
SIXTEEN CANDLES ON MY WEDDING CAKE: IMPLICATIONS OF
BANNING CHILD MARRIAGE IN AMERICA

MARIE JOHNSON-DAHL*

While the United States has worked to address the issue of child marriage abroad, child marriage still occurs on U.S. soil through a loophole: many state marriage statutes allow minors to marry with the permission of their parents or with judicial approval—sometimes, as young as twelve. This is especially problematic where parents marry their pregnant daughters to their rapists or to men much older than themselves. In response, an increasing number of state legislators have passed bills amending their marriage laws, raising the minimum age of marriage, in an effort to protect minor girls.

This Note explores the rapidly changing laws surrounding child marriage in the United States, analyzing the various arguments for and against it. In doing so, it seeks to determine which minors are marrying, whether minors may have any constitutional right to marriage, and whether minors wishing to marry might be able to stake a claim to religious liberty. This Note ultimately argues that states should tread with caution in making such drastic legislative changes. Though the legislators and lobbyists advocating for this reform undoubtedly have good intentions in seeking to advance the rights and the well-being of young women and minor girls, their actions could, in effect, do just the opposite. The dangerous, paternalistic rhetoric with which they are passing this legislation—whereby they argue that minor girls are incapable of rational decision-making—could have unintended consequences for the rights of minors in other contexts. This includes access to reproductive healthcare, medical treatment, organ donation, and vaccinations. Thus, even if no religious right or constitutional right to marriage exists for minors, an outright, blanket ban on child marriage is wrong on public policy grounds. This Note advocates that states must take less stringent regulatory positions towards child marriage, implementing procedural safeguards to prevent against abuse or coercion,

* J.D. 2020, University of Illinois College of Law; B.A., University of Illinois at Urbana-Champaign. I would like to thank the editors, members, and staff of the *University of Illinois Law Review* for their time and dedication to this journal. I would also like to thank Professor Jennifer K. Robbennolt and Professor Jason Mazzone—as well as Phyllida Burlingame of the ACLU of Northern California—for their valuable input and perspectives that helped shape this Note. This Note is dedicated to my parents who fostered my love of writing from an early age—always placing a copy of *The New Yorker* on the dining room table, driving me to youth writing programs, and instilling in me a love of words. Thank you for always believing in me and encouraging me. I owe all that I have to you, your love, and your sacrifices.

while being cognizant of their existing needs and recognizing minors as autonomous individuals.

TABLE OF CONTENTS

I.	INTRODUCTION	1047
II.	BACKGROUND.....	1050
	<i>A. Child Marriage in the Courts</i>	1050
	<i>B. Child Marriage by the Numbers</i>	1053
	<i>C. State Legislation and Reform</i>	1056
	1. <i>Virginia</i>	1057
	2. <i>Connecticut</i>	1057
	3. <i>New York</i>	1058
	4. <i>Kentucky</i>	1059
	5. <i>Delaware</i>	1059
	6. <i>New Jersey</i>	1060
	7. <i>Missouri</i>	1061
	8. <i>California</i>	1061
	9. <i>Ohio</i>	1063
	10. <i>New Hampshire</i>	1063
	11. <i>Georgia</i>	1064
III.	ANALYSIS	1066
	<i>A. Social Problems with Child Marriage Loophole</i>	1066
	1. <i>Early Marriage and Women’s Health</i>	1066
	2. <i>Educational Attainment and Economic Independence</i>	1068
	3. <i>Early Marriages Are Oftentimes Unhealthy Marriages</i>	1068
	<i>B. Legal Problems Created by Child Marriage</i>	1069
	1. <i>Unemancipated Minors Lack of Rights</i>	1069
	2. <i>Marriage of Minors Contradicts Statutory Rape Laws</i>	1069
	3. <i>Inadequacy of Parental Consent and Judicial Approval Requirements</i>	1070
	<i>C. Addressing the Arguments in Favor of Child Marriage: Do Minors Have a Right to Marry?</i>	1071
	1. <i>Do Minors Have a Fundamental Right to Marriage?</i>	1072
	2. <i>Claims to Religious Freedom</i>	1073
	a. <i>Who is Marrying?</i>	1073
	b. <i>Are These Statutes Targeting a Specific Religion?</i>	1079
	3. <i>Acknowledging Adolescents as Autonomous Individuals</i>	1080
	a. <i>Minors’ Rights to Reproductive Decision-Making</i>	1082
	b. <i>Minors’ Rights in Medical Decision-Making</i>	1085
IV.	RECOMMENDATION	1089
	<i>A. Tailoring to the Needs of Each State</i>	1090
	<i>B. Emancipation</i>	1091
	<i>C. Parental Consent</i>	1091

D. <i>Reforming Judicial Approval</i>	1092
E. <i>Meaningful Safeguards Against Coercion</i>	1093
F. <i>Building in a Religious Exemption to Marriage Statutes</i>	1094
G. <i>Extraneous Policy Solutions</i>	1094
V. CONCLUSION.....	1095

I. INTRODUCTION

In 1983, Dawn Tyree was eleven years old and in fifth grade.¹ That year, a family friend began to molest her. A year later, she became pregnant. Her parents, religious conservatives, were opposed to abortion. To shield themselves from embarrassment, they married Dawn to her rapist. Consequently, Dawn’s “abuser end[ed] up not in handcuffs but showered with wedding gifts.”² Dawn’s marriage at age thirteen required the approval of a judge. Facing coercion and manipulation from her parents, she told the judge she wanted to get married. Today, she sees the marriage for what it was: “a way to cover up the rape”; “a way to keep [her] from being an unwed teen mother”; “a way to avoid any child services investigation; and “a way to keep [her] husband out of prison.”³ Dawn is just one of many women in the United States who have come forward regarding their experiences with forced⁴ or coerced marriage as minors.⁵

Contrast this with the case of Maria Vargas who, at sixteen, married her twenty-five-year-old boyfriend.⁶ Though Maria’s mother begged her to reconsider, she reluctantly drove Maria and her boyfriend to West Virginia, where a minor may marry at age sixteen with the written consent of a parent.⁷ Despite their community’s condemnation of the relationship, Maria and her husband love one another, and he is a committed father-figure to her child. As a teen mom, Maria is reliant on him for the familial structure and financial support she desires. She believed that marriage “was her decision . . . and not her mother’s.”⁸

1. Nicholas Kristof, Opinion, *An American 13-Year-Old, Pregnant and Married to Her Rapist*, N.Y. TIMES (Jun. 1, 2018), <https://www.nytimes.com/2018/06/01/opinion/sunday/child-marriage-delaware.html?smid=fb-nytimes&smtyp=cur>.

2. *Id.*

3. *Id.*

4. Forced marriage is a marriage lacking “full and free consent of one or both parties and typically involves force, fraud, or coercion.” See Casey Swegman, *The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States*, NAT’L ONLINE RESOURCE CTR. ON VIOLENCE AGAINST WOMEN 1 (Feb. 2016), http://www.tahirih.org/wp-content/uploads/2016/02/AR_ForcedMarriage.pdf.

5. See, e.g., Laura A. Bischoff, *Investigation Reveals Kids as Young as 14 Are Getting Married in Ohio*, DAYTON DAILY NEWS, (Sept. 10, 2017), <https://www.daytondailynews.com/news/crime-law/should-children-allowed-get-married-ohio-thousands/aku65cwegGyrfI9uRzIzSM/>; Elizabeth Wynne Johnson, *Kentucky Votes to Ban Child Marriage*, NPR (Mar. 16, 2018, 6:51 PM), <https://www.npr.org/sections/thetwo-way/2018/03/16/594253182/kentucky-votes-to-ban-child-marriage>.

6. Terrence McCoy, *You Shouldn’t Be Doing This*, WASH. POST (Oct. 5, 2018), <https://www.washingtonpost.com/news/national/wp/2018/10/05/feature/child-marriage-in-the-u-s-is-surprisingly-prevalent-now-states-are-passing-laws-to-make-it-harder/>.

7. See W. VA. CODE ANN. § 48-2-301 (West 2019); McCoy, *supra* note 6.

8. McCoy, *supra* note 6.

The term “child marriage” often evokes images of young girls in developing countries who, on the pages of National Geographic,⁹ appear melancholic as they are married off to men twice their age. The United States has worked to address the issue of child marriage in other countries.¹⁰ It has called marriage under the age of eighteen a “human rights abuse that . . . produces devastating repercussions for a girl’s life, effectively ending her childhood . . . [and] forces a girl into adulthood and motherhood before she is physically and mentally mature and before she completes her education.”¹¹ During a 2015 visit to Kenya, former President Barack Obama spoke out against child marriage, stating that “[t]here’s no place in civilized society for the early or forced marriage of children.”¹² Yet, child marriage occurs on U.S. soil.¹³

Though the age of marriage in most states is eighteen, there is often a loophole: minors can marry with parental consent or a combination of both parental consent and judicial approval.¹⁴ For example, though the minimum age for marriage in North Carolina is eighteen, a minor as young as sixteen can marry with parental consent.¹⁵ If she is pregnant and obtains both parental consent and judicial approval, she can marry at just fourteen.¹⁶ Importantly, fourteen states have *no* minimum age for marriage so long as the minor meets the statutory requirements.¹⁷ As a result, minors as young as twelve could marry in these states.

But many states have recently been working to close the loophole—disallowing marriage in all circumstances under the age of eighteen.¹⁸ In the past three years, more than twenty states have introduced legislation to raise the minimum age of marriage.¹⁹ Under these new statutes, a minor who was previously able to marry no longer can. Practically speaking, where the age of marriage has been raised to seventeen, a minor aged sixteen previously had the right to marry. Now, that right is denied.

9. See, e.g., Nina Strohlic, *India’s Forgotten Child Brides*, NAT’L GEOGRAPHIC (Apr. 19, 2018), <https://www.nationalgeographic.com/photography/proof/2018/04/child-brides-marriage-shravasti-india-culture/>.

10. International Protecting Girls by Preventing Child Marriage Act of 2011, S. 414, 112th Cong. (2011).

11. U.S. DEP’T OF STATE, UNITED STATES GLOBAL STRATEGY TO EMPOWER ADOLESCENT GIRLS, 5–6 (2016), <https://2009-2017.state.gov/documents/organization/254904.pdf>.

12. Press Release, The White House Office of the Press Sec’y, Remarks by President Obama to the Kenyan People (July 26, 2015).

13. Camellia Burris, *Why Domestic Institutions Are Failing Child Brides: A Comparative Analysis of India’s and the United States’ Legal Approaches to the Institution of Child Marriage*, 23 TUL. J. INT’L & COMP. L. 151, 164–65 (2014).

14. Melissa Jeltsen, *Grown Men Are Exploiting Loopholes in State Laws to Marry Children*, HUFFPOST (Aug. 30, 2017, 12:01 AM), https://www.huffpost.com/entry/child-marriage-state-laws_n_59a5c70ee4b00795c2a27e19.

15. N.C. GEN. STAT. ANN. § 51-2 (West 2019).

16. *Id.*; see *Understanding State Statutes on Minimum Marriage Age*, TAHIRIH JUST. CTR. (Oct. 11, 2018) [hereinafter *Understanding State Statutes*], <https://www.tahirih.org/wp-content/uploads/2016/11/FINAL-Oct-2018-State-Statutory-Compilation.pdf>.

17. See *infra* Table 1.

18. See *infra* Section II.C.

19. Anjali Tsui, *Delaware Becomes First State to Ban Child Marriage*, PBS FRONTLINE (May 9, 2018), <https://www.pbs.org/wgbh/frontline/article/delaware-becomes-first-state-to-ban-child-marriage/>.

This Note will analyze the arguments for and against child marriage, questioning whether minors should be entitled to the right to marry on constitutional grounds or as a matter of policy. Though there has been a recent push to close the loophole out of concern for the protection of minor girls, this has been met with opposition.²⁰ Those arguing against a blanket ban on child marriage have pointed to religious freedom and individual autonomy.²¹ Some argue that it would be too harsh to forbid a pregnant minor from marrying, or that a ban would only push coerced marriages further under the rug.²² As such, there is a battle between two groups: those seeking to raise the marriage age in each state to eighteen to protect minors and those cautioning that such a drastic measure could harm minors in other ways.²³ While supporters of an outright ban of the marriage of minors have good intentions, this Note argues that such a measure is inequitable, impractical, and fails to recognize the interests of *all* minors. Further, an outright ban on marriage of minors could set a dangerous precedent for how the decision-making capacity of minors is viewed in other contexts. Instead, state statutes should address the child marriage issue in a way that prevents coerced and forced marriages, while still respecting the autonomy of minors and the right to marry.

Part II of this Note will (1) provide a background of the child marriage loophole in the United States; (2) consider how courts have addressed the rights of minors to marry; and (3) look at legislative reform efforts in several states. Part III will (1) analyze the social repercussions and legal problems created by child marriage and (2) address two arguments made against recent reform efforts to close the child marriage loophole—namely, the arguments of religious freedom and adolescent autonomy. Part IV advises against placing an outright ban on the marriage of minors under all circumstances. Instead, it recommends enacting appropriate safeguards to prevent coerced or forced marriages, while still respecting the right of minors to marry out of their own volition or religious beliefs. Specifically, this Note recommends that states require a family law judge to approve the marriage license and adopt a judicial procedure similar to that of California. It also recommends that states invoke a “best interest of the minor” standard and mandate the appointment of a guardian ad litem (“GAL”) to minors.²⁴ Finally, it recommends that statutes contain some nuance recognizing that minors may seek to marry for religious reasons.

20. See *infra* Section II.C.

21. *Id.*

22. See *infra* text accompanying notes 132–33, 202–07.

23. Scott Dance, *Effort to Limit Teen Marriage in Maryland Failed amid Concerns from Abortion Rights, Women's Groups*, BALT. SUN (Apr. 12, 2018, 6:20 PM), <https://www.baltimoresun.com/news/maryland/politics/bs-md-marriage-age-20180412-story.html> (quoting Diana Philip, executive director of NARAL Pro-Choice Maryland).

24. *Guardian Ad Litem*, BLACK'S LAW DICTIONARY (11th ed. 2019).

II. BACKGROUND

“Fifteen-year-olds should be coloring in coloring books or something.”²⁵

Clothed in wedding dresses and donning chains, protesters and the lobbyist group Unchained At Last have descended upon the steps of capitol buildings, state-by-state, calling for an outright ban to child marriage across the nation.²⁶ In doing so, they point to the harmful effects that child marriage has on young girls—namely, decreased educational and economic attainment, physical health problems associated with early pregnancy, and unhealthy relationships.²⁷ To accurately analyze this movement, however, it is crucial to explore how courts have grappled with the right of minors to marry and the reasoning behind various states’ efforts to raise the marriage age.

A. *Child Marriage in the Courts*

American society has placed the utmost importance on the institution of marriage.²⁸ Through a line of cases, the Supreme Court has repeatedly held that marriage constitutes a fundamental right.²⁹ In *Loving v. Virginia*, a grand jury indicted an interracial couple for violating a Virginia law banning interracial marriages.³⁰ The couple filed suit seeking to vacate the judgment against them.³¹ The Supreme Court—invoking both the Equal Protection and Due Process clauses of the Fourteenth Amendment—struck down the law banning interracial marriage on the grounds that it interfered with the fundamental right to marry.³² In doing so, the Court held that such classifications based on race must be subjected to strict scrutiny.³³ Only if the law can “be shown to be necessary to the accomplishment of some permissible state objective,” independent of racial discrimination, can it be constitutional.³⁴ The Court held that laws restricting

25. Eric Adler, *Missouri is a Destination Wedding Spot—for 15-Year-Old Brides*, KAN. CITY STAR (Mar. 11, 2018, 5:30 AM) [hereinafter Adler, *Missouri is a Destination Wedding Spot*], <https://www.kansas-city.com/news/state/missouri/article204287484.html>.

26. See *Chain-In*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/chain-in/> (last visited Apr. 9, 2020); see, e.g., Bennett Leckrone, *Protestors March Through Capitol, Urge Pa. Legislators to Eliminate Child Marriage Loophole*, PENN LIVE (June 26, 2019), <https://www.pennlive.com/news/2019/06/protestors-march-through-capitol-urge-pa-legislators-to-eliminate-child-marriage-loopholes.html>.

27. *Child Marriage—Devastating Consequences*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/child-marriage-devastating-consequences/> (last visited Apr. 9, 2020).

28. See, e.g., *Connell v. Francisco*, 898 P.2d 831, 835 (Wash. 1995); *City of Ladue v. Horn*, 720 S.W.2d 745, 747 (Mo. Ct. App. 1986).

29. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2591 (2015); *Turner v. Safley*, 482 U.S. 78, 95 (1987); *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978); *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

30. 388 U.S. at 3.

31. *Id.*

32. *Id.* at 11–12.

33. *Id.*

34. *Id.*

marriage based on race do not satisfy strict scrutiny and violate the Equal Protection Clause.³⁵

In 1978, the Court reiterated that marriage constituted a fundamental right in *Zablocki v. Redhail*, holding that individuals owing child support could not be excluded from the right to marry.³⁶ In *Zablocki*, the Court stated that, “[w]hen a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests.”³⁷ In 1987, the Court further emphasized its belief that marriage constitutes a fundamental right when it held that prison inmates cannot be denied this right.³⁸ But the landmark case of *Obergefell v. Hodges* is perhaps one of the most significant decisions in this line of cases.³⁹

In *Obergefell*, the Court granted certiorari to a group of similarly situated plaintiffs who challenged state laws excluding same-sex couples from the right to marry, as these laws defined marriage as being between one man and one woman.⁴⁰ *Obergefell* reiterated that marriage is a fundamental right and the Court held that laws excluding same-sex couples from the right to marry constituted a violation under the Fourteenth Amendment’s Due Process and Equal Protection Clauses.⁴¹ The Court also held that laws denying some classes of people the ability to marry are per se invalid unless those laws satisfy strict scrutiny.⁴² Justice Kennedy, writing for the majority, stated, “The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Same-sex couples may exercise the fundamental right to marry.”⁴³ The Court provided four reasons as to why the right to marriage is a fundamental right and why, consequently, same-sex couples cannot be excluded: (1) “the right to personal choice regarding marriage is inherent in the concept of individual autonomy”; (2) “the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals”; (3) marriage “safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education”; and (4) “marriage is a keystone of our social order,” and “[t]here is no difference between same- and opposite-sex couples with respect to this principle.”⁴⁴ In addition, Justice Kennedy noted:

35. *Id.* at 12.

36. 434 U.S. 374, 386–87 (1978).

37. *Id.* at 388.

38. *Turner v. Safley*, 482 U.S. 78, 98 (1987).

39. 135 S. Ct. 2584, 2588 (2015).

40. *Id.* at 2593.

41. *Id.* at 2597 (“The fundamental liberties protected by the [Fourteenth Amendment’s Due Process Clause] extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs.”).

42. But it is important to note that the Court did not explicitly use the term “strict scrutiny” in its decision. *Id.*

43. *Id.* at 2604–05.

44. *Id.* at 2599–2601.

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves.⁴⁵

Importantly, Justice Kennedy also stated that a fundamental right is not dependent upon the democratic process.⁴⁶ As such, “[a]n individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act,” as “fundamental rights may not be submitted to a vote.”⁴⁷

Throughout this line of cases, the Court did not grant or extend the right to marry to particular classes. Instead, it held that the right to marry is fundamental and extends to all.⁴⁸ As such, if the State seeks to exclude a particular class from this right, it must justify its exclusion under strict scrutiny.⁴⁹

Despite this line of cases, the Court has yet to decide a case dealing directly with child marriage. Consequently, Supreme Court dialogue pertaining to this topic is limited. The Court has also held that the State has the power to regulate marriage as it sees fit.⁵⁰ Hence, the age at which one may marry is determined by the state in which that individual resides.⁵¹ Of course, cases such as *Loving* and *Obergefell* made no mention of whether marriage, as a fundamental right, can be denied to minors.⁵² Dicta in related cases uphold the notion that marriage of minors is rightfully prohibited, as minors lack the requisite maturity and decision-making capacity to enter into a valid marriage.⁵³ The Court touched upon this idea in *Roper v. Simmons* when it implied that marriage is a “sophisticated” right not afforded to minors.⁵⁴ In addition, in *Carey v. Population Services*, Justice Powell, in his concurring opinion, asserted that states may regulate minors’ access to the “cluster of constitutionally protected choices’ relating to sex and marriage via consent laws and minimum age for marriage.”⁵⁵

Though there is a dearth of case law in the Supreme Court directly dealing with whether marriage as a fundamental right extends to minors, the Second

45. *Id.* at 2608.

46. *Id.* at 2605–06.

47. *Id.*

48. *Id.* at 2602 (“If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.”).

49. *See id.* at 2591; *see also* *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

50. *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978). *See also* Rosanne Piatt, *Overcorrecting the Purported Problem of Taking Child Brides in Polygamist Marriages: The Texas Legislature Unconstitutionally Voids All Marriages by Texans Younger than Sixteen and Criminalizes Parental Consent*, 37 ST. MARY’S L.J. 753, 762 (2006).

51. Piatt, *supra* note 50, at 762.

52. *See generally* *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967).

53. *Roper v. Simmons*, 543 U.S. 551, 619 (2005) (Scalia, J., dissenting); *Carey v. Population Servs. Int’l*, 431 U.S. 678, 684–85 (1977).

54. 543 U.S. at 619.

55. 431 U.S. at 706–07 (Powell, J., concurring).

Circuit addressed child marriage in *Moe v. Dinkins*.⁵⁶ In *Moe*, the two teenage plaintiffs, who were already parents, “wish[ed] to marry in order to cement their family unit and to remove the stigma of illegitimacy from their son.”⁵⁷ The minor female had not received parental consent required under the New York statute and, as a result, the couple was unable to wed.⁵⁸ The plaintiffs, on behalf of themselves and similarly-situated persons, challenged the New York statute. Nonetheless, the district court upheld the parental consent law as not violative of their due process rights.⁵⁹ In doing so, it stated that the harm inflicted in the denial of their marriage was only “a temporary situation at worst.”⁶⁰ Once the minors achieved the age of majority, the court reasoned, they would be able to marry and “eras[e] the mark of illegitimacy” cast upon their child.⁶¹ In addition, it held that, “[t]he State possesses paternalistic power to protect and promote the welfare of children who lack the capacity to act in their own best interest. The State’s interests in mature decision-making and in preventing unstable marriages are legitimate under its *parens patriae* power.”⁶² Affirming, the Second Circuit upheld the parental consent requirement under rational basis review, citing the peculiar vulnerability of children and their lack of critical decision-making capacity.⁶³ Importantly, it noted that, “[w]hile courts have subjected certain restrictions on the right to marry to heightened scrutiny, . . . the right of minors to marry has not been viewed as a fundamental right deserving strict scrutiny.”⁶⁴

B. Child Marriage by the Numbers

Though most state marriage laws require the parties be at least eighteen, “nearly every state allows at least some people under age 18 to marry.”⁶⁵ Some states have *no* minimum age for marriage in circumstances in which the statutory requirements are met.⁶⁶ At least 207,459 minors were married in the United States between 2000 and 2015.⁶⁷ Interestingly, child marriage is most common in the Southern United States.⁶⁸ Texas and West Virginia have the highest rates

56. 533 F. Supp. 623, 630–31 (1981).

57. *Id.* at 625.

58. *Id.* at 626.

59. *Id.*

60. *Id.* at 630.

61. *Id.*

62. *Id.* at 629 (citations omitted).

63. *Moe v. Dinkins*, 669 F.2d 67, 68 (1982).

64. *Id.*

65. Charlotte Alter, *Why It’s Still Legal for Underage Girls to Marry in the U.S.*, TIME (June 1, 2017), <http://time.com/4800808/why-its-still-legal-for-underage-girls-to-marry-in-the-u-s/>.

66. *See, e.g.*, ME. REV. STAT. ANN. tit. 19-A, § 652 (2019); MASS. GEN. LAWS ANN. ch. 207, § 25 (West 2019); MICH. COMP. LAWS ANN. § 551.201 (West 2019); MISS. CODE ANN. § 93-1-5 (West 2019); N.M. STAT. ANN. § 40-1-6 (West 2019).

67. Anjali Tsui et al., *Child Marriage in America*, PBS FRONTLINE (July 6, 2017), <http://apps.frontline.org/child-marriage-by-the-numbers/>.

68. David McClendon & Aleksandra Sandstrom, *Child Marriage Is Rare in the U.S., Though This Varies by State*, PEW RES. CTR. (Nov. 1, 2016), <http://www.pewresearch.org/fact-tank/2016/11/01/child-marriage-is-rare-in-the-u-s-though-this-varies-by-state/>.

of child marriage, with approximately seven out of every 1,000 minors age fifteen through seventeen married in 2014.⁶⁹

TABLE 1: CHILD MARRIAGE BY STATE

State	Minimum Marriage Age	Minimum Age at Which a Minor May Marry if the Minor Meets Statutory Requirements ⁷⁰
Alabama	18	16
Alaska	18	14
Arizona	18	16 ⁷¹
Arkansas	18	17
California	18	No minimum age
Colorado	18	16
Connecticut	18	16
Delaware	18	18
District of Columbia	18	16
Florida	18	17 ⁷²
Georgia	18	17
Hawaii	18	15
Idaho	18	No minimum age
Illinois	18	16
Indiana	18	15
Iowa	18	16 ⁷³
Kansas	18	15
Kentucky	18	17
Louisiana	18	No minimum age
Maine	18	No minimum age
Maryland	18	15
Massachusetts	18	No minimum age
Michigan	18	No minimum age
Minnesota	18	16
Mississippi	21	No minimum age ⁷⁴
Missouri	18	16
Montana	18	16
Nebraska	19	17
Nevada	18	17
New Hampshire	18	16
New Jersey	18	18
New Mexico	18	No minimum age
New York	18	17
North Carolina	18	14
North Dakota	18	16
Ohio	18	17
Oklahoma	18	No minimum age ⁷⁵
Oregon	18	17

69. *Id.*

70. By “statutory requirements,” this table refers to a minor obtaining either parental consent or parental consent and judicial approval.

71. The older spouse must be not more than three years older than the younger spouse.

72. The older spouse must be not more than two years older than the younger spouse.

73. For a sixteen-year-old to marry in Iowa, she must obtain both parental consent and judicial approval.

74. Mississippi’s statute is gendered in that a seventeen-year-old male may marry with parental consent, but a fifteen-year-old girl may marry with parental consent. If a minor obtains both parental consent or judicial approval, the minor may marry at any age.

75. In the case of pregnancy Okla. Stat. Ann. tit. 43, § 3.

Pennsylvania	18	No minimum age
Rhode Island	18	No minimum age
South Carolina	18	16
South Dakota	18	16
Tennessee	18	17
Texas	18 ⁷⁶	16
Utah	18	16
Vermont	18	16
Virginia	18	16
Washington	18	No minimum age
West Virginia	18	No minimum age
Wisconsin	18	16
Wyoming	18	No minimum age

Source: *Understanding State Statutes on the Minimum Marriage Age and Exceptions*, TAHIRIH JUSTICE CENTER (May 24, 2018).

Importantly, the vast majority of those underage spouses are girls.⁷⁷ Between 2000 and 2010, 167,000 minors were married in thirty-eight states.⁷⁸ Many of these marriages were to men aged eighteen or older.⁷⁹ Sometimes, these marriages are between young girls and considerably older men.⁸⁰ Additionally, between 2000 and 2015, over 207,000 minors were married in the United States.⁸¹ Of those minors, 985 were fourteen-years-old, and ten were just twelve-years-old.⁸² Child marriage is often gendered in that, in some states, the minimum age for marriage is lower for girls than it is for boys. For example, in Mississippi, the minimum age to marry is seventeen for boys but fifteen for girls.⁸³ Some states—such as Arkansas, Indiana, Oklahoma, and New Mexico—allow a minor’s pregnancy to serve as the sole basis for granting a marriage license.⁸⁴ Additionally, many states allow a clerk—rather than a judge—to issue marriage licenses to minors.⁸⁵

Though a number of states focus on the best interest of the minor, states rarely outline the factors judges must use in reaching their decisions. North Carolina is one of the few states that does.⁸⁶ In North Carolina, the district court judge must consider the opinion of the parents or guardians, the opinion of a GAL, the relationship between these individuals and the minor, and “[a]ny

76. Unless a minor age sixteen or seventeen has been granted emancipation.

77. *Id.*

78. Fraidy Reiss, *Why Can 12-Year-Olds Still Get Married in the United States?*, WASH. POST (Feb. 10, 2017, 11:03 AM), https://www.washingtonpost.com/posteverything/wp/2017/02/10/why-does-the-united-states-still-let-12-year-old-girls-get-married/?noredirect=on&utm_term=.e717372fa5c9.

79. *Id.*

80. *Child Marriage—Shocking Statistics*, UNCHAINED AT LAST, <http://www.unchainedatlast.org/child-marriage-shocking-statistics/> (last visited Apr. 9, 2020).

81. V.V.B., *Why America Still Permits Child Marriage*, ECONOMIST (Jan. 3, 2018), <https://www.economist.com/the-economist-explains/2018/01/03/why-america-still-permits-child-marriage>.

82. *Id.*

83. MISS. CODE ANN. § 93-1-5 (West 2019).

84. ARK. CODE ANN. § 9-11-103 (West 2019); IND. CODE ANN. § 31-11-1-6 (West 2019); OKLA. STAT. ANN. tit. 43, § 3 (West 2019); N.M. STAT. ANN. § 40-1-6 (West 2019).

85. See generally *Understanding State Statutes*, *supra* note 16.

86. N.C. GEN. STAT. ANN. § 51-2.1 (West 2018).

evidence that it would find useful in making its determination.”⁸⁷ Without clear guidelines, a determination of the minor’s best interest is often left to a judge’s or clerk’s broad discretion.⁸⁸

Yet rates of child marriage are declining nationally.⁸⁹ Further, despite advocates’ emphasis on the image of a young child bride, the majority of minors who marry are in their late teens.⁹⁰ In one study, 67% of the minors marrying were seventeen years old⁹¹ and sixteen-year-olds represented 29% of married minors.⁹² In addition, minors often marry a partner who is only a few years older.⁹³ Thus, while instances of large age gaps do occur, they are rare.⁹⁴ Further, a minor may find marriage to be a preferable route to take if she becomes pregnant. With marriage, a pregnant minor could gain access to certain rights and services. These include “health insurance, [solidifying] parental custody, or [accessing] housing assistance or military benefits.”⁹⁵

C. State Legislation and Reform

For 200 years, states have said very little with regard to the age of marriage. Under Common Law, the age for marriage was twelve for girls and fourteen for boys, though minors could marry as young as seven.⁹⁶ The Thirteen colonies adopted the marriage ages of twelve and fourteen.⁹⁷ By the Antebellum Period, many states had increased the marriage age to eighteen for girls and twenty-one for boys, respectively.⁹⁸ Marriage below these ages often required parental consent.⁹⁹ This policy stemmed from attitudes towards minors’ capacities but also a concern for inheritance and property protection.¹⁰⁰ Nonetheless, marriage commonly occurred between a minor girl and an adult male.¹⁰¹ The issue of marriage age then faded from the national spotlight as the country’s attention shifted to the issue of child marriage abroad.¹⁰² But interest in the issue of child marriage

87. *Id.*

88. See Letter to the Editor, *Time to End Child Marriage in the United States. No Exceptions.*, WASH. POST (Oct. 12, 2018, 4:37 PM), https://www.washingtonpost.com/opinions/time-to-end-child-marriage-in-the-united-states-no-exceptions/2018/10/12/5444b6e0-cd95-11e8-ad0a-0e01efba3cc1_story.html.

89. Johnson, *supra* note 5.

90. Tsui et al., *Child Marriage in America*, *supra* note 67.

91. *Id.*

92. *Id.*

93. *Id.* (“Most married adults who were 18, 19 or in their early 20s.”); see also Dance, *supra* note 23; Tsui et al., *Child Marriage in America*, *supra* note 67 (revealing that 60% of the marriages were to someone age eighteen to twenty, and 25% were to someone age twenty-one to twenty-three).

94. Tsui et al., *Child Marriage in America*, *supra* note 67.

95. Dance, *supra* note 23.

96. NICHOLAS L. SYRETT, *AMERICAN CHILD BRIDE: A HISTORY OF MINORS AND MARRIAGE IN THE UNITED STATES* 19 (2016).

97. *Id.* at 20.

98. *Id.* at 31.

99. *Id.* at 32.

100. *Id.* at 32–33.

101. *Id.* at 45–46; FLORENCE RUSH, *THE BEST KEPT SECRET: SEXUAL ABUSE OF CHILDREN* 20–21.

102. V.V.B., *supra* note 81.

is growing. This Section focuses on some of those states that have recently passed legislation to make it more difficult for minors to marry.

1. Virginia

In 2016, Virginia increased its minimum marriage age to eighteen—the only exception being that emancipated minors aged sixteen or seventeen can marry.¹⁰³ The Virginia legislators intended to prevent forced marriages of minors and statutory rape.¹⁰⁴ Previously, a minor could marry at the age of thirteen if she had parental consent or was pregnant.¹⁰⁵ The new statute closes the loophole; parental consent or pregnancy is no longer sufficient to grant marriage to a minor.¹⁰⁶ It requires the judge be attentive to possible coercion of the minor and that the judge find marriage to be in the minor's best interest.¹⁰⁷ In 2015, 182 minors married in Virginia. After the passage of this bill, that figure fell to thirteen.¹⁰⁸ This bill faced opposition, however, from legislators concerned about minors who seek to marry because they are pregnant.¹⁰⁹ Democratic State Senator J. Chapman Petersen called the bill “overly aggressive,” and stated that he believed it was “not for lawmakers to judge the decisions of pregnant teens and their families.”¹¹⁰

2. Connecticut

In 2017, the Governor of Connecticut signed into law H.B. 5442.¹¹¹ Previously, minors could marry at any age with judicial approval.¹¹² Legislators backing the bill hoped to prevent forced and coerced marriages of minor girls to older men.¹¹³ Under the originally proposed bill, marriage would have been

103. Hence these minors are presented with a choice: wait to get married or get emancipated. *Falling Through the Cracks*, TAHIRIH JUST. CTR. (Aug. 2017), <https://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf>; *SB 1705/HB 3932*, TAHIRIH JUST. CTR. (Feb. 2017) <https://www.tahirih.org/wp-content/uploads/2017/02/FINAL-Backgrounder-on-Forced-Child-Marriage-in-TX.pdf>. Texas passed a similar bill in 2017. H. Res. 3932, 85th Leg. (Tex. 2017).

104. Jenna Portnoy, *Why 13-Year-Olds Can No Longer Marry in Virginia*, WASH. POST (July 3, 2016), https://www.washingtonpost.com/local/virginia-politics/why-13-year-olds-can-no-longer-marry-in-virginia/2016/07/03/03849e46-3ef9-11e6-a66f-aa6c1883b6b1_story.html?noredirect=on&utm_term=.7cb4d08f5299.

105. *Id.*

106. See VA. CODE ANN. § 20-48 (West 2019) (“The minimum age at which persons may marry shall be 18, unless a minor has been emancipated by court order. Upon application for a marriage license, an emancipated minor shall provide a certified copy of the order of emancipation.”).

107. See VA. CODE ANN. §16.1-333 (West 2019).

108. Amy Harmon & Alan Blinder, *Delaware Has Banned Marriage Under Age 18. Other States Also Consider Limits.*, N.Y. TIMES (May 17, 2018), <https://www.nytimes.com/2018/05/17/us/child-marriage-minimum-age-minors.html>.

109. Portnoy, *supra* note 104.

110. *Id.*

111. H.R. 5442, 2017 Gen. Assemb., Reg. Sess. (Conn. 2017).

112. Sophia Tewa, *Too Young to Marry: Connecticut Finally Ends Child Marriage*, CONN. POST (Oct. 13, 2017, 9:23 AM), <https://www.ctpost.com/news/article/Connecticut-finally-ends-child-marriage-12272977.php>.

113. *House Passes Bill Preventing Forced Child Marriage*, CONN. HOUSE DEMOCRATS (May 10, 2017), <http://www.housedems.ct.gov/cook/article/house-passes-bill-preventing-forced-child-marriage>.

prohibited under eighteen.¹¹⁴ To secure passage, legislators compromised on a law that allows sixteen- and seventeen-year-olds to marry only if they obtain *both* parental consent and judicial approval.¹¹⁵ The probate court must also hold a hearing to determine that the minor is not being coerced.¹¹⁶ Advocacy organizations were dissatisfied with this result, arguing that parental consent and judicial approval still allow for coerced marriages.¹¹⁷ Nonetheless, Professor Joseph Fischel, an associate professor of Women's, Gender, and Sexuality Studies at Yale, cautioned that "advocates should tread carefully when limiting the right to marry"—as demonstrated by the women's rights, gay rights, and civil rights movements.¹¹⁸

3. *New York*

The same day that Connecticut passed H.B. 5442, New York passed legislation raising its marriage age to eighteen.¹¹⁹ But New York still allows minors aged seventeen to marry with judicial approval. Like Virginia, the New York statute implements protective measures—such as a judicial determination during an in-camera hearing with the minor—to ensure there is no coercion. The judge must also determine that the marriage will not endanger the minor's safety.¹²⁰ Previously, judges received little guidance in detecting coercion under these circumstances.¹²¹

Democratic Assemblywoman Amy Paulin pushed this reform in an effort to "dramatically change the lives of girls."¹²² In her words, "[c]hild marriage is coerced marriage. It condemns young women to a life they did not choose."¹²³ Her previous efforts to pass the bill were unsuccessful due to "concerns from lawmakers who represent religious communities."¹²⁴ Yet she did not specify *which* religious communities.¹²⁵ Legislators who sought to protect minors from their "ill-informed" judgments also supported this law.¹²⁶

114. H.R. 5442, 2017 Gen. Assemb., Reg. Sess. (Conn. 2017).

115. *Id.*

116. *Id.*; Talia Soglin, *Minimum Marriage Age Takes Effect*, YALE DAILY NEWS (Oct. 4, 2017, 1:43 AM), <https://yaledailynews.com/blog/2017/10/04/minimum-marriage-age-takes-effect/>.

117. Tewa, *supra* note 112.

118. Soglin, *supra* note 116.

119. N.Y. DOM. REL. LAW § 15 (McKinney 2019).

120. *Id.*

121. *Governor Cuomo Signs Legislation Ending Child Marriage in New York*, N. Y. ST. (June 20, 2017) [hereinafter *Governor Cuomo Signs Legislation*], <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-ending-child-marriage-new-york>.

122. Lisa W. Foderaro, *Child Marriage is Sharply Curtailed by New York Legislature*, N.Y. TIMES (June 8, 2017), <https://www.nytimes.com/2017/06/08/nyregion/child-marriage-is-sharply-curtailed-by-new-york-legislature.html>.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Governor Cuomo Signs Legislation*, *supra* note 121.

4. Kentucky

In 2018, Kentucky also raised its minimum age to eighteen—with the exception that a seventeen-year-old may marry if she is emancipated and she petitions the court.¹²⁷ In her petition, the minor must demonstrate “maturity and capacity for self-sufficiency,” proof of employment and stable housing, and proof that she has completed high school, received her G.E.D., or completed vocational training.¹²⁸ The older party can be no more than four years older than the younger party. The court must also determine by a preponderance of the evidence that the minor is not being coerced. A judge may conduct an in-camera hearing and must look into any domestic violence and criminal history of the older party. Finally, the minor becomes emancipated upon marriage.¹²⁹

This reform legislation sought to prevent the sexual exploitation of young girls.¹³⁰ But the passage of this bill was not without conflict. The Kentucky Senate pulled the bill multiple times prior to its final passage in response to Republican legislators’ arguments that its requirements infringed on the rights of parents.¹³¹ Organizations such as the Kentucky Family Foundation argued that parents and families should have the final say when it comes to the marriage of minors.¹³² Some legislators also contended that a blanket ban would prevent pregnant minors from exercising this right.¹³³

5. Delaware

In May of 2018, Delaware became the first state to place an outright ban on child marriage.¹³⁴ Marriage is now forbidden under the age of eighteen in Delaware—with no exceptions.¹³⁵ Previously, there was no minimum age for marriage if a minor obtained both parental consent and judicial approval.¹³⁶ Push for this bill stemmed from concerns of forced marriages, sexual assault, and the discrepancy between marriage age and the age of consent.¹³⁷ Indeed, between 2000

127. S.B. 48, 2018 Legis., Reg. Sess. (Ky. 2018).

128. *Id.*

129. *Id.*

130. Deborah Yetter, *Bill to Limit ‘Child Brides’ in Kentucky Advances, but 3 Senators Don’t Hold Their Peace*, LOUISVILLE COURIER J. (Mar. 7, 2018, 7:04 PM), <https://www.courier-journal.com/story/news/2018/03/07/kentucky-child-marriage-bill-passes-senate/404486002/>.

131. Esther Yu Hsi Lee, *Kentucky Senate Pulls Bill to Outlaw Child Marriage Following Opposition by Conservative Group*, THINK PROGRESS (Mar. 3, 2018, 2:37 PM), <https://thinkprogress.org/kentucky-child-marriage-79991589ad21/>.

132. Johnson, *supra* note 5.

133. Yetter, *supra* note 130.

134. H.R. 337, 149th Gen. Assemb., Reg. Sess. (Del. 2018); Bethlehem Feleke, *Delaware Becomes First US State to Fully Ban Child Marriage*, CNN (May 12, 2018, 9:09 AM), <https://www.cnn.com/2018/05/12/us/delaware-child-marriage-ban/index.html>.

135. Feleke, *supra* note 134.

136. *Id.*

137. *Williams Bill Ending Child Marriage Signed*, DEL. HOUSE DEMOCRATS, <http://www.dehousedems.com/press/williams-bill-ending-child-marriage-signed-0> (last visited Apr. 9, 2020).

and 2017, over 200 minors married in Delaware.¹³⁸ In over 90% of these cases, the marriage was to an adult male.¹³⁹ Delaware legislators from both political parties voted in favor of the bill, citing the “insufficient legal capacity [of minors] to make decisions.”¹⁴⁰ But Delaware’s reform bill was not without critics. Republican State Representative Steve Smyk—voting against it—called the measure “well-intentioned-but shortsighted” and argued that a blanket ban could “unfairly exclude couples with legitimate reasons for seeking such a union.”¹⁴¹ Republican State Representative Joe Miró, who voted against it, said that he “cannot support banning marriage, period.”¹⁴²

6. *New Jersey*

In June of 2018, New Jersey became the second state to enact an outright ban of marriage under the age of eighteen.¹⁴³ Previously, minors aged sixteen or seventeen could marry with parental consent alone.¹⁴⁴ Minors under sixteen could marry if they obtained parental consent and judicial approval.¹⁴⁵

It took many years to implement this reform. Legislators abruptly pulled a prior version of this bill in response to complaints from the Orthodox Jewish community, who asked for religious exemptions.¹⁴⁶ Additionally, former Governor Chris Christie vetoed a similar bill in May of 2017, citing religious liberties.¹⁴⁷ In his veto message, Christie stated, “[T]he severe bar this bill creates is not necessary to address the concerns voiced by the bill’s proponents and does not comport with . . . the religious customs, of the people of this State.”¹⁴⁸ The bill also faced opposition from anti-abortion groups such as New Jersey Right to Life, which argued that pregnant teenagers should be able to marry.¹⁴⁹

138. Sarah Mueller, *Delaware Expected to be the First State to Ban Child Marriage*, NPR (May 3, 2018, 8:35 PM), <https://www.npr.org/2018/05/03/608351312/delaware-expected-to-be-the-first-state-to-ban-child-marriage-outright>.

139. *Id.*

140. *Williams Bill Ending Child Marriage Signed*, *supra* note 137 (quoting Sen. Anthony Delcollo).

141. Tsui, *Delaware Becomes First State to Ban Child Marriage*, *supra* note 19.

142. Ashley Belanger, *A New Study on Child Marriage is Changing the Conversation*, TEEN VOGUE (Apr. 25, 2018), <https://www.teenvogue.com/story/new-study-child-marriage-changing-conversation>.

143. Michael Booth, *NJ Marriage Ban for Minors Signed into Law*, N.J. L.J. (June 22, 2018, 6:01 PM), <https://www.law.com/njlawjournal/2018/06/22/nj-marriage-ban-for-minors-signed-into-law/>.

144. *Id.*

145. Matt Friedman, *Ban on Child Marriages Conditionally Vetoed by Christie*, POLITICO (May 11, 2017, 1:13 PM), <https://www.politico.com/states/new-jersey/story/2017/05/11/ban-on-child-marriages-conditionally-vetoed-by-christie-111987>.

146. Susan K. Livio, *The Push to Ban Child Marriages in N.J. Just Stalled. Here’s Why.*, NJ.COM (Jan. 30, 2019), https://www.nj.com/politics/2018/05/effort_to_ban_child_marriage_in_nj_stalls_over_rel.html.

147. *Id.*

148. Friedman, *supra* note 145.

149. See Anjali Tsui, *In Fight Over Child Marriage Laws, States Resist Calls for a Total Ban*, PBS FRONTLINE (July 6, 2017) [hereinafter Tsui, *States Resist Calls for a Total Ban*], <https://www.pbs.org/wgbh/frontline/article/in-fight-over-child-marriage-laws-states-resist-calls-for-a-total-ban/>.

7. *Missouri*

Prior to July of 2018, Missouri had no minimum age for marriage. Minors under the age of fifteen could marry with judicial approval and the permission of only one parent.¹⁵⁰ Of course, efforts to raise the age met pushback from legislators who argued that it was not the government's place to forbid pregnant minors from marrying, especially when a sixteen-year-old girl wanted to marry her seventeen-year-old boyfriend.¹⁵¹ With compromise, a new law placed some restrictions on marriage.¹⁵² The minimum age for marriage in Missouri is now sixteen.¹⁵³ This new law also forbids marriage if the younger party is under the age of seventeen and the older party is over twenty-one.¹⁵⁴ This additional criteria attempts to circumvent coercion and statutory rape.¹⁵⁵

8. *California*

California sought to address the marriage age through S.B. 273, which was proposed in 2017 and ultimately passed in its amended form in 2018.¹⁵⁶ Prior to this bill, a minor of any age could marry with parental consent and judicial approval; however, California already had barriers in place to protect minors' welfare.¹⁵⁷ For instance, the California Family Code already required the judge approving marriage licenses of minors to be trained in child abuse, to launch Child and Family Services investigations when age discrepancies were too vast, and to grant emancipation to a minor once married.¹⁵⁸ Further, unlike many states, minors in California have access to a variety of social services, including domestic violence shelters and abortion services.¹⁵⁹

Nonetheless, Democratic State Senator Jerry Hill sought to raise the minimum age to eighteen at the urging of a constituent teenager.¹⁶⁰ Citing data on the economic, educational, and social effects on minor girls who marry early, Hill argued that there is a social responsibility to close the loophole.¹⁶¹ He stated, "While we respect all cultures and faiths, we cannot support practices that rob

150. Eric Adler, *Missouri Governor Signs Law Banning Marriage of 15-Year-Olds*, KAN. CITY STAR: GOV'T & POLS, (July 13, 2018, 2:30 PM) [hereinafter Adler, *Missouri Governor Signs Law*], <https://www.kansascity.com/news/politics-government/article214840670.html>.

151. *Id.*

152. MO. REV. STAT. § 451.090 (2019).

153. *Id.*

154. *Id.*

155. Adler, *Missouri Governor Signs Law*, *supra* note 150.

156. S.B. 273, 2018 Leg., Reg. Sess. (Cal. 2018).

157. Fraidy Reiss, *Why Won't California End Child Marriage?* UNCHAINED AT LAST (Aug. 20, 2018), <http://www.unchainedatlast.org/8-20-2018-why-wont-california-end-child-marriage/>.

158. CAL. FAM. CODE § 304 (West 2019).

159. Telephone Interview with Phyllida Burlingame, Reprod. Justice & Gender Equity Dir., ACLU of N. Cal. (Nov. 9, 2018).

160. Rebecca Greenway, *What You Should Know About Sen. Hill's Child Marriage Bill*, NBC BAY AREA (July 11, 2017, 7:29 PM), <https://www.nbcbayarea.com/news/local/Sen-Jerry-Hill-Child-Marriage-Bill-433928883.html>.

161. *Id.*

youth of their childhood.”¹⁶² As such, legislators introduced the bill to mitigate the “lifelong consequences” of early marriage.¹⁶³

But this bill, too, met pushback; this time, from the left. The Children’s Law Center argued that minors often marry because they have a baby and want the baby to be raised by married parents.¹⁶⁴ Marriage, it argued, can also be a ticket out of the foster care system.¹⁶⁵ Planned Parenthood also opposed the ban.¹⁶⁶ Presumably, it feared that “denying minors this right could give its opponents ammunition to deny minors reproductive rights.”¹⁶⁷ Both the National Center for Youth Law and the ACLU of Northern California referred to marriage as a “fundamental” or “core right.”¹⁶⁸ The ACLU of Northern California argued that banning marriage of minors “unnecessarily and unduly intrudes on the fundamental rights of marriage without sufficient cause.”¹⁶⁹ These organizations also claimed there was insufficient data to suggest child marriage was a problem in California and pointed to the procedural safeguards California already had in place.¹⁷⁰ Finally, the ACLU of Northern California feared that an outright ban would not prevent coercive relationships, but would instead “push these young women further from the reach of social services.”¹⁷¹ Indeed, underground marriages to minors do occur in the United States.¹⁷²

The opposition of these organizations forced the legislature to compromise.¹⁷³ Rather than placing an outright ban on the marriage of minors, the bill instead implemented meaningful safeguards. Specifically, it required (1) that the minor and at least one of the parents be interviewed by Family Court Services; (2) a report be submitted to the court on any findings of coercion or duress on the minor and recommendations for granting or denying the court order to marry; (3) the reporting to protective services if any abuse or neglect of the minor is

162. *Id.*

163. Associated Press, *Underage Marriages Get New Restrictions in California*, MERCURY NEWS (Sept. 22, 2018, 4:00 AM), <https://www.mercurynews.com/2018/09/22/underage-marriages-get-new-restrictions-in-california/>; Taryn Luna, *Under-18 Marriage Ban Weakened After ACLU Opposes*, SACRAMENTO BEE (May 9, 2017, 5:29 PM), <https://www.sacbee.com/news/politics-government/capitol-alert/article149610849.html>.

164. See Tsui, *States Resist Calls for a Total Ban*, *supra* note 149.

165. *Id.*

166. Jill Tucker, *Effort to Bar Child Marriage in California Runs Into Opposition*, S.F. CHRON., (July 6, 2017, 1:21 PM), <https://www.sfchronicle.com/bayarea/article/Effort-to-bar-juvenile-marriages-in-California-11268497.php>; Greenway, *supra* note 160.

167. Seth Dalton, *There Are No States in the U.S. That Ban Child Marriage*, VICE NEWS (Feb. 9, 2018, 7:57 PM), https://news.vice.com/en_us/article/qvekkx/there-are-no-states-in-the-us-that-ban-child-marriage.

168. Luna, *supra* note 163; Tucker, *supra* note 166.

169. Luna, *supra* note 163.

170. *Id.*

171. Tsui, *States Resist Calls for a Total Ban*, *supra* note 149.

172. Diana Cole, *Children Get Married in the U.S., Too: #15Girls*, NPR (Oct. 28, 2015, 2:14 PM), <https://www.npr.org/sections/goatsandsoda/2015/10/28/452540839/children-get-married-in-the-u-s-too-15girls>; Colleen Long, *U.S. Approved Thousands of Child Bride Requests Over the Past Decade, Data Shows*, PBS (Jan. 11, 2019, 1:52 PM), <https://www.pbs.org/newshour/nation/u-s-approved-thousands-of-child-bride-requests-over-the-past-decade-data-shows>.

173. See Press Release, Senator Jerry Hill, Governor Brown Signs Bill by Senator Jerry Hill to Help Prevent Minors from Being Forced into Marriage or a Domestic Partnership (Sept. 21, 2018), <https://sd13.senate.ca.gov/news/2018-09-21-governor-brown-signs-bill-senator-jerry-hill-help-prevent-minors-being-forced>.

suspected; (4) an interview of each prospective spouse by the judge; (5) consideration on the part of the judge as to whether there is coercion; and (6) appointment of a GAL.¹⁷⁴ In addition, the law includes a thirty-day waiting period, statutory emancipation, and requires the state to provide minors with information as to their new rights.¹⁷⁵

9. *Ohio*

On January 1, 2019, Ohio increased its minimum age of marriage to eighteen, though a minor aged seventeen may still marry with judicial approval.¹⁷⁶ The bill also includes a fourteen-day waiting period and restricts the maximum allowable age difference between the parties to four years.¹⁷⁷ Prior to this law, the marriage age was sixteen and eighteen for females and males, respectively.¹⁷⁸ But minors below these ages could marry with parental consent. A Dayton Daily News exposé prompted this reform, as it revealed that 4,443 minor girls had been married between 2000 and 2015. Fifty-nine of these girls were minors aged fifteen or younger.¹⁷⁹ This statistic also included three marriages of fourteen-year-olds. In one instance, a pregnant fourteen-year-old married a forty-eight-year-old man.¹⁸⁰

10. *New Hampshire*

As of January 1, 2019, New Hampshire raised its minimum age of marriage to sixteen if a minor obtained judicial approval.¹⁸¹ Previously, the law was gendered in that minor boys could marry at age fourteen but minor girls could marry at age thirteen.¹⁸² New Hampshire's reform began through the efforts of a teenager, Cassandra Levesque, who sought to increase the marriage age as a part of her Girl Scouts Gold Award project.¹⁸³ Given that her mother and grandmother were both "child brides," Levesque believed that marriage at an early age hinders minor girls' futures and should not be an option. She approached her state representative, Democratic Representative Jacalyn Cilley, who attempted to pass a bill raising the minimum age to eighteen.¹⁸⁴ In taking on this legislation, Representative Cilley asked, "How could anybody defend the practice of 13-year-olds

174. CAL. FAM. CODE § 304 (West 2019).

175. *Id.*

176. H.R. 511, 132d Gen. Assemb. (Ohio 2019).

177. *Id.*

178. Bischoff, *supra* note 5.

179. *Id.*

180. *Id.*

181. H.B. 1586, 2018 Sess., Reg. Sess. (N.H. 2018); H.B. 1587, 2018 Sess., Reg. Sess. (N.H. 2018).

182. Kate Taylor, *In New Class of Young Lawmakers, a Former Girl Scout Goes to the Statehouse*, N.Y. TIMES (Nov. 13, 2018), <https://www.nytimes.com/2018/11/13/us/young-candidates-elections.html>.

183. *Id.* The Gold Award is the most prestigious Girl Scout Award. It requires completion of a large service project and enables girls to receive college scholarships. See *Golden Award Girl Scouts*, GIRL SCOUTS, <https://www.girlscouts.org/en/our-program/highest-awards/gold-award.html> (last visited Apr. 9, 2020).

184. Taylor, *supra* note 182.

getting married?”¹⁸⁵ This bill was killed by New Hampshire Republicans, but Democratic female legislators were able to pass bills raising the minimum age to sixteen and preventing marriage where sex between the individuals would constitute statutory rape.¹⁸⁶ In addition, these bills provided judges in New Hampshire with more guidance in considering the applications of minors aged sixteen and seventeen.¹⁸⁷ In signing these bills into law, New Hampshire Governor Christopher T. Sununu stated:

These bills are about protecting our children. As the father of a young daughter and two young sons, I can tell you first hand that children do not have the lived experiences to make an important lifelong decision such as marriage. . . . [T]he teenage brain is not fully developed and teenagers are not at a point in their lives where they are capable of making such a paramount decision.¹⁸⁸

11. Georgia

As of July 1, 2019, Georgia raised its minimum marriage age from sixteen to seventeen, requiring that the minor be emancipated, that the older spouse not be more than four years older than the younger spouse, and that the minors take a premarital education course.¹⁸⁹ Republicans sponsored the bill, which was co-signed by Democrats.¹⁹⁰ Those legislators pushing to raise the marriage age in Georgia cited concerns for poverty, education, and “[o]verpowering, out of age, out of sync relationships that should be not happening.”¹⁹¹ Representative Scott Holcomb, voting in favor of the bill, stated, “[W]hat’s the rush? It’s not a big deal to wait until both parties are adults, to make a decision that makes sense for their lifetimes. Because marriage is an institution that should be long-term.”¹⁹²

Many other states have passed or introduced reform legislation raising the minimum marriage age or making it more difficult for minors to marry.¹⁹³ In 2018, for example, Tennessee increased its age to seventeen, though this reform was met by staunch opposition by the Family Action Council, a Christian interest

185. *Id.*

186. H.B. 1586, 2018 Sess., Reg. Sess. (N.H. 2018); H.B. 1587, 2018 Sess., Reg. Sess. (N.H. 2018); Taylor, *supra* note 182.

187. Taylor, *supra* note 182.

188. CHRISTOPHER T. SUNUNU, LETTER TO REPRESENTATIVE RICE AND MEMBERS OF THE NEW HAMPSHIRE HOUSE CHILDREN AND FAMILY LAW COMMITTEE (2018), <https://www.governor.nh.gov/news-media/press-2018/documents/20180124-hb-1586-1587.pdf>.

189. H.B. 228, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

190. Ashley Bridges, *Child Marriage Bill Passes Georgia House With Bipartisan Support*, WJBF NEWSCHANNEL 6 (Mar. 4, 2019, 6:36 PM), <https://www.wjbf.com/news/georgia-news/child-marriage-bill-passes-georgia-house-with-bipartisan-support/>.

191. *Id.*

192. *Id.*

193. *See, e.g.*, NEV. REV. STAT. § 122.025; H.B. 19-1316, 72d. Gen Assemb., Reg. Sess. (Co. 2019); S.B. 172, 2019 Reg. Sess. (La. 2019); S.B. 24, 2019 Leg., 191st Sess. (Mass 2019); H.B. 4005, 100th Leg., Reg. Sess. (Mich. 2019); H.B. 378, 2019 Leg., 166th Sess. (N.H. 2019); H.B. 511, 132d Gen. Ass. (Ohio 2019); S.R. 196, 123d Gen. Assemb., 1st Reg. Sess. (S.C. 2019); H.B. 2310, 2017 Leg., 190th Sess. (Mass. 2017).

group.¹⁹⁴ In 2019, Utah and Arizona raised their minimum age to sixteen if the minor meets certain requirements.¹⁹⁵ In addition, in 2019, Arkansas female Democrats increased the marriage age to seventeen.¹⁹⁶ As shown, much of the passed reform efforts did not place an outright ban on the marriage of minors. Instead, they reached a middle ground, raising the age to sixteen or seventeen. That these states preserved the right of older teens to marry suggests that this right is stronger for older adolescents. But many advocates of placing a ban on child marriage—including former child brides, state legislators, Chelsea Clinton, and organizations such as the AHA Foundation, Human Rights Watch, Girls Not Brides, the Tahirih Justice Center, and Unchained at Last—are dissatisfied with these results.¹⁹⁷ They argue that there should be a “bright line” minimum age of eighteen in every state—with no exceptions.¹⁹⁸

In the face of this movement to close the child marriage loophole, it is important to consider the arguments of those *opposed* to placing an outright ban on the marriage of minors. Many have argued an outright ban would be unfair to pregnant minors or minors who truly desire to marry.¹⁹⁹ In addition, the ACLU of Northern California and the Children’s Law Center have argued that this could intrude on a fundamental right.²⁰⁰ This sentiment was echoed by Professor Joseph Fischel, who stated that it is important to “tread carefully” when limiting the right to marry.²⁰¹ Finally, women’s rights organizations have expressed concern that an outright ban would have gross implications for the decision-making rights of minors in other contexts.²⁰² The Women’s Law Center of Maryland, for example, argued that this could “open the door for proposals to limit access to abortions for teenagers.”²⁰³ Indeed, the issue of child marriage has “pitted two ‘reproductive justice’ issues against each other—ending forced marriage and supporting rights to marry.”²⁰⁴ In addition, it has pointed out that placing such a

194. Jordan Buie, *Tennessee General Assembly Passes Ban on Marriage for Those Under Age 17*, TENNESSEAN (Apr. 24, 2018, 6:24 PM), <https://www.tennessean.com/story/news/politics/2018/04/24/tennessee-general-assembly-child-marriage-ban/546699002/>; Morgan Gstalter, *Tennessee GOP Kill Bill to Ban Child Marriage*, THE HILL (Mar. 8, 2018, 10:28 AM), <https://thehill.com/homenews/state-watch/377367-tennessee-gop-kill-ban-on-child-marriage>.

195. H.B. 234, 63d Leg., 2019 Gen. Sess. (Utah 2019); H.B. 2006, 53d Leg., 2d Reg. Sess. (Ariz. 2018).

196. H.B. 1708, 92d Gen. Assemb., Reg. Sess. (Ark. 2019).

197. See, e.g., Reiss, *Why Won't California End Child Marriage?*, *supra* note 157; JEANNE SMOOT, LETTER TO OPPOSE SB 273 (2017), <https://www.tahirih.org/wp-content/uploads/2017/07/06.26-Ltr-of-Opposition-by-Tahirih-Justice-Ctr-to-CA-SB-273.pdf>.

198. Anjali Tsui, *Florida Moves to Ban Marriage Before the Age of 17*, PBS: FRONTLINE (Mar. 9, 2018), <https://www.pbs.org/wgbh/frontline/article/florida-moves-to-ban-marriage-before-the-age-of-17/>; see also Chelsea Clinton & Fraidy Reiss, *Child Marriage is Still Happening in the U.S. & Around the World*, REFINERY29 (Mar. 8, 2019, 8:00 AM), <https://www.refinery29.com/en-us/2019/03/226273/chelsea-clinton-child-marriage-laws-unchained-at-last-essay>.

199. See *supra* text accompanying notes 132–34, 164, 181, 185.

200. Luna, *supra* note 163; Tucker, *supra* note 166.

201. Soglin, *supra* note 116.

202. See *infra* text accompanying notes 202–05.

203. Dance, *supra* note 23.

204. *Id.* (quoting Diana Philip, executive director of NARAL Pro-Choice Maryland).

restriction would prevent minors from using marriage as a tool to get “out of a bad situation,” such as foster care or a dangerous home life.²⁰⁵

Before imposing an outright ban on the marriage of minors in each state, it is crucial to analyze the validity of the arguments opposing this movement. Are minors entitled to the fundamental right to marry? Could preventing pregnant minors from marrying impinge on religious freedom? What implications could an outright ban have for how the law views the autonomy and decision-making capacity of minors in other contexts, such as abortion and medical consent?

III. ANALYSIS

This Part will first consider the social repercussions of the child marriage loophole. It will then consider the legal problems and inconsistencies the loophole creates. Lastly, it will address the possible arguments in favor of child marriage. In doing so, it will seek to determine whether minors might have a claim that these new statutes are violative of their fundamental right to marry or of their religious freedom. Even if minors are unable to make such claims, this Note will assess whether closing the loophole might be wrong on public policy grounds.

A. *Social Problems with Child Marriage Loophole*

Many women have begun speaking out about their experiences of being forced by their parents to marry their adult, male rapists.²⁰⁶ One woman recounted that, when asked by the judge why she wanted to marry, she “started crying . . . [and] answered, ‘Because I love him.’”²⁰⁷ Looking back on the experience, she realized that she “was pregnant and thought it was the right thing to do.”²⁰⁸ Importantly, minors of low socioeconomic status are more likely to marry.²⁰⁹ Early marriage is also more prevalent in southern and rural states and among religious conservatives.²¹⁰

1. *Early Marriage and Women’s Health*

Early marriage has been shown to have gross consequences for minors’ physical and mental health.²¹¹ Marriage at an early age implicates sex at an early age, and it also implicates pregnancy and childbirth before a girl’s body may be

205. *Id.*

206. See Julia Alanen, *Too Young to Tie the Knot*, BNA FAM. L. REP. 1, 3 (2014); Bischoff, *supra* note 5; Kristof, *supra* note 1.

207. Bischoff, *supra* note 5.

208. *Id.*

209. Arline T. Geronimus, *On Teenage Childbearing and Neonatal Mortality in the United States*, 13 POPULATION & DEV. REV. 245, 262 (1987); Jeremy E. Uecker & Charles E. Stokes, *Early Marriage in the United States*, 70 J. MARRIAGE & FAM. 835, 842 (2008).

210. Uecker & Stokes, *supra* note 209, at 836, 844.

211. Comm’r of Social Servs. *ex rel. Leslie C.*, 614 N.Y.S.2d 855, 860 (N.Y. Fam. Ct. 1994) (“[P]remature parenthood, forced marriage . . . and the need for medical or psychological treatment, must invariably be faced when children bear children.”).

physically ready.²¹² This may lead to maternal and infant mortality.²¹³ Importantly, “complications associated with childbirth and pregnancy are the leading causes of death for young women between the ages of fifteen and nineteen.”²¹⁴ This is especially problematic considering that the United States has the highest rate of maternal mortality in the developed world.²¹⁵ For black women, as compared to white women, the rate of mortality is doubled.²¹⁶

Research has found that early marriage can also have vast psychological consequences for girls.²¹⁷ Forced marriage and childbirth at an early age can be traumatic and isolating, leading to depression and life-long mental health issues.²¹⁸ Minors forced or coerced by their parents to marry are deprived of autonomy during a crucial period of social and psychological development.²¹⁹ Forced or coerced marriages deny minors “their dignity and the opportunity to make choices that are central to their lives, such as when and whom to marry or when to have children.”²²⁰ Feminists—such as Elizabeth Oakes Smith, an early women’s rights activist and victim of forced child marriage—shared this sentiment. She stated:

[Adolescence] is the most beautiful and the most suggestive period of a woman’s life. The girl who has sacrificed this by a premature marriage will carry in her breast, to the end of her life, the sense of a loss—the sense of desecration. . . . To lose this period, to be rushed from the cradle to the alter [*sic*] is to make the great life-long mistake.²²¹

212. Burris, *supra* note 13, at 152.

213. *Id.*

214. *Id.*

215. Nina Martin & Renee Montagne, *The Last Person You’d Expect to Die in Childbirth*, NPR (May 12, 2017, 5:00 AM), <https://www.npr.org/2017/05/12/527806002/focus-on-infants-during-childbirth-leaves-u-s-moms-in-danger> (“In every other wealthy country, and many less affluent ones, maternal mortality rates have been falling; in Great Britain, . . . the rate has declined so dramatically that ‘a man is more likely to die while his partner is pregnant than she is.’ But in the U.S., maternal deaths increased from 2000 to 2014.”) This is due, in part, to increased prevalence of cesarean sections, which lead to more complications, and a cultural focus on the health of the infant over the health of the mother which, in turn, has caused healthcare providers to be inadequately equipped to recognize and address symptoms of complications. See Renee Montagne, *To Keep Women from Dying in Childbirth, Look to California*, NPR (July 29, 2018, 8:02 AM), <https://www.npr.org/2018/07/29/632702896/to-keep-women-from-dying-in-childbirth-look-to-california>.

216. Julia Belluz, *We Finally Have a New US Maternal Mortality Estimate. It’s Still Terrible.*, VOX (Jan. 30, 2020, 10:40 AM), <https://www.vox.com/2020/1/30/21113782/pregnancy-deaths-us-maternal-mortality-rate>.

217. Jenna Mark, *Married at Eight Years Old: How United States Current Legal Remedies Are Inadequate to Protect the Victims of Child Marriages*, 18 NEW ENG. J. INT’L & COMP. L. 411, 415 (2012).

218. *Id.*; see also Matthew E. Dupre & Sarah O. Meadows, *Disaggregating the Effects of Marital Trajectories on Health*, 28 J. FAM. ISSUES 623, 626; Yann Le Strat et al., *Child Marriage in the United States and Its Association with Mental Health in Women*, 128 PEDIATRICS 524, 525 (2011).

219. Alanen, *supra* note 206, at 3.

220. Graça Machel & Desmond Tutu, *Child Marriage Robs Girls of Their Opportunities*, WASH. POST (July 31, 2012), https://www.washingtonpost.com/opinions/child-marriage-robs-girls-of-their-opportunities/2012/07/31/gJQAud7kNX_story.html.

221. SYRETT, *supra* note 96, at 99.

2. *Educational Attainment and Economic Independence*

Marriage and childbirth at an early age also inhibit educational attainment and upward mobility of minors.²²² Girls who marry in response to pregnancy are more likely to have a second pregnancy soon after.²²³ Early, closely-spaced pregnancies are associated with “lower economic and educational attainment.”²²⁴ Lack of education inhibits women’s earning capacity and autonomy, which often perpetuates cycles of domestic violence and hinders a woman’s ability to leave a relationship.²²⁵ Thus, if an adolescent girl’s parents force her to marry her rapist, a lack of earning capacity could serve as a barrier to escaping her marriage.

3. *Early Marriages Are Oftentimes Unhealthy Marriages*

Young women in forced or coerced marriages often lack bargaining power in the relationship due to discrepancies in age or economic dependence.²²⁶ Hence, the relationship often occurs under “coercive conditions.”²²⁷ These young women are more likely to endure domestic violence, sexual assault, and physical, mental, verbal, or economic abuse.²²⁸ They are more likely to cope with intimate partner violence (“IPV”) and consequently report higher rates of physical injury and missed days of work due to IPV-related physical injury.²²⁹ In addition, a lack of bargaining power can often make it difficult for minor girls to negotiate safe-sex, resulting in higher rates of STIs, cervical cancer, and unwanted pregnancies.²³⁰

Finally, early marriages are more likely to end in divorce.²³¹ Marriage at a young age has “[f]or decades . . . been the most consistent and unequivocal predictor of marital failure.”²³² As compared to marriages of people in their twenties, adolescent marriages in the United States are three times as likely to end in divorce.²³³ Perhaps unsurprisingly, women married as minors are even more likely to face economic hardship after they divorce.²³⁴

222. Mark, *supra* note 217, at 414.

223. *Florida: Child Marriage Ban Hits a Bump*, HUMAN RIGHTS WATCH (Feb. 5, 2018, 5:43 PM), <https://www.hrw.org/news/2018/02/05/florida-child-marriage-ban-hits-bump>.

224. *Id.*

225. *See id.*

226. Sanyukta Mathur et al., *Too Young to Wed: The Lives, Rights, and Health of Young Married Girls*, INT’L CTR. RES. WOMEN 11 (2003), <https://www.issuelab.org/resources/11421/11421.pdf>.

227. *Id.*

228. Heather Barr, *Delaware Ends Child Marriage; 49 to Go and Counting*, HUMAN RIGHTS WATCH (May 10, 2018, 3:10 PM), <https://www.hrw.org/news/2018/05/10/delaware-ends-child-marriage-49-go-and-counting>.

229. Judith McFarlane et al., *Child Brides, Forced Marriage, and Partner Violence in America*, 127 OBSTETRICS & GYNECOLOGY 706, 711 (2016).

230. *Id.*; *see also* Le Strat et al., *supra* note 218, at 527.

231. Le Strat et al., *supra* note 218, at 526.

232. Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817, 1819–20 (2012).

233. *Id.* at 1845.

234. *Id.* at 1818.

B. Legal Problems Created by Child Marriage

The child marriage loophole is also problematic because it is inconsistent with how the law treats minors in other contexts. Further, parental consent and judicial approval provisions of marriage statutes do not provide adequate safeguards against coerced marriage.

1. Unemancipated Minors Lack of Rights

Unless minors are emancipated, they face an inconsistency in the law: minors are treated as adults in one capacity—marriage—but treated as minors in other legal capacities. For example, minors, even if married, are unable to file for divorce, enter into contracts, or sign a lease.²³⁵ They cannot seek refuge at a domestic violence shelter, hire an attorney, obtain a credit card, open a bank account, rent a car, or run away without being given “run-away” status.²³⁶ As such, the law effectively denies minors the tools essential to leaving a marriage. Even further, many states have enacted barriers to minors’ abilities to obtain abortions. Thirty-seven states impose parental consent or notification requirements, which often dissuade women from obtaining abortions or delay the procedure.²³⁷ In this way, minors are treated as adults when they are granted a marriage license but are still denied the right to make decisions regarding their own bodies.

2. Marriage of Minors Contradicts Statutory Rape Laws

The age of consent in most states ranges from sixteen to eighteen.²³⁸ Hence, allowing minors to marry below the age of consent is in direct contradiction to statutory rape laws.²³⁹ This creates a “disconnect between civil and criminal law,” as a pregnant minor “is, by definition, a victim of statutory rape. To a prosecutor in that state, the pregnancy is proof that a crime has occurred, while to a civil judge or clerk, it could be a reason for granting a marriage license.”²⁴⁰ Between 1995 and 2015, there were over 100 marriages in New Jersey that should have

235. Kendra Huard Fershee, *A Parent is a Parent, No Matter How Small*, 18 WM. & MARY J. WOMEN & L. 425, 425 (2012); see also Reiss, *supra* note 157; V.V.B., *supra* note 81.

236. Reiss, *supra* note 157.

237. Lauren J. Ralph et al., *The Impact of a Parental Notification Requirement on Illinois Minors’ Access to and Decision-Making Around Abortion*, 62 J. ADOLESCENT HEALTH 281, 282–83 (2018).

238. The age of consent was raised through the efforts of the Women’s Christian Temperance Union from ten to sixteen, and in 2015, it was raised to no longer be gendered. See KRISTIN LUKER, *DUBIOUS CONCEPTIONS: THE POLITICS OF TEENAGE PREGNANCY* 27 (1996); *Legal Age of Consent for Marriage and Sex for the 50 United States*, GLOBAL JUST. INITIATIVE (2011), <https://globaljusticeinitiative.files.wordpress.com/2011/12/united-states-age-of-consent-table11.pdf>.

239. See RUSH, *supra* note 101, at 152.

240. Johnson, *supra* note 5.

legally constituted statutory rape.²⁴¹ In one such case, a minor aged fifteen married a man who was forty-three.²⁴²

Nonetheless, some scholars have critiqued statutory rape laws as failing to acknowledge teenagers' sexual autonomy.²⁴³ Professor Joseph Fischel argues that these laws are premised on assumptions that girls are "sexless or powerless" and incapable of making decisions about sex.²⁴⁴ Under statutory rape laws, a minor who is seventeen and 364 days old is deemed incapable of consenting to sex; however, she is deemed capable of consenting the very next day. Fischel critiques this standard, as "[n]umbers alone are not morally determinative."²⁴⁵ Instead, consent is much more nuanced. Statutory rape laws, he argues, should focus on preventing coercive relationships and should acknowledge minors as capable agents.²⁴⁶ The age of consent also differs across jurisdictions. For example, there are three different ages of consent across the Seventh Circuit: eighteen in Wisconsin, seventeen in Illinois, and sixteen in Indiana.²⁴⁷ Even further, statutory rape laws are disproportionately enforced against youth of color who are in consenting relationships,²⁴⁸ mirroring trends in criminal laws.²⁴⁹

3. *Inadequacy of Parental Consent and Judicial Approval Requirements*

Finally, parental consent and judicial approval do not serve as adequate checks on the coercion of minors. Parental consent provisions entrust parents to act in the best interests of their children.²⁵⁰ This is problematic, as parents are often the perpetrators of forced or coerced marriages.²⁵¹ A parent's consent to the marriage of his or her minor is not "per se, evidence that the minor has achieved sufficient physical and psychological maturity or life experience to fully appreciate the legal ramifications and practical consequences of sex and

241. Fraidy Reiss, *America's Child Marriage Problem*, N.Y. TIMES (Oct. 13, 2015), <https://www.nytimes.com/2015/10/14/opinion/americas-child-marriage-problem.html>.

242. Jessica Testa, *Child Marriage is Legal in 48 States. These Women are Asking Why*, BUZZFEED NEWS (June 23, 2018, 8:01 AM), <https://www.buzzfeednews.com/article/jtes/child-marriage-usa-legal-debate-abortion-new-jersey>.

243. JOSEPH J. FISCHEL, *SEX AND HARM IN THE AGE OF CONSENT* 100 (2016) (explaining that some non-consensual sex occurs between adults above the age of consent, and some sex that is actually consensual and wanted by both parties occurs between minors or between a minor and an adult); RUSH, *supra* note 101, at 153; Leslie Y. Garfield Tenzer, #MeToo, *Statutory Rape Laws, and the Persistence of Gender Stereotypes*, 2019 UTAH L. REV. 117, 134–35 (2019). See generally Michele Goodwin, *Law's Limits: Regulating Statutory Rape Law*, 2013 WIS. L. REV. 481 (2013).

244. See FISCHEL, *supra* note 243, at 108.

245. *Id.* at 86.

246. See *id.* at 92, 99.

247. Jennifer A. Drobac, *Age-of-Consent Laws Don't Reflect Teenage Psychology. Here's How to Fix Them.*, VOX (Nov. 20, 2017, 8:40 AM), <https://www.vox.com/the-big-idea/2017/11/20/16677180/age-consent-teenage-psychology-law-roy-moore> ("I defy anyone to tell me that teens in Indiana are more mature than those in Wisconsin.")

248. Goodwin, *supra* note 243, at 495; Michele Goodwin, Opinion, *Statutory Rape Laws*, N.Y. TIMES (July 13, 2015), <https://www.nytimes.com/2015/07/13/opinion/statutory-rape-laws.html>.

249. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 118 (2010).

250. Burris, *supra* note 13, at 164–65.

251. Alanen, *supra* note 206, at 3.

marriage. The presumption that parental consent somehow validates or obviates the minor's consent to marry is a fallacy."²⁵² As such, parental consent is often mistakenly viewed as a safeguard against forced and coerced marriage but realistically serves to do just the opposite.

The judicial approval exception faces similar criticism. Several states permit clerks—rather than judges—to issue marriage licenses.²⁵³ Many states do not require that the judge be a family law judge or trained in working with minors. Consequently, the judge could be from any division—with no background in recognizing instances of coercion, rape, or domestic abuse.²⁵⁴ This is problematic considering that “yes” may not always mean “yes.” Judges or clerks lacking keen awareness may allow coerced or forced marriages to go forward.²⁵⁵ Further, judges rarely appoint a GAL to minors in these proceedings.²⁵⁶ This contrasts starkly with how courts often appoint GALs to minors in other proceedings—such as child abuse and neglect cases or child custody cases—to ensure that a decision is made in a minor's best interest.²⁵⁷

C. *Addressing the Arguments in Favor of Child Marriage: Do Minors Have a Right to Marry?*

For 200 years, states have said almost nothing with regard to marriage age. But now this is changing. Many states have recently amended their statutes by raising the minimum age of marriage and making it more difficult for minors to exercise this right.²⁵⁸ This has largely been in response to non-profit organizations' lobbying efforts, which are grounded in a desire to prevent the coercion of minors.²⁵⁹ Legislators on both sides of the aisle have also expressed paternalistic ideas that minors are incapable of making these kinds of important decisions.²⁶⁰ By raising the marriage age and enacting barriers, legislatures are revoking rights to which minors were previously entitled.

Much of the discourse on the topic of the marriage of minors is focused on its mores. There are, undoubtedly, instances in which minor girls are coerced by their parents to marry. This may sometimes be the result of the minor becoming pregnant after having been raped. Without question, the law should disallow marriages of minors in this context and the government should prosecute these perpetrators to the fullest extent of the law. In addition, one cannot ignore the impact

252. *Id.* at 5.

253. *Understanding State Statutes*, *supra* note 16, at 2.

254. *See, e.g.*, MINN. STAT. ANN. § 517.02 (West, 2019) (“If the judge of the district court of the county in which the person resides is absent from the county and has not by order assigned another judge or a retired judge to act in the judge's stead, then the court commissioner or any judge of district court of the county may approve the application for a license.”) (emphasis added).

255. *See Johnson*, *supra* note 5.

256. *See Understanding State Statutes*, *supra* note 16, at 34, 48 (showing that only two states, North Carolina and Virginia, provide for a minor's guardian ad litem in state code provisions).

257. *See Illinois Marriage and Dissolution of Marriage Act*, 750 ILL. COMP. STAT. 5/506 (2018).

258. *See supra* Section II.C.

259. *See supra* Section II.C.

260. *See sources cited supra* notes 162, 169, 188 and accompanying text.

that early marriage has on minors' mental and physical health, educational attainment, and socioeconomic status.

But before placing an outright ban on marriages of minors in every state, it is important to consider those minors who truly desire to marry.²⁶¹ Some minors may seek marriage because they are pregnant and want to provide their child with familial structure, as the plaintiffs in *Moe*.²⁶² Others might want to marry because their religious traditions look down upon pregnancy outside of marriage. Or they may want to marry because they love one another and simply desire to exercise this right, such as the case of Maria Vargas.²⁶³ A desire to protect this right has been echoed by legislators, interest groups, and religious conservatives.²⁶⁴ In analyzing these arguments, it seems minors denied the right to marry may have a claim that these recent legislative reforms impinge on their fundamental right to marry. They may also have claims that these statutes impinge on their religious freedom. Even if such claims prove insufficient, it is evident that denying minors the right to marry could be wrongful on social and policy grounds.

1. *Do Minors Have a Fundamental Right to Marriage?*

It is evil to give children the so-called right to enter into this really serious contract It's like taking somebody, blindfolding her, taping up her mouth, tying her hands behind her back, tying her ankles together and then throwing her into the pool and saying, "We're giving her the right to swim."²⁶⁵

The ACLU of Northern California—though understanding of the motives of proponents—opposed an outright ban of the marriage of minors.²⁶⁶ It argued that California did not need to revoke this "fundamental right."²⁶⁷ But is marriage truly a fundamental right that extends to minors? The Supreme Court has held that marriage is a fundamental right and that the State cannot exclude persons from exercising this right unless the law passes strict scrutiny.²⁶⁸ Given that the Supreme Court has afforded significant weight to the right to marriage,²⁶⁹ it would not be unsurprising if it applied strict scrutiny to a statute prohibiting minors from marrying. If the Supreme Court were to apply strict scrutiny, it would need to find that the law is narrowly tailored to a compelling state interest. It is unclear whether the State's interest in protecting minors from divorce, poverty,

261. Adler, *Missouri is a Destination Wedding Spot*, *supra* note 25.

262. *Moe v. Dinkins*, 533 F. Supp. 623, 625 (S.D.N.Y. 1981).

263. See McCoy, *supra* note 6.

264. See *supra* Section II.C.

265. See Adler, *Missouri is a Destination Wedding Spot*, *supra* note 25 (quoting Fraidy Reiss of Unchained at Last).

266. Tucker, *supra* note 166.

267. *Id.*

268. *Skinner v. Oklahoma ex rel. Williamson* 316 U.S. 535, 541 (1942) (referring to marriage as "one of the basic civil rights of man" and "fundamental to the very existence and survival of race.").

269. See *supra* Section II.A.

lack of education, or possibly unhealthy relationships could be considered a compelling state interest. It is also unclear whether a law prohibiting the marriage of minors could be narrowly tailored to this interest, given that these trends could also be the result of poverty and lack of education in general.

Yet it seems unclear whether the Court would even apply such a test to the marriage of minors. The Court has not explicitly held that the right to marriage extends to minors. Dicta in *Roper* and *Carey* suggest that it is proper that this right might not be extended to minors due to their immaturity.²⁷⁰ Even further, the Second Circuit in *Moe* used rational basis review to reject the right of minors to marry in the absence of parental consent.²⁷¹ It explicitly stated that “the right of minors to marry has not been viewed as a fundamental right deserving strict scrutiny.”²⁷² The Supreme Court’s statements in *Roper* and *Carey* suggest that it might concur, were this issue to come before it. Thus, it is unclear whether minors could succeed on a claim that these new statutes are violating their fundamental right to marry and whether the Supreme Court would apply strict scrutiny were this issue to come before it. But if marriage truly is a fundamental right that extends to minors, it is significant that some states are enacting legislation to revoke it.

2. *Claims to Religious Freedom*

Former New Jersey Governor Chris Christie claimed that a ban on marriage of minors would “violate the cultures and traditions of some communities . . . based on religious traditions.”²⁷³ Indeed, many religious faiths emphasize the importance of virginity and look down upon abortion.²⁷⁴ Marriage is therefore viewed as a solution to teen pregnancy. Legislators have argued that it would be “a little bit overly aggressive” to prevent minors from marrying in this context.²⁷⁵ If a minor becomes pregnant or has already given birth, does she have a claim to religious freedom in the face of these new marriage statutes? If the minors in *Moe* had asserted their desire to marry in the name of “religious liberty,” would the outcome have been different?

a. Who is Marrying?

In analyzing claims of religious liberty, it must first be determined whether those minors seeking to marry are even religious persons, as former Governor Chris Christie claims.²⁷⁶ Further, many commentators have tied the issue of child

270. See *Roper v. Simmons*, 543 U.S. 551, 619 (2005); *Carey v. Population Servs. Int’l*, 431 U.S. 678, 706 (1977).

271. *Moe v. Dinkins*, 669 F.2d 67, 68 (2d. Cir. 1982) (per curiam).

272. *Id.*

273. Tsui, *Delaware Becomes First State to Ban Child Marriage*, *supra* note 19.

274. *Religious Groups’ Official Positions on Abortion*, PEW RES. CTR. (Jan. 16, 2013), <https://www.pewforum.org/2013/01/16/religious-groups-official-positions-on-abortion/>.

275. *Forced Marriage Law ‘Could Stop Victims Reporting Crime’*, BBC NEWS (Dec 5, 2018), <https://www.bbc.com/news/uk-wales-46455013>; Portnoy, *supra* note 104.

276. See *supra* notes 147–49 and accompanying text.

marriage to religion and “radical religious sects.”²⁷⁷ It is unclear if minors have any claim to religious liberty in the face of these new statutes. To make this determination, one must ascertain whether those minors marrying early are religious individuals and, if so, which religions they practice.

Marriage is most frequent in those states with higher conservatism, Republican voting records, and “greater religiosity.”²⁷⁸ Irrespective of a minor’s religious convictions, a minor is more likely to marry early if she attends a school wherein she is surrounded by religiously conservative peers.²⁷⁹ While early marriage occurs in a vast array of religious sects, “conservative Protestants exhibit the most consistent and early marrying effects.”²⁸⁰ Mormons are also likely to marry early.²⁸¹

Though Evangelicals have not formally endorsed child marriage, this sect has a long history of emphasizing the importance of virginity until marriage.²⁸² Organizations such as True Love Waits, the Silver Ring Thing, and Focus on the Family have promoted a youth culture focused on this agenda.²⁸³ Some of these organizations have created abstinence support groups and encouraged youth to sign agreements and exchange purity rings, hosting laser light shows during which hundreds of youth make abstinence pledges before friends and family.²⁸⁴ A 2005 study found that 17% of its adolescent participants had made virginity pledges.²⁸⁵ Thus, the number of minors placing value on abstinence for religious reasons is not insignificant.

Early marriage of minors has been deemed “an unfortunate by-product” of this tradition of stressing the importance of virginity.²⁸⁶ Evangelical teens are just as likely to engage in sex as other teens,²⁸⁷ but the emphasis on the immorality of premarital sex results in a lack of education on safe-sex.²⁸⁸

277. Burris, *supra* note 13, at 168; Foderaro, *supra* note 122.

278. NAOMI CAHN & JUNE CARBONE, *RED FAMILIES V. BLUE FAMILIES* 42 (2010); Hamilton, *supra* note 232, at 1841–42. *Contra The States of Marriage & Divorce*, PEW RES. CTR. (Oct. 15, 2009), <http://www.pewsocialtrends.org/2009/10/15/the-states-of-marriage-and-divorce/>.

279. Hamilton, *supra* note 232, at 1842–43.

280. Joshua J. Rendon et al., *Religion and Marriage Timing: A Replication and Extension*, 5 RELIGIONS 834, 843 (2014); see also Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J.L. & HUMAN. 89, 105 (2000).

281. Rendon et al., *supra* note 280, at 836.

282. Elizabeth Lauren Shively, *Happily Ever After: Gender, Romance and Relationships in the Christian Courtship Movement* (2012) (unpublished Ph.D. dissertation, Ohio State University); see Hamilton, *supra* note 232, at 1842.

283. See Lauren Winner, *Why is Chastity Important to the Christian Life? Lauren Winner Talks About The Importance of Experiencing Sex the Way it was Meant to Be—Within Marriage*, FOCUS ON THE FAM. (Feb. 1, 2005), <https://www.focusonthefamily.com/get-help/purity/>; *Looking for Silver Ring Thing?*, UNALTERED, <https://www.silverringthing.com/> (last visited Apr. 9, 2020); *True Love Waits*, LIFEWAY, <https://www.lifeway.com/en/product-family/true-love-waits> (last visited Apr. 9, 2020).

284. MARK D. REGNERUS, *THE FORBIDDEN FRUIT: SEX & RELIGION IN THE LIVES OF AMERICAN TEENAGERS* 91 (2007).

285. Melina M. Bersamin et al., *Promising to Wait: Virginity Pledges and Adolescent Sexual Behavior*, 36 J. ADOLESCENT HEALTH 428, 432 (2005).

286. Laura Davids, *Female Subordination Starts at Home: Consequences of Young Marriage and Proposed Solutions*, 5 REGENT J. INT’L L. 299, 304 (2007).

287. REGNERUS, *supra* note 284, at 153.

288. CAHN & CARBONE, *supra* note 278, at 42.

Consequently, these minors are less likely to use contraception and more likely to become pregnant.²⁸⁹ Even further, contraception is rarely used in cases of coerced sex or rape.²⁹⁰ Evangelical Protestants tend to be anti-abortion and heavily-focused on the importance of raising a child with both parents in a traditional family structure.²⁹¹ Thus, marriage is often viewed as the solution to teen pregnancy.²⁹² One could infer that Evangelical Protestants implicitly support the marriage of minors in instances of pregnancy, even when the minor is a victim of sexual assault.

Interestingly, a number of scandals have revealed underage minors being coerced or sexually abused by older men in the Evangelical community. This is exacerbated through the practice of “courtship”—a mechanism whereby parents match their daughters with a man who is often much older.²⁹³ This practice was highlighted when a *Washington Post* exposé revealed that Alabama politician Roy Moore had dated teenage girls.²⁹⁴ This included making advances on a fourteen-year-old when he was in his thirties.²⁹⁵ Some Evangelical leaders condemned his behavior, stating, “THIS IS NOT WHAT EVANGELICALS BELIEVE.”²⁹⁶ But political commentator, Kathryn Brightbill, countered that such practices are not uncommon in the Evangelical community.²⁹⁷ Specifically, she stated, “Roy Moore is a symptom of a larger problem in conservative fundamentalist and evangelical circles. It’s not a southern problem, it’s a fundamentalist problem. Girls who are 14 are seen as potential relationship material.”²⁹⁸

Brightbill’s claims have been substantiated by other recent scandals. In 1997, an adult member of a Baptist congregation in New Hampshire sexually assaulted and impregnated a fifteen-year-old girl.²⁹⁹ The pastor of the congregation forced her to confess her “sin” to the Congregation of having seduced her rapist.³⁰⁰ This reflected the deeply ingrained views of some sects of the Evangelical Church that the minor girl—and not the adult, male perpetrator—is the one at fault.³⁰¹ In 2016, Vaughn Ohlman created a retreat called “Let Them

289. *Id.*; REGNERUS, *supra* note 284, at 137.

290. REGNERUS, *supra* note 284, at 151.

291. *See* CAHN & CARBONE, *supra* note 278, at 130.

292. *See* REGNERUS, *supra* note 284, at 22.

293. Kathryn Brightbill, *The Larger Problem of Sexual Abuse in Evangelical Circles*, CHI. TRIB. (Nov. 14, 2017, 1:56 PM), <https://www.chicagotribune.com/news/opinion/commentary/ct-perspec-evangelical-roy-moore-girls-1115-20171114-story.html>.

294. *Id.*

295. *Id.*

296. Ed Stetzer, *No, Christians Don’t Use Joseph and Mary to Explain Child Molesting Accusations*, CHRISTIANITY TODAY (Nov. 9, 2017), <https://www.christianitytoday.com/edstetzer/2017/november/roy-moore.html>.

297. Kathryn Brightbill (@KEBrightbill), TWITTER (Nov. 9, 2017, 6:42 PM), <https://twitter.com/KEBrightbill/status/928815110679859200>.

298. *Id.*

299. Alan B. Goldberg et al., *Compassion or Cover-Up? Teen Victim Claims Rape; Forced Confession in Church*, ABC NEWS (Apr. 8, 2011), <https://abcnews.go.com/2020/teen-rape-victim-forced-confess-church/story?id=13299135>.

300. *Id.*

301. RUSH, *supra* note 101, at 143, 151.

Marry” to allow parents to pair their young daughters with other Christians’ sons. Ohlman implied that girls as young as twelve are capable of marrying, sexual intercourse, and childbearing.³⁰² This culture was echoed even further when an Evangelical pastor and radio broadcaster defended statements in favor of child marriage.³⁰³ He argued that the marriage of fifteen-year-old girls is not a sin and is instead favorable to maintain their purity and “God’s law.”³⁰⁴ But Boz Tchividjian, the grandson of the late Evangelical pastor Billy Graham, has been speaking out against sexual abuse in the Church.³⁰⁵ Through his organization GRACE (Godly Response to Abuse in the Christian Environment), he seeks to change the culture of the Evangelical Church and put a stop to this behavior.³⁰⁶

Though this is indicative of a culture that views marriage of minor girls as acceptable, it must be determined whether Evangelical minors are more likely than others to marry. If they are, claims that laws raising the minimum marriage age unfairly impinge upon religious persons’ right to marry may have some merit. The connection between child marriage and religion might be shown by determining whether a correlation exists between those states with the highest rates of child marriage and assessing which religions are most prominent in those states. Specifically, the Pew Research Center has collected data on percentages of religious persons in each state and has broken down those percentages by religious sect.³⁰⁷ A comparison of that data with the child marriage rates in each state could provide some insight as to which minors are more likely to marry. Through running a regression analysis across states’ child marriage child rates from 2000 to 2010 and those states’ percentages of Evangelical Protestants, it appears that there *is* a correlation. That is, states with higher numbers of Evangelical Protestants are *more* likely to have higher rates of child marriage.³⁰⁸

302. CB Condez, ‘Get Them Married’ Retreat Cancelled; Organizer ‘Appreciates’ So-Called Anti-Christian Sites’ Biblical Commentary, CHRISTIAN TIMES (May 9, 2016), <https://christiantimes.com/article/get-them-married-retreat-cancelled-organizer-appreciates-so-called-anti-christian-sites-biblical-commentary/55270.htm>.

303. R.L. Stollar, *On Child Marriage: Kevin Swanson and Dave Bruehner Defend Phil Robertson*, HOMESCHOOLERS ANONYMOUS (Jan. 11, 2014), <https://homeschoolersanonymous.org/2014/01/11/on-child-marriage-kevin-swanson-and-dave-bruehner-defend-phil-robertson/>.

304. *Id.*

305. Harry Bruinius, *Since Before #MeToo, Boz Tchividjian Has Held Abusers in Church Accountable*, CHRISTIAN CENTURY (July 3, 2018), <https://www.christiancentury.org/article/people/metoo-boz-tchividjian-has-held-abusers-church-accountable>.

306. *Id.*; see also GRACE, <https://www.netgrace.org/> (last visited Apr. 9, 2020).

307. *Religious Landscape Study*, PEW RES. CTR., <http://www.pewforum.org/religious-landscape-study/> (last visited Apr. 9, 2020).

308. The p-value of this regression analysis is 0.586, suggesting a correlation. Where a p-value is zero, there is no correlation. Where a p-value is one, there is a perfect correlation.

TABLE 2: THE RELATIONSHIP BETWEEN RELIGION AND CHILD MARRIAGE

State	Percentage of Evangelical Protestants ³⁰⁹	Number of 15 to 17-year-olds married per thousand 2010–2014 ³¹⁰	Child Marriage Rate 2000–2010 ³¹¹	Youngest Age at which Minors Can Marry if Meet Statutory Requirements
Alabama	42.1	4.9	0.17%	16
Alaska	13.6	1.8	0.10%	14
Arizona	17.4	4.8	N/A	16 ³¹²
Arkansas	36.3	5.6	0.25%	17
California	12.6 ³¹³	5.5	N/A	No minimum age
Colorado	16.6	4.4	0.09%	16
Connecticut	9.1	4.6	0.03%	16
Delaware	10.4	3.1	0.02%	18
Florida	16.8	4.3	0.08%	17 ³¹⁴
Georgia	30.0	4.9	N/A	17
Hawaii	15.8	4.2	0.05%	15
Idaho	14	3.6	0.29%	No minimum age
Illinois	14.2	3.7	0.05%	16
Indiana	22.3	3.8	N/A	15
Iowa	21.6	3.9	0.04%	16 ³¹⁵
Kansas	23.6	3.4	0.09%	15
Kentucky	37.2	4.1	0.28%	17
Louisiana	22.7	4.9	0.10%	No minimum age
Maine	8.4	2.2	N/A	No minimum age
Maryland	12.4	4.5	0.05%	15
Massachusetts	5.2	3.8	0.02%	No minimum age
Michigan	17.5	3.8	0.04%	No minimum age
Minnesota	14.1	3.3	N/A	16
Mississippi	34.9	4.4	0.15%	No minimum age ³¹⁶
Missouri	27.7	4.1	0.11%	16
Montana	18.2	3.1	0.04%	16
Nebraska	18.8	3.0	0.05%	17
Nevada	13.2	5.9	N/A	17
New Hampshire	7.7	3.2	0.01%	16
New Jersey	8.7	4.2	0.02%	18
New Mexico	17.2	3.2	N/A	No minimum age
New York	6.0	4.0	0.02%	17
North Carolina	27.0	5.4	N/A	14
North Dakota	16.9	2.9	0.04%	16
Ohio	21.2	3.4	0.04%	17
Oklahoma	37.1	5.8	N/A	No minimum age ³¹⁷
Oregon	17.7	3.8	0.08%	17
Pennsylvania	13.4	3.3	N/A	No minimum age
Rhode Island	10.5	2.0	N/A	No minimum age
South Carolina	27.3	3.1	0.10%	16
South Dakota	19.8	2.8	0.08%	16
Tennessee	42.1	5.5	0.13%	17

309. *Religious Landscape Study*, *supra* note 307.310. McClendon & Sandstrom, *supra* note 68 (using data from 2010–2014).311. *Child Marriage – Shocking Statistics*, UNCHAINED AT LAST, <http://www.unchainedatlast.org/child-marriage-shocking-statistics/> (using data from 2000–2010).

312. The older spouse must be not more than three years older than the younger spouse.

313. Figures for California are just estimates, as California has not collected data on ages of those marrying for years.

314. The older spouse must be not more than two years older than the younger spouse.

315. For a sixteen-year-old to marry in Iowa, she must obtain both parental consent and judicial approval.

316. Mississippi's statute is gendered in that a seventeen-year-old male may marry with parental consent, but a fifteen-year-old girl may marry with parental consent. If a minor obtains both parental consent or judicial approval, the minor may marry at any age.

317. In the case of pregnancy Okla. Stat. Ann. tit. 43, § 3.

Texas	23.9	6.9 ³¹⁸	0.15%	16
Utah	5.1	4.1	0.18%	16
Vermont	5.9	3.7	0.03%	16
Virginia	21.9	4.9	0.09%	16
Washington	15.3	4.3	0.05%	No minimum age
West Virginia	30.4	7.1	0.15%	No minimum age
Wisconsin	15.6	3.2	0.05%	16
Wyoming	19.2	4.7	0.19%	No minimum age

Nonetheless, this correlation could also be the result of conservative values, as many of these states exhibiting high religiosity are also “red” states. For example, the ten states with the highest percentages of Evangelical Protestants include Alabama, Tennessee, Kentucky, Oklahoma, Arkansas, West Virginia, Georgia, Missouri, South Carolina, and North Carolina, respectively.³¹⁹ But, for the most part, persons in these states are also more likely to align themselves with conservative ideology. As exemplified by Table 3, persons in these states are more likely to identify as conservative, to have voted for Trump in the 2016 Presidential Election, to oppose abortion, and to not believe in evolution—all characteristics associated with conservatism.³²⁰ As such, it is unclear whether minors who marry are more religious than those who do not, or if conservative beliefs also play a role.

318. Texas has the highest child marriage rate for girls: Nine out of every 1,000 girls ages 15 to 17 in that state were married. McClendon & Sandstrom, *supra* note 68 (using data from 2010–2014).

319. See *infra* Table 2.

320. See *infra* Table 3; see also *Political Typology Reveals Deep Fissures on the Right and Left*, PEW RES. CTR. (Oct. 24, 2017), <https://www.people-press.org/2017/10/24/political-typology-reveals-deep-fissures-on-the-right-and-left/>; *Beyond Red vs. Blue: The Political Typology*, PEW RES. CTR. (June 26, 2014), <https://www.people-press.org/2014/06/26/the-political-typology-beyond-red-vs-blue/>.

TABLE 3: STATES WITH HIGHEST PERCENTAGES OF EVANGELICAL PROTESTANTS AND INDICATORS OF CONSERVATISM

States with the Highest Percentages of Evangelical Protestants ³²¹	Dominant Political Ideology ³²²	Popular Voting Record in 2016 Presidential Election ³²³	Dominant Views on Abortion ³²⁴	Dominant Views on Human Evolution ³²⁵
Alabama	50% Conservative	62.9% Trump 34.6% Clinton	58% illegal in all/most cases	49% always existed in present form
Tennessee	46% Conservative	61.1% Trump 34.9% Clinton	55% illegal in all/most cases	49% always existed in present form
Kentucky	42% Conservative	62.5% Trump 32.7% Clinton	57% illegal in all/most cases	42% always existed in present form
Oklahoma	38% Conservative ³²⁶	65.3% Trump 28.9% Clinton	51% legal in all/most cases ³²⁷	42% always existed in present form
Arkansas	42% Conservative	60.4% Trump 33.8% Clinton	60% illegal in all/most cases	46% always existed in present form
West Virginia	47% Conservative	68.7% Trump 26.5% Clinton	58% illegal in all/most cases	48% always existed in present form
Georgia	42% Conservative	51.3% Trump 45.6% Clinton	49% illegal in all/most cases ³²⁸	39% always existed in present form
Missouri	39% Conservative	57.1% Trump 38.0% Clinton	50% illegal in all/most cases	38% always existed in present form
South Carolina	43% Conservative	54.9% Trump 40.8% Clinton	52% illegal in all/most cases	44% always existed in present form
North Carolina	40% Conservative	50.5% Trump 46.7% Clinton	49% legal in all/most cases ³²⁹	36% always existed in present form

b. Are These Statutes Targeting a Specific Religion?

Even if minors of Evangelical Protestant and Mormon sects are more likely to marry early for religious reasons, they can only make a claim of religious liberty if these new marriage statutes target their religion specifically.³³⁰ Legislators raising the marriage age have only referenced religious traditions vaguely, failing to specify *which* religious traditions were impacted by these laws.³³¹

321. *Religious Landscape Study*, *supra* note 307.

322. *Id.*

323. *2016 Presidential Election Results*, Politico (Dec. 13, 2016, 1:57 PM), <https://www.politico.com/2016-election/results/map/president/>.

324. *Religious Landscape Study*, *supra* note 307.

325. *Id.*

326. But note, 37% of Oklahomans identify as moderate.

327. But note, 45% believe that abortion should be illegal in all or most cases.

328. But note, 48% believe that abortion should be legal in all or most cases.

329. But note, 45% believe that abortion should be illegal in all or most cases.

330. *Emp't Div. v. Smith*, 494 U.S. 872, 882 (1990).

331. See, e.g., Caroline Matas, *Christie Strikes Child Marriage Bill, Cites Religious Freedom*, HARV. DIVINITY SCH. (MAY 18, 2017), <https://rlp.hds.harvard.edu/news/christie-strikes-child-marriage-bill-cites-religious-freedom>.

Neither the statutory language nor legislative history in these statutes indicate that states are raising the marriage age *because of* religion. Even further, while laws may not restrict religious beliefs, they may restrict religious practices that are against public policy.³³² As such, pregnant minors seeking to marry are unlikely to succeed on claims of religious liberty.

3. *Acknowledging Adolescents as Autonomous Individuals*

Important to this analysis is the rhetoric used by legislators and lobbyists seeking to raise the marriage age. Legislators raising the marriage age have utilized protectionist rhetoric suggesting that minor girls do not have the decision-making capacity to make choices of this weight. For example, the goal of the Texas bill was to delay the decision of marriage until girls “grow up” so that they are not marrying “before their time.”³³³ The Clerk of the Peace who initiated Delaware’s legislation told the press that, when he stopped a marriage of a pregnant minor, the “little girl[] . . . knew she was in safe hands.”³³⁴ In proposing legislation to eliminate the marriage of minors in Minnesota, a female Democratic state representative stated, “We are the adults who know better, so we should protect our children.”³³⁵ Finally, in signing New Hampshire’s bill into law, the Republican governor utilized language explicitly stating that minors are incapable of making important life decisions.³³⁶ Even the phrase “child marriage,” itself, creates an image of minors as incapable, fragile beings. By pushing forth this legislation with this rhetoric and without acknowledging the autonomy of minors, these legislators and lobbyists are, in effect, prompting the use of this harmful rhetoric from government officials and setting the stage for the limitation of minors’ rights in other contexts. While these efforts to raise the minimum age are undoubtedly well-intentioned—with the goal of protecting young women—asserting that minors are incapable of making decisions regarding their bodies and their futures could have gross implications for how policymakers and society at large view the decision-making capacity of minors in other contexts.

This sentiment has been shared by the ACLU of Northern California, women’s rights organizations, and legislators.³³⁷ In addition, Stephanie Nilva, the executive director of Day One, a nonprofit focused on dating abuse and domestic violence, has made this argument in advocating for minors’ rights. In doing so, she has stated, “I just believe in the autonomy and the empowerment of

332. Reynolds v. United States, 98 U.S. 145, 166 (1879).

333. Alex Samuels, *New State Law Seeks to Reduce the Number of Child Brides in Texas*, TEX. TRIB. (Sept. 26, 2017, 12:00 AM), <https://www.texastribune.org/2017/09/26/new-law-seeks-reduce-number-child-brides-texas/>.

334. Tsui, *Delaware Becomes First State to Ban Child Marriage*, *supra* note 19.

335. Briana Bierschbach, *Bill Aims to Put an End to ‘Child Marriages’ in Minnesota*, MINN PUB. RADIO (Feb. 12, 2019, 6:48 PM), <https://blogs.mprnews.org/capitol-view/2019/02/bill-aims-to-put-an-end-to-child-marriages-in-minnesota/>.

336. See *supra* text accompanying note 188.

337. Tovia Smith, *Who Decides if You’re Too Young to Marry?*, NPR (April 5, 2016, 4:47 PM), <https://www.npr.org/2016/04/05/473106012/who-decides-if-youre-too-young-to-marry>.

youth, and that young people are in the best position to determine whether they're safe, and also whether they want to be married."³³⁸

As previously mentioned, case law pertaining to the marriage of minors is sparse. Nonetheless, the Court has grappled with the rights of minors in other contexts over the last several decades.³³⁹ The Supreme Court has often viewed minors as distinguished from adults.³⁴⁰ For example, the Court has ruled that mandatory sentencing to life without parole and the use of the death penalty against minors are unconstitutional.³⁴¹ It has limited minors' constitutional rights to privacy³⁴² and free speech in school settings.³⁴³ In his concurrence in *Ginsberg v. New York*, Justice Stewart stated that "a child . . . is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees."³⁴⁴

Many of the Court's decisions limiting the rights of minors have been premised on the notion that "the State has an interest in protecting minors from their own immature judgment."³⁴⁵ Even further, the Court has upheld the fundamental right of parents to exercise control over their children, implying that the rights of minors are rooted in those of their parents.³⁴⁶ In his dissent in *H.L. v. Matheson*, Justice Marshall stated that "the primary role of parents in the upbringing of their children is now established beyond debate as an enduring American tradition."³⁴⁷ This sentiment has often been upheld by the Court. In *Meyer v. Nebraska*, "the first significant parents' rights case,"³⁴⁸ the Court held that the right of parents to bring up their children the way they see fit is protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.³⁴⁹ Two years later, in *Pierce v. Society of Sisters*, the Court upheld the rights of parents to send their children to private schools.³⁵⁰ Later, in *Stanley v. Illinois*, the Court held that the right to parent is protected by the Equal Protection Clause of the Fourteenth Amendment.³⁵¹ In *Troxel v. Granville*, the Court held that parents have "the right

338. *Id.*

339. *See, e.g.,* *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) ("Minors, as well as adults, are protected by the Constitution and possess constitutional rights.")

340. *Fershee, supra* note 235, at 446.

341. *Miller v. Alabama*, 567 U.S. 460, 483 (2012); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005).

342. *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 664–65 (1995) (upholding the right of schools to subject student athletes to urine drug tests); *New Jersey v. T.L.O.*, 469 U.S. 325, 341–42 (1985) (upholding the right of schools to search students' backpacks and lockers if they have a reasonable suspicion that a school rule has been broken).

343. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988); *Ginsberg v. New York*, 390 U.S. 629, 636–37 (1968).

344. *Ginsberg*, 390 U.S. at 649–50 (J. Stewart, concurring).

345. Linda L. Schlueter, *40th Anniversary of Roe v. Wade: Reflections Past, Present, and Future*, 40 OHIO N.U.L. REV. 105, 176 (2013).

346. *Piatt, supra* note 50, at 774.

347. *H.L. v. Matheson*, 450 U.S. 398, 447 (1981).

348. Martin Guggenheim, *Minor Rights: The Adolescent Abortion Cases*, 30 HOFSTRA L. REV. 589, 595 (2002).

349. *Meyer v. Nebraska*, 262 U.S. 390, 398 (1923).

350. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925).

351. 405 U.S. 645, 649 (1972).

to direct the upbringing and education of children under their control.”³⁵² This is assuming a parent acts in his or her child’s best interest. Notably, the Court’s decisions in this series of cases are largely grounded in the perceived ineptitude of minors and the corresponding reliance on their parents in decision-making.³⁵³

In some contexts, however, the Court has held that minors should be treated no differently than adults.³⁵⁴ In doing so, the Court has held that minors are entitled to the same constitutional protections and has recognized minors as autonomous individuals. For example, in *Bellotti v. Baird*, the Court stated that “a child merely on account of his minority, is not beyond the protection of the Constitution.”³⁵⁵ In *Planned Parenthood v. Danforth*, the Court stated that “constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority.”³⁵⁶

a. Minors’ Rights to Reproductive Decision-Making

Through parental consent and notification requirements, “a constant tug-of-war exists between minors’ constitutionally protected privacy rights and parents’ fundamental right to direct the upbringing of their children.”³⁵⁷ This has been particularly prevalent in the abortion context. Many states began implementing parental consent and notification requirements during the Reagan era.³⁵⁸ Though the Court struck down a parental notification statute as unconstitutional in *Danforth*, it later “retreated from this position” in *Bellotti*.³⁵⁹ In *Bellotti*, the Court upheld parental notification laws so long as an alternative method—such as judicial bypass—is available.³⁶⁰ In doing so, it noted that the “most important life decision, the choice to seek an abortion, cannot constitutionally be usurped by the minor’s parents or the State.”³⁶¹ Under the statute at issue, a judicial bypass required that a minor petition the court.³⁶² The court could then grant the minor the right to obtain an abortion if it determined that “(1) the minor was sufficiently mature and informed to choose an abortion without a parent’s involvement, or (2) the abortion was in the minor’s best interest, if she was unable to demonstrate the capacity to make the decision independently.”³⁶³

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

353. *See Ginsberg v. New York*, 390 U.S. 629, 640–41 (1968).

354. *Kent v. United States*, 383 U.S. 541, 554–55 (1966) (holding that minors can be tried as adults in criminal cases).

355. *Bellotti v. Baird*, 443 U.S. 622, 633 (1979).

356. *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976).

357. Stephanie A. Zavala, *Defending Parental Involvement and the Presumption of Immaturity in Minors’ Decisions to Abort*, 72 S. CAL. L. REV. 1725, 1726 (1999).

358. LUKER, *supra* note 238, at 77.

359. *Bellotti*, 443 U.S. at 651; *Danforth*, 428 U.S. at 74.

360. *Bellotti*, 443 U.S. at 647–48.

361. Fershee, *supra* note 235, at 447.

362. *Bellotti*, 443 U.S. at 647–48.

363. Sangitha Palaniappa, Franziska Schroder & Lauren Wiefels, *Abortion*, 17 GEO. J. GENDER & L. 3, 8 (2016).

Democrats have occasionally promoted parental notification statutes.³⁶⁴ But these provisions are largely utilized by Republican legislators to impede minors' ability to exercise their reproductive rights.³⁶⁵ Law Professor Carol Sanger has noted that these laws, "often couched in the language of family togetherness and child protection," are focused on "securing a set of political goals aimed at thwarting access to abortion, restoring parental authority, and punishing girls for having sex."³⁶⁶ In addition, these requirements often delay medical treatment, which can result in riskier procedures.³⁶⁷ Judicial bypass provisions do not serve as an adequate alternative option for minors, as they require a minor to skip school to go file a petition with the Court, and "the bypass is often difficult to navigate, even for the most mature minors."³⁶⁸

Yet the Court upheld a parental notification statute in *H.L. v. Matheson*.³⁶⁹ In doing so, it emphasized its position that "an unmarried pregnant minor [should] seek the help and advice of her parents in making the very important decision whether or not to bear a child."³⁷⁰ It stated that abortion "is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support."³⁷¹ The Court reasoned that a girl's pregnancy could be proof in fact of her "immature" judgment.³⁷² But in 2006, the Court upheld a parental notification statute that included *no* judicial bypass provision, "a law that seem[ed] to stand in clear violation of earlier Supreme Court precedents."³⁷³ In its decision, the Court stated that minors' "immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely."³⁷⁴

Indeed, many conservatives have argued that parental notification laws are necessary to "correct their daughters' misapprehensions and challenge their erroneous beliefs" by preventing their daughters from seeking abortions.³⁷⁵ The presumption that minors "lack [the] experience, knowledge, and maturity . . . to give [any kind of] meaningful[, informed] consent"³⁷⁶ to abortion is a tenet in right-wing anti-abortion rhetoric.³⁷⁷ In Indiana, a predominantly "red" state, parents are even able to challenge abortions of their daughters by claiming the fetus

364. See CAHN & CARBONE, *supra* note 278, at 97.

365. See *id.* at 102. These laws can often instill violence within the home or force a minor to give birth to a child she does not want. *Id.*

366. *Id.*

367. *Id.* at 98.

368. *Id.* at 102.

369. 450 U.S. 398, 413 (1981).

370. *Id.* at 409–10.

371. *Id.* at 410.

372. *Id.* at 411.

373. CAHN & CARBONE, *supra* note 278, at 100.

374. *Ayotte v. Planned Parenthood*, 546 U.S. 320, 326 (2006) (quoting *Hodgson v. Minnesota*, 497 U.S. 417, 444–45 (1990)).

375. Zavala, *supra* note 357, at 1746.

376. Susan McKinney, *Recent Decision*, *Matheson*, 450 U.S. 398 (1981), 12 CUMB. L. REV. 711, 713 (1982).

377. Heather D. Boonstra & Elizabeth Nash, *Minors & the Right to Consent to Health Care*, GUTTMACHER INST. (Aug. 1, 2000), https://www.guttmacher.org/sites/default/files/article_files/gr030404.pdf.

is “viable.”³⁷⁸ Moreover, even if a minor is already a parent, she must still face the barrier of parental notification in some states.³⁷⁹ Thirty-seven states require some kind of parental involvement in a minor’s abortion decision.³⁸⁰

But, on other occasions, legislation and the Court have upheld minors’ rights to reproductive decision-making. Under Title X of the Public Health Act and Titles V, XIX, and XX of the Social Security Act, teenagers were given access to government-funded family planning services.³⁸¹ In *Carey v. Population Services International*, the Court held that a blanket prohibition on the sales of contraceptives to minors is unconstitutional.³⁸² In doing so, the Court stated that “the right to privacy in connection with decisions affecting procreation extends to minors as well as to adults.”³⁸³

Though the Court has upheld parental notification statutes in the abortion context, it has noted the harm this obstacle can inflict.³⁸⁴ As a result, it has required that there be a mechanism whereby minors may obtain consent from someone else, such as a judge.³⁸⁵ In his vigorous dissent in *Matheson*, Justice Marshall argued that parental consent requirements violate minors’ right to privacy.³⁸⁶ He stated, “It seems doubtful that a minor mature enough to become pregnant and to seek medical advice on her own initiative would be unable or unwilling to provide her physician with information crucial to the abortion decision.”³⁸⁷ Recognizing the difficulty of the judicial bypass procedure, some states have repealed parental notification statutes or instead allow notice to be given to another individual, such as a physician, grandparent, or mental health professional.³⁸⁸

Even so, many states have recently enacted conservative abortion statutes making it more difficult for women in general to obtain abortions. Specifically, Alabama’s new abortion law, among other restrictions, effectively bans abortions from conception on and does not allow abortions even in cases of rape or incest.³⁸⁹ Georgia’s new abortion law bans abortion after just six weeks of pregnancy—before many minors may even know they are pregnant or are able to

378. Schlueter, *supra* note 345, at 158.

379. See Fershee, *supra* note 235, at 425.

380. *Parental Consent and Notification Laws*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/teens/preventing-pregnancy-stds/parental-consent-and-notification-laws> (last visited Apr. 9, 2020).

381. CAHN & CARBONE, *supra* note 278, at 87; LUKER, *supra* note 238, at 70.

382. *Carey v. Population Servs. Int’l*, 431 U.S. 678, 694 (1977).

383. *Id.* at 693.

384. *H. L. v. Matheson*, 450 U.S. 398, 441–42 (1981) (Marshall, J., dissenting).

385. *City of Akron v. Akron Ctr. for Reprod. Health*, 459 U.S. 940 (1982); CAHN & CARBONE, *supra* note 278, at 98.

386. *Matheson*, 450 U.S. at 441 (Marshall, J., dissenting).

387. *Id.* at 443.

388. CAHN & CARBONE, *supra* note 278, at 100–01; Boonstra & Nash, *supra* note 377 (“[W]hile parental involvement is desirable, many minors will not seek services they need if they have to tell their parents.”).

389. Timothy Williams & Alan Blinder, *As States Race to Limit Abortions, Alabama Goes Further, Seeking to Outlaw Most of Them*, N.Y. TIMES (May 8, 2019), <https://www.nytimes.com/2019/05/08/us/abortion-alabama-ban.html?module=inline>; Timothy Williams & Alan Blinder, *Lawmakers Vote to Effectively Ban Abortion in Alabama*, N.Y. TIMES (Mar. 14, 2019), <https://www.nytimes.com/2019/05/14/us/abortion-law-alabama.html>.

reach an abortion provider.³⁹⁰ Similar bills have been passed in Kentucky, Mississippi, Missouri, and Ohio.³⁹¹ These laws will have an especially problematic effect on minors, given that minors who are the victims of rape or incest are often stifled by their parents. A reduction in the number of abortion clinics—as in Missouri, which now only has one—can only harm minors who already have difficulty in accessing these services.³⁹² Given that the overarching goal of these new laws is to overturn *Roe v. Wade*, the use of rhetoric surrounding the decision-making capacity of minors is especially poignant now more than ever. If feminist lobbyists and Democratic legislators truly seek to advance the rights, safety, and well-being of minors, they must be careful in the language they use surrounding minors' abilities to make decisions on behalf of themselves.

b. Minors' Rights in Medical Decision-Making

Just as states regulate minors' rights in the abortion context, states also regulate minors' rights to consent to and receive medical care.³⁹³ As a general rule, minors need parental consent for medical treatment.³⁹⁴ Minors cannot consent to medical treatment or other decisions concerning their bodies without parental approval.³⁹⁵ They cannot donate blood or receive dental treatment, surgery, or x-rays.³⁹⁶ Though a minor may seek medical care without parental involvement while pregnant, that right is eliminated in some states once the minor gives birth.³⁹⁷ As the Supreme Court noted in *Parham v. J.R.*:

Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments. . . . The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child.³⁹⁸

But courts and legislators should be cognizant of the fact that minors' wants and needs in the medical context are not limited to cosmetic surgery. Significantly, even if a minor indicates on her driver's license that she wishes to be an

390. Patricia Mazzei & Alan Blinder, *Georgia Governor Signs 'Fetal Heartbeat' Abortion Law*, N.Y. TIMES (May 7, 2019), <https://www.nytimes.com/2019/05/07/us/heartbeat-bill-georgia.html>; Mitch Smith, *Missouri Governor Signs Bill Outlawing Abortion After 8 Weeks*, N.Y. TIMES (May 24, 2019), <https://www.nytimes.com/2019/05/24/us/missouri-abortion-law.html>.

391. See Mazzei & Blinder, *supra* note 390.

392. Sabrina Tavernise & Timothy Williams, *Lone Missouri Abortion Clinic Can Stay Open in Dispute with State*, N.Y. TIMES (June 28, 2019), <https://www.nytimes.com/2019/06/28/us/missouri-abortion-clinic.html>.

393. Doriane Lambelet Coleman & Philip M. Rosoff, *The Legal Authority of Mature Minors to Consent to General Medical Treatment*, 131 PEDIATRICS 786, 789 (2013).

394. See *id.* at 787.

395. ILL. HEALTH & HOSP. ASS'N, CONSENT BY MINORS TO MEDICAL TREATMENT (Mar. 15, 2019) [hereinafter CONSENT BY MINORS], <https://www.team-ih.org/files/non-gated/legal/consent-by-minors.aspx>.

396. Zavala, *supra* note 357, at 1732.

397. See CONSENT BY MINORS, *supra* note 395; see also Dean J. Haas, "Doctor, I'm Pregnant and Fifteen—I Can't Tell My Parents—Please Help Me": *Minor Consent, Reproductive Rights, and Ethical Principles for Physicians*, 86 N.D.L. REV. 63, 63 (2010).

398. *Parham v. J.R.*, 442 U.S. 584, 603–04 (1979).

organ donor, her organs may not be donated postmortem without parental consent.³⁹⁹ This is problematic, as research indicates parents are unlikely to donate their deceased child's organs to other children.⁴⁰⁰ Hence, misinformed parents could prevent their child from saving the life of another, even if it is her dying wish.

The issue of minors' autonomy in medical decision-making is even more pertinent in the context of a minor's right to be vaccinated. As demonstrated by the recent measles outbreak, many parents are involved in the "anti-vaxxer" movement,⁴⁰¹ which has even been propagated by celebrities such as Justin Timberlake, Jessica Biel, and Jim Carrey, to name a few.⁴⁰² A refusal to vaccinate one's child predisposes that child to life-threatening illnesses and puts others at risk of harm. Despite this, a minor cannot receive vaccinations without parental consent.⁴⁰³

Unvaccinated minors are increasingly asserting their rights to be vaccinated,⁴⁰⁴ sparking dialogue concerning minor's voices in the shadow of their parents.⁴⁰⁵ A small number of states have enacted legislation banning religious or personal exemptions.⁴⁰⁶ For example, New York recently enacted a law ending religious and some non-religious vaccination exemptions for schoolchildren across the state.⁴⁰⁷ But parents' decisions not to vaccinate their homeschooled children remains an issue.⁴⁰⁸

399. See Illinois Anatomical Gift Act, 755 ILL. COMP. STAT. ANN. 50/5-7 (2018); Kevin Joy, *Can My Child Be an Organ Donor? What Parents Should Know*, UNIV. MICH. MEDICINE: MICH. HEALTH (Jan. 23, 2018, 7:00 AM), <https://healthblog.uofmhealth.org/childrens-health/can-my-child-be-an-organ-donor-what-parents-should-know>.

400. Joy, *supra* note 399.

401. See Amanda Morris & Scott Simon, *Defying Parents, A Teen Decides to Get Vaccinated*, NPR (Feb. 9, 2019, 7:57 AM), <https://www.npr.org/sections/health-shots/2019/02/09/692819105/defying-parents-a-teen-decides-to-get-vaccinated>.

402. EJ Dickson, *A Guide to 17 Anti-Vaccination Celebrities*, ROLLING STONE (June 14, 2019, 1:52 PM), <https://www.rollingstone.com/culture/culture-features/celebrities-anti-vaxxers-jessica-biel-847779/>; Jan Hoffman, *How Anti-Vaccine Sentiment Took Hold in the United States*, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/23/health/anti-vaccination-movement-us.html>.

403. WORLD HEALTH ORG., *Considerations Regarding Consent in Vaccinating Children and Adolescents Between 6 and 17 Years Old*, at 2, (2014) [hereinafter *Considerations Regarding Consent in Vaccinating Children and Adolescents*], https://www.who.int/immunization/programmes_systems/policies_strategies/consent_note_en.pdf.

404. Morris & Simon, *supra* note 401.

405. *Id.*; Marco Cáceres, *Professor Says Parents Have No Right to Refuse Vaccines for Their Children*, VACCINE REACTION (Oct. 31, 2018), <https://thevaccinereaction.org/2018/10/professor-says-parents-have-no-right-to-refuse-vaccines-for-their-children/>.

406. See *States with Religious and Philosophical Exemptions from School Immunization Requirements*, NAT'L CONF. ST. LEGISLATURES (Jan. 3, 2020), <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

407. Bobby Allyn, *New York Ends Religious Exemptions for Required Vaccines*, NPR (June 13, 2019, 5:26 PM), <https://www.npr.org/2019/06/13/732501865/new-york-advances-bill-ending-religious-exemptions-for-vaccines-amid-health-cris>.

408. Alexa St. John & Melanie Grayce West, *Antivaccination Groups in New York Push Home Schooling*, WALL ST. J. (July 4, 2019, 1:14 PM), <https://www.wsj.com/articles/antivaccination-groups-in-new-york-push-home-schooling-11562260445>.

Importantly, fourteen states have employed the Mature Minor Doctrine.⁴⁰⁹ This doctrine allows minors to consent to medical care—either in all or in some circumstances—without parental authorization.⁴¹⁰ It recognizes the rights of a minor with regard to his or her body as an autonomous individual and is backed by the American Medical Association and the American Academy of Pediatrics.⁴¹¹ This doctrine allows minors to obtain care if they are emancipated, married, a parent, pregnant, or in the military.⁴¹² It also applies when minors are seeking a particular type of care, such as emergency care,⁴¹³ mental health treatment, sexual assault services, family planning services, drug or alcohol treatment, or STI testing.⁴¹⁴ The Illinois Supreme Court utilized this doctrine in upholding the right of a Jehovah’s Witness minor to reject a life-saving blood transfusion.⁴¹⁵ Holding that the age of majority is not a “bright line” restriction, the Court found that she was mature and capable of making her own medical decisions.⁴¹⁶ But the use of this doctrine is not widespread.⁴¹⁷ In the majority of states, a minor cannot consent to medical treatment outside of specific exceptions.⁴¹⁸ As a result, parental consent is required for most medical treatment.

Importantly, courts have utilized the doctrine of *parens patriae* in overriding the wishes of a parent when the minor requires life-saving treatment. This doctrine has been applied particularly in cases where Jehovah’s Witness or Christian Scientist parents refuse blood transfusions to the minor.⁴¹⁹ In *In re Clark*, an Ohio court upheld a court-ordered blood transfusion to a three-year-old over the objection of his Jehovah’s Witness parents.⁴²⁰ In doing so, the court stated, “Their child is a human being in his own right When a religious doctrine espoused by the parents threatens to defeat or curtail such a right of their child, the State’s duty to step in and preserve the child’s right is immediately operative.”⁴²¹

Where a Jehovah’s Witness parent opposes medical treatment for his or her child, a hospital typically invokes its already-established process.⁴²² If the situation is an emergency, such as a need for a life-saving blood transfusion, the hospital may take temporary custody of the minor and administer treatment without

409. ABIGAIL ENGLISH ET AL., *STATE MINOR CONSENT LAWS: A SUMMARY* 3 (3d. ed. 2010).

410. Kathryn Hickey, *Minors’ Rights in Medical Decision Making*, 9 JONA’S HEALTHCARE L., ETHICS & REG. 100, 102 (2007).

411. Josh Burk, Note, *Mature Minors, Medical Choice, and the Constitutional Right to Martyrdom*, 102 VA. L. REV. 1355, 1356 (2016).

412. CAHN & CARBONE, *supra* note 278, at 102; CONSENT BY MINORS, *supra* note 395; ENGLISH ET AL., *supra* note 409, at 2–3.

413. See *R.J.D. v. Vaughan Clinic*, 572 So. 2d 1225, 1227–1228 (Ala. 1990).

414. CAHN & CARBONE, *supra* note 278, at 102; CONSENT BY MINORS, *supra* note 395; ENGLISH ET AL., *supra* note 409, at 4; Boonstra & Nash, *supra* note 377.

415. *In re E.G.*, 133 Ill. 2d 98, 108 (1989).

416. *Id.* at 108–09.

417. Coleman & Rosoff, *supra* note 393, at 787.

418. *Id.*

419. See *In re Clark*, 185 N.E.2d 128, 130–31 (1962).

420. *Id.* at 132.

421. *Id.*

422. Telephone Interview with David S. Lee, Asst. General Counsel, Rush Medical College (Mar. 4, 2020).

the parents' consent.⁴²³ But where the situation is not an emergency, the hospital will likely turn to its Jehovah's Witness liaison, an individual familiar with the parents' religious beliefs, and seek to reach a decision as to the best course of treatment for the minor in light of these beliefs.⁴²⁴ If that dialogue is unsuccessful, the hospital will engage consultation of its child protective services team, a group of clinicians, to determine whether the hospital needs to reach out to child protective services. If none of these efforts are successful, child protective services are engaged and temporary custody of the minor is sought so that the hospital may administer treatment.⁴²⁵ Thus, where parents object to medical treatment of their child on religious grounds, hospitals must make additional efforts to administer treatment over these objections.

Parental consent and notification requirements impede minors' bodily autonomy and serve as a barrier to minors' ability to obtain medical treatment or procedures. Though the Court has acknowledged the rights of minors under the Constitution, it is hesitant to intrude on the family and the rights of parents.⁴²⁶ Allowing parents to have the final say in these contexts is rooted in the "fundamental presumption of immaturity" of minors.⁴²⁷ But this fails to acknowledge minors as autonomous individuals.⁴²⁸ To assume that parents always act in the best interest of their child is to put considerable power in the hands of parents, even against the wishes of the minor. These requirements put minors at risk of physical harm. These policies may force a minor to delay an abortion to the point where it is unsafe or force her to carry a fetus to term that she does not want. Further, they may prevent minors from obtaining life-saving treatment.

These sentiments are shared by the medical community, which advocates for the right of mature minors to consent to treatment.⁴²⁹ Some scholars have argued that minors do have a right to either consent to or refuse medical treatment.⁴³⁰ This right, they argue, is a hybrid right consisting of "a due process right to their bodily integrity and the First Amendment."⁴³¹ Indeed:

The ability to make such choices is the bedrock of the American ideal of life, liberty, and the pursuit of happiness. A woman who is seventeen years and 364-days-old should get the same opportunity to prove that she is mature enough to make a personal decision affecting her own body that a person a single day older would be able to make automatically⁴³²

423. 410 ILL. COMP. STAT. 210/3 (2018). See also *Jehovah's Witnesses in Wash. v. King Cty. Hosp. Unit No. 1*, 390 U.S. 598 (1968) (per curiam); Lynn D. Wardle, *Controversial Medical Treatments for Children: The Roles of Parents and of the State*, 49 FAM. L. Q. 509, 512–13 (2015).

424. Telephone Interview with David S. Lee, *supra* note 422.

425. 325 ILL. COMP. STAT. 5/5 (2018); 20 ILL. COMP. STAT. 505/5.30 (2018).

426. Lynne Marie Kohm, *Sex at Six: The Victimization of Innocence and Other Concerns over Children's Rights*, 36 BRANDEIS J. FAM. L. 361, 391 (1997); Piatt, *supra* note 50, at 773.

427. Zavala, *supra* note 357, at 1732.

428. See Tom D. Campbell, *The Rights of the Minor: as Person, as Child, as Juvenile, as Future Adult*, 6 INT'L J.L. & FAM. 1, 19 (1992).

429. See Coleman & Rosoff, *supra* note 393, at 787.

430. Burk, *supra* note 411, at 1356.

431. *Id.*

432. *Id.* at 1357.

Thus, even if an outright ban on marriage of minors is not violative of a “fundamental right” like religious freedom, it is wrong on social and policy grounds. As shown, minors’ rights in the abortion and medical contexts are frequently under attack. To prevent minors from marrying under all circumstances based on the assertion that they are incapable of making important decisions would be to embark on a dangerous path. Indeed, those pushing to close the marriage loophole are employing the very same rhetoric as those who seek to limit minors’ rights in these other contexts. Both argue that minors are not mature enough to make important decisions. The ACLU of Northern California has astutely pointed out that the term “child marriage” itself is dangerous.⁴³³ The term is not conscientious of youth empowerment.⁴³⁴ Ironically, the legislators making these statements are often Democrats who presumably support teenage girls’ right to abortion and minors’ right to medical decision-making.⁴³⁵ Though these legislators’ efforts are unquestionably well-intentioned, this recent legislative push is extreme. This is especially the case when one considers that the majority of minors marrying are in their late teens and are marrying a partner who is only a few years older. Indeed, the current national dialogue surrounding this legislative movement could provide the very ammunition that anti-abortion and anti-medical rights advocates need.

It is crucial that legislators analyze the issue from all angles and consider the implications that their rhetoric and an outright ban would have for the right to marriage and for minors’ bodily autonomy. It is possible to develop marriage statutes that prevent forced and coerced marriage while still acknowledging minors as autonomous, capable individuals.

IV. RECOMMENDATION

In light of the social repercussions and legal inconsistencies caused by the child marriage loophole, it is unsurprising that many legislators and advocacy groups have lobbied for an outright ban on child marriage. There are, without question, instances in which minors are forced or coerced into marriage.⁴³⁶ Raising the minimum age of marriage to eighteen—with no exceptions—would seemingly prevent such injustices from occurring.

But taking away what may be minors’ “fundamental right” to marriage is a drastic measure. Much of the recent legislation raising the marriage age is grounded in ideas that minors are not capable of rational decision-making.⁴³⁷ Legislators passed almost every new statute with the purpose of protecting minors from their “immature” decision-making.⁴³⁸ While there are many negative

433. Telephone Interview with Phyllida Burlingame, *supra* note 159.

434. *Id.*

435. New York Democratic Assemblywoman Amy Paulin, for example, has sponsored legislation easing women’s access to emergency contraception. *Assembly Passes Emergency Contraception Bill*, N.Y. ST. ASSEMB. (Jan. 31, 2005), <https://nyassembly.gov/mem/Amy-Paulin/story/12765>.

436. *See, e.g.*, Kristof, *supra* note 1.

437. *See, e.g.*, *supra* text accompanying notes 202, 208, 229, 333–39.

438. *Id.*

repercussions of early marriage, these legislators are revoking a right—a right that minors were previously entitled to—under the guise that they know what is best for them. This is particularly problematic when legislators, such as those in California and Minnesota, lack data indicating that child marriage is a problem in their states.⁴³⁹ By quickly moving to eliminate this right of minors, legislators on both sides of the aisle fail to consider the implications these changes can have for minors in other contexts. Specifically, denying minors the right to marry could prevent minors' ability to obtain abortions, receive vaccines, or gain access to medical treatment.⁴⁴⁰ Threats to minors' autonomy in these contexts would assuredly harm minors' physical health.⁴⁴¹ Even further, as the ACLU of Northern California has argued, raising the minimum age for marriage may not be an adequate solution to preventing these coercive relationships.⁴⁴² Banning marriage could instead exacerbate issues of religious-only ceremonies.

Even if minors do not have a claim that these changes are violative of their rights under the Constitution, placing an outright ban on marriage of minors in every state is overzealous and is wrong on policy grounds. This is especially wrong when the minors are in their older teens and seek to marry for religious reasons or simply because they want to marry the person they love. Forbidding marriage under the age of eighteen is not the proper solution.⁴⁴³ Further, a pregnancy exception does not serve as adequate protection against forced or coerced relationships. Allowing an exception only for pregnant minors would also be unfair to LGBTQ couples. States should instead develop a framework that prevents coerced and forced marriages of minors while still protecting the rights of minors who truly desire to marry.

A. *Tailoring to the Needs of Each State*

Some states enacted reform in response to data indicating vast numbers of minors marry at an early age, sometimes to much older adult men. For example, in Texas, more than 40,000 minors were married between 2000 and 2014.⁴⁴⁴ In such instances, states should consider implementing an age floor and procedural safeguards to prevent coerced and forced marriages. But an arbitrary minimum age floor may not be necessary for every state. The ACLU of Northern California's opposition to an outright ban on marriage of minors was grounded in its belief that such a drastic measure was not needed in their state.⁴⁴⁵ Having analyzed available data on the marriage rates of minors, it rationalized that child marriage was not occurring at a rate that warranted revocation of this right from so many minors.⁴⁴⁶ Even further, California already had programs and laws in

439. Bierschbach, *supra* note 335.

440. *See supra* Section III.C.3.

441. Ralph et al., *supra* note 237, at 282.

442. Tsui, *States Resist Calls for a Total Ban*, *supra* note 149.

443. Dance, *supra* note 23; Tucker, *supra* note 166.

444. Tsui et al., *Child Marriage in America*, *supra* note 67.

445. Luna, *supra* note 163.

446. *Id.*

place to prevent coerced and forced marriages.⁴⁴⁷ Those advocating for an outright ban of minors marrying in every single state should be more attentive to the needs of each state. It would be beneficial to first consider individual states' marriage data and existing procedural safeguards before taking away such a significant right to which minors were previously entitled.

States should also strive to collect data on marriages, including the ages of those persons getting married. If states can analyze this data, they will be able to determine whether child marriage is a problem that needs to be addressed. If, for example, they see that vast numbers of pregnant minors are marrying adult men, they will know to enact statutes protecting these minors from coercion.

B. Emancipation

As demonstrated above, unemancipated minors are debilitated by denial of their rights in other contexts. California did not place an outright ban on child marriage, but it already had emancipation mechanisms in place.⁴⁴⁸ Under Virginia's new statute, minors become emancipated when they are granted a marriage license.⁴⁴⁹ This Note recommends building emancipation into marriage statutes such that minors who marry may be afforded all of the same rights as adults in the eyes of the law. It also recommends that they be provided with information as to their rights as emancipated minors. With emancipation, a married minor is "empowered with the legal status and rights of an adult to protect herself if she is abused (such as to leave home, go to a shelter, or file for a protective order or divorce)."⁴⁵⁰ Even further, emancipated minors can more easily seek abortions and medical treatment without parental notification or consent.⁴⁵¹ If minors are to be afforded the right to marry, they must also be afforded rights in other contexts such that they may act autonomously and divorce, if necessary.

C. Parental Consent

Parental consent provisions do not provide an adequate safeguard against the coercion of minors. Pregnant minors are often coerced or forced by their parents to marry the man who impregnated them.⁴⁵² Instead, the judicial system should serve as a check on those parents who coerce their minors. Further, parental consent is a tool often used by Republican legislators in preventing minors'

447. Tucker, *supra* note 166.

448. Tsui, *States Resist Calls for a Total Ban*, *supra* note 149.

449. Portnoy, *supra* note 104.

450. *Support 415/HB 703 To Raise the Minimum Marriage Age and to Protect Children from Abuse and Coercion*, TAHIRIH JUST. CTR., https://www.tahirih.org/wp-content/uploads/2016/02/Pass-SB-415_HB-703-to-Protect-Children.pdf (last visited Apr. 9, 2020).

451. See Harriet F. Pilpel & Ruth J. Zuckerman, *Abortion and the Rights of Minors*, 23 CASE W. L. REV. 779, 781 (1972); see, e.g., *Parental Notification of Abortion Law (Age 17 and Under)*, PLANNED PARENTHOOD ILL., <https://www.plannedparenthood.org/planned-parenthood-illinois/patient-resources/abortion-services/parental-notification-abortion-law> (last visited Apr. 9, 2020).

452. See Kristof, *supra* note 1.

access to safe abortions.⁴⁵³ To argue the necessity of parental consent provisions is to argue that minors are incapable of making decisions regarding their bodies. The promotion of parental consent provisions in marriage statutes can therefore dangerously bolster the arguments of anti-abortion advocates and those who argue that minors are incapable of providing medical consent. At present, minors' rights to bodily autonomy are under attack as Southern states increasingly seek to limit access to abortion and contraceptive services. Moreover, minors' rights in the medical context—absent parental consent—are extremely limited. Thus, legislators seeking to preserve or promote the rights of minors in these contexts should be wary of including parental consent provisions in marriage statutes.

D. Reforming Judicial Approval

Many states' mechanisms for judicial approval of marriages of minors are grossly inadequate. Statutes should require that the judge approving the marriage of minors be a family law judge. These judges should be required to undergo formal training in recognizing child abuse and neglect, coercion, sexual assault, and emotional abuse. This will encourage judges to be vigilant and deny marriage licenses under these circumstances.

Further, statutes should require that judges specifically look to the best interests of the minor in granting marriage licenses.⁴⁵⁴ Judges should be required to conduct an in-camera hearing with the minor in making this determination.⁴⁵⁵ Statutes should be specific in their best-interest factors to ensure a judge is making a proper finding. Factors should include a finding that the minor is marrying of her own free will and that her decision is free of force, abuse, duress, coercion, threat, persuasion, menace, fraud, or undue influence.⁴⁵⁶ In addition, the court should look to the maturity of the minor and find that "marriage will not endanger the mental, emotional or physical safety of the minor."⁴⁵⁷ Pregnancy alone should not be sufficient to hold that marriage is in a minor's best interest.⁴⁵⁸ Factors could include the religious convictions of the minor and how the prospective spouses came to know one another.⁴⁵⁹ As has been shown, pregnancy or the wishes of parents could be indicative of sexual assault or coercion.⁴⁶⁰

453. See *Laws Restricting Teenagers' Access to Abortion*, ACLU, <https://www.aclu.org/other/laws-restricting-teenagers-access-abortion> (last visited Apr. 9, 2020) ("Although everyone hopes that teens can turn to their parents when faced with an unintended pregnancy, and in fact most teens do so, laws preventing teens from obtaining health care unless they can talk to a parent put their health and safety at risk and do not increase family communication.").

454. See generally *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

455. See CAL. FAM. CODE §304 (West 2018); N.Y. DOM. REL. CODE § 15 (McKinney 2019).

456. See CAL. FAM. CODE § 304 (West 2019); KY. REV. STAT. §402.205 (West 2019); N.Y. DOM. REL. CODE § 15 (McKinney 2019); VA. CODE § 16.1-333.1 (2019).

457. N.Y. DOM. REL. CODE § 15 (McKinney 2018) (effective Aug. 20, 2019).

458. See COLO. REV. STAT. § 14-2-108 (West 2018); 750 ILL. COMP. STAT. 5/208 (2018); IOWA CODE § 595.2 (2019); MONT. CODE ANN. § 40-1-213 (2018); NEV. REV. STAT. § 122.025 (2019).

459. The latter is a provision in Kentucky's new marriage statute. KY. REV. STAT. ANN. § 402.205 (West 2018).

460. See, e.g., VA. CODE § 16.1-333.1(2019). But the North Carolina statute does take this factor into the best-interest determination. See N.C. GEN. STAT. § 51-2.1 (2019).

These should therefore not serve as factors considered in a best-interest determination.

A determination of the minor's best interest may be further assisted through the appointment of a GAL, as is the case in North Carolina.⁴⁶¹ The function of a GAL is to focus on the needs of the minor and determine what action is in the best interest of the minor. Under ideal circumstances, GALs are able to meet with the minor and other parties involved. As such, statutes should require the minor be appointed a GAL, just as in other circumstances involving minors.⁴⁶²

E. Meaningful Safeguards Against Coercion

California's new marriage statute serves as a model for how states may implement meaningful safeguards to prevent coercion. Under the statute, a minor under the age of eighteen may marry only if she obtains a court order.⁴⁶³ Prior to the issuance of a court order, Family Court Services is required to conduct separate interviews of the prospective spouse and the minor's parents. It must then submit a written report containing any finding of abuse, duress, coercion, threat, or force. In doing so, it makes its recommendation as to whether a marriage license should be granted. If it finds any evidence of abuse or neglect, it must make a report to Child Protective Services.⁴⁶⁴

Further, statutes should require that the minors reside in the jurisdiction where they are seeking to marry. As was seen in the case of Maria Vargas,⁴⁶⁵ forum-shopping is a very real issue in obtaining marriage licenses. Coercive parents could transport their young daughter to another state where marriage laws are more lenient.⁴⁶⁶ Residency requirements will also allow states to collect data on who is marrying and help minors who are victims of coercion through social services.⁴⁶⁷

Statutes should also provide for the option of prosecution for statutory rape where a much older man attempts to marry a pregnant minor.⁴⁶⁸ Some scholars have even suggested utilizing certain forms of Orders of Protection to assist minors in this context.⁴⁶⁹ Many of the new statutes work to eliminate these issues in the first place by disallowing the marriage of a minor if the older party is more than three or four years older.⁴⁷⁰ This is a useful means in preventing those situations in which minors marry much older men. While minors are autonomous

461. N.C. GEN. STAT. § 51-2.1 (2018).

462. GALs are appointed in a variety of circumstances, such as cases involving child abuse and neglect, custody, and adoption. *See, e.g.*, 705 ILL. COMP. STAT. 405/2-17 (2018); 750 ILL. COMP. STAT. 5/506 (2018).

463. CAL. FAM. CODE § 304 (2018).

464. *Id.*

465. *See McCoy, supra* note 6 and accompanying text.

466. *Id.*

467. *See Falling Through the Cracks, supra* note 103.

468. Burris, *supra* note 13, at 152. This Note acknowledges that both adult men and women could be the adult party marrying a minor. But the issue is gendered in that those minors marrying are most frequently girls, and these girls are sometimes pregnant.

469. Lisa V. Martin, *Restraining Forced Marriage*, 18 NEV. L.J. 919, 969, 982 (2018).

470. *See, e.g.*, H.B. 511, 132nd Gen. Assemb. (Ohio 2019).

individuals who should be granted the right to make their own decisions, it is unlikely that an adolescent girl marrying a man in his forties is not being subjected to coercion. But it is important to acknowledge that there may be consenting relationships between a person below the age of consent and above the age of consent.⁴⁷¹ Finally, marriage licenses should not be granted if the spouse named in the minor's petition has a violent criminal history or has previously been enjoined by a domestic violence order or order of protection.⁴⁷² This tactic, already employed by some states,⁴⁷³ protects minors from entering a potentially abusive relationship.

F. *Building in a Religious Exemption to Marriage Statutes*

A prior version of New Jersey's bill was pulled after Orthodox Jews argued there should be a religious exemption built into the law.⁴⁷⁴ Of course, scholars have found that the minors most likely to want to marry for religious reasons are Evangelical Protestant or Mormon.⁴⁷⁵ These new statutes are not targeting a specific religion, nor are they referencing religion at all. Nonetheless, states should take seriously those minors seeking to exercise their marriage right for religious reasons. It would, therefore, be desirable for statutes to, as a policy matter, contain some nuance whereby minors' beliefs or religious convictions can play a role in the judge's finding of the minor's best interest.

G. *Extraneous Policy Solutions*

One cannot ignore the social, economic, and educational repercussions of early marriage. But, as it has been shown, many of those minors marrying are in their late teens, and many are marrying a person who is merely a couple of years older.⁴⁷⁶ Paternalistic efforts by states to revoke this right of minors out of concern for these harms are drastic. Instead, states should focus on the root causes of teen pregnancies and forced and coerced marriages: poverty and lack of education.⁴⁷⁷ In addition, allowing states to teach comprehensive sex-education in their schools would increase the likelihood that minors utilize birth control and contraception. All of this, in turn, would delay sexual intercourse and prevent pregnancy in teens.⁴⁷⁸ A reduced number of pregnancies will enable minors to complete their high school educations and will make situations of forced or coerced marriages less likely to occur.

In addition, states should directly address abusive and coerced relationships before taking such drastic measures as eliminating this right of minors. To ignore

471. FISCHER, *supra* note 243, at 10–11 (arguing that consent does not always mean “good sex”).

472. KY. REV. STAT. § 402.205 (2018).

473. *See* S.B. 48, 2018 Leg. Reg. Sess. (Ky. 2018).

474. Livio, *supra* note 146.

475. Rendon et al., *supra* note 280, at 836.

476. Tsui et al., *Child Marriage in America*, *supra* note 67.

477. FISCHER, *supra* note 243, at 91–92; Susan Lee-Rife et al., *What Works to Prevent Child Marriage: A Review of the Evidence*, 43 *STUD. FAM. PLAN.* 290–94 (2012).

478. LUKER, *supra* note 238, at 185–88.

the heart of the problem and make the marriage of minors illegal could instead prompt these relationships to be pushed further under the rug where they can no longer be regulated.⁴⁷⁹ Comprehensive sex-education programs should raise awareness of sexual assault and coerced sex, and courts should be vigilant in seeking to detect these relationships when considering marriage licenses.

V. CONCLUSION

For the past 200 years, minors have been able to marry if they meet the requirements of their state statutes. Many states have recently been pushing to eliminate this right by raising the minimum marriage age to eighteen. Organizations and legislators have been actively campaigning to close the loophole in every state, revoking a right to which minors were previously entitled. These efforts are heavily focused on preventing forced and coerced marriages of minors to much older men—especially when the minor is impregnated as a result of sexual assault. This movement is also grounded in concerns for the health, well-being, and educational attainment of minor girls.

But this reform is problematic in that it is also premised on the notion that minors lack decision-making capacity. This very rhetoric has been employed by the Republican Party in limiting minors' access to abortion and contraceptive services through the use of parental consent and notification requirements.⁴⁸⁰ It also coincides with arguments that minors should not be able to make medical decisions for themselves. Specifically, minors cannot receive vaccinations and often cannot receive medical treatment in the absence of parental consent.⁴⁸¹ Medical professionals also face obstacles in supplying blood transfusions to minors over the religious objections of their parents.⁴⁸² The argument that minors are incapable of deciding whether to marry could have gross implications for how the law and society view the capacity of minors in these other contexts. Those pushing to place an outright ban on marriage of minors in all contexts are steadfastly focused on the mores of early marriage but fail to consider the unintended consequences of their efforts.

It is unclear whether minors could succeed on a claim that this legislation violates their fundamental right to marry or their religious liberties. The Supreme Court could analyze a law restricting the rights of minors to marry under strict scrutiny given its position on the right to marry in cases such as *Loving* and *Obergefell*. But the Supreme Court could also find that the right of minors to marry is not included in the fundamental right to marry. If the court were to analyze this right under strict scrutiny, these new statutes could be unconstitutional. It is unlikely that minors would be able to claim these laws infringe on their religious liberty, as these statutes do not target religion in general or any particular religious group.

479. Telephone Interview with Phyllida Burlingame, *supra* note 159.

480. *Laws Restricting Teenagers' Access to Abortion*, *supra* note 453.

481. *Considerations Regarding Consent in Vaccinating Children and Adolescents*, *supra* note 403.

482. *See supra* text accompanying notes 419–23.

Nonetheless, an outright ban on the marriage of minors is wrong on social and policy grounds. Revoking this right previously granted to minors sends a strong message that the states do not believe minors are autonomous agents capable of making important decisions. The rhetoric surrounding these new laws disempowers minors and fails to acknowledge the bodily autonomy and decision-making capacity of adolescents. Though those advocating for an outright ban on the marriage of minors are seeking to promote the health, safety, and well-being of young women, it is crucial that they consider how these efforts could, counterintuitively, pave the way for denial of minors' rights in other contexts in which their voices are already being suppressed. Legislators should consider how actions often have unintended, harmful consequences. States should instead focus on the particular needs of their constituents and implement appropriate safeguards to protect minors from coercion while still acknowledging the rights and autonomy of minors. To fail to acknowledge the decision-making capacity and bodily autonomy of minors is to embark down a dangerous road.