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## *In re E.G.*: The Right of Mature Minors in Illinois to Refuse Lifesaving Medical Treatment

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# *In re E.G.*: The Right of Mature Minors in Illinois to Refuse Lifesaving Medical Treatment

## I. INTRODUCTION

Until the early part of the twentieth century, children in America were regarded as mere chattels of their parents, occupying essentially the same social status as servants.<sup>1</sup> As a result of social reforms throughout this century, children now are guaranteed many of the same constitutional rights enjoyed by adults. Despite these relatively recently acquired rights, minors are still considered less able than adults to exercise mature, rational judgment, and often are prevented from making decisions that courts and legislatures feel may adversely affect their well-being. To this end, states have sharply restricted the ability of minors to exercise autonomy in medical decision-making, including their ability to consent to or refuse medical treatment.

In a case that vastly altered the state's ability to prevent minors from controlling their own health care, the Illinois Supreme Court decided that a seventeen-year-old Jehovah's Witness could refuse lifesaving blood transfusions.<sup>2</sup> The court previously had decided cases in which adults had refused such transfusions for religious reasons<sup>3</sup> and cases in which parents had refused such transfusions on behalf of infants.<sup>4</sup> *In re E.G.* involved a minor who was herself refusing the transfusions on religious grounds; therefore, *In re E.G.* presented a case of first impression in Illinois.

In February 1987, the juvenile court declared E.G. a neglected minor, and appointed a guardian with the authority to consent to blood transfusions on E.G.'s behalf. On review, however, the Illinois Appellate Court determined that because E.G. had made a mature, independent decision to refuse the transfusions, the state had no further interest in protecting her.<sup>5</sup> Pursuant to the Illinois

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1. Katz, Schroeder, & Sidman, *Emancipating Our Children—Coming of Legal Age in America*, 7 FAM. L. Q. 211, 212 (1973) [hereinafter *Emancipating Our Children*].

2. *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989).

3. *In Re Brooks' Estate*, 32 Ill. 2d 361, 205 N.E.2d 435 (1965). See *infra* notes 51-59 and accompanying text.

4. *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769 (1952). See *infra* notes 35-42 and accompanying text.

5. *In re E.G.*, 161 Ill. App. 3d 765, 771, 515 N.E.2d 286, 290 (1st Dist. 1987).

Emancipation of Mature Minors Act,<sup>6</sup> the appellate court declared E.G. emancipated for the limited purpose of consenting to or refusing blood transfusions.<sup>7</sup> The Illinois Supreme Court affirmed this portion of the appellate court's decision, stating that as a mature minor, E.G. had a common law right to refuse medical treatment.<sup>8</sup>

This Note will examine the cases illustrating the conflict between the state's interest in protecting minors<sup>9</sup> and the rights of minors to control their own health care.<sup>10</sup> The historical posture of Illinois courts in allowing individuals to refuse lifesaving medical treatment also will be explored.<sup>11</sup> The Note will then analyze the Illinois Supreme Court's decision in *In re E.G.*<sup>12</sup> Finally, the effect of the Illinois Supreme Court's ruling on a minor's right to refuse lifesaving medical treatment will be discussed.<sup>13</sup>

## II. BACKGROUND

In the exercise of their powers to promote community welfare, states have broad authority to regulate the activities of their citizens.<sup>14</sup> One aspect of this police power is the *parens patriae*<sup>15</sup> power, under which the state may act to protect those who are legally incompetent. Minors, for example, traditionally are considered legally incompetent because of their inexperience and immaturity;<sup>16</sup> a state, therefore, may exercise its *parens patriae* authority to limit the minor's ability to make legal decisions.<sup>17</sup> The state's *parens patriae* authority over the minor fades as the minor becomes more mature, and eventually disappears when the minor attains legal majority.<sup>18</sup> Recognizing that the maturity of some minors

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6. ILL. REV. STAT. ch. 40, paras. 2201-2211 (1987).

7. *E.G.*, 161 Ill. App. 3d at 772, 515 N.E.2d at 291.

8. *E.G.*, 133 Ill. 2d at 111-22, 549 N.E.2d at 327-28.

9. See *infra* notes 28-42 and accompanying text.

10. See *infra* notes 84-98 and accompanying text.

11. See *infra* notes 51-77 and accompanying text.

12. See *infra* notes 128-90 and accompanying text.

13. See *infra* notes 191-245 and accompanying text.

14. See, e.g., *Lochner v. New York*, 198 U.S. 45 (1905).

15. Literally "parents of the country," *parens patriae* traditionally refers to the role of the state as sovereign and guardian of persons under legal disability. BLACK'S LAW DICTIONARY 579 (Abr. 5th ed. 1983).

16. See generally Dodson, *Legal Rights of Adolescents: Restrictions on Liberty, Emancipation and Status Offenses*, LEGAL RIGHTS OF CHILDREN §§ 4.01-.35 (R. Horowitz & H. Davidson eds. 1984)(for a discussion of the relationship between the law and minors).

17. *Id.* §§ 4.02 -.03.

18. *Id.* § 4.01. In addition to allowing the state a measure of authority over minors, the state's *parens patriae* authority encompasses all legally incompetent persons, including temporarily and permanently disabled adults, and the mentally retarded. Although

renders the exercise of the *parens patriae* authority inappropriate in certain situations, most states have adopted some form of the mature minor doctrine, which recognizes that a minor who can demonstrate maturity should be allowed to make certain legal decisions independently.<sup>19</sup>

The controversy presented by *In re E.G.* involved balancing the state's *parens patriae* interest against the rights of the mature minor to bodily self-determination,<sup>20</sup> including the right to exercise religious beliefs.<sup>21</sup> Although courts previously had balanced these similar interests in the context of abortion rights,<sup>22</sup> neither the United States Supreme Court nor any other state high court<sup>23</sup> has been asked to determine whether a minor has a right to refuse life-saving treatment on religious grounds.<sup>24</sup> The arguments presented by the litigants in *In re E.G.* consequently rested on three lines of cases: cases dealing with the state's *parens patriae* interests;<sup>25</sup> cases

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this authority obviously is quite broad, it stops short of allowing governmental interference into the private decisions of competent adults. See generally Byrn, *Compulsory Lifesaving Treatment for the Competent Adult*, 44 *FORDHAM L. REV.* 1 (1975) [hereinafter *Compulsory Treatment*].

19. See, e.g., Illinois Emancipation of Mature Minors Act, ILL. REV. STAT. ch. 40, paras. 2201-2211 (1987); Illinois Consent by Minors to Medical Operations Act, ILL. REV. STAT. ch. 111, paras. 4501-4505 (1987).

20. Bodily self-determination describes the right of the competent individual to exercise exclusive control over her own body and generally is considered to include the right to consent to or refuse medical treatment. See *infra* notes 43-77 and accompanying text (discussing bodily self-determination).

21. See *infra* notes 35-42, 51-59 and accompanying text (cases discussing interplay of medical treatment and religious beliefs).

22. See, e.g., *Bellotti v. Baird*, 443 U.S. 622 (1979) (invalidating abortion parental consent statute that made no alternative provision for mature minors); *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976) (invalidating state statute requiring minors to obtain parental consent before seeking abortion). See *infra* notes 92-98 and accompanying text (*Bellotti* discussed), notes 84-91 and accompanying text (*Planned Parenthood* discussed).

23. A California trial court refused to compel a fourteen-year-old Jehovah's Witness to accept treatment involving blood transfusions that were prohibited by the religious beliefs of both the minor and her parents. Unlike *E.G.*, the minor in that case did not require the transfusions to save her life, and alternative, although less successful, treatment options were available to her. *In re D.P.*, No. 91590 (Cal. Super. Ct. Santa Clara County, July 1986).

24. A number of states have compelled minors to undergo lifesaving treatment over parental opposition. The minors in these cases were younger than *E.G.*, and it was the parents, not the minors themselves, who refused treatment. See *In re Eric B.*, 189 Cal. App. 3d 996, 235 Cal. Rptr. 22 (1987) (six-year-old boy); *In re D.L.E.*, 645 P.2d 271 (Colo. 1982) (16-year-old girl); *Custody of a Minor*, 375 Mass. 733, 379 N.E.2d 1053 (1978) (two-year-old girl); *In re Ivey*, 319 So.2d 53 (Fla. Dist. Ct. App. 1975) (four-day-old infant); *Morrison v. State*, 252 S.W.2d 97 (Mo. Ct. App. 1952) (12-day-old infant).

25. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1944); *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769 (1952). See *infra* notes 35-42 and accompanying text (*Labrenz* discussion).

dealing with the right to bodily self-determination,<sup>26</sup> and cases dealing with the mature minor doctrine in the context of constitutional rights.<sup>27</sup>

### A. *The State's Parens Patriae Interest*

The first and fourteenth amendments of the federal constitution guarantee parents the right to raise their children without undue governmental interference.<sup>28</sup> A state, however, legitimately may exercise its *parens patriae* authority to restrict parental rights in order to safeguard the health and welfare of children.<sup>29</sup> One of the earliest cases in which the United States Supreme Court was required to balance the state's *parens patriae* interest against the rights of parents to follow their religious beliefs in raising their children was *Prince v. Massachusetts*.<sup>30</sup> In *Prince*, the appellant was convicted of directing her ward, a minor, to sell Jehovah's Witnesses' publications on the streets, thereby violating a statute prohibiting children from selling literature in public places.<sup>31</sup> The appellant claimed that the statute unconstitutionally infringed upon her right to practice her religious beliefs in raising her ward.

The Court upheld the statute, declaring that the state, as *parens patriae*, had the power to limit parental freedom and authority in matters affecting the welfare of children.<sup>32</sup> In what has become an often-quoted passage in support of a state's ability to intervene into the familial relationship, the Court stated, "Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when

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26. See, e.g., *In re Brooks' Estate*, 32 Ill. 2d 361, 205 N.E.2d 435 (1965). See *infra* notes 51-59 and accompanying text.

27. See, e.g., *Bellotti v. Baird*, 443 U.S. 622 (1979); *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). See *infra* notes 84-98 and accompanying text.

28. For example, parents have the right to follow their religious and moral beliefs in educating their children. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (striking down a state statute requiring Amish parents to send their children to public schools); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (invalidating a state statute requiring children to attend public rather than private or parochial schools); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down a state statute prohibiting the teaching of German in public schools).

29. See generally 59 AM. JUR. 2D *Parent and Child* § 11 (1987).

30. 321 U.S. 158 (1944).

31. *Id.* at 159, 161. Child labor statutes such as the one in *Prince* represented one of the first state forays into parental control over children. See generally R. MNOOKIN & D. WEISBERG, *CHILD, FAMILY & STATE* 824 (2d ed. 1989) (for a historical view of child labor laws).

32. *Prince*, 321 U.S. at 168-69.

they can make that choice for themselves.”<sup>33</sup> The Court held that, because a state has broader authority over children than over adults, the state did not exceed its power when it prohibited a child from selling religious tracts in public places, even though it could not have prevented an adult from doing the same.<sup>34</sup>

Following the rationale in *Prince*, the Illinois Supreme Court in *People ex rel. Wallace v. Labrenz*<sup>35</sup> held that the parents of an infant could not refuse blood transfusions required to save the infant's life.<sup>36</sup> In *Labrenz*, the infant daughter of two Jehovah's Witnesses was born with a blood disorder which, if left untreated, would result in the infant's death or severe mental impairment. The only known treatment involved blood transfusions that the parents refused as against their religious beliefs.<sup>37</sup> Pursuant to the Illinois Juvenile Court Act,<sup>38</sup> the trial court declared the infant neglected, and appointed a guardian to consent to the transfusions.<sup>39</sup>

Because the transfusions involved little risk and were virtually always successful, the Illinois Supreme Court rejected the parents' argument that they had merely exercised their right to avoid a haz-

33. *Id.* at 170.

34. *Id.* at 167-68, 170.

35. 411 Ill. 618, 104 N.E.2d 769 (1952).

36. *Id.* at 625-26, 104 N.E.2d at 773-74.

37. *Id.* at 620-21, 104 N.E.2d at 771. The Jehovah's Witnesses were founded in the United States in 1872 by Charles Taze Russell. See generally 6 THE NEW ENCYCLOPEDIA BRITANNICA 524 (15th ed. 1986). A millennialistic sect, the Jehovah's Witnesses separate themselves from other denominations and secular governments. They seek to establish God's Kingdom on earth following Armageddon and believe that our destiny will unfold according to a timetable set out in the apocalyptic books of the Bible. *Id.* at 524-25. Jehovah's Witnesses donate many hours to door-to-door preaching and distribution of literature, including books, tracts, and two widely disseminated magazines, *Watchtower* and *Awake*. The sect views blood transfusions as a violation of the Biblical prohibitions against eating blood ("For it has seemed good to the Holy Spirit and to us to lay upon you no greater burden than these necessary things: that you abstain from what has been sacrificed to idols and from blood . . ." *Acts* 15:28-29. Reliance also is placed on *Leviticus* 17:10, *Genesis* 9:3-4, and *Deuteronomy* 12:33. WATCH TOWER BIBLE & TRACT SOCIETY OF PENNSYLVANIA, JEHOVAH'S WITNESSES AND THE QUESTION OF BLOOD (1977). See generally Milhollin, *The Refused Blood Transfusion: An Ultimate Challenge for Law and Morals* 10 NAT. L. F. (1965). Other religious sects that rely on prayer instead of medical technology for healing include Christian Scientists, see *In re Eric B.*, 189 Cal. App. 3d 996, 235 Cal. Rptr. 22 (1st Dist. 1987); The General Assembly and Church of the First Born, see *In re D.L.E.*, 645 P.2d 271 (Colo. 1982); and The Church of God of the United Assembly, see *In re Hamilton*, 657 S.W.2d 425 (Tenn. Ct. App. 1983).

38. ILL. REV. STAT. ch. 37, paras. 802-1 to 803-32 (1987). The Illinois Juvenile Court Act defines a neglected minor as "any minor under 18 years of age whose parent . . . does not provide the proper . . . medical or other remedial care . . . necessary for a minor's well-being." *Id.* para. 802-3 (1987).

39. *Labrenz*, 411 Ill. at 621-22, 104 N.E.2d at 772.

ardous procedure.<sup>40</sup> The court then considered the parents' argument that the trial court's application of the Juvenile Court Act deprived them of their right to exercise their religious beliefs in making medical decisions for their daughter. Quoting *Prince*, the court stated "neither the rights of religion [n]or the rights of parenthood are beyond limitation."<sup>41</sup> The *Labrenz* court recognized that the danger to the infant in the case before it presented a far stronger case for state intervention than did the situation in *Prince*, and it held that the state's interest in preserving the lives of minors outweighed parents' rights to exercise their religious beliefs.<sup>42</sup>

### B. *The Right to Bodily Self-Determination*

The concept of bodily self-determination rests on the theory that a competent adult has the right to absolute control over her own body.<sup>43</sup> As Justice Cardozo stated: "No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."<sup>44</sup>

At common law, a competent adult has complete autonomy over her own body, including the right to consent to or refuse medical treatment.<sup>45</sup> In order to effectively consent to medical treatment, an individual must be informed of the potential benefits of the treatment, along with any attendant risks.<sup>46</sup> A physician or other health care provider who performs a procedure against the patient's will or for which the patient has not consented has committed an "unauthorized touching," and may be liable for battery.<sup>47</sup>

Another source of the right to bodily self-determination is the constitutional right to privacy. For example, the right to privacy affords the individual a measure of reproductive autonomy, including the ability to decide "whether to bear or beget a child."<sup>48</sup> The

40. *Id.* at 624-25, 104 N.E.2d at 773.

41. *Id.* at 625, 104 N.E.2d at 773-74 (quoting *Prince*, 321 U.S. at 166).

42. *Id.* at 626, 104 N.E.2d at 774.

43. Cantor & Conroy, *Best Interests, and the Handling of Dying Patients*, 37 RUTGERS L. REV. 543, 546 (1985) [hereinafter *Best Interests*] (citing *In re Conroy*, 98 N.J. 321, 346-48, 486 A.2d 1209, 1222-23 (1985)).

44. *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

45. *Best Interests*, *supra* note 43, at 546.

46. *Id.*

47. See generally PROSSER AND KEETON ON THE LAW OF TORTS § 18 (5th ed. 1984) (for a discussion of the tort doctrine of informed consent and battery).

48. *Eisenstat v. Baird*, 405 U.S. 438, 453 (1972). See also *Roe v. Wade*, 410 U.S. 113,

common law right to bodily self-determination and the constitutional right to privacy arguably guarantee a competent adult the right to refuse even lifesaving medical treatment. In a so-called "right-to-die" case, *Cruzan v. Director, Missouri Department of Health*,<sup>49</sup> the Supreme Court reaffirmed the principle that individuals have a liberty interest in refusing unwanted medical treatment, but in the case of an incompetent, the state may require clear and convincing evidence that withdrawal of treatment is desired.<sup>50</sup>

Prior to the *Cruzan* decision, the Illinois Supreme Court held that the United States Constitution guarantees an individual the right to make medical decisions free from undue interference by the state. In 1965, the court held in *In re Brooks' Estate*<sup>51</sup> that an adult has a right to follow her religious beliefs when making medical decisions, even when those beliefs dictate the refusal of lifesaving treatment.<sup>52</sup> The appellant in *Brooks* was an adult Jehovah's Witness who repeatedly had told her physician that her religious convictions prohibited her from accepting blood transfusions. Nevertheless, when her condition required such a transfusion, her physician successfully petitioned the court for an order appointing a conservator to consent to the transfusion.<sup>53</sup>

The Illinois Supreme Court held that the first<sup>54</sup> and fourteenth<sup>55</sup>

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153 (1973) ("This right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."). The constitutional right to privacy first was given form in a law journal article by Samuel Warren and Louis D. Brandeis. See Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890). The most famous exposition of the right may be found in Justice Brandeis' dissenting opinion in *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) in which he described the right to have one's private life protected from government interference as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man."

49. 110 S. Ct. 2841 (1990). Nancy Cruzan was a thirty-year-old patient in a persistent vegetative state who required artificial nutrition and hydration. Her parents sought to have the nutrition and hydration discontinued, citing their daughter's previously expressed desire not to be kept alive in such a state. *Cruzan*, 760 S.W.2d at 418. Writing for the majority, Chief Justice Rehnquist stated, "[b]ut for purposes of this case, we assume that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." *Id.* at 2852. In a concurring opinion, Justice O'Connor wrote that "the liberty guaranteed by the Due Process Clause must protect, if it protects anything, an individual's deeply personal decision to reject medical treatment, including the artificial delivery of food and water." *Id.* at 2857 (O'Connor, J., concurring). See also *In re Conroy*, 98 N.J. 321, 486 A.2d 1209 (1985); *In re Quinlan*, 70 N.J. 10, 355 A.2d 647 (1976).

50. *Cruzan*, 110 S. Ct. at 2852.

51. 32 Ill. 2d 361, 205 N.E.2d 435 (1965).

52. *Id.* at 373-74, 205 N.E.2d at 442-43.

53. *Id.* at 363-64, 205 N.E.2d at 437.

54. The first amendment provides, in pertinent part: "Congress shall make no law



amendments to the United States Constitution prohibit a state from interfering with an individual's absolute right to exercise her religious beliefs, except when that exercise presents a clear and present danger to the "public health, welfare, or morals."<sup>56</sup> In finding that no such clear and present danger existed, the *Brooks* court stated:

Even though we may consider appellant's beliefs unwise, foolish or ridiculous, in the absence of an overriding danger to society we may not permit interference therewith . . . [by] compelling her to accept medical treatment forbidden by her religious principles, and previously refused by her with full knowledge of the probable consequences. In the final analysis, what has happened here involves a judicial attempt to decide what course of action is best for a particular individual, notwithstanding that individual's contrary views based upon religious convictions. Such action cannot be constitutionally countenanced.<sup>57</sup>

The *Brooks* court held that the state had no legitimate interest in interfering in the appellant's medical decisions. The court distinguished *Brooks* from cases such as *Labrenz*, in which the exercise of religious beliefs endangered the health of minors.<sup>58</sup> The court further noted that Brooks did not have minor children who would become wards of the state if she died, nor was she pregnant with a child who would be injured as a result of her decision.<sup>59</sup> Thus, the court left unresolved whether an adult would be free to exercise her religious beliefs in a manner that would seriously affect a minor's welfare.

Twenty-four years after *Brooks*, the Illinois Supreme Court again considered the right to bodily self-determination in *In re Es-*

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respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. CONST. amend. I.

55. Section 1 of the fourteenth amendment provides, in pertinent part: "no state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States . . ." U.S. CONST. amend. XIV, § 1.

56. *Brooks*, 32 Ill. 2d at 372, 205 N.E.2d at 441.

57. *Id.* at 373, 205 N.E.2d at 442.

58. *Id.* at 369, 205 N.E.2d at 439 (citing *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 104 N.E.2d 769 (1959)). See *supra* notes 35-42 and accompanying text (*Labrenz* discussed).

59. *Brooks*, 32 Ill. 2d at 369, 205 N.E.2d at 440. The court noted that if the children became wards of the state, "[t]he State might well have an overriding interest in the welfare of the mother . . ." *Id.* For example, in *Norwood Hosp. v. Munoz*, No. 89: E0024-G1, slip. op. (Mass. Trial Court, Probate and Family Court Dept., May 11, 1989), the court issued a declaratory judgment in favor of a hospital that sought to be absolved of liability if it complied with the wishes of a Jehovah's Witness who was refusing life-saving blood transfusions. The basis of the court's decision was the hardship the patient's death would cause to her five-year-old son.

*tate of Longeway.*<sup>60</sup> In *Longeway*, the court held that the guardian of an incompetent patient may refuse artificial nutrition and hydration on the patient's behalf.<sup>61</sup> Longeway, a seventy-six year old woman, had suffered severe brain damage resulting from a series of strokes. Although not clinically brain dead, Longeway's neurological damage was so severe that she would never regain consciousness. Because Longeway had lost the ability to chew and swallow, she required nutrition through a tube surgically implanted into her stomach.<sup>62</sup>

Longeway's daughter brought suit as her guardian to compel withdrawal of the feeding tube. The daughter alleged that, although Longeway had not executed a living will<sup>63</sup> or signed a health care power of attorney,<sup>64</sup> she had indicated while still conscious and competent that she did not wish to be kept alive by artificial means.<sup>65</sup> Lacking guidance from the United States Supreme Court, the Illinois Supreme Court declined to address whether the constitutional right to privacy included the right to refuse life-sustaining medical treatment.<sup>66</sup> Instead, the court looked to common law that requires a physician to obtain the patient's consent before initiating any medical treatment.<sup>67</sup> Finding that the requirement of consent necessarily implied a right to re-

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60. 133 Ill. 2d 33, 549 N.E.2d 292 (1989).

61. *Id.* at 45-46, 549 N.E.2d at 297-98.

62. *Id.* at 36, 549 N.E.2d at 293.

63. The Living Will Act represents a legislative finding that individuals have the "fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have death delaying procedures withheld or withdrawn in instances of a terminal condition." ILL. REV. STAT. ch. 110 1/2, para. 701 (1987). The Act provides, in pertinent part, that "[a]n individual of sound mind and having reached the age of majority or having obtained the status of an emancipated person pursuant to the 'Emancipation of Mature Minors Act' . . . may execute a document directing that if he is suffering from a terminal condition, then death delaying procedures shall not be utilized for the prolongation of his life." *Id.* para. 703.

64. The Illinois Powers of Attorney for Health Care Law states: "The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to decline medical treatment or to direct that it be withdrawn, even if death ensues." *Id.* para. 804-1. Executing a health care power of attorney allows the individual to delegate to an agent the power to make medical decisions for the individual should the individual become unable to make them himself. *Id.*

65. *Longeway*, 133 Ill. 2d at 36, 549 N.E.2d at 293.

66. *Id.* at 44, 549 N.E.2d at 297.

67. *Id.* at 44-45, 549 N.E.2d at 297 (citing *Union Pac. Ry. v. Botsford*, 141 U.S. 250 (1891); *Pratt v. Davis*, 224 Ill. 300, 79 N.E. 562 (1906); *Schloendorff v. Society of New York Hosp.*, 211 N.Y. 125, 105 N.E.92 (1914)). Ironically, the Supreme Court looked to *Longeway* in deciding whether Nancy Cruzan had a right to discontinuation of hydration and nutrition. *See Cruzan*, 110 S. Ct. at 2850.

fuse treatment, the court held that under Illinois common law, a patient has the right to refuse life-sustaining medical treatment, including nutrition and hydration.<sup>68</sup> Further, when the patient is incompetent, the Illinois Probate Act<sup>69</sup> allows the patient's surrogate to exercise this right under the substituted judgment theory.<sup>70</sup>

The court cautioned, however, that the individual's right to discontinue life-sustaining treatment must be balanced against the state's interests in continuing the treatment,<sup>71</sup> including the preservation of life, the protection of innocent third parties, the prevention of suicide, and maintaining the integrity of the medical profession.<sup>72</sup> The court conceded that none of these interests would normally override the patient's right to refuse artificial nutrition and hydration.<sup>73</sup>

Although the *Longeway* court cited *Brooks*<sup>74</sup> as authority for the Illinois common law right to refuse medical treatment,<sup>75</sup> the *Brooks* decision rested on the court's holding that Brooks' motive for refusing the treatment was protected by the constitution's guarantee of religious freedom.<sup>76</sup> The *Longeway* opinion, however, gave no indication that Longeway's wishes were motivated by her religious beliefs. *Longeway* therefore, extends *Brooks* by not re-

68. *Id.* at 45, 549 N.E.2d at 297.

69. ILL. REV. STAT. ch. 110 1/2, para. 11a-17 (1987). Section 11a-17 of the Probate Act provides that the guardian shall make provisions for the support, care, comfort, and health of his ward. *Id.*

70. *Longeway*, 133 Ill. 2d at 48-49, 549 N.E.2d at 298-99. The substituted judgment theory requires that the guardian or other surrogate decisionmaker substitute her judgment for what she believes the patient would choose under the circumstances. In determining the patient's wishes, the surrogate considers any of the patient's previously expressed opinions regarding the proposed medical treatment, the patient's religious and philosophical beliefs, and the patient's attitudes towards illness, suffering and death. *Id.* at 49-50, 549 N.E.2d at 299. The court concluded that the Illinois legislature implicitly had adopted the substituted judgment theory in the Powers of Attorney for Health Care Law, which provides that an agent has the authority to terminate any type of medical care on behalf of the patient, so long as the agent believes such action would be consistent with the intent and desires of the patient. *Id.* at 49, 549 N.E.2d at 299. *See supra* note 64.

71. 133 Ill. 2d at 48, 549 N.E.2d at 299.

72. *Id.* (quoting Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 741, 370 N.E.2d 417, 425 (1977)).

73. *Id.* "Adequate safeguards exist to protect life and third parties, and to prevent suicide. Moreover, the ethical integrity of the medical profession can be ensured by not compelling . . . any medical facility or its staff to act contrary to their moral principles." *Id.* *But see In re Brooks' Estate*, 32 Ill. 2d 361, 369, 205 N.E.2d 435, 440 (1965) (state may have an overriding interest in the life and health of a parent whose children are in danger of becoming wards of the state).

74. *Brooks*, 32 Ill. 2d 361, 205 N.E.2d 435.

75. *Longeway*, 133 Ill. 2d at 44-45, 549 N.E.2d at 297.

76. *Brooks*, 32 Ill. 2d at 372-73, 205 N.E.2d at 441-42.

quiring the motive for refusing medical treatment to be based on constitutionally protected religious beliefs. A person's motives for refusing treatment nevertheless remain relevant because the court's adoption of a balancing test suggests that, at some point, the state's interests in preserving life and preventing suicide could outweigh the individual's right to control medical treatment.<sup>77</sup>

### C. *The Mature Minor Doctrine and The Minor's Right to Constitutional Protection*

Traditionally, the common law views minors as suffering from a type of mental incompetence, giving rise to a presumption of legal incapacity.<sup>78</sup> This presumption of incapacity arises from the perceived need to protect minors from the consequences of their immature actions and decisions.<sup>79</sup> For example, in many states, very young minors may be presumed unable to formulate intent required to commit an intentional tort.<sup>80</sup>

Similarly, in criminal law, young children traditionally have been thought unable to formulate the *mens rea* necessary to be convicted of a crime.<sup>81</sup> Even ancient English law, however, allowed a child to be prosecuted as an adult when the evidence indicated that the child had acted with criminal intent.<sup>82</sup> Most modern criminal codes likewise attribute to minors at least some degree of presumed incapacity to formulate criminal intent, while still providing that a

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77. Courts and commentators disagree as to whether the state's interest in preventing suicide is implicated in cases involving the right to refuse lifesaving or life-sustaining medical treatment. Compare *Best Interests*, *supra* note 43, at 549 (so long as the fatal medical condition is not self-induced, refusing life-sustaining medical treatment is outside the legal definition of suicide) with *John F. Kennedy Memorial Hosp. v. Heston*, 58 N.J. 576, 279 A.2d 670, 673 (1971) (state's interest in compelling lifesaving treatment in some such circumstances is essentially equivalent to its interest in preventing suicide).

78. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to Their "Rights."* B.Y.U. L. REV. 605, 613 (1976).

79. *Id.*

80. Horowitz & Hunter, *The Child Litigant*, in LEGAL RIGHTS OF CHILDREN § 3.06 (R. Horowitz & H. Davidson eds. 1984). Most jurisdictions have no fixed age limits for findings of tortious intent. *Id.* Some states, however, follow the "Rule of Sevens" that conclusively presumes a child under age seven incapable of forming tortious intent. Between the ages of seven and fourteen, there is a rebuttable presumption of incapacity, and between the ages of fourteen and eighteen there is a rebuttable presumption of capacity. See, e.g., *Cardwell v. Bechtol*, 724 S.W.2d 739, 745 (Tenn. 1987).

81. W. LAFAVE & A. SCOTT, CRIMINAL LAW § 4.11 (2d ed. 1986). The criminal law generally follows the "Rule of Sevens" for purposes of presumptions relating to capacity. *Id.* § 4.11, at 398.

82. See 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 23-24 (1st ed. facsimile 1769, available through University of Chicago Press 1979) (ten year-old boy exhibited discretion between good and evil by hiding his slain playmate's body).

minor exhibiting criminal intent may be prosecuted as an adult.<sup>83</sup>

Although the presumption of incapacity remains a viable legal doctrine, the United States Supreme Court has recognized that some minors possess the maturity to make certain constitutionally protected decisions. In *Planned Parenthood v. Danforth*,<sup>84</sup> the Court considered the constitutionality of a Missouri statute requiring that every minor obtain parental consent prior to seeking an abortion.<sup>85</sup> Although *Roe v. Wade*<sup>86</sup> guaranteed a woman's constitutional right to terminate her pregnancy during its first trimester, Missouri argued that allowing a minor to obtain an abortion without the advice and guidance of a caring, responsible adult would violate the state's duty to protect the welfare of minors.<sup>87</sup>

The *Planned Parenthood* Court held that minors, like adults, were entitled to constitutional rights, including the right to seek an abortion.<sup>88</sup> Therefore, in order to restrict a minor's right to an abortion by granting the parent absolute veto power over the minor's decision, the state must demonstrate a compelling interest, unnecessary in the case of an adult.<sup>89</sup> The Court ruled that the state's interest in safeguarding family unity and parental authority was not sufficiently compelling and held the statute unconstitutional.<sup>90</sup> Yet, the Court emphasized that its holding did not mean

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83. W. LAFAVE, *supra* note 81, § 4.11, at 400. See, e.g., Illinois Juvenile Court Act, ILL. REV. STAT. ch. 37, para. 801-1 to 807-1 (1987). Section 5-4 of the Illinois Juvenile Court Act provides that except where otherwise provided, minors under seventeen may be prosecuted as delinquent minors, but not as adults under Illinois criminal laws. *Id.* para. 805-4. Yet, section 5-4(6)(a) provides that a minor fifteen or older charged with first degree murder, aggravated criminal sexual assault, armed robbery when the robbery is committed with a firearm, or unlawful use of weapons shall be prosecuted as an adult under Illinois criminal laws. *Id.* para. 805-4(6)(a).

84. 428 U.S. 52 (1976).

85. *Id.* at 72.

86. 410 U.S. 113 (1973).

87. *Planned Parenthood*, 428 U.S. at 72-73.

88. *Id.* at 74. The Court stated that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the constitution and possess constitutional rights." *Id.*

89. *Id.* at 74-75. In a previous portion of the opinion, the Court had considered another provision of the Missouri statute that required a married woman to obtain her husband's consent prior to undergoing an abortion, unless the abortion was required to save the woman's life. *Id.* at 67-68. In striking down this provision, the Court held that "the state cannot 'delegate to a spouse a veto power that the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy.'" *Id.* at 69 (quoting *Danforth v. Planned Parenthood*, 392 F. Supp. 1362, 1375) (E.D. Mo. 1975) (Webster, J., dissenting)).

90. *Id.* at 75. Although the Court did not suggest any state interests that would be compelling, it did state that "[a]ny independent interest the *parent* may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant." *Id.* (emphasis added).

that every minor, regardless of her age and level of maturity, could effectively consent to an abortion.<sup>91</sup>

In *Bellotti v. Baird*,<sup>92</sup> the Court struck down a similar state statute as unconstitutionally restricting a minor's right to obtain an abortion. The court conceded that although the Constitution protects minors as well as adults, minors' constitutional rights cannot be equated with those of adults.<sup>93</sup> The peculiar vulnerability of children, their frequent inability to make important decisions maturely, and the importance of the role of parents in childrearing, mandated flexibility in applying constitutional principles to children.<sup>94</sup>

Because a state legitimately may limit the freedom of minors to make certain serious decisions,<sup>95</sup> the state had not overstepped its bounds by requiring minors to consult their parents before making the critical decision to terminate a pregnancy.<sup>96</sup> The Court nevertheless held the statute unconstitutional because it provided no alternative for a minor who could demonstrate the requisite maturity to make such a decision without parental guidance.<sup>97</sup> As in *Planned Parenthood*, the statute necessarily failed because it impermissibly granted the parent absolute veto power over the minor's right to an abortion.<sup>98</sup>

### III. DISCUSSION

#### A. *Factual Background of In re E.G.*

In February 1987, E.G., a seventeen-year-old Jehovah's Witness, was diagnosed as having acute nonlymphocytic leukemia, a malignant disease affecting white blood cells.<sup>99</sup> Treatment of the disease required blood transfusions, which E.G. and her mother refused as

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91. *Id.* The Court did not describe circumstances that would justify a state's restriction of a minor's ability to consent to abortion. This cautionary statement appears to permit a state to require parental consent for minors seeking abortions, so long as the state allows a minor who can demonstrate her maturity some means by which she can circumvent the parental consent requirements. *Id.* at 90-91 (Stewart, J. concurring).

92. 443 U.S. 622 (1979).

93. *Id.* at 634.

94. *Id.*

95. For example, a state may legitimately consider a minor's immaturity in restricting the right to vote or to marry. *Id.* at 635-36 (citing *Ginsberg v. New York*, 390 U.S. 629, 649-50 (1968) (Stewart, J., concurring in result)).

96. *Id.* at 641.

97. *Id.* at 643.

98. *Id.*

99. *In re E.G.*, 133 Ill. 2d 98, 101, 549 N.E.2d 322, 323 (1989).

against their religious beliefs.<sup>100</sup> Because E.G.'s physician believed that E.G. would die within a few weeks if she did not receive the transfusions, the state instituted neglect proceedings against E.G.'s mother in juvenile court.<sup>101</sup>

E.G.'s physician testified at an initial hearing that E.G.'s blood had only one-fifth to one-sixth normal oxygen-carrying capacity. Because any exertion left E.G. excessively fatigued and occasionally incoherent, she was confined to bedrest.<sup>102</sup> The physician noted E.G.'s maturity and religious sincerity and further testified that E.G. apparently understood her treatment options and the consequences of refusing the transfusions.<sup>103</sup> The hospital's associate general counsel agreed with the physician's assessment of E.G.'s maturity and competence.<sup>104</sup> Nevertheless, the trial judge appointed the associate general counsel temporary guardian with authority to consent to transfusions on E.G.'s behalf.<sup>105</sup> E.G. subsequently received nine to ten transfusions over a two-month period.<sup>106</sup>

In April 1987, the trial court held further hearings regarding E.G.'s welfare.<sup>107</sup> After receiving several blood transfusions, E.G. was strong enough to testify on her own behalf.<sup>108</sup> She testified that she understood the nature of her disease and the consequences of refusing the transfusions.<sup>109</sup> She further stated that, although she did not wish to die, her religious beliefs prohibited her from accepting blood transfusions.<sup>110</sup>

A psychiatrist who specialized in evaluating the maturity and competency of minors was among other witnesses testifying to E.G.'s maturity at the second hearing.<sup>111</sup> After evaluating E.G., the psychiatrist concluded that E.G. had the maturity level of an

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100. *Id.* at 101-02, 549 N.E.2d at 323. E.G. and her mother did consent to any other treatment. *Id.* For a discussion of the basis of Jehovah's Witnesses' refusal to consent to blood transfusions, see *supra* note 37.

101. 133 Ill. 2d at 102, 549 N.E.2d at 323. For the relevant portion of the Juvenile Court Act, see *supra* note 38.

102. *In re E.G.*, 161 Ill. App. 3d 765, 780, 515 N.E.2d 286, 297 (1st Dist. 1987) (McNamara, J., dissenting).

103. 133 Ill. 2d at 102, 549 N.E.2d at 323.

104. *Id.*

105. *Id.* at 102, 549 N.E.2d at 323-24.

106. *E.G.*, 161 Ill. App. 3d 765, 781, 515 N.E.2d 286, 297 (1st Dist. 1987) (McNamara, J., dissenting).

107. *E.G.*, 133 Ill. 2d at 103, 549 N.E.2d at 324.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

eighteen to twenty-one year-old and was competent to refuse the transfusions.<sup>112</sup> After the second hearing, the trial court declared E.G. medically neglected and appointed a permanent guardian to consent to further medical treatment on E.G.'s behalf.<sup>113</sup> Although the trial court found that E.G. was a mature seventeen year-old who had reached her decision on an independent basis, the court also reasoned that it was in E.G.'s best interest to remain under the care of a court-appointed guardian.<sup>114</sup> In addition, the court held that the state's interest in preserving E.G.'s life outweighed the interests of E.G. and her mother in exercising their religious beliefs.<sup>115</sup>

### B. The Appellate Court's Decision

The Illinois Appellate Court for the First District affirmed the trial court's finding that E.G. was medically neglected<sup>116</sup> but vacated the trial court's order appointing a guardian for E.G.<sup>117</sup> The court noted that in *Brooks*, the Illinois Supreme Court upheld the first amendment right of an adult Jehovah's Witness to refuse blood transfusions.<sup>118</sup> The court then extended this constitutional right to mature minors, relying on the United States Supreme Court decisions in *Planned Parenthood*<sup>119</sup> and *Bellotti*,<sup>120</sup> which held that a state could not restrict the constitutional rights of mature minors to obtain abortions.<sup>121</sup> The court conceded that the Supreme Court had not yet extended the privacy rights of minors beyond reproductive matters but reasoned that such an extension was inevitable.<sup>122</sup> Recognizing the historical importance of religious freedom in the United States, the court stated "[w]e find it difficult to consider seriously an argument that such freedom should be afforded less protection from government infringement than the rights at issue in the abortion cases."<sup>123</sup>

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112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 103-04, 549 N.E.2d at 324.

116. *E.G.*, 161 Ill. App. 3d at 772, 515 N.E.2d at 291.

117. *Id.* at 771, 515 N.E.2d at 291.

118. 32 Ill. 2d 361, 205 N.E.2d 435. *See supra* notes 51-59 and accompanying text (*Brooks* discussed).

119. 428 U.S. 52 (1976). *See supra* notes 84-91 and accompanying text (*Planned Parenthood* discussed).

120. 443 U.S. 622 (1979). *See supra* notes 92-98 and accompanying text. (*Bellotti* discussed).

121. *E.G.*, 161 Ill. App. 3d at 770-71, 515 N.E.2d at 290.

122. *Id.* at 771, 515 N.E.2d at 290.

123. *Id.*



The court held that because the trial court found E.G. to be a mature seventeen year-old who had arrived at her decision without parental influence, the state had no further interest in protecting E.G. as an immature minor.<sup>124</sup> The court then inquired whether the state had advanced any other interest that would not be present in the case of an adult. Ruling that the state had advanced no such interest, the court held that E.G. could not be prevented from exercising her constitutional right solely on the basis of her being a minor.<sup>125</sup> Pursuant to the Emancipation of Mature Minors Act,<sup>126</sup> the court declared E.G. emancipated for the purpose of consenting to or refusing medical treatment.<sup>127</sup>

### C. *The Opinion of the Illinois Supreme Court*

The Illinois Supreme Court affirmed the appellate court as to E.G.'s right to refuse transfusions<sup>128</sup> but reversed and remanded the neglect finding.<sup>129</sup> Unlike the appellate court, however, the Illinois Supreme Court declined to reach the first amendment issues<sup>130</sup> and instead relied on the Illinois common law right to refuse medical treatment as articulated in *Longeway*.<sup>131</sup>

#### 1. The Mootness Issue

Although the issue in this case technically was moot because E.G. was no longer a minor, both parties argued that the case should not be dismissed.<sup>132</sup> Even though a court should not take

124. *Id.*

125. *Id.* at 771, 515 N.E.2d at 290-91.

126. ILL. REV. STAT. ch. 40, paras. 2201-2211 (1987). The Act provides, in pertinent part, "[a] mature minor ordered emancipated under this Act shall have the right to enter into valid legal contracts, and shall have such other rights and responsibilities as the court may order . . ." ILL. REV. STAT. ch. 40, para. 2205 (1987). Although Section 2207 of the Emancipation of Mature Minors Act requires a minor to demonstrate the ability to manage her own affairs and to live wholly or partially independent of her parents or guardian, Section 2202 provides that the Act "does not limit or exclude any other means either in statute or case law by which a minor may become emancipated." ILL. REV. STAT. ch. 40, paras. 2202, 2207 (1987).

127. *E.G.*, 161 Ill. App. 3d at 771-72, 515 N.E.2d at 290-91.

128. *E.G.*, 133 Ill. 2d at 112, 549 N.E.2d at 326.

129. *Id.* at 112-13, 549 N.E.2d at 328.

130. *Id.* at 112, 549 N.E.2d at 328.

131. *Id.* at 109, 549 N.E.2d at 326 (citing *Longeway*, 133 Ill. 2d at 45-46, 549 N.E.2d at 297-98). See *supra* notes 66-70 and accompanying text (discussion of the Illinois common law right to refuse medical treatment).

132. *E.G.*, 133 Ill. 2d at 105, 549 N.E.2d at 325. A case is moot if "there is no subject matter on which the judgment of the court's order can operate." *Ex parte Baez*, 117 U.S. 378, 390 (1900). See, e.g., *Atherton Mills v. Johnston*, 259 U.S. 13 (1922), in which a father and son sued to enjoin a business from firing the son so that the business could

an appeal if the matter is not "live," courts will make an exception if there is "substantial public interest" in the subject matter of the litigation.<sup>133</sup> In *E.G.*, the court indicated that application of this exception depended on " 'the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.' "<sup>134</sup> The court noted that in two other cases in which Jehovah's Witnesses had refused blood transfusions, *Brooks* and *Labrenz*, it had concluded that significant public interest existed and decided the cases on the merits.<sup>135</sup> Without further discussion, the court stated that the present case met the criteria for the public interest exception, and that the court would therefore address the case's merits.<sup>136</sup>

## 2. *The Illinois Common Law Right to Refuse Medical Treatment*

In determining whether E.G.'s minority precluded her from refusing lifesaving medical treatment, the court noted that in Illinois, adults have the right to refuse medical treatment, under both Illinois common law<sup>137</sup> and the first amendment's guarantee of religious freedom.<sup>138</sup> The court also noted that in Illinois, a minor can be compelled to accept lifesaving medical treatment over the religious objections of her parents.<sup>139</sup> Recognizing that the only bar to E.G.'s ability to refuse blood transfusions was the six months separating her from her eighteenth birthday, the court then questioned whether these six months prevented E.G. from exercising the right to refuse medical treatment.<sup>140</sup>

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comply with child labor laws. During the lapse of time between the time the matter was brought and decided, the minor reached an age not subject to application by the statute in question.

133. *Id.* at 105-06, 549 N.E.2d at 325. Justice Clark, however, dissented on the mootness issue, finding that none of the exceptions to the mootness doctrine were implicated in this case. *Id.* at 115, 549 N.E.2d at 329 (Clark, J., dissenting). See *infra* notes 186-190 and accompanying text.

134. *E.G.*, 133 Ill. 2d at 105, 549 N.E.2d at 325 (quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 622, 104 N.E.2d 769, 772 (1952)).

135. *Id.* (citing *In re Brooks' Estate*, 32 Ill. 2d 361, 366-67, 205 N.E.2d 435, 437-38 (1965) and *Labrenz*, 411 Ill. at 622-23, 104 N.E.2d at 772).

136. *Id.* at 105-06, 549 N.E.2d at 325.

137. *Id.* at 106, 549 N.E.2d at 325 (citing *Longeway*, 133 Ill. 2d at 45, 549 N.E.2d at 297). See *supra* notes 66-70 and accompanying text (reference to this right).

138. *Id.* (citing *Brooks*, 32 Ill. 2d at 373, 205 N.E.2d at 441-42). See *supra* notes 51-59 and accompanying text (*Brooks* discussed).

139. *Id.* (citing *Labrenz*, 411 Ill. at 626, 104 N.E.2d at 774). See *supra* notes 35-48 and accompanying text (*Labrenz* discussed).

140. *Id.*

Because E.G. was a minor under the legislative definition of legal majority,<sup>141</sup> the court first focused on whether the legislature intended the age of eighteen to be an "impenetrable barrier that magically precludes a minor from possessing and exercising certain rights normally associated with adulthood."<sup>142</sup> In determining that the legislature did not so intend, the court examined three statutes: the Consent by Minors to Medical Operations Act,<sup>143</sup> the Emancipation of Mature Minors Act,<sup>144</sup> and the Juvenile Court Act.<sup>145</sup>

First, the Consent by Minors to Medical Operations Act removes one of the disabilities of minority by allowing certain minors to consent to medical treatment.<sup>146</sup> Under this Act, any minor who is married or pregnant may effectively consent to medical treatment.<sup>147</sup> Additionally, any minor over twelve may consent to treatment for venereal disease or chemical addiction.<sup>148</sup> As such, the Consent by Minors to Medical Operations Act represents an apparent legislative determination that the importance of allowing minors to seek medical care in such situations outweighs the inter-

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141. The Emancipation of Mature Minors Act defines a minor as "a person 16 years of age or over, and under the age of 18 years . . ." ILL. REV. STAT. ch. 40, para. 2203-1 (1987).

142. *E.G.*, 133 Ill. 2d at 106, 549 N.E.2d at 325.

143. ILL. REV. STAT. ch. 111, paras. 4501-4505 (1987).

144. ILL. REV. STAT. ch. 40, paras. 2201-2211 (1987).

145. ILL. REV. STAT. ch. 37, paras. 802-1 to 803-32 (1987).

146. ILL. REV. STAT. ch. 111, paras. 4501, 4502, 4504 (1987).

147. ILL. REV. STAT. ch. 111, paras. 4501, 4502 (1987). The Act provides that for purposes of consenting to medical treatment, "a married person who is a minor, a pregnant woman who is a minor, or any person 18 years of age or older, is deemed to have the same legal capacity to act and has the same powers . . . as has a person of legal age." ILL. REV. STAT. ch. 111, para. 4501 (1987). Such provisions concerning married or pregnant minors generally represent a legislative acknowledgment of the radical change in the minor's position within the family, especially in relation to her parents. *See generally* Katz, *supra* note 1, at 217.

148. ILL. REV. STAT. ch. 111, para. 4504 (1987). Section 4504 provides, in pertinent part, "a minor 12 years of age or older who may have come into contact with any venereal disease, or may be determined to be an addict, an alcoholic or an intoxicated person . . . may give consent to the furnishing of medical care or counseling related to the diagnosis or treatment of such disease." ILL. REV. STAT. ch. 40, para. 4504 (1987). Unlike provisions concerning married and pregnant minors, provisions concerning minors who suffer from venereal disease or chemical addiction are based more on the critical need to allow minors free access to treatment for such conditions than on legislative determinations of family situations. Such statutes were passed in response to the increasing incidence of sexual activity and drug use among minors in the 1960s. Because minors involved in these activities were reluctant to have their parents find out about them, the minors frequently did not seek treatment for venereal disease and drug addiction. The resulting individual and public health crisis prompted most states to pass laws enabling minors to seek medical treatment for such afflictions. Katz, *supra* note 1, at 238-39.

ests of either the parents or the state in preventing minors from consenting to medical treatment.<sup>149</sup>

Similarly, under the Emancipation of Mature Minors Act, a minor may be declared emancipated with the legal authority to control her own health care decisions.<sup>150</sup> Under this Act, any minor over sixteen who can demonstrate the ability to live partially or wholly independent from her parents<sup>151</sup> may seek a court order granting either complete or partial emancipation.<sup>152</sup> However, the Act provides that no order of emancipation shall be entered over the objection of the minor's parents or guardian.<sup>153</sup> The court held that read together, the Emancipation of Mature Minors Act and the Consent by Minors to Medical Operations Act, indicated that the legislature did not intend the age of eighteen to be an impenetrable barrier prohibiting minors from exercising rights normally associated with adulthood, including the right to consent to medical treatment.<sup>154</sup>

Finally, the court considered the Juvenile Court Act,<sup>155</sup> that permits persons under eighteen to be prosecuted as adults in certain circumstances.<sup>156</sup> The decision whether to prosecute a minor as an adult turns on a determination of the minor's capacity to formulate criminal intent.<sup>157</sup> The court concluded that the Juvenile Court Act presupposed a "sliding scale of maturity,"<sup>158</sup> that demands certain persons under eighteen receive the same treatment as adults.<sup>159</sup> Thus, the legislative intent expressed in the Juvenile Court Act focuses on the individual's mental capacities rather than upon chronological age.<sup>160</sup>

The court also cited cases in which the United States Supreme

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149. Katz, *supra* note 1, at 239. Legislation allowing minors to consent to medical treatment in these situations also encourages health care facilities to provide treatment to minors by insulating the facility from liability for treating the minor without parental consent. *Id.* This type of legislation also protects the facility from financial risk by ensuring that the minor's consent will not be subject to disaffirmance by reason of minority. *Id.*

150. ILL. REV. STAT. ch. 40, paras. 2201-2211 (1987). See *supra* note 126, (text of the pertinent provision).

151. ILL. REV. STAT. ch. 40, para. 2203-2 (1987). See also *supra* note 126.

152. ILL. REV. STAT. ch. 40, para. 2202 (1987).

153. ILL. REV. STAT. ch. 40, para. 2209 (1987).

154. *E.G.*, 133 Ill. 2d at 107, 549 N.E.2d at 325.

155. ILL. REV. STAT. ch. 37, paras. 802-1 to 803-32 (1987).

156. *E.G.*, 133 Ill. 2d at 107, 549 N.E.2d at 325-26. See W. LAFAVE § 4.11, *supra* note 81, at 398.

157. *E.G.*, 133 Ill. 2d at 107, 549 N.E.2d at 326.

158. *Id.*

159. *Id.*

160. *Id.* at 107, 549 N.E.2d at 326.

Court had extended constitutional rights to minors,<sup>161</sup> including the right to privacy,<sup>162</sup> the right to seek an abortion,<sup>163</sup> freedom of speech,<sup>164</sup> freedom from unreasonable searches and seizures,<sup>165</sup> and procedural due process.<sup>166</sup> Although the court did not reach the issue of whether E.G.'s constitutional rights were implicated by this litigation, it construed these decisions as indicating the Supreme Court's tendency to reject the age of eighteen as a "bright line" restricting minors' constitutional rights.<sup>167</sup>

In accordance with its interpretation of the Illinois statutes relating to minors and United States Supreme Court precedent, the court rejected chronological age as a bar to medical decisionmaking, and held that in Illinois, mature minors could exercise the same common law right to control medical care as adults.<sup>168</sup> The court then specifically extended to mature minors the common law right to refuse lifesaving medical treatment,<sup>169</sup> holding that, had E.G. been adjudged a mature minor, she indeed could have refused the life-sustaining blood transfusions.<sup>170</sup>

### 3. Intervention of the Courts

Although the court recognized a mature minor's right to control her own health care decisions, it determined that the exercise of this right required judicial intervention.<sup>171</sup> The court stated that, unless the legislature provides otherwise, a trial judge must determine whether the minor is mature enough to make her own health

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161. *Id.* at 108, 549 N.E.2d at 326.

162. *Id.* (citing *Carey v. Population Servs. Int'l*, 431 U.S. 678, 693 (1977) ("the right to privacy in connection with decisions affecting procreation extends to minors as well as adults")).

163. *Id.* (citing *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983) (state cannot make absolute abortion prohibition for all minors under 15); *Bellotti v. Baird*, 443 U.S. 622 (1979) (state cannot make unconditional requirement of parental consent for all minors seeking abortions)).

164. *Id.* (citing *Tinker v. Des Moines Independent Community School District* 393 U.S. 503 (1969) (overturning lower court's dismissal of complaint against school officials who had expelled students for wearing black armbands to school to protest Vietnam War)).

165. *Id.* (citing *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (public school officials considered state actors for purposes of conducting searches and carrying out other disciplinary functions)).

166. *Id.* (citing *In re Gault*, 387 U.S. 1 (1967) (minors in juvenile court proceedings entitled to certain procedural due process guarantees)).

167. *Id.* at 108-09, 549 N.E.2d at 326.

168. *Id.* at 109, 549 N.E.2d at 326.

169. *Id.*

170. *Id.* at 110, 549 N.E.2d at 327.

171. *Id.*

care decisions.<sup>172</sup> According to the court, two reasons justified judicial intervention: Illinois public policy, valuing the sanctity of life, and the state's *parens patriae* interest in protecting those unable to protect themselves.<sup>173</sup>

Because both interests become critical when the minor's health and life are at stake, the court concluded that the determination of maturity required clear and convincing evidence:

If the evidence is clear and convincing that the minor is mature enough to appreciate the consequences of her actions, and that the minor is mature enough to exercise the judgment of an adult, then the mature minor doctrine affords her the common law right to consent to or refuse medical treatment.<sup>174</sup>

As in *Longeway*, however, the court cautioned that this right is not absolute: it must be balanced against the state's interests in preserving life, protecting the interests of third parties, preventing suicide, and maintaining the ethical integrity of the medical profession.<sup>175</sup> The court stated that in E.G.'s situation, protecting the interests of third parties was the most significant of the four concerns.<sup>176</sup> For example, had E.G.'s mother opposed E.G.'s decision, the mother's opposition would have weighed heavily against E.G.'s right to refuse the transfusions.<sup>177</sup>

Finally, the court addressed the finding of neglect against E.G.'s mother. The court reasoned that if the trial court had properly declared E.G. a mature minor, it could not have found E.G.'s mother guilty of neglect.<sup>178</sup> Because the trial court had lacked guidance on the ability of mature minors to refuse medical treatment, the court remanded the case to the Circuit Court of Cook County to expunge the neglect finding.<sup>179</sup>

As a result of the court's decision in *In re E.G.*, a mature minor in Illinois may exercise the common law right to bodily self-deter-

172. *Id.*

173. *Id.* at 110-11, 549 N.E.2d at 327 (citing *Longeway*, 133 Ill. 2d at 51-52, 549 N.E.2d at 300-01).

174. *Id.* at 111, 549 N.E.2d at 327-28. Although the court declared that mature minors could exercise the right to control their medical care, the court did not comment on the evidence offered in support of E.G.'s maturity. Furthermore, because E.G. had reached the age of majority, the court declined to remand the case for a finding of maturity. *Id.* at 112, 549 N.E.2d at 328.

175. *Id.* at 111, 549 N.E.2d at 328 (citing *Longeway*, 133 Ill. 2d at 48, 549 N.E.2d at 299).

176. *Id.* The court identified the principal third parties in the instant case as parents, guardians, adult siblings, and other relatives. *Id.*

177. *Id.* at 111-12, 549 N.E.2d at 328.

178. *Id.* at 112-13, 549 N.E.2d at 328.

179. *Id.* at 113, 549 N.E.2d at 328.

mination, including the right to consent to or refuse medical treatment. Thus, a minor who can demonstrate to a trial judge that she is sufficiently mature to make her own health care decisions has the right to refuse even lifesaving medical treatment.<sup>180</sup>

#### 4. The Dissents

Justice Ward, who issued a lengthy dissent in *Longeway*,<sup>181</sup> also dissented in *In re E.G.*. According to Justice Ward, the majority's position in *E.G.* was a dangerous departure from the state's *parens patriae* duty to protect minors.<sup>182</sup> He distinguished *E.G.*'s case from those merely involving a minor's consent to treatment because here, "a minor's injury or very self-destruction may be involved."<sup>183</sup> Justice Ward's dissent also criticized the majority for departing from strict statutory construction, thereby eroding the legislature's determination of the age of majority.<sup>184</sup> Finally, Justice Ward criticized the majority for not articulating guidelines by which the trial court will be required to make the determination of maturity.<sup>185</sup>

Justice Clark, who also issued a separate dissent in *Longeway*,<sup>186</sup> dissented in *In re E.G.* on mootness grounds.<sup>187</sup> Because *E.G.* had turned eighteen, and because of the paucity of cases dealing with the rights of mature minors to refuse lifesaving medical treatment, Justice Clark stated that there was no need to provide an authoritative determination for the future guidance of public officials.<sup>188</sup> Justice Clark therefore concluded that the substantial public interest exception to the mootness doctrine did not justify reaching the merits of *E.G.*'s case.<sup>189</sup> Finding that none of the other exceptions

180. *Id.* at 110, 549 N.E.2d at 327.

181. *Longeway*, 133 Ill. 2d at 55, 549 N.E.2d at 302 (Ward, J., dissenting). Justice Ward had difficulty with the majority's use of "substituted judgment," expressing the concern that the surrogate will substitute the surrogate's own values for those of the incompetent.

182. *E.G.*, 133 Ill. 2d at 113, 549 N.E.2d at 328 (Ward, J., dissenting).

183. *Id.* at 114, 549 N.E.2d at 329. Justice Ward found the distinction between allowing a minor to consent to beneficial treatment and allowing her to refuse lifesaving treatment decisive, stating, "The safeguarding of health and the preservation of life are obviously different conditions from one in which a minor will be held to have a common law right . . . to refuse medical treatment and sometimes in effect take his own life." *Id.* at 113, 549 N.E.2d at 328.

184. *Id.* at 114, 549 N.E.2d at 329.

185. *Id.*

186. *Longeway*, 133 Ill. 2d at 65, 549 N.E.2d at 307. (Clark, J., dissenting) (issue should be decided by legislature).

187. *E.G.*, 133 Ill. 2d at 115, 549 N.E.2d at 329 (Clark, J., dissenting).

188. *Id.* at 115-16, 549 N.E.2d at 329-30.

189. *Id.* at 115, 549 N.E.2d at 330.

to the mootness doctrine were applicable, Justice Clark concluded that the issue presented was moot, and that the majority had erred in addressing the merits.<sup>190</sup>

#### IV. ANALYSIS

The Illinois Supreme Court's decision in *In re E.G.* demonstrates the difficulty of balancing the state's *parens patriae* interest against the rights of minors. It is commendable that the court recognized that an individual does not undergo any magical transformation on her eighteenth birthday whereby she is suddenly endowed with the ability to make crucial decisions regarding her health.<sup>191</sup> The court acknowledged that an individual well may reach a sufficient level of maturity to make such decisions somewhat before the statutorily defined age of majority. Although the majority's opinion may be viewed by some as an abdication of the court's duty to protect those who cannot protect themselves,<sup>192</sup> the court's approach appropriately focuses less on the presumptions surrounding the age of the individual and more on her ability to make a decision that is both permitted by Illinois common law<sup>193</sup> and articulated in enactments of the Illinois legislature.<sup>194</sup>

Application of the decision, however, undoubtedly will create practical difficulties for health care providers and trial courts alike. Health care providers will find the already thorny issue of informed consent becoming even more troublesome as the provider attempts to determine from whom it is required to obtain consent. Likewise, the trial court will encounter difficulties in determining maturity; although the opinion in *In re E.G.* extended to the mature minor the right to control medical treatment,<sup>195</sup> it gives the trier of fact no guidelines to follow in making the potentially critical determination of maturity.<sup>196</sup>

Finally, although the court advanced four state interests against which the trial court must balance the minor's right to control her treatment,<sup>197</sup> the same court noted in *Longeway* that none of the

190. *Id.* at 117-18, 549 N.E.2d at 330-31.

191. *Id.* at 106, 549 N.E.2d at 325.

192. *See id.* at 113, 549 N.E.2d at 328 (Ward, J., dissenting).

193. *See In re Estate of Longeway*, 133 Ill. 2d 33, 549 N.E.2d at 292 (1989); *In re Brooks' Estate*, 32 Ill. 2d 361, 205 N.E.2d 435 (1965).

194. *See supra* notes 63-64. (Living Will Act and Illinois Powers of Attorney for Health Care Law discussed)

195. *E.G.*, 133 Ill. 2d at 109, 549 N.E.2d at 326.

196. *Id.* at 114, 549 N.E.2d at 329 (Ward, J., dissenting).

197. *Id.* at 111, 549 N.E.2d at 328. *See supra* note 175 and accompanying text for a discussion of the state's interests.



four interests normally would be sufficient to overcome the right of an adult to control her own health care.<sup>198</sup> Because the right of the mature minor to bodily self-determination purportedly is the same as that of an adult,<sup>199</sup> none of these interests should be considered sufficiently compelling to overcome the rights of the minor who has been judged mature enough to make health care decisions independently.

#### A. Health Care Providers

The practical difficulties presented by *E.G.* will be encountered first by health care providers. For example, E.G. first was brought to the state's attention when her physicians reported her situation to the Department of Children and Family Services,<sup>200</sup> as required by the Abused and Neglected Child Reporting Act.<sup>201</sup> Although hospital personnel believed that E.G. had reached her decision in a mature fashion,<sup>202</sup> because she was an unemancipated minor, her refusal of the treatment legally was irrelevant. Because E.G.'s mother was the sole party empowered to make health care decisions for E.G., the mother's refusal of lifesaving treatment automatically triggered the hospital's obligation to report E.G. as a neglected minor.<sup>203</sup>

Even after the court's decision in *In re E.G.*, it remains irrelevant to the health care provider whether the parent refuses to consent to treatment for the minor, or whether the parent merely refuses to override the minor's refusal of the treatment. So long as the minor is unemancipated, the only relevant fact is that the parent is withholding consent for a medically necessary procedure, and the health care provider still will be obligated to report the minor as neglected.<sup>204</sup>

More problematic is the situation in which the minor herself re-

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198. *Longeway*, 133 Ill. 2d at 48, 549 N.E.2d at 299.

199. *E.G.*, 133 Ill. 2d at 109, 549 N.E.2d at 326-27.

200. *In re E.G.*, 161 Ill. App. 3d 765, 766, 515 N.E.2d 286, 287 (1st Dist. 1987).

201. ILL. REV. STAT. ch. 23, paras. 2051-2055 (1987). The Abused and Neglected Child Reporting Act requires health care and other child care professionals to report suspected cases of neglect to the Illinois Department of Children and Family Services. *Id.*

202. See *supra* text accompanying notes 103-04, discussing E.G.'s understanding of her treatment options.

203. The Abused and Neglected Child Reporting Act contains a mandatory requirement that a health care provider shall immediately report any suspected cases of abuse or neglect. The Act leaves no room for the provider to exercise discretion once the minor falls within the statutory definition of neglected. ILL. REV. STAT. ch. 23, para. 2054 (1987) (emphasis added).

204. *Id.*

fuses treatment, despite the consent of the parent. A health care provider that honors the wishes of the minor in such a situation may run a substantial risk of incurring liability for medically abandoning the minor.<sup>205</sup> On the other hand, although the consent of the parent technically may be valid, a provider that compels an apparently competent minor to accept treatment against her wishes may now conceivably be liable to the minor for battery.<sup>206</sup> A prudent health care provider, however, has no statutory means of obtaining a declaration of its responsibilities because the parent's consent precludes the institution of neglect proceedings.<sup>207</sup> Similarly, Illinois has no statute whereby a minor in E.G.'s position may obtain an order allowing to her to consent to medical treatment.

Although the court's failure to clarify the role of health care providers will cause providers in these situations a certain amount of confusion and difficulty, the provider is not without viable solutions to this dilemma. Furthermore, no amount of inconvenience to the health care provider should outweigh the mature minor's right to bodily autonomy.

One possible solution for the problems the health care provider will encounter when a minor refuses necessary medical treatment may lie in Section 11-5 of the Illinois Probate Act.<sup>208</sup> That section provides that the court, upon the filing of a petition by any responsible citizen, may appoint a guardian of the person of the minor whenever it appears necessary or convenient.<sup>209</sup> This broad language could allow a physician or any other health care personnel

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205. Although neither a physician nor a hospital has a duty to undertake to treat a particular patient, once treatment is undertaken, the patient is owed a duty of reasonable care. *Compulsory Treatment*, *supra* note 18, at 30. By failing to render necessary treatment to a legally incompetent patient, the health care provider could be liable to the patient for abandonment. *Id.* at 30-31.

206. See *supra* notes 43-47 and accompanying text. (right to bodily self-determination discussed)

207. Although the Illinois Probate Act allows appointment of a guardian for persons incompetent to make their own health care decisions, that portion of the Act pertains only to adults. Under Section 11a-3, the court may appoint a guardian of the person if the individual is disabled and "lacks sufficient understanding or capacity to make or communicate responsible directions concerning the care of his person." ILL. REV. STAT. ch. 110 1/2, para. 11a-3 (1987). Section 11a-2, however, defines a disabled person as "a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate." ILL. REV. STAT. ch. 110 1/2, para. 11a-2 (1987). Under this Act, the hospital could request that the state appoint a guardian of the person for an adult, but the language of the statute precludes application of this portion of the Probate Act to a minor. *Id.*

208. ILL. REV. STAT. ch. 110 1/2, para. 11-5 (1987).

209. *Id.*

to petition the court for appointment of a guardian to consent to treatment on a minor's behalf.<sup>210</sup> Once the matter is before the trial court, the judge would have the opportunity to evaluate the minor's maturity and either appoint a guardian or order the minor emancipated for the purpose of consenting to medical treatment.

As previously stated, a minor seeking to control her own health care decisions has no statutory means by which to petition the court independently for an order of emancipation. The only Illinois statute allowing a minor to obtain such an order is the Emancipation of Mature Minors Act,<sup>211</sup> which requires the minor to verify that she has lived wholly or partially independent of her parents or guardian.<sup>212</sup> Consequently, minors such as E.G. who remain part of a cohesive family unit cannot be emancipated under the Emancipation of Mature Minors Act.

The Emancipation of Mature Minors Act, however, is not intended to be the only means of emancipation in Illinois. The Act specifically provides that it does not exclude any other means either in statutory or case law by which a minor may become emancipated.<sup>213</sup> By requiring that a minor obtain a judicial determination of maturity,<sup>214</sup> *In re E.G.* provides the minor access to the courts of Illinois, and creates a case law means whereby a minor may seek an order of emancipation.

### B. Determination of Maturity

Once the minor seeking to be adjudged mature has gained access to the judicial system, the problems presented by *In re E.G.* begin anew. As Justice Ward notes in his dissent, the majority offers the trier of fact no recommendations to guide its determination of maturity.<sup>215</sup> Significantly, the court did not declare that E.G. was in fact a mature minor,<sup>216</sup> nor did it comment on the sufficiency of the evidence presented regarding E.G.'s maturity. Unlike the Emancipation of Mature Minors Act, which sets forth specific criteria re-

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210. To date, however, the statute has been applied only to situations involving guardianship when the parent-child relationship has been interrupted by divorce, death of a parent, or parental unfitness. See, e.g., *In re Lecocq's Estate*, 17 Ill. App. 3d 1011, 309 N.E.2d 84 (3d Dist. 1974).

211. ILL. REV. STAT. ch. 40, paras. 2201-2211 (1987). See *supra* note 126.

212. ILL. REV. STAT. ch. 40, para. 2207 (1987). See *supra* note 126 for the partial text of this provision.

213. ILL. REV. STAT. ch. 40, para. 2202 (1987).

214. *E.G.*, 133 Ill. 2d at 110, 549 N.E.2d at 327.

215. *Id.* at 114, 549 N.E.2d at 329 (Ward, J., dissenting).

216. *Id.* at 112, 549 N.E.2d at 328.

quired for a declaration of emancipation,<sup>217</sup> the opinion in *E.G.* requires only that the trial court find clear and convincing evidence of maturity.<sup>218</sup>

Furthermore, although *E.G.* is significant in that it allows a minor the opportunity to demonstrate the capacity to make vital medical decisions, it is perhaps equally significant in that it does not discard the presumption that minors lack the capacity to make such decisions.<sup>219</sup> Because the trial court must find clear and convincing evidence of maturity, the minor's failure to meet that burden will allow the presumption of incapacity to stand.

As a practical matter, the requirement of clear and convincing evidence effectively precludes a finding of maturity in an emergency or in any other situation where there is no opportunity for the trial court judge to speak with the minor and evaluate her maturity firsthand. Likewise, where a judicial evaluation is impossible because the minor is unconscious or incoherent, the court probably will consider the minor's previously expressed desires regarding health care insufficient to constitute clear and convincing evidence of maturity.

Although the court made no attempt to set a minimum age for application of the mature minor doctrine, the requirement of clear and convincing evidence suggests that the younger the minor, the less likely that she will be able to demonstrate the requisite maturity. Additionally, the trial court is not without legislative guidelines in this area. Under the Emancipation of Mature Minors Act, a minor must be at least 16 to be ordered emancipated.<sup>220</sup> Although the Act provides that the presumption of legal incapacity may be rebutted in the case of a minor 16 or older, it nevertheless indicates a legislative intent to retain at least some presumption of incapacity for minors under sixteen.<sup>221</sup>

217. ILL. REV. STAT. ch. 40, para. 2207 (1987).

218. *E.G.*, 133 Ill. 2d at 111, 549 N.E.2d at 327-28. Even in cases when emancipation is sought through channels other than the Emancipation of Mature Minors Act, Illinois courts appear to focus on the minor's demonstrated ability to live independently of her parents and manage her own financial affairs. See, e.g., *In re Marriage of Donahoe*, 114 Ill. App. 3d 470, 448 N.E.2d 1030 (2d Dist. 1983).

219. *E.G.*, 133 Ill. 2d at 110-11, 549 N.E.2d at 327-28. The court stated "A minor may have a long and fruitful life ahead that an immature, foolish decision could jeopardize. Consequently, when the trial judge weighs the evidence in making a determination of whether a minor is mature enough to handle a health care decision, he must find proof of this maturity by clear and convincing evidence." *Id.* at 110, 549 N.E.2d at 327.

220. ILL. REV. STAT. ch. 40, para. 2203-2 (1987).

221. The stated purpose of the Act is to provide a means of obtaining legal emancipation for minors who can demonstrate the ability to manage their own affairs. ILL. REV. STAT. ch. 40, para. 2201 (1987). By requiring that the minor be at least 16, however, the

In contrast, the Consent by Minors to Medical Operations Act allows a minor who is age twelve or older to consent to treatment for venereal disease or substance abuse.<sup>222</sup> Rather than indicating a legislative determination that minors twelve and older have the capacity to make well-reasoned decisions about medical care, this Act represents a legislative recognition of the importance of allowing access to these services to any minor with even minimal capacity to consent to treatment.<sup>223</sup> As such, the Act furthers the state's interest in preserving the minor's life and health. It appears, therefore, that in the absence of any similar overriding social policy, the legislature has adopted a presumption of incapacity for minors under sixteen, and a trial court accordingly should exercise extreme reluctance to allow such minors to make life-threatening medical decisions.

### C. *Balancing the Competing Interests*

Although the court did not provide guidelines for the determination of maturity, it identified four state interests that the trial court should balance against the right of the mature minor to refuse life-saving treatment.<sup>224</sup> As in *Longeway*, the four competing interests articulated in *In re E.G.* were the state's interest in preserving life, the interests of third parties, the interest of the state in preventing suicide, and the interest in maintaining the integrity of the medical profession.<sup>225</sup> Even though these interests have been recognized as important by a number of courts and commentators,<sup>226</sup> none are sufficiently weighty to override the mature minor's right to control her own health care.

#### 1. The state's interest in preserving life

The state's interest in preserving life long has been recognized as a valid exercise of its police power, and frequently is considered to be part of its *parens patriae* power as well. As the court in *E.G.* states, the interest of the state in preserving a minor's life is strongest when the minor is immature and the health care issues are po-

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legislature apparently has determined that minors under 16 still are in need of a certain amount of parental protection and guidance.

222. ILL. REV. STAT. ch. 111, para. 4504 (1987).

223. See *supra* notes 147-49. (discussing statutory provisions)

224. *E.G.*, 133 Ill. 2d at 111, 549 N.E.2d at 328.

225. *Id.*

226. For a discussion of the competing interests and the manner in which the states have dealt with them, see generally *Compulsory Treatment*, *supra* note 18.

tentially life-threatening.<sup>227</sup> As a practical matter, the younger the minor, the more likely that the minor will in fact be immature. Consequently, the younger the minor, the stronger the state's interest in preserving the minor's life, and the less likely that a court will allow the minor to make life-threatening decisions.

Although the adoption of a balancing test suggests that at some point the state's interest in the preservation of life may outweigh the mature minor's right to medical autonomy, the decision in *E. G.* belies this conclusion. As stated previously, the state's interest is strongest when the minor's condition is life-threatening. The court's willingness to allow *E. G.* to make a life-threatening decision, however, indicates that it is the maturity of the minor, and not the consequences of the minor's decision, that should be considered determinative; therefore, even when the state's interest in preserving life is at its strongest, it is not sufficiently compelling to outweigh the mature minor's right to medical autonomy.

## 2. The interests of third parties

Of the four competing interests mentioned by the court in *In re E. G.*, the interests of third parties were identified as the most important.<sup>228</sup> The court indicated that when the decision of the minor is contrary to the wishes of her parent, the trial court should give great consideration to the parent's wishes.<sup>229</sup> Again, the adoption of a balancing test indicates that at some point, the wishes of the parent could prove sufficiently compelling to defeat the right of the minor to refuse treatment.

In *Longeway*, however, the court indicated that the interests of third parties normally would not be sufficiently compelling to outweigh the individual's right to bodily autonomy.<sup>230</sup> Because the court in *E. G.* claims that the right of the mature minor to autonomy in medical decision-making is equal to that of an adult, the rights of the minor should not be overcome by any interest that could not outweigh the rights of an adult in a similar situation. Consequently, if the interests of third parties are insufficient to overcome the rights of an adult, they are insufficient to overcome the rights of a mature minor.

Most courts that have considered the constitutional issues involved in the right to refuse medical treatment have based their

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227. *Id.* at 111-12, 549 N.E.2d at 229.

228. *Id.* at 111-12, 549 N.E.2d at 328.

229. *Id.*

230. *Longeway*, 133 Ill. 2d at 48, 549 N.E.2d at 299.

decisions both on the right to privacy and the common law right to informed consent.<sup>231</sup> In its decision in *Cruzan*, the United States Supreme Court stated that “[t]he principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.”<sup>232</sup> The constitutional right to privacy inherent in medical decisionmaking,<sup>233</sup> requires that any state restriction on a minor’s right to such autonomy must pass muster under the standards set forth in *Planned Parenthood*<sup>234</sup> and *Bellotti*.<sup>235</sup> Allowing the parents’ wishes to overcome the mature minor’s constitutional right to refuse medical treatment could result in precisely the type of absolute veto power held unconstitutional in *Planned Parenthood* and *Bellotti*.

### 3. Interest of the State in Preventing Suicide

The third state interest articulated in *In re E.G.* was the prevention of suicide.<sup>236</sup> Although the state has a legitimate interest in preventing suicide, that interest is not implicated in cases such as *In re E.G.* Because suicide involves the deliberate termination of one’s existence,<sup>237</sup> it requires both that one desires to die and that one set in motion the causative factors of death.<sup>238</sup> According to her own testimony, E.G. did not wish to die, but her religion forbade her to accept blood transfusions.<sup>239</sup> By following her religious beliefs, E.G. was not actively seeking death, but was merely refusing a form of treatment that was unacceptable to her.

Furthermore, because E.G. suffered from leukemia, a condition that was not self-induced, her circumstances did not meet the legal

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231. See e.g., *Cruzan v. Director, Mo. Dept. of Health*, 110 S. Ct. 2841, 2847 (1990). For further discussion of *Cruzan*, see *supra* notes 49-50 and accompanying text.

232. *Id.* at 2851. Parenthetically, on the same day the Court decided *Cruzan*, the Court rendered a decision in *Hodgson v. Minnesota*, 110 S. Ct. 2926 (1990). Writing for the majority, Justice Stevens held that the two-parent parental notification requirement of the Minnesota abortion statute was unconstitutional. Citing *Bellotti* and *Planned Parenthood*, the Court reiterated that a parent’s interest in the termination of the pregnancy of a competent and mature minor is not outweighed by the minor’s privacy interest. *Hodgson*, 110 S. Ct. at 2946.

233. See *supra* note 49 and accompanying text.

234. See *supra* notes 89-91 and accompanying text. (discussing the state’s ability to restrict a minor’s right to an abortion)

235. See *supra* text accompanying notes 95-98.

236. *E.G.*, 133 Ill. 2d at 111, 549 N.E.2d at 328.

237. *Best Interests*, *supra* note 43, at 549.

238. *Id.*

239. *E.G.*, 133 Ill. 2d at 103, 549 N.E.2d at 324.

definition of suicide.<sup>240</sup> The state's interest in preventing suicide in such cases is adequately served by ascertaining that the minor has not purposely induced her fatal condition out of a desire to die; it should not therefore be grounds for defeating the mature minor's right to exercise autonomy in medical decision-making.<sup>241</sup>

#### 4. Maintaining the integrity of the medical profession

The final state interest articulated in *In re E.G.* was maintaining the integrity of the medical profession.<sup>242</sup> Certainly there can be few situations more devastating and demoralizing to a medical professional than to be compelled to watch a patient die from a condition that could be remedied by a relatively simple medical procedure. The doctrine of informed consent underlying all medical decisions, however, would be meaningless if it could be defeated in order to maintain the integrity of the medical profession.<sup>243</sup> The trial court adequately can protect the interests of the medical profession by not requiring health care workers to perform procedures against the dictates of their consciences.<sup>244</sup> As wrenching as the medical dilemma must be, it cannot be considered a substantive reason for denying the patient her right to choose.<sup>245</sup>

### V. CONCLUSION

The Illinois Supreme Court's decision in *In re E.G.* undoubtedly will provoke voluminous commentary and debate among practitioners, clergy, academics, the judiciary, and the numerous special interest groups whose beliefs are involved. Much of the commentary will be, at best, negative. However, the Illinois Supreme Court should be commended for attempting to grapple with the seemingly insurmountable issues, and for formulating a morally acceptable solution. Although the Supreme Court's approach raises

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240. *Best Interests*, *supra* note 43, at 549. The authors contend that so long as the fatal medical condition is not self-induced, refusing life-sustaining medical treatment does not fall within the legal definition of suicide. *Id.*

241. Pointing out the distinction between self-destruction and self-determination, the authors state that there is an "emerging judicial consensus that the terminally ill patient's prerogative to shape medical intervention will be deemed to be outside the legal realm of suicide." *Id.*

242. *E.G.*, 133 Ill. 2d at 111, 549 N.E.2d at 328.

243. *Compulsory Treatment*, *supra* note 18, at 31.

244. *Id.* For example, a surgeon should not be required to perform a procedure that will be made unreasonably dangerous by the patient's refusal of blood transfusions. *Id.* The *E.G.* court stated that "[i]t must be evident that neither a court nor a patient can dictate treatment contrary to reasonable and good faith medical judgment." *Id.*

245. *Id.*



a number of practical difficulties, by affording a minor the opportunity to demonstrate the maturity to manage her own health care, it allows autonomy to those with the capacity to exercise it, while still protecting those unable to protect themselves.

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