The Regulation of Pregnant Minors in State Care
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My paper will examine the ways in which law fails one of the most marginalized populations of adolescents – pregnant minors in state or foster care. Parental involvement statutes in thirty-six states require parental consent or notice before an abortion may be performed on a minor. However, it is unclear what duty state guardians owe to minors when asked to consent to a minor’s abortion, and what standards should govern that state guardian’s decision. Although state or county agencies may make health care decisions for a minor (with certain conditions being met), many state or county programs forbid state guardians, often through unofficial or unpublished policies, from giving consent because of liability concerns. Moreover, caseworkers’ or foster parents’ beliefs about teenage sexuality or opposition to abortion may make obtaining consent or notice practically impossible. At the same time, minors are often not allowed to live with the children they have while in state or foster care.

My paper will explore how policies governing pregnant minors in state care show a state preference for childbirth followed by adoption. First, I will consider whether the lack of clarity in states’ treatment of pregnant teenagers, coupled with the state’s failure to counsel minors’ in terms of their healthcare needs, offends minors’ constitutional rights under Planned Parenthood of Southeastern Pennsylvania v. Casey. Second, I will weigh the advantages and disadvantages of approaching the issue of marginalization as a constitutional one. I will seek to understand what insights feminist theory might contribute to a critique of the state preferences expressed through law’s operation regarding what type of woman should parent. In this vein, my paper will consider feminist theory’s complex relationship with law reform agendas that privilege state regulation over cultural and social mobilization.

The questions my paper will raise are timely and novel. I will incorporate the influence of increasing grassroots activism that seeks to build awareness of the treatment of pregnant minors in foster care. I will also consider the intervention of federal law, most recently the Fostering Connections to Success and Increasing Adoptions Act of 2008, in addressing the general health concerns of the significant population of young women who are pregnant while in state care.

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