

Hodgson v. Minnesota

Learner Outcomes

Students will:

1. Understand the role of the court in weighing competing interests in making decisions.
2. Develop opinions on the role of the court and legislature in regulating minors' lives.
3. Learn about the power of the courts and the legislature to regulate constitutional rights.

Materials needed: *Copies of* **BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader** (optional)
CASE SUMMARY: *Hodgson v. Minnesota*
Student Handout: *HODGSON v. MINNESOTA*

Grade level: Grades 9-12

Time needed: 1-2 class periods

Procedure:

1. Explain to students that they will be considering a case that affects a very controversial constitutional right: the privacy right for a woman to have an abortion.
2. Emphasize that the goal of the lesson is not to debate the Court's decision in *Roe v. Wade* but instead is to consider how the legislature has the power to develop regulations surrounding constitutional rights. (For example, the legislature has written laws that govern the First Amendment in the area of free press and defamation.)
3. Ask students why legislatures have this power. Is it to ensure that other's rights are not violated? Protecting the rights of all is a very difficult task. Explain that legislatures and courts weigh the interests of various groups when deciding solutions to problems. (In the free press example, the newspaper's right to publish, the public's right to know, and an individual's right to privacy and reputation are weighed and compared when developing laws that regulate this area.)
4. Have students brainstorm the interests of the state, parents, and minors in the health care issues of minors. (Emergency medical care, vaccinations, diet (school lunches), etc.) List on the board.

Procedure cont.

Interests might include:

State: sometimes pays for the health care
wants a healthy population
if kids are treated badly, state looks bad
investment in future
promote supportive family environment so that state does not have to take on that role

Parents: love children
want and know what is best for children
privacy of family
reputation as loving parents
“a man’s home is his castle”

need to be in control

Minors: privacy
know what is best
must live with the decision forever
want to be treated as an adult
equal rights

however, may not want to be responsible

5. Explain that one health care issue of great controversy is in the area of reproductive rights.
6. Explain the background of Dr. Jane Hodgson to the students. (**BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader.**)
7. Have students read the **CASE SUMMARY: *Hodgson v. Minnesota***. Review the legislation and discuss competing interests. What interests did the court identify? Are there interests that are missing?
8. To keep the focus of the case analysis on the constitutionality of the Minnesota notification law, have students complete the **Student Handout: *Hodgson v. Minnesota***. Tell students that the survey items are actual statements made by the court in the decision (which consisted of several opinions). These statements were made by the justices in support of their positions.
9. Select several statements, discuss, and determine if the class agrees or disagrees with the court’s reasoning. Members of the class might favor the positions held by the dissenting judges or by the majority judges. (Although the survey does not indicate which statements belong to the dissent or to the majority, in most cases it is fairly clear.)
10. Ask students how they would vote if they were judges on the court.
11. Have students evaluate the court’s effort to protect the competing interests. Was it fair? Effective? Is there a better solution?

BACKGROUND READING: Dr. Jane Hodgson, the abortion rights crusader

“On April 29, 1970, Dr. Jane Hodgson performed an abortion on Nancy Kay Widmyer in the Charles T. Miller Hospital, St. Paul, Minnesota. Nancy was a twenty-three-year-old mother of three children--six, three, and two years old--and the wife of a construction worker. She and her children had recently gone through a bout of rubella, which most people call German measles. Because she knew that women who contract rubella early in pregnancy suffer a great risk of having a deformed child, Nancy consulted Dr. Hodgson, her obstetrician, for advice. The doctor and her patient agreed that terminating the pregnancy was the best choice for Nancy. The abortion was uncomplicated and Nancy left the hospital in good health.

“The abortion was also illegal in Minnesota. . . .Dr. Jane Hodgson was an unlikely crusader against Minnesota’s criminal abortion law, which banned all abortions except those required to save a pregnant woman’s life. She could have performed the abortion on Nancy Widmyer quietly, without risking a prison term or loss of her medical license. Dr. Hodgson was no back-alley abortionist--she was . . .fifty five years old in 1970, a 1940 graduate of the University of Minnesota Medical School and former resident at the prestigious Mayo Clinic in Rochester, Minnesota. In thirty years of practice, she had delivered more than four thousand babies and performed fewer than a dozen abortions. Much of her practice and research was aimed at improving fertility and helping her patients have healthy, wanted children.”

The Courage of Their Convictions

Dr. Hodgson was indicted on May 21, 1970. She was convicted after a five-day trial and sentenced to a suspended thirty-day jail term and a year of unsupervised probation. After her criminal conviction, she appealed to the U.S. Supreme Court, which refused to hear the case, and the Minnesota Supreme Court, which simply sat on the appeal for more that two years.

During that time, twenty eight states removed some barriers to legal abortions. Minnesota was not one of them. Neither was Texas, where a poor women named Norma McCorvey finally persuaded the U.S. Supreme Court to listen. Disguising herself as “Jane Roe,” she challenged the constitutionality of the Texas law. In January 1973, Justice Harry Blackmun of the U.S. Supreme Court (a Minnesota native who had represented the Mayo Clinic for twenty years before being appointed judge) wrote the court’s opinion in *Roe v. Wade*, stating that the Constitution envisioned a right of privacy that was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”

Dr. Hodgson’s criminal conviction was reversed on February 2, 1973, citing the *Roe v. Wade* decision. During the next eight years, Dr. Hodgson challenged attempts made by the Minnesota legislature to restrict abortion rights. She was generally successful, but a 1981 challenge of the parental notification and 48-hour-wait law failed.

Source: *The Courage of their Convictions*, Peter Irons

CASE SUMMARY: *Hodgson v. Minnesota*

497 U.S. ____ (1990) or 110 S.Ct. 2926 (1990)

In 1981, the Minnesota Legislature passed a law providing that:

(1) no abortion was to be performed on an unemancipated minor (minor under the direction and care of a parent or guardian) until at least 48 hours after the minor’s physician or an agent gave written notice to the parent (defined in the law to mean both parents) either by delivery personally to the parent or by certified mail, and

(2) such notice was mandatory unless

(a) the attending physician certified that an immediate abortion was necessary to prevent the minor’s death and there was insufficient time to provide the required notice,

(b) the abortion was authorized in writing by the person or persons entitled to notice, or

(c) the minor declared that she was a victim of parental abuse or neglect, in which case notification of the abuse had to be given to the proper authorities.

The legislature, planning for the likelihood that the law would be challenged and found unconstitutional, added a provision that is commonly called the “*judicial bypass provision*.” It stated:

(3) If the minor did not want to comply with the notification requirements, she could ask a judge to authorize an abortion if the judge determined that

(a) the minor was mature and capable of giving informed consent, or

(b) an abortion without parental notification would be in the minor’s best interest.

In 1981, two days before the law was to become effective, Dr. Hodgson and others filed a lawsuit, claiming that the law was a violation of the Minnesota and U.S. Constitutions. In 1982, the Federal District Court issued a preliminary injunction, stopping the application of parts 1 and 2, which required parental notification without the judicial bypass, until a trial could be held.

After a five-week trial in 1986, the court found that the law was unconstitutional. On appeal, the U.S. Court of Appeals for the Eighth Circuit reversed the district court’s judgment. The U.S. Supreme Court agreed to hear the case. A majority of the members of the U.S. Supreme Court decided that although the two-parent notice requirement without judicial bypass (parts 1 and 2) was unconstitutional, the provision of the bypass in the law (part 3) made the notice requirement and the 48-hour wait constitutional.

In an five-four decision, the court balanced the interests of three groups: the state, parents, and minors.

First, “the State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.” The court found that the 48-hour wait reasonably furthered the legitimate state interest in making sure that the minor’s decision is knowing and intelligent.

However, the court also found that the notification of both parents did not further a legitimate state interest. The court said “Not only does two-parent notification fail to serve any state interest with respect to functioning families, it disserves the state interest in protecting and assisting the minor with respect to dysfunctional families. . . . In these circumstances { divorce, absent parent, abuse, neglect }, the statute was not merely

CASE SUMMARY: *Hodgson v. Minnesota* cont.

ineffectual in achieving the State’s goals but actually counterproductive.” The court said that although the state claims that the main purpose of the law is to protect the well-being of minors by encouraging them to discuss with their parents the decision to terminate their pregnancies, the state could not require family members to talk to one another.

“Second, parents have an interest in controlling their children’s education and upbringing, and a natural parent’s stake in the relationship with a child may rise to the level of a protected liberty interest if the parent has demonstrated his commitment by assuming personal, financial, or custodial responsibility for the child.” The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one’s children have been deemed essential. However, the court questioned the requirement of notification to both parents, stating that providing other medical care to minors only requires the notification and consent of one parent.

After acknowledging that a parent’s interest in shaping a child’s values and lifestyle is important, the court said it cannot overcome the liberty interest of a minor acting with the consent of a single parent. “It follows that the combined force of the separate interest of one parent and the minor’s privacy interest must outweigh the separate interest of the second parent.”

The court further addressed the minor’s interests by providing reasons for treating minor women differently than adult women. “Parental notice and consent are qualifications that typically may be imposed by the State on a minor’s right to make important decisions. As 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.” However, the court weighed the state’s interest in the two-parent notification requirement against the minor’s constitutional right to decide whether or not to bear a child (protected by the Due Process Clause of the 14th Amendment) and determined that the minor’s interest outweighed the state’s interest.

Thus, the court held that the two-parent notification requirement was unreasonable and overburdensome on the minor and found it unconstitutional.

The court then went on to consider the judicial bypass provision. Declaring the provision constitutional, the court agreed with the state’s argument that the bypass procedure saves the notification and delay requirements because it provides an alternative way to obtain a legal abortion for minors who would be harmed by those requirements.

The court’s decision in *Hodgson* is actually two decisions. First, a majority of the members of the court joined in an opinion holding that the two-parent notice requirement **without** judicial bypass was unconstitutional. Second, although unable to agree on an opinion (resulting in several concurring opinions) five members agreed that the two-parent notification requirement **with** the judicial bypass provision was constitutional.

Student Handout: *HODGSON v. MINNESOTA*

The following statements were made by the Justices of the U.S. Supreme Court in their opinions for *Hodgson v. Minnesota*. Some of the statements were taken from the majority opinions, some from the dissenting opinions. Which do you agree with? Mark each statement according to your opinion.

Do you:

Strongly **D**isagree **D**isagree **U**ndecided **A**gree **S**trongly **A**gree

	SD	D	U	A	SA
1. The State has a strong and legitimate interest in the welfare of its young citizens.					
2. Young people are immature, inexperienced, and lack judgment. This impairs their abilities to exercise their rights wisely.					
3. The State has no legitimate interest in conforming family life to a state-designed ideal by requiring family members to talk together.					
4. Requiring notification of both parents discourages parent-child communication.					
5. A natural parent who has demonstrated sufficient commitment to his or her children is entitled to raise the children free from undue state interference and should not be required to notify an absent parent.					
6. It is clear that a requirement that a minor wait 48 hours after notifying a single parent of her intention to get an abortion would reasonably further the legitimate state interest in ensuring that the minor's decision is knowing and intelligent.					
7. In thousands of dysfunctional families affected by this statute, the two-parent notice requirement would prove positively harmful to the minor and her family.					
8. The State has no more interest in requiring all family members to talk with one another than it has in requiring certain of them to live together.					

Student Handout: *HODGSON* v. *MINNESOTA* cont.

	SD	D	U	A	SA
<p>9. Minors are treated differently from adults in our laws, which reflects the simple truth that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.</p> <p>10. Neither the scope of a woman’s privacy right nor the magnitude of a law’s burden is diminished because a woman is a minor.</p> <p>11. Requiring a minor to wait 48 hours after notifying a parent reasonably furthers legitimate state interests.</p> <p>12. A notification requirement compels many minors seeking an abortion to travel to a State without such a requirement to avoid notifying a parent.</p> <p>13. A substantial proportion of pregnant minors voluntarily consult with a parent regardless of the existence of a notification requirement.</p> <p>14. The prospect of having to notify a parent causes many young women to delay their abortions thereby increasing the health risks of the procedure.</p> <p>15. The 48 hour delay is designed to provide parents with adequate time to consult with their daughters.</p> <p>16. Forced notification in dysfunctional families is likely to sever communication patterns and increase the risk of violence.</p> <p>17. The requirement permits parents to provide doctors with relevant information about their daughters’ medical history and to assist with ensuring that proper after-care procedures are followed.</p> <p>18. The delay period permits the parent to inquire into the competency of the doctor performing the abortion.</p>					

Student Handout: *HODGSON* v. *MINNESOTA* cont.

	SD	D	U	A	SA
<p>19. The statute serves the interest of protecting parent’s independent right to determine and strive for what they believe to be best for their children.</p> <p>20. The judicial bypass procedure is unconstitutional because it effectively gives a judge an absolute veto over the decision of the physician and his patient.</p> <p>20. Some minors are so upset by the bypass procedure that they consider it more difficult than the medical procedure itself.</p> <p>21. The law does not give to children many rights given to adults, and provides, in general, that children can exercise the rights they do have only through and with parental consent.</p> <p>22. A State pursues a legitimate end under the Constitution when it attempts to foster and preserve the parent-child relationship by giving all parents the opportunity to participate in the care and nurture of their children.</p> <p>23. In many families, whether the parents are living together or apart, notice to both parents serves the interests of the parents and the minor.</p> <p>24. When dealing with extremely sensitive issues, such as the one involved here, the appropriate forum for their resolution is the legislature.</p> <p>25. We should not forget that the legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.</p>					