# Parental Notification and a Single Dissent

By Paul Engel

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- When should a minor’s wishes supersede their parent’s?
- Should the courts be deciding when and if the parents of a minor child is notified of their attempts to receive an abortion?
- The case of Doe v Chapman deals primarily with the actions of one of the employees of the court, there is plenty of discussion of the fundamental question of parental rights vs children’s.

When should a parent be denied the right to know about medical procedures performed on their children? Most of us have been rebellious teenagers, sure that our parents are out to get us, only to grow up and realize they were right. When does a teenager’s right to liberty supersede a parent’s right to oversee their minor child’s upbringing? These are all questions in the case Doe v. Chapman, which was decided in the Eighth Circuit in April, 2022. This decision was appealed to the Supreme Court, which decided the case in March of 2023, with a single justice dissenting. This case not only turns on the questions I’ve already posed, but the procedures of the court.

One of the most difficult parts of being a parent is preparing your children to be independent and make decisions on their own. Let them make decisions before they are ready and they can be lost to any number of bad decisions. If you hold on too

long though, and don't allow them to decide for themselves, then they will be dependent on you and unable to survive on their own in a hostile world.

As a general rule, the people closest to the situation are best positioned to decide. That means the parents should be the ones making decisions for their children. Yes, there are situations where parents are not the best decision-makers for their children, but shouldn't that be the exception, not the rule?

*In Missouri, an abortion may not be performed on a woman under the age of 18 without, as relevant here, the informed written consent of one parent or guardian.* ***§ 188.028.1(1), RSMo 2016*** *. A minor may bypass this requirement by obtaining a court order granting the right to self-consent (for mature minors), or judicial consent (for "best interests" minors).* ***§§ 188.028.1(3), 188.028.2(3)*** *.*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

The State of Missouri included this idea of parental control over their minor child's medical treatment in their abortion laws. These laws require a minor get informed written consent from a parent or guardian before receiving an abortion, or receive a court order granting the child self-consent or judicial consent. Under what conditions can a court grant such a bypass?

*The juvenile court may then (a) find the minor is sufficiently mature and grant the right to self-consent, (b) find the abortion is in her best interests and give judicial consent, or (c) deny the petition.*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

This brings up a couple of questions. How can a court determine if a minor is "sufficiently mature" to "grant the right to self-consent"? What could the court possibly base its

decision on? Has the court lived with the child for any period of time? Does it have examples of the history of the child's decision making? Also, how does the court know what is in the best interest of the child? Yes, there are situations where such a decision would be easy to determine, for example if the child was the victim of abuse at the hands of the parent or guardian. Beyond that, what we have is an opportunity for a judge to substitute their opinion for the parents, based on little more than a judge's beliefs or political biases. Based on this, I would hope the times when a judge imposes themself between a parent and child are not only extremely rare, but well founded. This case though, isn't about judicial interference in the medical decisions of a parent.

*Jane Doe, then 17 years old, discovered she was pregnant in December 2018. Seeking an abortion, she went to the Randolph County Courthouse to apply for a judicial bypass. An employee at the clerk's office hadn't heard of the judicial bypass procedure, said they would do some research, and told Doe to come back later. A few weeks later, Doe returned. An employee told her "they were pretty sure that [she] could not open the petition without notifying a parent."*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

Jane Doe was seeking an abortion. Since she was under the age of 18, she needed either her parent's consent or a judicial bypass. That's when an employee of the county court's office told her that they could not open the petition without notifying the bypass.

*She offered to provide an application form but said that "our Judge requires that the parents will be notified of the hearing on this." Returning to the courthouse in mid-January, Doe was again told that a parent would be notified if she filed an application. She eventually traveled to Illinois in March 2019, obtained a judicial bypass, and had an abortion without parental consent or notification.*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

So Jane Doe could get an application, but was told the judge would require her parents be notified of her petition.

Let's pause here a moment and consider this dilemma. It's apparent Ms. Doe is not only looking to get an abortion without her parent's consent, but without them being aware of it either. Hence the issue with parental notification of the hearing. However, Ms. Doe is still a minor. That means not only is she unable to give consent, but her parents are legally responsible for her as well. Does this include any healthcare that might be required post abortion? Or will they be ignorant of the fact that their daughter had an abortion, which could have serious medical consequences?

*Doe sued Chapman in her individual and official capacities under 42 U.S.C. § 1983, alleging that Chapman's refusal to allow her to apply for a judicial bypass without parental notification violated her Fourteenth Amendment rights.*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

While not specified, it seems likely that the Fourteenth Amendment violation Ms. Doe alleged was being violated was:

*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;*

**U.S. Constitution, Amendment XIV**

As a minor, she does not have full possession of her rights. This is evidenced by her need to get a judge to allow her to get an abortion without her parent's permission. This is where Ms. Chapman's case gets a little sticky..

*Chapman testified she "chatted with [Associate Circuit Judge] James Cooksey" and "his ad– his words were that he would require us to send notification to these parties." She added that Judge Cooksey "advised that he would not hear the case*

*without giving notice to the parents," and that she was simply "following what he said he was going to require to hear the case."*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

Ms. Chapman was claiming quasi-immunity since she was acting under the direction of the judge, but that particular argument fell apart.

*However, when Judge Cooksey was asked if he ever told Chapman not to accept an application without notifying Doe's parents, he testified, "Not to my recollection. I wouldn't have had any authority to do that unless something was filed and I looked at the law. It's not how I usually would operate."*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

What to do, what to do? Ms. Chapman says that the judge told her the court would need to notify the parents upon Ms. Doe filing the petition, but Judge Cooksey does not remember giving any such instruction. Furthermore, he says such direction would be counter to his routine practices. The District Court had denied Ms. Chapman's petition for summary judgment, which is why the case is at the Circuit Court. How did the court find?

*Because Doe's constitutional right to apply for a judicial bypass without notifying her parents is clearly established by Supreme Court precedent, this court need not address Chapman's other arguments about qualified immunity.*

*The district court's order denying summary judgment is affirmed.*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

The Circuit Court affirmed the District Court's order to deny summary judgment for Ms. Chapman. There was one dissenter.

*The bottom line is that there is no genuine issue of material fact here. The unrebutted evidence is that Chapman was acting "at [her] judge's direction," which entitles her to absolute immunity. Martin v. Hendren , 127 F.3d 720, 721 (8th Cir. 1997) (citation omitted).*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

Justice Stras disagreed with the rest of the court, claiming the the evidence that Ms. Chapman was acting under her judge's direction was unrebutted. I would disagree with that statement, not because the judge did not recall the conversation, but because he said it was not the way he would routinely handle such a question. The case was appealed to the Supreme Court, which gave a terse reply.

*The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit with instructions to dismiss the case as moot.*

**Chapman v. Doe – On Petition For Writ Of Certiorari**

That terse reply was, yes we'll take the case, no, the circuit court was wrong, now go dismiss the case. Why did the court think this case should be dismissed? Because, in their opinion it was moot.

*An issue presenting no real controversy.*

*Moot refers to a subject for academic argument. It is an abstr act question that does not arise from existing facts or rights.*

**Moot – The Free Legal Dictionary**

Most of the court thought the case was now an academic argument, and that it was no longer based on existing facts. Since the court did not give a reason for their opinion, we can only speculate. I say most of the court though, because

one justice, Justice Jackson, disagreed.

*When a case becomes moot, the losing party is generally deprived of the right to appeal the merits of an adverse decision.*

**Chapman v. Doe – On Petition For Writ Of Certiorari**

Justice Jackson is correct. Now that the judgment affirming the District Court's denial of Ms. Chapman's request for summary judgment has been vacated and the case declared moot, there is no place for Ms. Chapman to go to appeal the District Court's decision. Justice Jackson based her dissent on the way previous courts had handled the vacatur of a case by mooting, using the case *United States* v. *Munsingwear, Inc.*, as precedent.

*While these core principles warrant an exceedingly cautious approach to Munsingwear vacatur requests, our recent practices reflect a sharp uptick in the number of vacaturs awarded. I would not add this far-from-exceptional case to that growing list.*

**Chapman v. Doe – On Petition For Writ Of Certiorari**

**Conclusion**

So where does that leave our analysis? As frequently happens, this case can trace its origins to a failure of the legislature when it wrote the law.

*The current text of § 188.028 neither requires nor prohibits pre-hearing parental notification.*

***Doe v. Chapman, 30 F.4th 766, (8th Cir. 2022)***

Missouri law does not state whether or not parents or guardians were to be notified about a hearing for a minor requesting a judicial bypass to the state's parental consent laws. This leaves the question in the hands of judges rather

than the representatives of the people. While I think that parental notification should be the norm, I can also see situations where that would be detrimental to the child. Without good laws specifying under what situations parents should and should not be notified, it really comes down to the whim of the court.

Perhaps Ms. Chapman honestly believed there was a duty to notify the parents of the hearing. Where she or Judge Cooksey were mistaken was they were put in this situation because of the need for a judgment call. Because of that ambiguity, I cannot say for sure who was right in this case. It does show one important point we should all remember when dealing with the legal system: When it doubt, get it in writing.



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