have an abortion. In such cases, the judge determined whether the minor was capable of making the decision to have an abortion on her own. If the judge determined that she was, the judge could overrule the parents' decision and the minor could have an abortion. However, regardless of the judge's verdict on the minor's competency, the judge could prevent the minor from having an abortion if the judge felt it was not in the minor's best interest. Under the Massachusetts law, whenever a minor initiated judicial proceedings to obtain permission for an abortion, the court informed the minor's parents. Critics of that law claimed that it unconstitutionally restricted the right of minors to obtain an abortion by requiring the approval of both the minor's parents or a superior court judge. In 1974, the law was challenged in the Massachusetts District Court.

In 1974, William Baird, the founder and then director of Parents Aid Society, Inc., hereafter Parents Aid, brought *Bellotti v. Baird* to the Massachusetts court. A pregnant, unmarried minor identified by the pseudonym Mary Moe represented minors who sought abortions in Massachusetts but could not obtain them under the Massachusetts law. Mary Moe was pregnant when the court case began and sought to obtain an abortion without informing her parents. Gerald Zupnick, a doctor who performed abortions at Parents Aid clinics, represented abortion providers in the case. The law's challengers sued Francis Bellotti, the then attorney general of Massachusetts, because Bellotti held the chief law enforcement position in Massachusetts and was responsible for prosecuting abortion providers who broke the law and provided abortions to minors without parental consent.

The Massachusetts District Court first heard *Bellotti v. Baird* in 1974, and in July 1976 the case went to the US Supreme Court. At the time, the Supreme Court absented, which meant that they decided to withhold a decision, and the case went back to the Massachusetts District Court. *Bellotti v. Baird* was argued in the Massachusetts District Court for a second time in October 1977. In May 1978, the Massachusetts District Court decided that the law was unconstitutional and placed an injunction against the enforcement of the law, which meant that the law was not repealed but not enforced. That decision was appealed to the Supreme Court.

The Supreme Court heard oral arguments for *Bellotti v. Baird* on 27 February, 1979. At the time,

the Supreme Court consisted of nine judges: Warren E. Burger, the chief justice, William J. Brennan, Jr., Potter Stewart, Byron R. White, Thurgood Marshall, Harry Blackmun, Lewis F. Powell, William H. Rehnquist, and John Paul Stevens. Attorneys Joseph J. Balliro and John H. Henn both presented arguments to the Supreme Court on behalf of Baird and minors seeking abortions in Massachusetts. Garrick F. Cole, who at the time served as an assistant attorney general for Massachusetts, presented oral arguments to the Supreme Court on behalf of Bellotti and the state of Massachusetts.

The question the Supreme Court needed to answer in *Bellotti v. Baird* was whether the Massachusetts law unconstitutionally restricted the right of minors to obtain an abortion. In the oral arguments, Cole, on behalf of Bellotti, presented the argument that the law was in place to protect the interests of minors and promote parental consultation in the decision of whether to terminate a minor's pregnancy. Cole argued that, under the law, if a pregnant minor petitioned the superior judge, the judge's function was to determine whether she was mature enough to make the decision to terminate a pregnancy. The judge had the power to prevent a minor from having an abortion if the judge found her to be incapable of making her own decision, or if the judge found an abortion to be against her best interest. Cole acknowledged that a judge having veto power over a woman's decision to abort would be unconstitutional if the pregnant woman were an adult. However, Cole argued that the Massachusetts law was constitutional because minors were a vulnerable group that necessitated extra legal protections.

Balliro presented an argument on behalf of Baird. Balliro argued that the Massachusetts law was unconstitutional because it effectively prevented minors from obtaining abortions. Balliro argued that the law imposed unconstitutional burdens on the right to have an abortion. The first burden, Balliro argued, was that the minor had to obtain the consent of two parents. The law had provisions for circumstances where there was a single parent due to death or desertion, but the law made no exception for other extenuating circumstances, like in the case of Moe. In *Bellotti v. Baird*, Moe was pregnant and seeking an abortion at the time of the initial court proceedings and did not want to tell her parents about her pregnancy because her parents had hostile views about abortion and her father had threatened to kill her boyfriend if she became pregnant. Under the Massachusetts law, parents could deny their consent to an abortion arbitrarily, which meant that even if a physician considered the abortion medically necessary, one or both parents could refuse their consent and prevent the minor from obtaining an abortion.

The second burden, Balliro argued, was what Balliro termed judicial override. A judge could override the parents and grant the minor consent for an abortion once the judge determined the minor was mature enough to make that decision. However, the judge also had the power to decline a minor's request for an abortion even if the judge had determined that the minor was mature enough to make the decision on her own. Balliro argued that the law allowed judges to potentially deny a minor an abortion without cause, which was unconstitutional.

Baird's other attorney, Henn, provided arguments for Baird as well. Henn based his arguments on the equal protection clause of the Fourteenth Amendment of the US Constitution. The equal protection clause of the Fourteenth Amendment grants all citizens equal protection under the law and ensures that laws treat citizens impartially. Henn argued that the Massachusetts law was unconstitutional because it treated minors seeking an abortion more strictly than minors seeking any other medical procedure. According to Henn, that violated the Fourteenth Amendment because it created an arbitrary distinction between minors seeking medical procedures and minors seeking abortions. Minors seeking other medical procedures, such as limb amputation, needed the consent of only one parent, whereas the Massachusetts law required a minor seeking an abortion to obtain the consent of both her parents.

The Supreme Court issued their opinion on *Bellotti v. Baird* on 2 July 1979. In an eight to one decision, the Court ruled that the Massachusetts law was unconstitutional, upholding the Massachusetts District Court's prior decision of 1978. Supreme Court judge Powell delivered the Court's plurality opinion. Justices Burger, Stewart, and Rehnquist concurred. In the opinion, Powell wrote that the Court ruled the law unconstitutional because it gave parents and judges veto power over minors seeking an abortion. That veto power unconstitutionally restricted minor's right to an abortion because it made a minor's ostensibly private decision subject to the approval of her parents or a

judge. The Court further concluded that requiring a minor's parents to be informed whenever a minor sought judicial permission for an abortion was unconstitutional. The Court concluded that the law wrongfully held no recourse for a minor who wished to have an abortion without her parents' knowledge. In all cases, the law required parents to be informed of the abortion, even if that may not have been in the minor's best interest.

Another justice, Stevens, filed a concurring opinion, which was joined by Brennan, Marshall, and Blackmun. They agreed with the Court's decision but did not join the majority opinion because the majority opinion addressed the constitutionality of legislation that would require minors seeking an abortion without parental consent to undergo counseling. At the time of the Court's decision, no such legislation existed, and Brennan, Marshall, and Blackmun argued that the majority opinion ruled on an issue they were not asked to decide on. Therefore, Brennan, Marshall, and Blackmun did not agree with the majority ruling and wrote their own concurring opinion.

Rehnquist also filed a concurring opinion, in which he agreed with the Court's decision and called for the Court to revisit their decision in an earlier case, *Planned Parenthood v. Danforth*, as that case had also touched on the abortion right of minors. In *Planned Parenthood v. Danforth*, Rehnquist had joined a dissenting opinion, arguing that states had the right to protect minors from making decisions that were not in their best interests and that parental consent was the traditional way states sought to protect minors. In his opinion on *Bellotti v. Baird*, Rehnquist stated that the Court's decision in *Planned Parenthood v. Danforth* provided no reason why states should not be able to employ the same methods in protecting minors seeking abortions.

Supreme Court judge White filed a dissenting opinion that disagreed with the majority opinion. He argued that it was in the best interests of a minor for her parents to participate in the decision to terminate the pregnancy, and that a minor's parents should be notified if the minor seeks permission for an abortion by going before a judge.

The Supreme Court's ruling on *Bellotti v. Baird* affirmed that a woman's right to an abortion was not contingent upon her age, and that the rights guaranteed by the US Constitution applied to adults as well as minors. The Court's decision in *Bellotti v. Baird* became a precedent, meaning that future laws could not restrict the right of minors by requiring parental or judicial consent for an abortion. The ruling affirmed that a woman's choice to have an abortion or to carry a pregnancy to term, whether she was a minor or an adult, was a personal decision that could not be subjected to the veto of a third party, in this case that of her parents or a judge.

Sources

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