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A PARENT IS A PARENT, NO MATTER HOW SMALL

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ABSTRACT

Every parent in America has constitutional rights to parent his or her children. If a parent is under the age of eighteen, however, those rights are tenuous. There is no question that adolescent parents face difficulties while trying to juggle school, parental responsibilities, work, their social lives, and more. Add to that long list of challenges the legal infirmities all minors share, and a picture of impending disaster begins to appear for the adolescent parent and his or her child. Furthermore, once a minor parent enters the family court system—instead of getting the services, training, and supervision that may be needed to help him or her adjust to, and take responsibility for, the difficulties of parenthood—he or she may be at risk of losing his or her child.

The struggles adolescent parents encounter do not necessarily indicate they are bad parents. Of course, some adolescent parents, like some adult parents, are simply bad parents who should not retain their parental rights. Yet, the legal and life hurdles adolescent parents encounter should be considered by courts when an adolescent parent's parental rights are being questioned. If courts were sensitive to the fact that the parent whose parenting is in question is an adolescent and that adolescent parents are legally and societally impeded from upholding their parental responsibilities, they would be less likely to invade adolescent parents' fundamental rights to raise their children. One way to help courts be sensitive to the issues adolescent parents face would be for states to add a factor to their "best interests of the child" test encouraging courts to proceed with caution when considering the fitness and custodial rights of adolescent parents.

This article argues that the constitutional rights of parents to raise their children require that courts take extreme care during dependency hearings that involve adolescent parents to ensure that those constitutional rights are protected. First, adolescent parents are not as legally equipped to engage fully in their rights and responsibilities as adult parents. Second, adolescent parents often lack, for a number of reasons outside their control, the skills it takes to be a

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good parent, but they are not necessarily incapable of learning those skills once taught. Third, adolescent parents are not in a position of power that allows them to advocate effectively for themselves or their children during the dependency process. When a group of people is so vulnerable and when its rights are so important, states and courts should do all they can to ensure that it is treated fairly. This article not only points out the potential pitfalls for courts when handling dependency proceedings involving adolescent parents, it also endeavors to suggest solutions to those problems.

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INTRODUCTION

Once a person becomes a parent in the United States, he or she has a constitutional right to parent his or her child.¹ Without some intervening reason to get involved, neither states nor the federal government statutorily disfavor the rights of parents to parent, despite the parent's age, health, mental capacity, education level, and so on.² This reluctance to intervene with the family unit is rooted in the legal system's treatment of parental rights as fundamental rights and its recognition that the process through which parental rights can be terminated is subject to Due Process constraints as required by the Fourteenth Amendment.³ Once the State has reason to examine a parent/child relationship, perhaps because of allegations of abuse or neglect, or because of a custody battle, those fundamental rights may be subject to an examination of the fitness of the parent.⁴ That fitness

1. See *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter." (internal citation omitted)).

2. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925) ("[R]ights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State.").

3. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("[T]he 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.'" (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923))); *Santosky v. Kramer*, 455 U.S. 745, 753–54 (1982) ("[S]tate intervention to terminate the relationship between [a parent] and [the] child must be accomplished by procedures meeting the requisites of the Due Process Clause." (alterations in original) (quoting *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 37 (1981))).

4. See *Santosky*, 455 U.S. at 760 ("[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship."). "After the State has established parental unfitness at that initial

analysis cannot, constitutionally, and should not, morally, include any consideration of the age of the parent, but instead should focus on specific factual evidence regarding the parent's ability to bond with the child, to provide for and discipline the child appropriately, and to direct and control his or her upbringing properly.

Once a parent has been declared unfit during the adjudication phase of a custody determination, the court will conduct a "best interests of the child" inquiry to determine who should have custody over the child or children of the unfit parent in the disposition phase.⁵ The test is meant to balance the rights of parents to parent their children and the interests of the state in protecting children from harm.⁶ The test varies from state to state, but there are some common threads.⁷ Many states explicitly state overarching goals and principles for courts to uphold when making custody determinations, such as a preference to avoid removing children from their family homes or to maintain "[t]he health, safety, and/or protection of the child."⁸ Like the guiding principles, the factors that states use to determine a custodial arrangement that is in the best interests of the child are frequently similar to one another as well.⁹

The factors states rely on to determine custody are linked to the ability of the parents to provide a safe and stable environment for their children. For example, many states consider the emotional ties between the parents and the child, as well as the mental and physical health needs of the parents and children.¹⁰ Other common threads in the best interests factors include the parent's ability to provide "adequate food, clothing, and medical care," as well as a determination of whether domestic violence is present in the home.¹¹ Many states employ a broad and general statement that gives courts more discretion in the best interests analysis.¹² Only three states include factors that cannot be considered—expressly requiring courts to disregard

proceeding, the court may assume as the *dispositional* stage that the interests of the child and the natural parents do diverge." *Id.*

5. *Id.*

6. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., DETERMINING THE BEST INTERESTS OF THE CHILD: SUMMARY OF STATE LAWS 2 (2010), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf (listing the goals underlying the "best interests of the child" standard).

7. See *id.* ("Best interests' determinations are generally made by considering a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s), with the child's ultimate safety and well-being as the paramount concern.").

8. *Id.*

9. *Id.* at 3.

10. *Id.*

11. *Id.*

12. CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 4.

socioeconomic status, gender, or disability in their analysis¹³—and no states explicitly bar courts from taking into account the age of the parent when determining custody.

The tests are meant to be flexible in order to allow for courts to consider the complexities inherent in parent/child relationships when deciding whether a parent who may have been adjudicated unfit should have contact with his or her children,¹⁴ but they do little to alert courts to the pitfalls in examining the fitness of an adolescent parent. Because adolescent parents, by definition, are parenting during their adolescence, their parenting abilities are greeted, by society and the courts, with a hefty dose of skepticism.¹⁵ This skepticism of an adolescent¹⁶ parent's ability to parent can easily seep into the court's reasoning when it adjudicates whether a parent is fit to parent, which is a violation of the Due Process Clause of the Constitution.¹⁷ In addition, courts cannot treat adolescent parents' right to parent differently than adult parents under the Equal Protection Clause by considering the age of the parent as a negative factor in the best interests of the child balancing test.¹⁸ As such, states should expand their considerations of parental fitness and the factors in their best interests of the child tests in an attempt to be supportive of adolescent parents in their roles as parents, so that courts do not—purposely or inadvertently—unconstitutionally hold the adolescent parent's adolescence against him or her in the fact finding or disposition stages of custody determinations.

I. THE FUNDAMENTAL RIGHT TO PARENT

Although the concept that parents have a fundamental right to raise their children how they see fit—within reason—has not pervaded the entire history of the United States, it is one of the first fundamental liberties the Court recognized.¹⁹ In 1923, the Court determined that the Due Process Clause of the Fourteenth Amendment contains within it a substantive fundamental right of parents to parent their

13. *Id.* at 3–4.

14. *See id.* at 2.

15. *See, e.g.,* *McRae v. Califano*, 491 F. Supp. 630, 680–81, 685 (E.D.N.Y. 1980) (“The risk that the adolescent mother will not be competent to rear her child, and will be unable to realize on her native endowments but will rather be stunted in her development and remain unable to function adequately in employment or home management is pitifully great.”), *rev'd, sub nom.* *Harris v. McRae*, 448 U.S. 297 (1980).

16. Throughout this article, I use “adolescent” to modify parent, which I define as a parent under the age of eighteen. I use the word minor to modify child when I refer to the children born to parents under the age of eighteen.

17. *See infra* notes 19–23 and accompanying text.

18. *See infra* notes 24–29 and accompanying text.

19. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

children.²⁰ A parent's interest is paramount over other interests, such as the State's interest in educating children or a grandparent's interest in visiting a grandchild.²¹ Since *Meyer v. Nebraska*, the Court has consistently rejected attempts to interfere with that liberty interest and steadfastly protected parents' rights to direct and control the upbringing of their children.²² In no case has the Supreme Court limited that fundamental liberty interest to parents who have reached the age of majority.²³

In addition, the right to parent is protected by the Equal Protection Clause of the Fourteenth Amendment.²⁴ In *Stanley v. Illinois*, the Court broadly stated that "[t]he integrity of the family unit has found protection in . . . the Equal Protection Clause of the Fourteenth Amendment."²⁵ In *Skinner v. Oklahoma*, the Court, considering a law that allowed habitual offenders of certain types of crime to be sterilized against their will, stated that "[m]arriage and procreation are fundamental to the very existence and survival of the race."²⁶ The rights of an individual to start a family as well as to maintain the family unit are rights that those living in the United States share equally, unless and until there is proof through a constitutionally sound process that those rights should be infringed.²⁷ As such, the laws that apply to adolescent parents in the disposition phase of a dependency hearing²⁸ must be applied in the same way that they are applied to adults in dependency hearings.²⁹

20. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) ("Without doubt, [the liberty interest] denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children . . .").

21. See, e.g., *Troxel*, 530 U.S. at 72-73 (holding that a state statute requiring any person who sues for visitation rights to children be granted those rights if visitation is in the best interests of the child is an unconstitutional infringement on a parent's fundamental right to parent); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925) (holding that a statute requiring that children attend public schools violated parents' rights "to direct the upbringing and education of children under their control").

22. See *Troxel*, 530 U.S. at 66 (enumerating several Supreme Court cases where the fundamental liberty interest to parent has been upheld and reiterating that the Fourteenth Amendment clearly protects that interest).

23. See Emily Buss, *The Parental Rights of Minors*, 48 BUFF. L. REV. 785, 787 & n.6 (2000) (noting the Court has yet to rule on the issue of curtailing a minor parental rights).

24. See *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

25. *Stanley*, 405 U.S. at 651 (internal citations omitted).

26. *Skinner*, 316 U.S. at 541.

27. See *Prince v. Massachusetts*, 321 U.S. 158, 173 (1944) ("[T]he human freedoms . . . carried over into the Fourteenth Amendment are to be presumed invulnerable and any attempt to sweep away those freedoms is prima facie invalid. It follows that any restriction or prohibition must be justified by those who deny that the freedoms have been unlawfully invaded.").

28. See *infra* Part III.B (discussing the disposition phase of dependency hearings).

29. Cf. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (holding that the denial of a building permit to a home for the mentally disabled was a violation of the

Adolescents have the same fundamental constitutional right to parent as anyone else. There is no Supreme Court precedent, nor state law, that curtails the right of an adolescent to parent his or her child.³⁰ To speculate why no state has attempted to interfere statutorily with an adolescent's right to parent is difficult; there are many possible reasons states have not done so. On the one hand, it might be odd to think that states would pass laws to strip adolescents of some of their parental rights because the Court has been so clear about the fundamental nature of the right to parent.³¹ On the other hand, it is also odd that states have not seen fit to insert themselves more formally into adolescents' parent-child relationships, because states are so quick to regulate so many other aspects of adolescents' lives.³²

No matter how young a parent is, it is difficult to imagine that, in a free society, a state should or could proactively interfere with a parent's fundamental right to parent by enacting a law that terminates parental rights if the parent is under a certain age.³³ One can imagine futuristic doomsday novels and movies where such a law has been passed, replete with scenes of heart-wrenching forced adoptions or abortions, or images of a pregnant teenager running away to a distant country where she could raise her child without fear of state interference. Certainly, that states would even consider such an extreme option would be thought by many to be outrageous. The fact that states have not legally forbidden young people from becoming parents, however, did not deter society from socially condemning legions of girls over the course of many decades simply because they were pregnant.³⁴ The era when adolescent women who became pregnant were given no choice by society but to get married or give up their children for adoption deeply harmed those women emotionally and mentally for the duration of their lives; this must not be repeated.³⁵

Equal Protection Clause as applied because there was no rational reason for the city to believe that the home would pose a threat to the city's legitimate interests).

30. See Buss, *supra* note 23, at 787 & n.6.

31. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923) (“The established doctrine is that this liberty may not be interfered with . . . without reasonable relation to some purpose within the competency of the state to effect.”).

32. See *infra* Part II.B.

33. See Buss, *supra* note 23, at 812–14, 822 (observing that compelling an adolescent parent to take certain actions with respect to his or her child is disfavored).

34. See ANN FESSLER, *THE GIRLS WHO WENT AWAY: THE HIDDEN HISTORY OF WOMEN WHO SURRENDERED CHILDREN FOR ADOPTION IN THE DECADES BEFORE ROE V. WADE* 71–72 (2006) (“Those young women were made to suffer a latter-day version of social shunning.”).

35. See *id.* at 207–11 (“Their grief has been exacerbated, and in some cases become chronic, because they were not permitted to talk about or properly grieve their loss. Not only was the surrender of their child not recognized as a loss; the implication was they should be grateful that others had taken care of their problem.”).

Not only have states been unwilling to legally bar adolescents from becoming parents, they have also been loath to codify any interference with an adolescent parent's right to parent.³⁶ States have not granted the parents of the adolescent parent a formal right to have a say in whether the adolescent parent should become a parent or to have a legally recognized role in the adolescent parent-child relationship.³⁷ Nor have states required any sort of parenting training or licensure of adolescent parents.³⁸ This state reticence to a statutorily mandated state or third-party involvement in the adolescent parent-child relationship should not be taken, however, as an indication that states or society trust that adolescent parents are good parents. In fact, deep skepticism that adolescent parents can adequately care and provide for their children abounds,³⁹ creating a situation that may result in courts unconstitutionally terminating parental rights of adolescents without cause.

II. SKEPTICISM ABOUT ADOLESCENTS' ABILITY TO PARENT, THE REALITY OF ADOLESCENT PARENTING, AND THE PIG-PEN PHENOMENON

It would be difficult to argue that there is a generally held belief that adolescents make good parents or that society benefits when adolescents become parents.⁴⁰ If asked, most people would likely say that they think it is better for a person to wait until adulthood to become a parent. That adolescents are believed to be less equipped than adults to handle many aspects of the basic functions of life cannot be disputed.⁴¹ Courts, legislatures, and agencies have long restricted (often characterized as "protected") adolescents from entering into

36. See Buss, *supra* note 23, at 786 ("[I]f she chooses to keep the baby, the law gives her *carte blanche*, despite the harm that may come to her, to her baby, to her parents, and to society as a result.").

37. *Id.* at 805–08.

From the moment the minor becomes a parent, lines of authority are profoundly affected for the remainder of that minor's childhood: While the adult parents still have custodial authority over their child, they have little authority over the most important aspect of her conduct—how she behaves as a parent—and no direct authority over their child's child.

Id. at 808 (footnotes omitted).

38. *Id.* at 820–21.

39. See *id.* at 788–90 ("Becoming a parent before becoming an adult is widely perceived as a bad outcome in our society." (footnote omitted)).

40. See Rebecca A. Maynard, *The Study, the Context, and the Findings in Brief*, in *KIDS HAVING KIDS: ECONOMIC COSTS AND SOCIAL CONSEQUENCES OF TEEN PREGNANCY* 1, 2–4 (Rebecca A. Maynard ed., 1997) [hereinafter *KIDS HAVING KIDS*] (describing the many consequences of adolescent childbearing).

41. See Buss, *supra* note 23, at 786 (noting minors' "special vulnerability" and "limited decision making capacity").

contracts, making life and death decisions, directing their own educations, exercising their right to free speech, and more.⁴² Although these formal restrictions have not explicitly been applied by legislatures to the parental rights of adolescents, the courts, when determining fitness, may overly rely on this skepticism to limit the fundamental rights of adolescent parents to parent without first taking simple steps to help adolescent parents succeed as parents.⁴³

Even though studies have shown that adolescent parents may be more at risk to struggle in their roles as parents and that adolescent parents are impeded by law from doing many of the things that parents need to do to support their children, there are few mechanisms in place to support adolescent parents.⁴⁴ Despite the massive number of dollars pumped into fighting teen pregnancy each year, there are essentially no dollars dedicated to helping adolescent parents be better parents.⁴⁵ Once an adolescent becomes pregnant, she slips into oblivion, unless and until her fitness as a parent is called into question. At that point, she is generally thrust into the family court system, where her fitness as a parent is evaluated.⁴⁶ While it is possible an adolescent parent could receive support and assistance from the court system to help her become a better parent, the focus is generally on the wrongs she has committed as a parent, not the remedies that could foster a positive and healthy parent-child relationship.⁴⁷

There is plenty of data indicating that adolescent parenting is fraught with difficulty for the adolescent parent and the children of

42. See Sarah Katz, *When the Child Is a Parent: Effective Advocacy for Teen Parents in the Child Welfare System*, 79 TEMP. L. REV. 535, 544–48 (2006).

43. See *id.* at 554 (“Courts, advocates, and social service providers often assume that the teenager is a *per se* unfit parent or may bypass the teenager’s parental rights simply because of her youth.”).

44. See *id.* at 536 (“Considering the[] poor outcomes for ‘alumni’ of the foster care and juvenile justice systems and their children, it is particularly shocking that our child welfare system is so ill prepared to address the needs of young parents.”).

45. There are multitudes of federally and state funded programs dedicated to preventing adolescent pregnancy. One program, the federal Personal Responsibility Education Program (PREP), which provides young people with information about teen pregnancy and sexually transmitted disease prevention, as well as information about preparing for adulthood, doled out over 45 million dollars to states in 2010. See *FY 2010 Personal Responsibility Education Program (PREP) Grantees*, ADMIN. FOR CHILD. & FAMILIES, U.S. DEPARTMENT HEALTH & HUM. SERVICES, http://www.acf.hhs.gov/programs/fysb/content/docs/10_prep.htm (last updated Mar. 14, 2011). In addition to PREP funds, states received more than 33 million dollars in abstinence program funding in 2010. *FY 2010 Abstinence Program Grantees*, ADMIN. FOR CHILD. & FAMILIES, U.S. DEPARTMENT HEALTH & HUM. SERVICES, http://www.acf.hhs.gov/programs/fysb/content/docs/10_titev.htm (last updated Mar. 14, 2011).

46. See *infra* Part III (describing the adjudication/disposition process).

47. See *infra* Part III (discussing the adolescent parent’s experience in the adjudication/disposition process).

adolescent parents. Data in the 1970s and 1980s seemed to show that becoming a parent during adolescence would lead to multiple negative outcomes for the parent, such as poverty, lower educational attainment, difficulty finding and keeping a job, over-reliance on governmental assistance, and more.⁴⁸ Similarly, there are studies that suggest that the well-being of children born to young parents is at risk because of the adolescence of the parent.⁴⁹ More recent competing studies, however, have found that many of the struggles encountered by adolescent parents and their children may not be caused by the fact that the adolescent became a parent during his or her youth, but are simply correlative.⁵⁰ Most studies on the topic, however, abound with data that adolescent parents do struggle in life, as do their children.⁵¹

Although researchers might disagree on whether adolescent parenting is the cause of many struggles that young parents and their children encounter in life, basically every study conducted about adolescent parenting indicates that life is hard for young parents and their children.⁵² It appears, based on the more recent studies, that life was hard for many adolescent parents before they had children and that life probably would have been hard for their children, regardless of how old their parents were when they were born.⁵³ What is important about the studies, both the ones that suggest adolescent parenting causes negative life outcomes and those that suggest a simple correlation between the two, is that they connect adolescent parenting with a host of troubles for the adolescent parents and their

48. See, e.g., 1 NAT'L RESEARCH COUNCIL, RISKING THE FUTURE: ADOLESCENT SEXUALITY, PREGNANCY, AND CHILDBEARING 123–34 (Cheryl D. Hayes ed., 1987) (describing the possible negative outcomes for adolescent parents).

49. See, e.g., *id.* at 134–39 (describing the negative outcomes for children of adolescent parents); Judith A. Levine et al., *The Well-Being of Children Born to Teen Mothers*, 69 J. MARRIAGE & FAM. 105, 105–06 (2007) (discussing studies that find a causal link between adolescent parenting and the poor well-being of children born to adolescents).

50. See, e.g., Arline T. Geronimus & Sanders Korenman, *The Socioeconomic Consequences of Teen Childbearing Reconsidered*, 107 Q. J. ECON. 1187, 1208 (1992) (reporting the results of a study regarding the socioeconomic status of young parents while controlling for family background and finding that earlier studies linking teenaged parenthood with long-term lower socioeconomic status might be “overstat[ing] the costs of teen childbearing”).

51. See, e.g., Levine et al., *supra* note 49, at 105–06 (reporting results of several studies linking adolescent parenting to negative outcomes); Greg Pogarsky et al., *Developmental Outcomes for Children of Young Mothers*, 68 J. MARRIAGE & FAM. 332, 340 (2006) (finding that boys born to adolescent mothers were more likely to use drugs, be involved in gangs, and be unemployed, and that all children born of adolescent mothers were likely to themselves become parents at an early age); David M. Stier et al., *Are Children Born to Young Mothers at Increased Risk of Maltreatment?*, 91 PEDIATRICS 642, 646 (1993) (finding a correlation between adolescent parenting and maltreatment of their young children).

52. See, e.g., Levine et al., *supra* note 49, at 121 (“[T]een pregnancy is correlated with poor outcomes . . .”).

53. See Geronimus & Korenman, *supra* note 50, at 1208–09.

children.⁵⁴ Those troubles seem to stick to most adolescent parents and their children, creating what I will call the “Pig-Pen Phenomenon.” The Pig-Pen Phenomenon is based on the lovably messy Peanuts character whose cloud of dust follows him wherever he goes.⁵⁵

Much like Pig-Pen, adolescent parents carry with them a burden that they cannot shed easily. In Pig-Pen’s case, he cannot rid himself of the cloud of dust that can interfere with his attempts to catch the attention of a girl with whom he has become smitten.⁵⁶ In a teen parent’s case, she cannot rid herself of several obstacles to her parental success that are largely based on her age and have little to do with her ability to be a good parent. Having a baby requires a student to find daycare so she can work and go to school, which is expensive and hard to come by for many adults, particularly those who fall below the poverty threshold.⁵⁷ A teen parent has the same parental responsibilities as any other parent, but she is not legally capable of making decisions in the same way an adult is.⁵⁸ A teen parent has significant financial obligations, but less earning potential than adult parents.⁵⁹ While the Pig-Pen Phenomenon likely would have the strongest effect on underprivileged adolescent parents—which, not coincidentally, make up the majority of teen parents according to many studies⁶⁰—it can affect all teen parents.

54. See *infra* Part II.A.

55. *Pig-Pen*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Pig-Pen> (last visited Mar. 30, 2012). Charles Schulz’s Peanuts comic strip and television programs created a series of lovable, yet humanly imperfect, characters with whom many young people, and adults, can identify. Pig-Pen does not seem to do anything to cause himself to get dirty, but the dirt seems to be magnetically attracted to him. *Id.*

56. *Id.*

57. In 2006–2007, the National Center for Education Statistics reported that 40.9 percent of pre-primary-aged children from ages three to five in families below the poverty threshold attended some sort of center-based child care program, while 59.6 percent of non-poor children in the same age group attended. *Table 1. Percentage of Preprimary Children Ages 3–5 Who Were Enrolled in Center-Based Early Childhood Care and Education Programs, by Poverty Status and Race Ethnicity: 2006–07*, NAT’L CENTER FOR EDUC. STAT., U.S. DEPARTMENT EDUC., http://nces.ed.gov/pubs2008/2008051_a.asp (last visited Mar. 30, 2012). While some adolescent parents may have a built-in support system with family members who are willing to watch their children while they work or attend school, not all do, and the availability of child care is crucial to the educational success of an adolescent parent. See Stefanie Mollborn, *Making the Best of a Bad Situation: Material Resources and Teenage Parenthood*, 69 J. MARRIAGE & FAM. 92, 93 (2007) (recognizing that having material resources is important to an adolescent parent’s success and noting that “for most teenage parents, these high resource demands are not being met, either by themselves or by others” (citation omitted)).

58. See *infra* Part II.B (discussing the added struggle of adolescent parents because of their status as minors under the law).

59. See Mollborn, *supra* note 57, at 93.

60. See, e.g., Kristin Anderson Moore et al., *Effects on the Children Born to Adolescent Mothers*, in *KIDS HAVING KIDS*, *supra* note 40, at 145, 170 (“Young teen mothers . . . were more often recipients of welfare at some point during their own childhoods.”).

Despite all of the clear data showing that many adolescent parents struggle in their efforts to provide support to their children and that children of adolescent parents are likely to struggle throughout childhood and into adulthood,⁶¹ once in the court system, an adolescent parent's minority could be used against her in the fitness and custody determinations.⁶² Instead of being considered a mitigating factor that could be viewed as a logical and reasonable explanation for her struggle to provide for her child, an adolescent parent's youth might be considered a reason to declare her unfit as a parent or to cut off her custodial rights.⁶³ Instead of evaluating the legal hurdles she may have encountered in her daily life, which may impede her ability to parent effectively, she is treated as a social ill that needs to be corrected by removing her child from her custody.⁶⁴ Being a parent is never easy; the responsibilities of parenthood are daunting no matter when a person becomes a parent.⁶⁵ Adolescent parents face all of the regular challenges presented by parenthood, and, with the added pressure of societal and legal limitations they experience, they can find themselves involved in dependency proceedings over their ability to care for their children.⁶⁶

A. *What Studies Say About Adolescent Parenting*

As stated above, the Pig-Pen Phenomenon affects almost all adolescent parents in some way. Without looking at a single study or newspaper headline, most people would agree that adolescent parenting is associated with difficulties in life for the adolescent parent, the child born to the young parent, and society. It is essentially undisputed that adolescent parenting comes with educational, financial,

61. See NAT'L RESEARCH COUNCIL, *supra* note 48, at 123–39.

62. See, e.g., Katz, *supra* note 42, at 536–37 (describing how one young mother's youth was held against her).

63. See *id.* at 536–38, 543.

64. See *id.* at 537–38. Katz represents adolescent parents who are in the foster care system in Pennsylvania and has witnessed how courts handle adolescent parents during dependency proceedings. *Id.* at 535.

[T]here are no age-based distinctions applied to minor parents in dependency proceedings where minor parents are alleged to have abused or neglected their own children; minor parents are held to the same standards of care and control of their children as any other parent. The courts rarely take into account how the limitations on minors' rights serve to inhibit the fulfillment of their duties as parents. Often, the courts disregard these minors' rights as parents altogether, on the assumption that because of their minor status, they are not entitled to the same procedural protections as their adult counterparts. *Id.* at 543 (footnotes omitted).

65. See Mollborn, *supra* note 57, at 93 (describing the financial difficulties of parenthood, regardless of one's age).

66. See Katz, *supra* note 42, at 543.

and other challenges for the adolescent parent, the child of the adolescent, and society.⁶⁷ This glaringly obvious connection between negative outcomes and adolescent parenting is supported by countless studies that have been conducted over the years, particularly since the 1970s.⁶⁸ The earlier studies focused on the notion that adolescent childbearing caused the negative outcomes, but regardless of the causation, the Pig-Pen Phenomenon, linking poverty, low educational attainment, mental and physical health issues, delayed or stunted career options, and so on to those who parent young, is real and supported by innumerable studies of adolescent parenthood and parenting.⁶⁹

*1. Adolescent Parents Are Negatively Impacted by
Childbearing in Adolescence*

Having a baby during adolescence is likely associated with negative outcomes in most aspects of a young person's life.⁷⁰ The negative consequences of adolescent childbearing, according to an analysis done by the National Research Council in 1987, are grave.⁷¹ Adolescent pregnancy is often accompanied by medical complications, including higher rates of maternal mortality, premature birth, or low-birth weight babies.⁷² Pregnant adolescents are more likely to neglect their health during their pregnancies, which can negatively impact their own health and that of the fetus.⁷³ Being pregnant carries the possibility of health complications, but it seems that pregnancy during adolescence can make those risks even higher.⁷⁴

In addition to the health risks that pregnant adolescents face, there are significant impediments for adolescent parents when it comes to educational attainment.⁷⁵ Young women who are pregnant or parenting are much less likely to graduate from high school or go

67. See, e.g., Shannon S. Carothers et al., *Children of Adolescent Mothers: Exposure to Negative Life Events and the Role of Social Supports on Their Socioemotional Adjustment*, 35 J. YOUTH & ADOLESCENCE 827, 828 (2006) ("Adolescent mothers, as opposed to adult mothers, are often characterized as being depressed, having low IQs, poor social supports, histories of abuse and/or neglect, residential instability, stressful relationships, punitive parenting practices, and a general lack of readiness to parent; each of these factors has negative consequences for children's development." (citation omitted)).

68. See *supra* notes 48–54 and accompanying text.

69. See *supra* notes 48–54 and accompanying text.

70. See Deborah Jones Merritt, *Ending Poverty by Cutting Teenaged Births: Promise, Failure, and Paths to the Future*, 57 OHIO ST. L.J. 441, 441–42 (1996).

71. See NAT'L RESEARCH COUNCIL, *supra* note 48, at 123–39.

72. *Id.* at 124–25.

73. *Id.*

74. *Id.*

75. *Id.* at 125–28.

on to college than those who delay childbearing to later in life.⁷⁶ Once they leave school,⁷⁷ they are less likely to catch up and complete their education than those who drop out for other reasons.⁷⁸ Teenage fathers also suffer educational detriment, although they seem to be affected less dramatically than teenage mothers.⁷⁹ A more recent study conducted by Professor Stefanie Mollborn, however, has cast doubt on the long held belief that adolescent pregnancy and parenting cause kids to drop out of school.⁸⁰

According to Professor Mollborn, recent studies have debunked the theory that adolescent pregnancy and parenting have a direct effect on short term educational attainment.⁸¹ Studies that controlled for non-pregnancy and parenting issues that tend to cause students to drop out of school showed that the factors that cause adolescents to drop out of school are the same ones that cause students to become parents.⁸² Studies, however, have also shown that long-term educational attainment is affected by adolescent parenting, and Professor Mollborn conducted a study to see if material resources, such as money and child care, can improve long-term educational attainment.⁸³ Instead of focusing on the individual attributes that might contribute to a student dropping out of school, Professor Mollborn sought to analyze the societal structure and its effects on educational attainment for adolescent parents.⁸⁴ Professor Mollborn pointed out that “[i]n public discourse,” when attempting to isolate the reasons adolescent parents suffer when it comes to educational attainment, people assume that “personalities, aspirations, deviant tendencies, and race/ethnicity” are the cause of the disruption in educational attainment.⁸⁵

76. *Id.* at 126–27.

77. The National Research Council characterizes their leaving school as dropping out, but it is unclear if they are voluntarily leaving school or forced out because of their pregnancy status. See Kendra Fershee, *Hollow Promises for Pregnant Students: How the Regulations Governing Title IX Fail to Prevent Pregnancy Discrimination in School*, 43 IND. L. REV. 79, 84–85 (2009); see also Michelle Gough, *Parenting and Pregnant Students: An Evaluation of the Implementation of the “Other” Title IX*, 17 MICH. J. GENDER & L. 211, 216–17, 256–64 (2011) (positing theories about why Title IX’s regulations barring pregnancy discrimination have not been effective at accomplishing that goal).

78. See NAT’L RESEARCH COUNCIL, *supra* note 48, at 127.

79. *Id.* at 126.

80. Mollborn, *supra* note 57, at 93 (“[B]ecoming a parent does not cause school dropout, but rather, preexisting socioeconomic and other factors cause both parenthood and dropout.”).

81. *Id.* at 93. *But see* Daniel H. Klepinger et al., *Adolescent Fertility and the Educational Attainment of Young Women*, 27 FAM. PLAN. PERSP. 23, 27 (1995) (explaining that, even after disaggregating factors that tend to cause students to drop out of high school, adolescent parents do drop out of school at a higher rate than non-parenting students).

82. Mollborn, *supra* note 57, at 93.

83. *Id.* at 93–94.

84. *Id.* at 93.

85. *Id.*

Professor Mollborn's research showed that material resources do positively influence long-term educational attainment for adolescent mothers, and, to a smaller extent, for adolescent fathers.⁸⁶ The resources that it takes to support a child while the child's parents are engaged in other activities, such as school, are significant.⁸⁷ An adolescent parent has the same financial responsibilities to his or her child as any other parent.⁸⁸ Child care is not free, nor is food, housing, clothing, or any number of other expenses that arise in caring for a child.⁸⁹ These financial hurdles that accompany adolescent parenting, according to Professor Mollborn, are the obstacles to long-term educational attainment for young parents,⁹⁰ and they are supplemented by the struggles adolescent parents have in finding well paying and fulfilling careers.⁹¹

Adolescent parents have a more difficult time working than those who delay childbearing until later in life.⁹² Young parents are less likely to be able to find work, to work in jobs that pay more than minimum wage, and to work in jobs with which they are satisfied.⁹³ Those factors tend to diminish over time for the adolescent parent, but the effects of the adolescent parent's lower educational achievement and his or her responsibilities in caring for a young child negatively affect his or her chances of getting and retaining fulfilling and well-paid employment significantly.⁹⁴ These difficulties that young parents encounter when trying to find employment are also factors contributing to the statistics that indicate that adolescent parents are more likely to live in poverty as well.⁹⁵ In addition to employment and wage challenges, adolescent parents are likely to struggle with poverty in part because they typically parent alone.⁹⁶

Adolescent mothers, in particular, are more likely to be economically disadvantaged and more likely to need public assistance than women who waited longer to become parents.⁹⁷ Studies have shown

86. *Id.* at 102.

87. *See id.* at 102–03.

88. *See* Mollborn, *supra* note 57, at 93.

89. *Id.*

90. *Id.* at 102.

91. *See* NAT'L RESEARCH COUNCIL, *supra* note 48, at 130–32 (“[A]dolescent mothers are less likely to find stable and remunerative employment than their peers who delay childbearing.”).

92. *See id.*

93. *Id.*

94. *See id.* at 131–32.

95. *See id.* at 132–34; Merritt, *supra* note 70, at 461.

96. *See* NAT'L RESEARCH COUNCIL, *supra* note 48, at 128–29.

97. *Id.* at 132–33. *But see* Geronimus & Korenman, *supra* note 50, at 1189–90 (“[O]ur findings . . . suggest[] that failure to control adequately for family background differences among women who have births at different ages may lead to overstated estimates of the long-term socioeconomic consequences of teen childbearing.”).

that the human capital of young mothers is significantly lower than that of young women who do not have their first child until after the age of twenty.⁹⁸ Young white women who become parents in their teen years make twenty-three percent less in wages than young white women who delay childbearing; young black women suffer a thirteen percent reduction in wages as compared to their counterparts who bear children later in life.⁹⁹ The study of human capital focused on the investments of young women in themselves, in terms of education and wage earning in their early years, and determined that their child care needs negatively affected their educational attainment and their ability to save money in their youth.¹⁰⁰ It is easy to imagine, understanding the probability of difficult life challenges that young parents encounter, that the children of adolescents might also have increased struggles in their young lives.¹⁰¹

2. Children May Suffer Many Harmful Effects from Being Born to Young Parents

The campaigns aimed at stopping adolescents from becoming parents are full of information about the terrible things that happen to young people when they have a child before they reach adulthood.¹⁰² Those campaigns, presumably drawing on the conscience of a young person who might be sexually active and at risk of becoming pregnant, also share scary statistics about what happens to the children of adolescent parents.¹⁰³ They can struggle educationally, mentally, physically, and financially, and they have increased risks of joining a gang, becoming a parent as a teen, and using drugs.¹⁰⁴ Recent studies have taken into account the likelihood of children of adolescent parents to struggle in these areas because of their socioeconomic status, which helps isolate them—whether the age of their mother when she had her first child was actually a cause of their struggles in life.¹⁰⁵ The results of these studies indicate that the children of adolescent parents do

98. See Daniel Klepinger et al., *How Does Adolescent Fertility Affect the Human Capital and Wages of Young Women?*, 34 J. HUM. RESOURCES 421, 425–26 (1999).

99. *Id.* at 443.

100. *See id.*

101. See NAT'L RESEARCH COUNCIL, *supra* note 48, at 134–35, 138–39.

102. See, e.g., *Preventing Unplanned and Teen Pregnancy: Why It Matters*, NAT'L CAMPAIGN TO PREVENT TEEN & UNPLANNED PREGNANCY, <http://www.thenationalcampaign.org/why-it-matters/default.aspx> (last visited Mar. 30, 2012) (explaining various negative consequences of teen pregnancies).

103. See, e.g., *id.* (discussing developmental, health and social risks to children of unplanned pregnancies as opposed to their planned counterparts).

104. Pogarsky et al., *supra* note 51, at 340; *Preventing Unplanned and Teen Pregnancy: Why It Matters*, *supra* note 102.

105. See Pogarsky et al., *supra* note 51, at 333–34.

indeed have a harder row to hoe in life than children who were born to mothers who delayed parenting until adulthood.¹⁰⁶

One study has suggested that children born to adolescent parents have increased exposure to negative life events, which is associated with less favorable childhood development.¹⁰⁷ According to the study, those negative life events associated with adolescent parenting include “poverty, neighborhood crime, poor schools, . . . single parenthood,” and low levels of maternal education.¹⁰⁸ Exposure to negative life events can increase the risk that a child will suffer from depression and anxiety and be more likely to inappropriately internalize and externalize.¹⁰⁹ Most of the negative life experiences that many children of adolescents encounter, however, are linked with the fact that many children born to adolescents live in poor communities.¹¹⁰ Although being born to an adolescent mother likely does not cause a child to be exposed at a higher rate than other children to negative life events, it is important to realize that these children are similarly at risk, or perhaps more so, as are children growing up in extreme poverty.¹¹¹

In addition to being exposed to more negative life events, young children of young adolescent mothers are more likely to live in a home environment that is not suitable for a small child.¹¹² Younger adolescent parents are more likely to expose their children to poor home environments than adolescent parents who are over the age of seventeen.¹¹³ The study also looked at whether the mother’s background characteristics, not her adolescence, might help explain the poor home environment.¹¹⁴ Somewhat surprisingly, when the mother’s background characteristics were taken out of the assessment of the child’s home environment, the statistics indicated that children of adolescent parents were more likely to live in a poor home environment.¹¹⁵ In other words, the adolescent parent’s home environment when she became a parent was less likely to be the cause of her child’s poor

106. *See id.* But see Arline T. Geronimus et al., *Does Young Maternal Age Adversely Affect Child Development? Evidence from Cousin Comparisons in the United States*, 20 *POPULATION & DEV. REV.* 585, 601–03 (1994) (finding that adolescent parents are not more likely to have developmentally challenged children than adult parents of the same socioeconomic status).

107. Carothers et al., *supra* note 67, at 828.

108. *Id.*

109. *Id.* at 834.

110. *Id.*

111. *Id.*

112. *See* Moore et al., *supra* note 60, at 150–51.

113. *Id.* at 151.

114. *See id.*

115. *Id.* In fact, while children of adolescent parents who are over the age of seventeen are not more likely to live in poor home environments, when the study controlled for the mother’s background characteristics, a statistically significant pattern of poor home environments emerged even for the children of older adolescent parents. *Id.*

home environment than the fact that she had a child. In these circumstances, it appears that teen pregnancy can cause children to grow up in poor home environments.

Adolescent childbearing also appears to have a similar negative effect on the “cognitive development and academic achievement” of children born to adolescent parents.¹¹⁶ Children born to mothers aged seventeen or younger are more likely to struggle with “mathematics, reading recognition, and reading comprehension” than children born to mothers aged eighteen or over.¹¹⁷ Similar to the study about poor home environment, the mother’s background characteristics could actually be ruled out as a major contributor to the cognitive development and academic achievement shortfalls.¹¹⁸ When controlled for the mother’s background characteristics, the studies showed a statistically significant correlation between the fact that a child struggles with academics and the fact that his or her parent is an adolescent, indicating that adolescent parenting may be the cause of the academic struggles for the child.¹¹⁹ Interestingly, however, in other areas such as behavior problems or health and psychological well-being, there were no statistical indicators that children of adolescent parents were more likely to struggle than children of parents who were twenty when they were born.¹²⁰

In another study, published in 1993, researchers determined that children born to adolescent mothers are more likely to suffer maltreatment than children born when their parents were older.¹²¹ The study controlled for several factors, including the definition of what a “young” mother is, what “maltreatment” is, detection bias (i.e., the theory that adolescent parents might be less able to conceal maltreatment for whatever reason than other parents), and for the fact that young mothers often have many of the risk factors that lead to increased likelihood of maltreatment (e.g., poverty, single parenthood, and low educational attainment).¹²² The study found that children of adolescent parents are at twice the risk of maltreatment, at an increased risk of poor growth, and at a statistically significant increased rate to experience a change in primary caretaker over children born to older parents.¹²³ Interestingly, with respect to the maltreatment statistics, the study determined that in every instance of physical

116. *Id.*

117. *Id.*

118. Moore et al., *supra* note 60, at 151.

119. *See id.*

120. *See id.* at 151, 155.

121. *See* Stier et al., *supra* note 51, at 646.

122. *Id.* at 642–43, 646.

123. *Id.* at 646.

abuse recorded where the abuser was identified, the mother of the child was not the abuser.¹²⁴

Once again, there is debate among researchers about whether adolescent parenting causes negative life outcomes for the children of adolescent parents, but the studies indicate fairly clearly that the negative life outcomes are real for the children of adolescent parents.¹²⁵ As such, the Pig-Pen Phenomenon does not just affect adolescent parents; it appears to affect their children as well. The negative consequences of teen childbearing, however, do not stop with the adolescent parents and their children. The parents of adolescent parents tend to shoulder a heavy burden when their child becomes pregnant, as does society as a whole.¹²⁶ Certainly there are going to be negative consequences for society when young people, ill-equipped to manage the task and often unsupported in their efforts to do so, are responsible for raising children.

3. *Effects Are Felt by Society*

It seems obvious that when negative consequences for adolescent childbearing are evident for adolescent parents and their children, there would be concomitant costs to society. How to define those costs, however, is difficult. Once categories of study can be established, it is also difficult to determine if adolescent pregnancy has a negative effect on society. For example, one assumption is that adolescent parents literally cost society money through government assistance.¹²⁷ Another assumption may be that adolescent childbearing has contributed to the rise in crime statistics.¹²⁸ Those assumptions have been tested to determine what monetary costs society actually bears when adolescents become parents.¹²⁹

124. *Id.* There were 15 cases of physical abuse studied; in 10 of those cases, an abuser was identified in the medical records. *Id.* In none of those 10 cases was the mother of the abused child the abuser; the abusers “were seven fathers, two [other] relatives, and one boyfriend of a mother.” *Id.* In the five cases where an abuser was not identified, only two indicated that the mother was suspected of being the abuser. *Id.*

125. See *supra* Section II.A.2 (describing the effects of adolescent parenting on the child born to the adolescent).

126. See *infra* Sections II.A.1 and II.A.3 (describing the negative outcomes for the adolescent parent and on society as a whole).

127. See Susan Reimer, *Preventing Teen Pregnancy Saves Taxpayers Billions*, BALTIMORE SUN, June 15, 2011, http://articles.baltimoresun.com/2011-06-15/features/bs-gl-reimer-teen-pregnancy-20110616_1_teen-pregnancy-teen-mother-health-care (discussing a study that found that teen childbearing cost taxpayers \$10.9 billion in 2008).

128. See Patrick Fagan, *The Real Root Causes of Violent Crime: The Breakdown of Marriage, Family, and Community*, BACKGROUND, Mar. 17, 1995, at 1, 16, available at <http://www.heritage.org/research/reports/1995/03/bg1026nbsp-the-real-root-causes-of-violent-crime>.

129. See Jeffrey Grogger, *Incarceration-Related Costs of Early Childbearing*, in KIDS HAVING KIDS, *supra* note 40, at 231, 244–53, 254 n.7; V. Joseph Hotz et al., *The Impacts*

First, the assumption that adolescent childbearing costs society money through subsidies for young parents and their children is likely false according to one 1997 study.¹³⁰ In fact, the study's researchers were able to determine that if adolescents delayed childbearing for three to four more years, the economic impact on the government would actually increase.¹³¹ This surprising conclusion is logical when taxes paid by parents who had their first child in adolescence are factored into the equation.¹³² Parents typically work less when their children are small, and adolescents typically work less than adults.¹³³ As a result, if an adolescent has a child when she is less likely to be paying payroll taxes anyway, when she does enter the workforce, she will be in it longer during years when she has more earning potential and paying more taxes than if she had delayed childbearing.¹³⁴

While taxpayers may not spend more on adolescent parents than on other people who receive government assistance, there does appear to be a link between adolescent parenting and higher rates of incarceration among children born to adolescent parents.¹³⁵ Professor Jeffrey Grogger determined that boys born to adolescent mothers "are 2.7 times more likely to be incarcerated" in their twenties than boys born to older parents.¹³⁶ He theorized that the lack of parenting skills added to the hurdles in front of adolescent mothers makes it more likely that their sons will engage in criminal behavior when they reach adolescence.¹³⁷ Professor Grogger stated:

Teen childbearing has been shown to reduce the mother's educational attainment, her employment, her earnings, and her likelihood of marriage. Single parents with lower human capital and lower income may transmit to their children the kinds of economic and social disadvantage that give rise to adolescent crime. Furthermore, a young mother simply may lack the maturity required to be a good parent. As a result, her children may act out; as adolescents, they may commit crime.¹³⁸

of Teenage Childbearing on the Mothers and the Consequences of Those Impacts for Government, in *KIDS HAVING KIDS*, *supra* note 40, at 55, 55–58, 79–85, 87–88 nn.24–27, 94 tbl. 3A.1.

130. Hotz, *supra* note 129, at 83–85 ("[G]overnment spending on public assistance will not decline . . . even if society were able to get these women to postpone their childbearing by substantially more than 3 to 4 years." (footnote omitted)).

131. *Id.* at 83.

132. *Id.*

133. *Id.* at 74–79.

134. *Id.* at 83–85.

135. See Grogger, *supra* note 129, at 252–53.

136. *Id.* at 253.

137. *Id.* at 231.

138. *Id.* (internal citation omitted).

There are quite a few assumptions going on here, many of which may be entirely off base, but the data did indicate that if adolescent mothers put off childbearing until they reached age eighteen, their children would be less likely to be incarcerated, saving annual corrections budgets \$522 million.¹³⁹

While it is difficult to determine what the financial cost of adolescent childbearing is on society, it is not difficult to see that the consequences of adolescent childbearing are costly in many ways. The Pig-Pen Phenomenon indicates a serious societal cost associated with adolescent childbearing: low educational attainment for adolescent parents, economic struggles, single parenthood, cognitive delays in children born to adolescent parents, children exposed to negative life events at a higher rate, etc. In addition, adolescent pregnancy appears to be, in most circumstances, avoidable, and it affects every sector of society. With costs to individuals and society so high, it is a wonder that parties in a position to intervene positively do not do so when it appears that an adolescent parent is struggling—especially when at least some of the Pig-Pen Phenomenon factors may be a result of legal restrictions on adolescents that can actively interfere with their ability to parent.

B. Adolescents Do Not Enjoy the Same Legal Rights as Adults

There are no restrictions on the rights of adolescents to become parents, nor are there direct restrictions on the rights of adolescents to parent their children.¹⁴⁰ But all adolescents are restricted from full participation in society because of their adolescence. Adolescents cannot enter into contracts, work as many hours as they choose, rent an apartment, drive cars (depending on their age), stay out as late as they choose, and so on.¹⁴¹ There are few exceptions to the restrictions on an adolescent's ability to engage fully in society, even if the adolescent is a parent.¹⁴² These restrictions are yet another reason adolescents may struggle with their parenting responsibilities, but the tension between an adolescent's legal restrictions and parental role is rarely resolved in favor of an adolescent parent when a state considers the best interests of the child.

139. *Id.* at 252.

140. *See supra* Part I (describing the fundamental right to parent).

141. *See Katz, supra* note 42, at 543–48.

142. *But see, e.g., id.* at 545 (discussing a Pennsylvania law that allows pregnant teenagers to make some choices regarding their health care).

1. The Supreme Court's Take on Adolescence and the Law—Inside and Outside the Context of Parenthood

The Supreme Court once famously stated that there are three reasons that children's constitutional rights are not equal to those of adults: "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing."¹⁴³ The Court has made clear, however, that minors are not restricted from constitutional protection altogether; in fact, the Court has made clear that the Fourteenth Amendment and the Bill of Rights are not reserved to adults alone.¹⁴⁴ Stating that children have rights under the constitution is by no means a declaration that children have equal protection as adults under the law; the Court has been ready and willing to make rulings that treat minors differently than adults in a number of contexts.¹⁴⁵ A non-exhaustive list of decisions where the Court has ruled that minors have fewer or different rights than adults includes rulings where the Court has limited minors' First Amendment rights¹⁴⁶ and Fourth Amendment rights,¹⁴⁷ and where the Court held that the death penalty may not be applied to persons who committed a capital crime before their eighteenth birthday.¹⁴⁸ The considerations are highly contextualized, but the Court is clearly very comfortable with the notion that minors can and should be treated differently under the law than adults.¹⁴⁹

143. *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (holding that a Massachusetts statute requiring a minor to seek permission from her parents before acquiring an abortion unconstitutionally burdened her right to obtain an abortion).

144. *See In re Gault*, 387 U.S. 1, 13 (1967).

145. *See, e.g., Bellotti*, 443 U.S. at 635–36 (“[T]he Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences.”).

146. *See Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (holding that a school principal's decision to censor the school newspaper did not violate the students' First Amendment rights).

147. *See Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 656 (1995) (holding that requiring indiscriminate urine tests of student athletes did not violate the Fourth Amendment); *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (finding that a school search “does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law”).

148. *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (“The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.”).

149. *See Emily Buss, Constitutional Fidelity Through Children's Rights*, in 2004 THE SUPREME COURT REVIEW 355, 355–56 (Dennis J. Hutchinson et al. eds., 2005) (arguing that since its holding in *In re Gault* that children have rights, the Court has defined children's rights through an “adult-minus” approach, resulting in an impaired constitutional rights analysis framework for children (internal quotation marks omitted)).

The Court in *Bellotti v. Baird* carefully considered the right of a minor to have an abortion and, in so doing, discussed the gravity of the decision to bear and raise a child.¹⁵⁰ The Court stated that states have a constitutional right to limit minors' right to make important life decisions because of the concern that minors "lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."¹⁵¹ In addition, the Court pointed out that states often impose parental notice and consent requirements on the rights of minors to make important decisions.¹⁵² Furthermore, the Court stated that, "[a]s immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor."¹⁵³ Ultimately, however, the *Bellotti* Court held that the arguably most important life decision, the choice to seek an abortion, cannot constitutionally be usurped by the minor's parents or the State.¹⁵⁴

In coming to its conclusion that the U.S. Constitution does not permit states to impose parental consent requirements upon a minor seeking an abortion, the Court focused on the nature of pregnancy and the unique position in which it puts minors.¹⁵⁵ The Court looked at the short time span a pregnant person has to decide whether she wants to continue her pregnancy, as well as the burdens that accompany pregnancy and motherhood, in deciding that the Massachusetts statute requiring parental consent for a minor to seek an abortion was unconstitutional.¹⁵⁶ First, requiring parental consent in the context of pregnancy is much more detrimental than in other contexts, such as the decision to marry, which can simply be postponed until the minor reaches the age of majority.¹⁵⁷ Second, the Court weighed heavily the gravity of the life impact a pregnancy can have on a person.¹⁵⁸ In so doing, the Court recognized that the decision to become a parent, and, by extension—assuming she does not give up custody of the child—the decision to parent a child, remains with the parent-to-be, even if she is a minor.

150. *See Bellotti*, 443 U.S. at 640–43.

151. *Id.* at 635 (footnote omitted).

152. *See id.* at 637–41 ("Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chance for the full growth and maturity that make eventual participation in a free society meaningful and rewarding." (footnote omitted)).

153. *Id.* at 640 (footnote omitted).

154. *See id.* at 651.

155. *Id.* at 642–44.

156. *Bellotti*, 443 U.S. at 642–44.

157. *Id.* at 642 ("A pregnant adolescent . . . cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.").

158. *Id.* at 642–43.

Interestingly, the Court in *Bellotti* seems to believe that an adolescent's choice to become a parent is concomitant with her reaching, under the law, adulthood.¹⁵⁹ The Court recognized that forcing an adolescent to complete an unwanted pregnancy might be exceptionally burdensome because of her limited education, job skills, money, and emotional maturity.¹⁶⁰ The Court went on to say that "the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority."¹⁶¹ While it seems true that the Court would agree that adolescent parents have as many rights in raising their children as any other parent, it is not true that all of the legal disabilities of minority are terminated once a minor becomes a parent.¹⁶² When thinking back to those areas of the law where courts have determined that minors have inferior rights to adults, there are no explicit exceptions for minors who are parents.

In *Bellotti*, the Court gives its own example of an area of the law where minors' rights are more limited than those of adults: the area of First Amendment law.¹⁶³ The *Bellotti* Court relied on *Ginsberg v. New York*, an earlier Supreme Court ruling where the conviction of an individual for selling pornographic material to a seventeen-year-old was upheld, and where the Court stated that the decision did not trample any First Amendment rights of the minor, to show that minors' rights can be limited simply because of their minority.¹⁶⁴ Nowhere in *Ginsberg*, nor in any other Supreme Court case allowing more state intrusion into the lives of minors, does the Court carve out an exception to the restriction for adolescent parents. Although access to pornography or freedom from warrantless searches of school lockers do not raise particular constitutional concerns for adolescent parents more than other minors, the point is that parenthood does not terminate the traditional "disabilities of minority," as suggested by the *Bellotti* Court. The constitutional restrictions on minors do not end there, and some of the restrictions can be particularly harmful to adolescent parents.

Constitutional rights are typically viewed as a binary system; a person either has them or does not, and that determination typically depends on a person's citizenship status, not his or her relationship status.¹⁶⁵ For minors, however, the Supreme Court has, in some

159. *See id.* at 642.

160. *Id.*

161. *Id.*

162. *See infra* Part II.B.2.

163. *See Bellotti*, 443 U.S. at 636.

164. *See id.* (citing *Ginsberg v. New York*, 390 U.S. 629 (1968)).

165. *See* Jason H. Lee, *Unlawful Status as a "Constitutional Irrelevancy"?: The Equal Protection Rights of Illegal Immigrants*, 39 GOLDEN GATE U. L. REV. 1, 7 (2008) (arguing

circumstances, treated constitutional rights as dependent upon the rights of their parents to the care and control of their children.¹⁶⁶ So, minors' constitutional rights can be seen, in some instances, as a slice of their parents' constitutional "pie." Until Justice Douglas began casting doubt on the paradigm in his dissent in *Wisconsin v. Yoder* in 1972, the Court viewed children's rights through the lens of their parents' rights to care for and control their children.¹⁶⁷ For example, when a child's First Amendment rights were at stake because the State passed a law requiring her to attend a secular public school, the Court evaluated her right to attend a sectarian school as her parents' right to direct and control her education.¹⁶⁸ This system of viewing a minor's rights as dependent upon his or her parents' rights can be harmful to adolescent parents who are trying to engage in what is perceived as a very adult activity: parenting.

Adolescents, including adolescent parents, are subject to limitations on their constitutional rights that can be particularly harmful to adolescent parents. First, adolescent parents cannot seek abortions with the same freedom as adults.¹⁶⁹ This puts adolescent parents in the difficult position of possibly being forced to face parenthood more than once during childhood. Second, adolescents do not have the same due process rights as adults when being involuntarily committed to mental institutions.¹⁷⁰ In *Parham v. J.R.*, the Court balanced the rights of the parents against the rights of the child, and it determined that the rights of the parents to seek voluntary commitment

that unlawful status is constitutionally irrelevant because the Equal Protection Clause applies to all persons in the United States).

166. See Emily Buss, *What Does Frieda Yoder Believe?*, 2 U. PA. J. CONST. L. 53, 55–63 (1999) (describing how the rights of children are framed).

167. *Wisconsin v. Yoder*, 406 U.S. 205, 241 (1972) (Douglas, J., dissenting) ("I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that . . . the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children."); see also Buss, *supra* note 166, at 53 (agreeing with Justice Douglas that the State should not interject itself into the development of a child's religious identity).

168. See *Yoder*, 406 U.S. at 230–33; see also *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) ("Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life . . .").

169. See *Lambert v. Wicklund*, 520 U.S. 292, 293, 297 (1997) (holding that a Montana statute requiring a minor to notify at least one of her parents before she seeks an abortion does not violate the constitution because the judicial bypass provision in Montana is sufficient to protect minors who have good reason not to notify their parents); see also *Carey v. Population Servs. Int'l*, 431 U.S. 678, 692–94 (1977) (wrestling with the notion that children's constitutional rights can be invaded by the states more readily than those of adults, but ultimately deciding that a provision prohibiting the sale of contraceptives to persons under the age of 16 was unconstitutional).

170. See *Parham v. J.R.*, 442 U.S. 584, 620–21 (1979).

of the child to a mental institution outweighed whatever due process rights the child had.¹⁷¹

Parham remains a particularly dangerous case for adolescent parents. It is more dangerous to adolescent parents, in some ways, than to adolescents who are not parents, because it holds open the possibility that the parents of a pregnant or parenting adolescent can trump her due process rights, which is an even higher-stakes calculation when the adolescent is pregnant or parenting.¹⁷² The *Parham* Court was more concerned with the possibility that an adversarial hearing to determine whether a child should be committed to a mental institution would further strain an already strained parent-child relationship than it was concerned with the child's due process rights.¹⁷³ When evaluating the potential value of such a hearing, the Court stated: "Surely, there is a risk that it would exacerbate whatever tensions already exist between the child and the parents. . . . A confrontation over such intimate family relationships would distress the normal adult parents and the impact on a disturbed child almost certainly would be significantly greater."¹⁷⁴ This preference for familial stability—which ironically was likely impossible to achieve in light of the parents' desire to commit their children against their will to mental institutions—over the due process rights of children indicates a willingness by the Court to curtail children's constitutional rights when their relationship with their parents is strained and the children's mental stability is in question. These factors could also apply to adolescent parents if the Court so chose.

Because the Court decided *Parham* in 1979, it appears clear that the possible doomsday scenario painted above, that *Parham* could be extended to commit adolescent parents to mental institutions without due process, has not and will not arise. The fact remains, however, that adolescents labor under constitutional impediments placed upon them because of their age, and those impediments do not disappear if the adolescent becomes a parent.¹⁷⁵ The fact remains that some of those impediments can be particularly detrimental to adolescent parents. The impediments do not, however, stop at constitutional rights. Adolescents' rights in the common law and statutory

171. *Id.* at 610 ("Another problem with requiring a formalized, factfinding hearing lies in the danger it poses for significant intrusion into the parent-child relationship. Pitting the parents and child as adversaries often will be at odds with the presumption that parents act in the best interests of their child.")

172. *See id.*

173. *Id.*

174. *Id.* (footnote omitted).

175. *But see* *Bellotti v. Baird*, 443 U.S. 622, 642 (1979) (stating, as dicta, that minor parents are treated as adults by the law).

law are also treated differently in a way that can have a significant negative impact on adolescent parents.

2. Statutory and Common Law Restrictions on Adolescents' Rights

Adolescents sometimes have fewer rights, and greater protections, under the law than adults. Legislatures often specifically exempt adolescents from the rights and responsibilities that are created in legislation.¹⁷⁶ In many circumstances, depending on the age of the adolescent, such statutory exemptions are made through reasoned policy choices.¹⁷⁷ In some instances, however, legislatures have affirmatively barred adolescents from full participation in society in ways that negatively impact adolescent parents and create additional obstacles for parents who may already struggle in their role as parents.¹⁷⁸ Those statutes seem to indicate either a misunderstanding of the effect the law may have on an adolescent parent or a desire to send messages to adolescents who are not parents that becoming a parent before the age of majority will not be tolerated or supported.¹⁷⁹

As stated above, there are no laws or court rulings that strip adolescents of their parental rights simply because they are adolescents.¹⁸⁰ It appears that most people can agree that doing so would violate the Constitution and permit ugly governmental intrusions in the lives of adolescents.¹⁸¹ But legislatures have not translated that reluctance to insert themselves into an adolescent's decision-making process regarding whether she should become a parent to areas of the law that might create difficult obstructions for an adolescent parent. One example of a statute that directly targets adolescent parents

176. *See, e.g.*, N.D. CENT. CODE ANN. § 39-06-09 (West 2011) (stating that minor drivers are largely exempt from sole liability for negligence imposed on adult drivers since the individual who signed the minor's license application, often the parent, is jointly and severally liable).

177. *See, e.g., id.* § 39-06-04 (representing the fact that most states do not permit minors to receive instructional permits until they are, at a minimum, fourteen years of age, which presumably ensures that most drivers are physically capable of driving and mature enough to operate a vehicle responsibly).

178. *See, e.g.*, VA. CODE ANN. § 32.1-46.02 (West 2011) (demonstrating that minors have difficulty obtaining medical care without parental consent, making it even more difficult for minor parents).

179. *See, e.g.*, Katz, *supra* note 42, at 539 (asserting that welfare reform as well as increased enforcement of statutory rape statutes constitute attacks on teenage pregnancy).

180. *See id.* ("Teenage parents have most of the same rights and responsibilities as parents of any age.").

181. *But see* Buss, *supra* note 23, at 786 (comparing the somewhat inconsistent hands-off approach the Court and other lawmakers have taken regarding the rights of minors to become parents with the very hands-on approach that lawmakers take when dealing with minors' rights in almost every other area of the law).

and potentially makes their parenting responsibilities more difficult to carry out is the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“Welfare Reform Act”).¹⁸² While some provisions of the Welfare Reform Act might be perceived as supportive of adolescent parents, it is the sort of intrusion into adolescent parents’ lives that does not assess their individualized needs and can do more harm than good.

The Welfare Reform Act is one of a very few pieces of federal legislation that even acknowledges that adolescent parents exist.¹⁸³ Unfortunately, it does so by denying adolescent parents public assistance in certain circumstances.¹⁸⁴ The provisions targeted at adolescent parents require that, in order to receive public assistance, they stay in school and live with their parents.¹⁸⁵ It can easily be argued that those provisions were intended to help adolescent parents stay on the right track with their education and receive the support from their parents that would likely be most beneficial to them during a difficult time in their lives. It is possible that both of those things could be true for some adolescent parents, but it is also possible that the rigid requirements of the law make the lives of some adolescent parents more difficult than they already were.

There are very realistic and understandable scenarios that adolescent parents confront that would exclude them from public assistance under the Welfare Reform Act, but these scenarios are not the result of failures to be responsible parents. Requiring some adolescent parents to stay in school and live in their parents’ home in order to receive public assistance might be the incentive they need to continue with their education in order to reach bigger goals for themselves and their children in the future. Consider, however, a situation where an adolescent parent cannot obtain adequate care for her child while she is in school.¹⁸⁶ That simple and realistic scenario might require her to drop out of school—assuming she could not find after-school work

182. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 408(a)(4)–(5), 110 Stat. 2105, 2135–36 (1996) (codified as amended in scattered titles of the U.S.C.) (denying assistance to those adolescent parents “who do not attend high school or other equivalent training program” or who do not live “in adult-supervised settings”).

183. See also Kendra Fershee, *An Act for All Contexts: Incorporating the Pregnancy Discrimination Act into Title IX to Help Pregnant Students Gain and Retain Access to Education*, 39 HOFSTRA L. REV. 281, 316 & n.241 (2010) (discussing the first piece of federal legislation aimed at supporting pregnant and parenting students in schools, The Pregnant and Parenting Students Access to Education Act of 2010).

184. 42 U.S.C. § 608(a)(4)–(5) (2006).

185. *Id.*

186. See *id.* § 618(b) (containing provisions for block grants to states to provide child care to those receiving assistance under the Act, but not guaranteeing that everyone under the Act will receive any assistance, much less a particular amount of assistance).

that would pay her enough to cover her child care costs, which is not an unrealistic assumption. This in turn would exclude her from receiving public assistance.¹⁸⁷ Another potentially dangerous scenario that would work as a barrier to an adolescent parent's parenting success is linked to the requirement that she live with her parents or some equivalent adult supervision.¹⁸⁸

The Welfare Reform Act does provide for some exceptions to the requirement that an adolescent live with her parents in order to receive assistance under the Act.¹⁸⁹ Those exceptions take into account the possibility that the relationship between the parent, adolescent parent, and minor child could be abusive, or that the adolescent parent does not have a parent or legal guardian.¹⁹⁰ The law, however, cannot contemplate a scenario where the relationship between the parent and the adolescent parent is not abusive, but in some other way toxic. For example, the parent of the adolescent parent may resent the fact that he or she has been unwittingly shoved into the role of grandparent and caregiver to a small child. Requiring adolescent parents to live with their parents in order to receive public benefits could result in resentment and hostility at home, which would not be a supportive environment that encourages them to be the best parents they could be. A toxic home environment is not a good place to raise a child, and it is a place where other problems for the adolescent parent can arise.

Adolescent parents, in light of the roadblocks presented to them by laws like the Welfare Reform Act, might be likely to act out in ways that insert them into the Child and Family Services realm, even though they are generally good and loving parents. Adolescent parents who are forced to live with their parents might be more likely to stay out late and engage in behavior that might be typical for a teen, but potentially disastrous for a parent. Parents who are forced to support their children after they become parents at an early age might be more likely to call Child and Family Services on their children for behavioral issues that are relatively minor. The Welfare Reform Act's one-size-fits-all approach to limiting public assistance to adolescent parents is but one example of the detrimental effects of the law on adolescent parents.

For centuries, judges have been creating common law that can interfere with adolescent parents' abilities to parent. One obvious

187. *See id.* § 618(b)(2) (demonstrating the exclusion of minor parents needing child care assistance to stay in school from those benefitting from the majority of funds by requiring that 70 percent of block grant funds for child care be made available to families receiving assistance under the Act, those engaging in work activities in order to transition off the assistance, and those who were at risk of becoming dependent on the assistance).

188. *Id.* § 608(a)(5)(A).

189. *Id.* § 608(a)(5)(B).

190. 42 U.S.C. § 608(a)(5)(B)(ii).

common law impediment to minors that affects adolescent parents significantly is the prohibition on the ability to enter into contracts.¹⁹¹ Denying minors the right to enter into binding contracts bars them from the ability to rent housing, buy or lease a car, or borrow money. Simply put, the law fails to allow adolescent parents to provide basic needs to their children; it requires adolescent parents to be dependent on their parents, the government, or disinterested third parties in order to survive. While they are expected to provide the same opportunities and benefits to their children as any parent, they are expected to do so with a limited tool kit and a forced dependence that can thwart their efforts to provide. They are not legally equipped to adequately build a stable home for their children, but, if an accusation of unfitness is leveled against them, there is little recognition of the very legal impediments that might have contributed to their struggles as parents.

The law not only stands in the way of adolescent parents' ability to parent by making it difficult for them to engage fully in the things good parents do—working, making a home, choosing a nurturing and supportive community in which to raise children—it also does so more directly. The very process that states use to evaluate the fitness of a parent and determine custody of children of parents who have been declared unfit can create obstacles for adolescent parents' success.¹⁹² The obstacles may be inadvertent, but they are unfair, unjust, and, most importantly, unconstitutional. Understanding how the process works and where states are failing to understand the constitutional rights of adolescent parents might help solve the problem. The more crucial fix, however, lies in the need for affirmative reminders to courts that adolescent parents do have the right to parent and that their minority cannot be used against them as a justification for terminating their parental rights or removing custodial rights to their children.

III. DEPENDENCY PROCEEDINGS: ADJUDICATION OF A PARENT'S FITNESS AND DISPOSITION OF CUSTODY

The process of removing a child from the home of his or her parents is, in most states, bifurcated into a two-step process. First, the court will do an assessment of the fitness of the parent to provide for the child, often called the adjudication phase.¹⁹³ If the adjudication

191. See *Sims v. Everhardt*, 102 U.S. 300, 306 (1880) (holding that a contract signed by a minor is voidable by the minor).

192. See, e.g., *Katz*, *supra* note 42, at 554 (stating that there is also an assumption that "a teenager is a *per se* unfit parent" in child abuse hearings and similar proceedings).

193. KAREN S. BUDD ET AL., *EVALUATION OF PARENTING CAPACITY IN CHILD PROTECTION* 25 (2011).

results in a finding that the parent is somehow unfit to parent, the court will then move on to consider how to handle the custody of the child.¹⁹⁴ In every state, as well as in every American territory that is not a state (i.e., District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), there is a statute that requires the court to evaluate the “best interests of the child” at some point in the process of evaluating the fitness of the parent or determining custody for the child.¹⁹⁵ At each step of the process, states should be more sensitive to the challenges and difficulties encountered by adolescent parents and should include statutory guidance to courts so that they do not violate the constitutional rights of the adolescent parents by unfairly holding their minority against them.

A. Determining Fitness of Adolescent Parents: Adjudication

Although there might be some disagreement, it seems fair to say that the government is generally not in the business of directing and controlling how parents raise their children.¹⁹⁶ If there is a reason for the State to get involved in a child’s life, however, it will do so in order to protect that child from harm. A parent generally may find himself or herself thrust into the child and family services realm when a complaint is made about his or her parenting.¹⁹⁷ If the state agency responsible for reviewing complaints deems it necessary, it will open an investigation of the situation.¹⁹⁸ If the agency determines there is merit to the accusation, it may seek to have the child declared a dependent of the state, which then may lead to a determination of whether the parent’s parental rights should be terminated.¹⁹⁹

There are obvious constitutional considerations when intervening in a parent’s right to the care and control of her children. The Supreme Court has made clear that parents have due process protections when their fitness is evaluated by a state court.²⁰⁰ The process can vary from state to state, but the fundamental process guaranteed by the Constitution must be fair and apply the correct evidentiary standard before parents can be deprived of their rights to their children.²⁰¹ That

194. *See id.*

195. CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 1.

196. *See Katz*, *supra* note 42, at 540.

197. *See Investigation*, CHILD WELFARE INFO. GATEWAY, U.S. DEPARTMENT HEALTH & HUM. SERVICES, <http://www.childwelfare.gov/responding/iaa/investigation> (last visited Mar. 30, 2012).

198. *See BUDD ET AL.*, *supra* note 193, at 23.

199. *See* 1 THOMAS A. JACOBS, CHILDREN AND THE LAW: RIGHTS & OBLIGATIONS §§ 2:59, 2:67 (2011).

200. *See Santosky v. Kramer*, 455 U.S. 745, 747–48 (1982).

201. *Id.*

standard, held by the U.S. Supreme Court in *Santosky* to require states to prove by clear and convincing evidence that parental rights should be terminated, is high because even if they have not been model parents, parents nonetheless “retain a vital interest in preventing the irretrievable destruction of their family life.”²⁰² Unfortunately, the process used to terminate an adolescent’s parental rights can be stacked against them and leave them incapable of preventing the irretrievable destruction of their family.²⁰³

Adolescent parents are subjected to the same process as any parent when their fitness is called into question.²⁰⁴ There are no alternative statutory bases for determining whether an adolescent parent’s parenting is in keeping with “community standards.” On the one hand, this makes sense, because the process of determining parental fitness is really meant to protect the child at risk; the age of the parent is immaterial to the health and well-being of the child.²⁰⁵ On the other hand, if the parent of the child at risk is an adolescent, there may be intervening factors that have contributed to the situation that either are out of the adolescent parent’s control and solvable with the help and understanding of the court, or are the result of the adolescent parent’s ignorance and immaturity (but are not indicative of a longer-term, systemic parenting deficiency) that can be corrected with support and training.²⁰⁶ Ignoring an adolescent parent’s minority and treating him or her as any other parent in the adjudication and disposition processes could lead to an unconstitutional intrusion into the adolescent parent’s right to parent.

While the process for declaring a parent unfit varies from state to state, there are a few constants that every state must observe. First, as is guaranteed by the Due Process Clause of the Fourteenth Amendment, there must be a process.²⁰⁷ Second, the process must be constitutionally sound, which, in this circumstance, requires, as stated above, that the State prove by clear and convincing evidence that the parent is unfit to parent.²⁰⁸ Parental fitness is decided based on an assessment of the parent’s ability to meet community standards regarding the care and well-being of his or her child.²⁰⁹ This process

202. *Id.* at 753.

203. *See Katz, supra* note 42, at 554.

204. *See Buss, supra* note 23, at 786 (noting that the law “afford[s] minors the same right as adults to assume parental authority”).

205. *See Katz, supra* note 42, at 542.

206. *See id.* at 537.

207. *See Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 37 (1981) (“[S]tate intervention to terminate the relationship between [a parent] and her child must be accomplished by procedures meeting the requisites of the Due Process Clause.”).

208. *See Santosky v. Kramer*, 455 U.S. 745, 747–48 (1982).

209. *See JACOBS, supra* note 199, § 2:2 (“These ‘community’ standards are established through dependency statutes and the case law interpreting these statutes.”).

is called a dependency adjudication and is essentially a fact-finding process that allows the State to present evidence that the parent has not met statutory requirements regarding the care and control of his or her children and allows the parent to refute that evidence.²¹⁰

There are multiple reasons the government might open an investigation of a parent. If a parent has been neglectful or abusive of his or her child, he or she can be investigated for those wrongdoings.²¹¹ Other bases for opening an investigation can include: “emotional neglect[,] malnutrition[,] failure to thrive[,] medical care neglect[,] . . . dirty or unsafe home[,] . . . failure to protect[,] mental illness of parent or child[,] destitute child[,] lifestyle,” or others.²¹² An accusation of any of the above, or a combination thereof, can be the basis for a dependency hearing in court.²¹³ A dependency hearing is what the process is called when a court is asked to determine whether a minor should be declared a dependent of the state.²¹⁴

During the dependency adjudication process (also sometimes called the adjudication process), the court can, depending on the state, take a number of paths. The Supreme Court has determined that at the adjudication stage the Due Process Clause requires that the parent’s fitness be evaluated without considering the best interests of the child.²¹⁵ If the minor is declared dependent during the adjudication phase, the court then moves on to the disposition phase, where the determination of what will happen next for the minor child and his or her parent will be made.²¹⁶ At that stage, the court can take any number of paths, but regardless of the path the court takes, the child is considered a ward of the court until the court decides that the child does not need the court’s protection any longer.²¹⁷ The court can then apply the best interests of the child test to decide whether it would be best for the child to stay with the parent despite the dependency determination.²¹⁸ The court can also remove the child from the parent’s custody on a temporary basis or decide to commence proceedings to terminate parental rights.²¹⁹

210. *Id.* § 2:59.

211. *See id.* § 2:14.

212. *Id.*

213. *See id.* §§ 2:14, 2:33.

214. *See id.* § 2:67.

215. *Santosky v. Kramer*, 455 U.S. 745, 760 (1982) (reasoning that the interests of the parent and child are entangled until the parent’s fitness is determined, and only when the parents is declared unfit can the child’s interests be evaluated independent of the parent’s interests).

216. *JACOBS*, *supra* note 199, § 2:67.

217. *Id.*

218. *Id.* § 2:67 n.3.

219. *Id.*

B. Determining the Best Interests of the Child: Disposition

Family or juvenile court judges carry an unenviable burden when they are asked to decide whether a parent should lose his or her parental rights. Even “easy” cases, where a parent has severely abused or neglected his or her child, cannot be easily decided because when a judge terminates parental rights, those rights can never be reinstated (a parent can certainly appeal a termination decision, but once the appeals have been exhausted, the parent has no recourse).²²⁰ State legislatures have attempted to help judges shoulder the burden by writing statutes that give them guidance about the factors that should be taken into account when deciding the fate of a family.²²¹ These factors are considered in the tests that are meant to help courts determine the best interests of the child at each phase of the adjudication and disposition processes.²²² The best interests of the child tests include factors that encourage courts to consider both the unfavorable and favorable aspects of the parent-child relationship and are meant to protect the children from harm.²²³ They do not, however, consider one of the most crucial considerations: whether the parent is an adolescent.

IV. THE DUE PROCESS CLAUSE REQUIRES THAT JUDGES BE CAREFUL TO SEPARATE THE IMPEDIMENTS OF ADOLESCENCE FROM THE PARENTAL FITNESS ANALYSIS DURING THE ADJUDICATION PHASE TO AVOID TRAMPLING THEIR FUNDAMENTAL RIGHTS TO RAISE THEIR CHILDREN

As stated above, all parents have a substantive due process right to the care and control of their children.²²⁴ Of course, that right is not universal and inviolate; the State has the power to interfere with that right if the parent’s authority and control puts the welfare of the child at risk.²²⁵ Unless the State intervention is “shown to be necessary for or conducive to the child’s protection against some clear and present danger,” it is not constitutionally permissible for the State to pass a law that interferes with that right.²²⁶ In *Prince v. Massachusetts*, the Court considered the constitutionality of legislation that barred children under the age of twelve from selling religious magazines.²²⁷ The

220. *But see* 750 ILL. COMP. STAT. 50/14.5 (2009) (allowing a biological parent who lost his or her parental rights to a child to adopt the child, if certain conditions are met).

221. CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 2.

222. *Id.*

223. *Id.* at 3–5.

224. Katz, *supra* note 42, at 539.

225. *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

226. *Id.*

227. *Id.* at 159–60.

Court held that the law was a constitutional infringement on both the parent's liberty interest in raising her child and her religious liberty.²²⁸ In the case of child welfare laws, there is no patent constitutional deprivation of the substantive due process rights of adolescent parents per se, but, as those laws are applied, adolescent parents' liberty interests can be infringed by an indelicate court.²²⁹

In the case of child welfare laws that bar physical, emotional, and mental abuse and/or neglect, there is no argument that those laws unconstitutionally target adolescent parents to strip them of their fundamental liberty interest to parent. As stated in *Prince*, the State may restrict the parent's authority over his or her child due to its general interest in protecting the welfare of children.²³⁰ That, of course, is as it should be. If parents are unfit and present a clear and present danger to the welfare of their children, their rights to raise a child should be scrutinized and perhaps severed by the State. A constitutional concern, when considering the liberty interest of adolescent parents to the care, control, and custody of their children, appears when a court seeks to interfere with that right, not because the parent is unfit, but because the adolescent parent is barred by the law from providing the best care to his or her children or is engaging in adolescent behavior.

A troubling pitfall that judges may encounter while determining the fitness of an adolescent parent is failing to recognize the legal impediments placed on adolescents.²³¹ Those impediments can put an adolescent parent in the position of having to choose between providing proper care to his or her child and obeying the law. For example, an adolescent parent may have to miss more school than is permissible to care for her child. This could be used against her in an adjudication. Similarly, an adolescent parent who tries to improve a bad living situation by leaving her residence (perhaps she lives with an abusive boyfriend or in unhealthy conditions) may find herself homeless because she cannot legally rent an apartment. In situations like this, finding a parent unfit would violate his or her substantive due process right to parent, because he or she is forced by the law into the position of putting her child at risk.

An adolescent parent who cannot work enough hours, because of his or her age, to make enough money to buy food or rent an apartment is certainly at risk of losing her child in a dependency

228. *See id.* at 173.

229. *See Katz, supra* note 42, at 554.

230. *Prince*, 321 U.S. at 166 ("Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control . . .").

231. *See supra* Part II.B.

proceeding.²³² The fact that the child of the adolescent parent is malnourished, inappropriately clothed, homeless, or dirty are certainly serious problems that require intervention.²³³ A results-oriented judge would be right to seek to correct those problems immediately. Without a deeper inquiry into why the child is suffering those conditions, however, a judge may be quick to interfere in the parent-child relationship without fully considering the adolescent parent's intent and desire to provide adequate care, as well as the adolescent parent's legal inability to do so. Judges must be careful in the adjudication process to avoid inferring a parental fitness flaw rooted in an anti-youth bias, as opposed to a fundamental parenting flaw that cannot be rectified with support and services.

In addition to the legal constraints adolescent parents have on their ability to parent, courts should also be cognizant of the possibility that they could mistake adolescent behavior for unfitness. As stated above, the *Prince* Court held that a state law that violated a fundamental liberty of a parent "must fall," unless the state enacted that law to protect the child from clear and present danger.²³⁴ In the case of child welfare laws, it is entirely likely that the State may have to protect a child from a clear and present danger posed by his or her adolescent parent. In those cases, the court should intervene to protect the endangered child immediately. The court runs the risk, however, of violating the substantive due process rights of the adolescent parent if it is hypersensitive to the adolescent behavior of the parent and imputes from that behavior a nonexistent clear and present danger to the minor child. There is a long list of adolescent behaviors that may indicate to a court that an adolescent parent is unfit to parent, when in fact all that parent needs is support and services to become a better parent.²³⁵

Adolescent parents often struggle to be "perfect" parents.²³⁶ These struggles may have less to do with their adolescence and more to do with the circumstances of their lives, which were in place long before they had children.²³⁷ To the extent that their lack of life experience, maturity, and self-control do contribute to their struggles to parent, it may be more of an indication that they need help, training, and support to understand the responsibilities of their status as parents

232. See BUDD ET AL., *supra* note 193, at 18 tbl. 1.1.

233. *See id.*

234. *See Prince*, 321 U.S. at 167.

235. *See Mollborn*, *supra* note 57, at 102–03 (“[P]roviding teenage parents with resources may . . . improv[e] socioeconomic conditions for both parent and child.”).

236. *See supra* Part II.A (describing the difficulties faced by adolescent parents).

237. *See supra* Part II.A.

and to improve their parenting skills. While staying out past curfew, missing school, or the recreational use of drugs and alcohol could be an indication of a bigger parenting problem, they may simply indicate that, like many parents, this particular adolescent parent needs intervention and support to be a better parent. A court that is quick to declare an adolescent parent unfit for engaging in irresponsible adolescent behavior is not following the *Prince* holding; it requires that state intervention into the parent-child relationship be reserved to situations where the welfare of the child of the adolescent parent is in “clear and present danger.”²³⁸

Not only do parents have a substantive due process right to parent their children, they also are constitutionally protected in the dependency process from severance of their parental rights without sound procedural due process.²³⁹ The *Santosky* Court decided that states must use the more exacting “clear and convincing evidence standard” when determining whether to terminate parental rights.²⁴⁰ Because the right to parent is fundamental and the decision to terminate is final, the Court held that a lower standard would violate the procedural due process guarantees of the Fourteenth Amendment.²⁴¹ Not only do courts have to uphold and respect adolescent parents’ fundamental rights to parent their children, they also need to be careful that the process they apply when deciding whether to terminate the parental rights of an adolescent is constitutionally sound. Because adolescents are uniquely hindered by the law from being able to fully realize their parenting responsibilities, a court should be particularly careful about interfering with their procedural rights to parent unless it is convinced that the parental deficiencies are not solely a result of the parents’ adolescence.

Procedural due process also requires that courts avoid conflating adolescent behavior with the fitness analysis. Because states are required to prove, by clear and convincing evidence, that a parent is unfit, courts cannot take into consideration the fact that the adolescent parent is an adolescent.²⁴² It is easy to imagine, considering how high the stakes are in dependency proceedings, that courts would be willing to use against adolescent parents behavior that might be considered that of a “typical teen,” but not the sort of behavior that would be considered egregious enough to interfere with an adult parent’s

238. *Prince*, 321 U.S. at 167.

239. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

240. *Id.* at 769 (internal quotation marks omitted).

241. *Id.* at 768.

242. *See id.* at 767 (“The State’s interest in finding the child an alternative permanent home arises only ‘when it is *clear* that the natural parent cannot or will not provide a normal family home for the child.’” (citation omitted)).

right to parent his or her children.²⁴³ There is a significant amount of discretion allowed to the judge when determining whether a parent has violated “community standards” and is therefore unfit to parent.²⁴⁴ This discretion can leave adolescent parents vulnerable to a judge’s interpretation that juvenile, and correctable, behavior automatically makes a parent unfit.

The standard of clear and convincing evidence that courts must use to declare a parent unfit should focus on facts that indicate that the adolescent parent’s child is in danger. Those facts can certainly include adolescent behavior that is putting the minor child in danger. A judge must be careful, however, to avoid letting an anti-youth bias, or negative assumptions about the ability of adolescent parents to be good parents, factor into the community standards analysis. A few obvious examples of subjective categories of behavior that can serve as the basis for declaring an adolescent parent unfit are signs of emotional neglect, a dirty or unsafe home, and lifestyle, which each individual judge can view quite differently.²⁴⁵ When applied to an adolescent parent in the adjudication phase of a dependency hearing, those bases can be viewed in such a way that paints a picture of a terrible parent, or, alternatively, they can be seen as depicting an inexperienced, perhaps selfish, parent in need of guidance and support.

Disentangling a parent’s adolescence from the allegation of parenting deficiencies is obviously a difficult task. It is easy to assume that the State must have a good reason to make an allegation that a parent is unfit, and protecting children from harm is one of the most important things a state does. It is precisely because those reasons make the stakes high in child welfare inquiries that courts should be all the more careful to protect the substantive and procedural due process rights of adolescent parents and avoid making assumptions about their ability to parent based on their youth as opposed to their capabilities. In addition, legislatures should help courts protect the constitutional rights of adolescent parents by including a factor into

243. While anecdotal evidence of courts doing this is available, it is difficult to confirm that this sort of bias is happening in court because many family and juvenile court proceedings are closed and court decisions are sealed to protect the privacy of the parties involved. See Jan L. Trasen, Note, *Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or the System?*, 15 B.C. THIRD WORLD L.J. 359, 366–67 (1995). Staying out late, missing school, and recreational use of drugs and alcohol, may at first glance appear to factor into whether an adolescent parent is fit to parent. Unless it has a negative impact on the child, irresponsible behavior does not signal a problem with the parent’s fitness as much as a need for training and support for the adolescent parent. See BUDD ET AL., *supra* note 193, at 14 (noting that the policy rationale behind The Family Preservation and Support Initiative was to “assist vulnerable children and families prior to any maltreatment”).

244. JACOBS, *supra* note 199, § 2:2.

245. *Id.* § 2:14.

the best interests of the child test that warns courts to treat adolescent parents as they do adult parents.

V. THE EQUAL PROTECTION CLAUSE REQUIRES THAT JUDGES
CONSIDER THE YOUTH OF ADOLESCENT PARENTS DURING THE
DISPOSITION PHASE TO AVOID HOLDING THEM TO STANDARDS
TO WHICH ADULT PARENTS ARE NOT SUBJECT

Adolescents have the same fundamental right to parent as any other person in America. Despite the angst that adult parents, legislators, school teachers, doctors, researchers, and most every segment of society has about the concept of teen parenting, the law is clear that age may not be a factor in determining whether a person has a constitutional right to be a parent to his or her biological children.²⁴⁶ It is also clear, however, that there are significant hurdles and challenges that adolescent parents almost universally encounter.²⁴⁷ Not only do many adolescent parents live in poverty before becoming parents, which only adds financial strain, they often struggle with pursuing their education throughout the early years of their children's lives.²⁴⁸ In addition to the socioeconomic and educational challenges they face, adolescent parents are denied the basic rights that adults enjoy, making it even more difficult to provide for their children.²⁴⁹

To account for the inequality of the application of the laws to adolescent parents as compared to adult parents and the circumstances of life that make adolescent parenting more difficult than parenting during adulthood, legislatures should write a new best interests of the child factor into state law. This factor would alert courts to the legal and circumstantial difficulties that are often outside of the control of an adolescent parent and would help courts minimize any potential infringement on adolescent parents' right to equal protection of the laws as well. While treating adolescent parents differently in the best interests of the child factors may seem counterintuitive to equal protection jurisprudence, it may be the best way to ensure that courts treat adolescent parents equally to adult parents. Unfortunately, the best interests of the child factors may be inadequate to protect minor children from removal from their parent's custody without proper justification. A factor that alerts or reminds courts of the unique challenges that adolescent parents face and encourages courts to consider intervention and support before removal may be a practical solution

246. See note 180 and accompanying text.

247. See *supra* Part II.B.1.

248. See *supra* Part II.A.

249. See *supra* Part II.B.

for preventing courts from unconstitutionally holding the adolescent parents' youth against them in the disposition analysis.

A. Adolescent Parents Enjoy a Liberty Interest in Raising Their Children That Is Supported by the Equal Protection Clause

While there is no Supreme Court precedent indicating that age or parental status are suspect classes, it is clear that laws that are applied unequally to similar groups of people without a rational basis violate the Equal Protection Clause of the Fourteenth Amendment.²⁵⁰ The question arises, therefore, in the context of adolescent parenting, whether it is rational for a court to assume that the age of the parent will put the child in danger. It seems clear that the answer should be no. The age of the adolescent parent is less important than the action or inaction of the parent and how that affects the minor child. An assumption based on the age of the parent that he or she is less capable of improving his or her parenting skills²⁵¹ than a adult parent would not be rational, especially considering the additional hurdles adolescent parents confront in their parenting efforts that are outside of their control.²⁵² It is certainly just as possible for an adolescent parent to be able to improve his or her parenting as an adult parent. There is no legal or scientific support, however, for the notion that adolescent parents are inherently less capable of parenting than anyone else.

It is difficult to give examples where courts have violated the constitutional rights of adolescent parents by using age against them because courts are under no obligation to report the age of the parents who are respondents in dependency hearings.²⁵³ In fact, those records are often sealed.²⁵⁴ Anecdotally, however, there is plenty of evidence that courts are punishing parents for being adolescents, instead of trying the simpler and more effective method of supplying services and training to help adolescent parents adjust to being parents at a young age.²⁵⁵ A logical place for courts to look for guidance when determining whether an adolescent parent should retain parental rights is

250. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985).

251. This would be the consideration at the disposition stage, because the parent has been declared unfit in some way to get to this point in the procedures. See notes 193–94 and accompanying text.

252. See *supra* Part II.B.

253. OFFICE OF THE STATE COURTS ADM'R, SUPREME COURT STEERING COMM. ON FAMILIES & CHILDREN IN THE COURT, A PARENT'S GUIDE TO JUVENILE DEPENDENCY COURT 2, available at http://www.flcourts.org/gen_public/family/bin/dependencybooklet.pdf.

254. *Id.*

255. See *Katz*, *supra* note 42, at 536.

the best interests of the child test. This is a state-by-state statutory construct used to help courts balance factors that weigh in favor of and against a parent in the adjudication and disposition phases of dependency hearings.²⁵⁶ Every state, commonwealth, and district in the United States has a version of the best interests of the child test, though the factors in the tests vary from state to state.²⁵⁷

B. Incorporating a New Best Interests Factor That Encourages Judges to Support, Not Punish, Adolescent Parents for Their Youth Would Help Judges Apply the Laws Equally

As stated above, the Supreme Court has stated that the right to parent is fundamental, and it has never carved out an exception for adolescent parents.²⁵⁸ But public opinion, coupled with troubling statistics, about the ability of adolescents to parent may encourage judges to more proactively interfere with adolescent parents' rights, even when their parenting wrongs are not so egregious as to justify a loss of custody.²⁵⁹ Worse, courts may not be aware that adolescent parents have legitimate reasons to struggle or that these struggles may be outside of their control.²⁶⁰ Also, as stated above, the Equal Protection Clause mandates that courts have a rational basis for interfering with adolescent parents' parenting rights more frequently than they interfere with the rights of adult parents.²⁶¹ For these reasons, legislatures should help alert courts to the unique problems encountered by adolescent parents and include a best interests of the child factor that encourages courts to proceed with caution when considering how to intervene when their parenting is questioned in the dependency process.

Adolescent parents do not have the same legal rights and privileges that adult parents have. They do, however, have the same responsibilities and duties regarding the care and control of their children

256. CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 1–4.

257. *Id.*

258. The Court has also never affirmed that adolescent parents have a fundamental right to parent, but in the absence of such a ruling, it seems fair to assume that a parent is a parent and his or her fundamental right to parent is protected no matter age. *See Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (stating clearly that parents have the fundamental right to the care and control of their children).

259. *See, e.g., Katz, supra* note 42, at 536–37 (relating the story of one adolescent's right to parent being terminated).

260. *See id.* at 544 (“Whether emancipated or not, many of the age-based limitations on the rights of minors have a direct effect on teenage parents' ability to provide properly for their children.”).

261. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); *see also Katz, supra* note 42, at 553 (demanding that courts respect the rights of teen parents during adjudication and disposition).

as adult parents. This legal tightrope sometimes creates an untenable situation for adolescents that may contribute to their struggles and failures as parents. Legislatures should write a best interests of the child factor that would alert judges, who may not think of the balancing act when they preside over the disposition phase of dependency hearings, to make sure that their reasons for intervention into the constitutionally protected parenting right are the same reasons the court would use to intervene in an adult parent's parenting right. Helping courts stay alert to potential bias against adolescent parents would protect adolescent parents from unconstitutional interference with their parenting rights and would do more to preserve what could be, with some support, healthy parent-child relationships.

As stated above, the best interests of the child tests vary from state to state.²⁶² There are a few universal similarities, however, that are important to note. First is the overarching reason for the factors, which is to protect children from harm.²⁶³ Second, they are meant to maintain the integrity of the family unit, when at all possible.²⁶⁴ Third, they all omit any reference to the consideration of a parent's age in the disposition process.²⁶⁵

1. Best Interests Tests Are Intended to Protect Children from Harm, While Preserving the Family Unit When Possible

There is an important governmental interest in protecting children from harm.²⁶⁶ The definition of harm has changed from a time when states were loath to intervene in a parent's right to discipline a child²⁶⁷ to a time when government actors recognize the importance of preserving families to the extent possible.²⁶⁸ The legal approach to answering the difficult question of who should have custody of children when maltreatment is alleged has also changed over the

262. See CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 1–4.

263. *Id.* at 2.

264. *Id.*

265. See *id.* at 3 (listing the commonly required factors for determining the best interests of a child, not including the age of the parent).

266. See *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944).

267. See, e.g., BUDD ET AL., *supra* note 193, at 9–10 (discussing the 1874 case of “Mary Ellen,” a child in foster care whose severe abuse by her foster parents was overlooked by the authorities until pressured to do so by the president of the New York Society for the Prevention of Cruelty to Animals).

268. See *id.* at 13–15. The pendulum is settling in between the two options of favoring that abused or neglected children be removed from their parents' custody and making “reasonable efforts” to maintain the parent-child relationship. See *id.* While federal law does still require that agencies make reasonable efforts to maintain the parent-child relationship, it does not value the parent-child relationship over the safety of the child when severe abuse or neglect is at issue. *Id.* at 14–15; see also 42 U.S.C. § 671(a)(15) (2006) (noting that children's safety is a “paramount concern”).

years. Since the birth of the legal system, most governments considered the role of raising children to be filled solely by parents, largely because children were considered their fathers' chattel.²⁶⁹ In the United States in the mid- to late 1900s, states and the federal government eventually moved toward a more interventionist approach that invoked the concept of *parens patriae*.²⁷⁰ *Parens patriae* means "country as parent" and is rooted in the notion that the government has a moral right to intervene when a parent is abusing or neglecting his or her child.²⁷¹

States have become increasingly careful in the years that the child welfare system has evolved only to intervene in the parent-child relationship when there is actual maltreatment of a child. Maltreatment of a child is defined as recent acts or failures to act by a parent or caregiver that result in physical, emotional, or sexual abuse of a child.²⁷² The best interest of the child tests are meant to balance the potential harm to a child if he or she stays in an unsafe environment with his or her parent against the potential harm of separating the child from his or her parent.²⁷³ When maltreatment is suspected, many forms of intervention are possible.²⁷⁴ The courts are not necessarily involved at every stage of the inquiry, but if they do get involved, they are likely to rely heavily on the best interests of the child test to determine where the child should be placed.²⁷⁵

As states began to look more closely at families where abuse or neglect may have been occurring, they determined a need for a system by which to evaluate whether intervention was necessary, and, if so, how much.²⁷⁶ Courts and legislatures began constructing tests to help assess the health of the parent-child relationship.²⁷⁷ These tests can take into account almost anything about the relationship between the parent and child, the relationship between the child and any other potential caretaker, the mental and physical health of the parties,

269. BUDD ET AL., *supra* note 193, at 19.

270. *Id.* at 7.

271. *Id.*

272. *Id.* at 17.

273. CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 2.

274. BUDD ET AL., *supra* note 193, at 18–19.

275. *See id.* In some circumstances, a state may intervene in a parent-child relationship without a court order if the maltreatment is not severe, such as over-discipline or leaving a school-age child unattended. *Id.* at 18.

276. *See id.* at 20–22.

277. *See id.* at 20–21 tbl. 1.2. Michigan was an early state to adopt a model for determining what was in a child's best interests. *Id.* at 21 tbl. 1.2. The model defined the "best interests of the child" using the totality of the factors listed and required a court to consider, evaluate, and determine such factors as the love and affection between the parties involved, the permanence of the proposed family unit, the moral fitness of those involved, the capacity of the parties involved to provide food, clothing, and other material needs to the child, and more. *Id.*

the permanence of a potential living situation, and more.²⁷⁸ The best interests of the child test factors are helpful reminders meant to distill the logical factors that most laypersons would rely upon to make such an important decision in the lives of children and their parents. They are meant to be comprehensive and balanced, not punitive or skewed toward a particular result.

2. Do Not Account for Age Positively or Negatively

There is quite a bit of variation on the precise factors states include in the best interests of the child tests, but the factors that all states include are clearly intended to protect children and assist courts in evaluating the health of a particular family.²⁷⁹ Many states give discretion to courts as they weigh the factors by not requiring every factor to be considered or by including a more broad, catch-all factor that allows the court to take into account any other important considerations.²⁸⁰ No state mentions, positively or negatively, the age of the parent.²⁸¹ Of course, some factors could cause a court to consider the age of the parent. For example, the mental and emotional health of the parent or a catch-all provision, if there is one, may require an inquiry into the parent's age. No state, however, includes a factor that would give the court reason to pause and consider, if an adolescent parent is involved, that the need for intervention may be the result of factors outside of the parent's control and rooted in the fact of his or her adolescence, perhaps making drastic intervention unnecessary.

C. Tests Should Include a Factor That Seeks to Support Adolescent Parents and Maintain Parent-Child Relationship

States should add a factor to their best interests of the child tests that serves as a helpful warning to juvenile or family court judges that there is a high potential for misunderstanding and misapplication of the law when considering a dependency hearing involving adolescent parents. Adolescent parents may not be sophisticated enough to advocate effectively for themselves or their children once they enter the dependency process because of legal and logistical challenges that their youth creates. That inability may lead a judge to operate on faulty assumptions about the adolescent's abilities to parent, to seek and receive support for his or her parenting, or to learn the skills necessary to provide a nurturing environment and a stable home for his

278. *Id.*

279. See CHILD WELFARE INFO. GATEWAY, *supra* note 6, at 2–3 (discussing the best interest factors used by each state).

280. See *id.* at 4.

281. See *id.* at 3.

or her child. The factor should be written from a positive perspective, focusing on the concepts of support and training, and not from a punitive stance. Of course, the factor is not intended to take the focus away from protecting the child of the adolescent parent from harm. Rather, it should be understood as a reminder to judges of the unique circumstances experienced by many adolescent parents and the possibility that positive intervention and support could foster and maintain a strong parent-child relationship.

Adolescent parents whose parenting is in question by the State might find themselves in that situation for reasons outside of their control or because they have made mistakes that could have been avoided if they had had training and support.²⁸² Because of the legal roadblocks many adolescent parents encounter when they try to parent their children, such as limitations on their ability to contract and additional scrutiny of their parenting skills, adolescent parents can be hamstrung by their youth even before their children are born.²⁸³ Adolescent parents, by the nature of their youth, are also likely to be unprepared for parenting.²⁸⁴ They often are not financially stable, may lack maturity required to parent, and have educational obligations that are difficult to fulfill while bearing responsibility for a child.²⁸⁵ But with thoughtful support, they also may be more capable of learning how to become good parents than many parents whose parenting skills have been called into question by the State.

Parents in every demographic can benefit from the support of their family members, friends, and community in their efforts to raise children. Adolescent parents have the responsibilities of parenthood and the responsibilities of youth, which are often at odds. All parents must attend to their children's physical, mental, educational, and moral growth, which requires parents to be economically stable, motivated to provide their child with an education, emotionally mature, and so much more. In addition, adolescent parents have responsibilities to themselves to go to school, to grow and mature in their relationships and social interactions, and to develop skills to become independent from their families. Balancing the interests of a parent's responsibilities to his or her child and to himself or herself is often difficult for an adult and presumably is even more so for an adolescent

282. See WENDY C. WOLF & SALLY LEIDERMAN, CTR. FOR ASSESSMENT & POLICY DEV., INVESTING IN "YOUNG FAMILIES:" SOME THOUGHTS ON ADVANTAGES, DISADVANTAGES AND POSSIBLE NEXT STEPS 2 (2001), available at <http://www.capd.org/pubfiles/pub-2001-03-02.pdf> (arguing that "new options" are needed to help strengthen families with adolescent parents because of the unique challenges they face).

283. See *supra* Part II.B.

284. See Katz, *supra* note 42, at 537 (describing the plight of young adolescents who are expected to be competent and responsible parents).

285. See *supra* Part II.A.

parent. Even the most mature, economically supported, and responsible adolescent parents may find balancing their responsibilities difficult to nearly impossible.

Adolescent parents may not be old enough to drive themselves to work or school, and may not be able to get a job or attend school because they do not have reliable and affordable childcare.²⁸⁶ The Center for Assessment and Policy Development released several policy papers and analyses regarding the kind of support that could help strengthen the extremely at-risk families headed by adolescents in the late 1990s and early 2000s.²⁸⁷ Specifically, supporting adolescent parents as they attempt to maintain their education while juggling their parenting responsibilities requires reliance on several important areas: child care for their young children, prenatal care, health care for their young children, transportation help, and more.²⁸⁸ More generally, adolescent parents often need help with life and parenting skills, housing assistance, economic assistance, and counseling in any number of areas, including substance abuse and domestic violence intervention.²⁸⁹ The difficulty associated with providing these services to adolescent parents is not necessarily that the services do not exist, but that it is often difficult to identify those in need of the services and convince them to seek the services.²⁹⁰

286. CTR. FOR ASSESSMENT & POLICY DEV., PROVIDING CRITICAL SERVICES AND SUPPORTS TO TEEN PARENTS AND THEIR CHILDREN (1999), *available at* <http://www.capd.org/pubfiles/pub-1999-10-04.pdf> (emphasizing the many difficulties teenage parents face in succeeding in school without the necessary support systems in place).

287. *See, e.g.*, CTR. FOR ASSESSMENT & POLICY DEV., HELPING THE EDUCATION SYSTEM WORK FOR TEEN PARENTS AND THEIR CHILDREN (1999), *available at* <http://www.capd.org/pubfiles/pub-1999-10-06.pdf> (giving recommendations for providing access to educational benefits for adolescent parents); CTR. FOR ASSESSMENT & POLICY DEV., *supra* note 286 (noting that adolescent parents need support services to stay in school); CTR. FOR ASSESSMENT & POLICY DEV., SCHOOL-BASED PROGRAMS FOR ADOLESCENT PARENTS AND THEIR YOUNG CHILDREN: AN OVERVIEW (1997), *available at* <http://www.capd.org/pubfiles/pub-1997-10-01.pdf> (discussing strategies to help adolescent parents overcome barriers); CTR. FOR ASSESSMENT & POLICY DEV., SUPPORTING YOUNG FAMILIES: CHALLENGES TO IMPLEMENTING CONTEMPORARY WELFARE POLICY (1999), *available at* <http://www.capd.org/pubfiles/pub-1999-10-02.pdf> (advocating supportive school environments); S. A. STEPHENS ET AL., CTR. FOR ASSESSMENT & POLICY DEV., IMPROVING OUTCOMES FOR TEEN PARENTS AND THEIR YOUNG CHILDREN BY STRENGTHENING SCHOOL-BASED PROGRAMS: CHALLENGES, SOLUTIONS AND POLICY IMPLICATIONS (1999), *available at* <http://www.capd.org/pubfiles/pub-1999-04-01.pdf> (providing solutions for strengthening school efforts to assist adolescent parents); WOLF & LEIDERMAN, *supra* note 282, at 2 (suggesting policy reasons to strengthen young families).

288. CTR. FOR ASSESSMENT & POLICY DEV., *supra* note 286 (listing various support services that should be provided for teen parents and their children).

289. *Id.*

290. *Id.* (“[I]t often takes special efforts to deal with the concerns of teen parents for their own independence and authority over decisions affecting themselves and their children, while providing them with appropriate information and guidance in making appropriate decisions.”).

Ironically, the problems that adolescent parents often encounter are quite solvable, and, depending on the community and the need, the solutions are not particularly difficult to provide. According to the Center for Assessment and Policy Development, some of the biggest challenges to communities that seek to provide support and services to adolescent parents are the difficulties associated with linking appropriate community-based services with schools, dealing with the capacity limitations of community services providers, and overcoming the reluctance of some adolescent parents to utilize support services.²⁹¹ It may be somewhat counterintuitive, but schools are not necessarily good places to provide services that are not perceived to be directly related to educational goals, such as childcare, even though those services are crucial to adolescent parents' ability to continue with their schooling.²⁹² Also, many of the support services available in communities are not particularly suited to adolescent parents because they are not specially designed to support adolescents.²⁹³ Lastly, adolescent parents often struggle with maintaining their independence as parents and are loath to accept services that make them feel less autonomous in their parenting.²⁹⁴

It is an understatement to say that the notion of a state taking an active role in supporting adolescent parents is novel. States and the federal government have been extremely hesitant to appear to be targeting adolescent parents for support in any way.²⁹⁵ This is incredibly ironic, however, with the staggering number of statistics that indicate that being an adolescent parent is even more difficult than being an adult parent.²⁹⁶ Instead of continuing to try and solve the problems associated with adolescent parenting by throwing money at preventing teen pregnancy, states and the federal government should take an active role in supporting and training adolescent parents to help them raise healthy, educated, productive children.

The confluence of the psychological, mental, societal, and legal difficulties an adolescent parent will likely encounter in his or her youth are enough to cause even the most seasoned and supported parent to falter. Expecting a young and likely immature adolescent parent to navigate the difficulties of parenthood while juggling school, work, and all other responsibilities normally reserved to adults is

291. *Id.*

292. *See id.*

293. *Id.* ("Even the processes required for accessing and using these services may assume a level of maturity and independence that many teen parents do not yet have.").

294. CTR. FOR ASSESSMENT & POLICY DEV., *supra* note 286.

295. *See* Fershee, *supra* note 183, at 315–16 ("[T]he level of dedication, financial resources, and passion reserved for stopping the social ill of teen pregnancy dies a sudden death when a teen actually gets pregnant.").

296. *See supra* Part II.A.

unrealistic. Right now, states do nothing to alert judges to the reasonable and understandable ways in which adolescent parents may stumble, thereby leaving courts at risk of holding an adolescent parent's youth against him or her in the analysis of whether he or she should maintain custody or parental rights. States can do more to create and maintain healthy family structures by acknowledging that adolescent parents who do find themselves under investigation for abuse or neglect likely are simply ill-equipped to handle the complexities of parenthood on their own. By taking a more affirmative and supportive stance when determining the parental rights of an adolescent parent, states can protect children and their parents from the lasting harm that comes from a termination of parental rights or even a temporary loss of custody by providing training, services, and resources to struggling adolescent parents.

While even a modest amount of support and services sometimes may do wonders for adolescent parents in their efforts to raise healthy, educated, well-adjusted children, challenges abound when linking appropriate services to the people who need them.²⁹⁷ As a result, adolescent parents may find themselves at a higher risk for intervention by child and family services investigations, which could have been avoided with training, support, and a small amount of intervention. Once an adolescent parent has entered the system, however, the State has more power, authority, and access to ensure that the adolescent parent receives the services and support he or she needs.²⁹⁸ Writing new factors into the best interest of the child tests requiring a court or child and family services personnel to assess the challenges that adolescence presents for parents in order to intervene positively in that adolescent parent's life could do more to help families stay together than any other method of intervention.²⁹⁹ Although perhaps not the most efficient path to preserving the familial bond between adolescent parents and their children, a new best interests of the child factor that contemplates the unique challenges of adolescent parenthood could be the most effective way to keep children and their parents together.

States should consider adding the following language to their best interests of the child test:

Because parents under the age of eighteen do not have the same legal rights as adults to participate fully in society, but do have

297. See STEPHENS ET AL., *supra* note 287 (highlighting the difficulties of identifying at-risk teen parents and providing them with the necessary support services).

298. See CTR. FOR ASSESSMENT & POLICY DEV., *supra* note 286 (describing the reluctance of some teenage parents to take advantage of the support services that are available).

299. See *id.* (suggesting several possible support services that might be provided to teen parents and their children).

the same legal responsibilities as all parents, the court should consider whether increased supervision and support would be more appropriate than removal of custody, depending on the particular circumstances presented in each case.

This language would allow the court flexibility to remove from an adolescent parent's custody any child whose welfare is in clear and present danger, but would also serve as a helpful reminder that adolescent parents may simply need increased training, supervision, support, and/or services.

CONCLUSION

The fundamental right to parent is not legally conditioned. Parents are presumed good parents until they act in a way that calls into question their ability to provide a safe, healthy, loving, and nurturing environment to their children. There are groups of parents, however, who might, for a variety of reasons often outside of their control, have more difficulty providing that safe and nurturing environment for children. Adolescent parents, as discussed above, are in a demographic that tends to struggle with the responsibilities associated with parenthood, and they have fewer legal rights than their adult counterparts. Even though there are multiple indicators that many adolescent parents have significant limitations as parents, the law does essentially nothing to support and encourage them in their parenting roles.

States should, in every circumstance, be loath to disrupt the parent-child relationship when its intervention is improper, immoral, or unfair. Adolescent parents are no more deserving of that deference than any other parent. The likelihood, however, that adolescent parents will be judged harshly for something they cannot control—their adolescence—and be at risk for losing their parental rights because of it makes clear that courts should proceed with caution and care when considering the parental rights of an adolescent parent. Considering the data showing that children of adolescent parents are at risk for negative life outcomes and considering the utter impossibility of eradicating teen pregnancy and parenting, it seems entirely reasonable that the next logical step to improve the lives of at-risk children is to support their parents. After all, to rephrase Dr. Seuss, a parent is a parent, no matter how small.³⁰⁰

300. See DR. SEUSS, *HORTON HEARS A WHO!* (1954).