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Body Art on Children’s Bodies: Should It Be Up to Parents to Decide?

Inna Volkova*

The ultimate question I seek to explore in this Note is whether parents should have discretion to make choices on behalf of their children regarding nonmedical body alterations. Based on research, my conclusion is that children should be allowed to alter their bodies with parental consent. For the purpose of this Note, “children” are defined as people under the age of eighteen. The term “body art” is used to describe “any semi-permanent decoration of the body such as tattooing, piercing, plastic surgery, etc.”1 The definition of “tattooing” is “the act or practice of introducing inks or dyes into or underneath the skin of a human being to produce therein an indelible or nearly indelible image.”2 “Body piercing” is defined as a “means to make a hole in the body or oral cavity in order to insert or allow the insertion of any ring, hoop, stud, or other object for the purpose of ornamentation of the body.”3

Taking into consideration the popularity of cultural trends such as babies getting their ears pierced and teenagers getting tattoos with parental consent, it is important to explore the social implications of legislation limiting parental rights over their child’s body. While parents are able to make significant life choices regarding what their children should eat and which school they should attend, it is interesting that body art asserts its own category of limitation on parental rights. I propose uniformity of legislation that allows children under the age of eighteen to get both tattoos and piercings with parental consent.

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I. HISTORY OF PIERCINGS AND TATTOOS

Tattoos have a rich human history. Tattooing is an ancient practice using many tools and instruments, including needles and pigment reservoirs. There is some evidence that tattooing goes back as far as the Ice Age, and numerous figurines depicting tattooing on their bodies have been discovered going as far back as 4,000 years. The earliest tattoos consisted of simple geometric figures, such as lines and dots forming a pattern. Tattoos have evolved throughout the world in many different places, independent of one another, for varying purposes including beautification, religious expression, healing, and even as a form of punishment. Maori tribal tattooing signifies a person's status and rank, marking rites of passage and significant events. Yantra tattooing in Thailand is thought to give protection and magical powers to the wearer.

Like tattoos, piercings are a medium of expression with a long and extensive history and symbology. People today have adapted this form of body art to include gauges, bars, and other types of metalwork. Egyptians practiced body piercings for decoration as well as status. In fact, Egyptian mummified human remains containing body piercings date back 5,000 years. Egyptian pharaohs were the only people allowed to have navel piercings—a symbol of high status. Romans have also been documented as having nipple piercings to signify strength and virility. Piercings are used in Aztec and Mayan tribes as part of religious rituals. Additionally, gladiators, who were slaves in the Roman Empire, had more practical piercings with purposes such as helping with certain aspects of combat and preventing sexual intercourse without a master's consent. Like tattoos, body piercings are and have been utilized throughout the world for a variety of purposes.

Most people today, especially women, subscribe to this type of body art in the form of ear piercing, although other types of body piercing gained

6. Id.
10. Id.
11. Id.
12. Id.
13. Id.
14. Id.
popularity in the 1980s and 1990s. Despite the argument that piercings are not as expressive as a picture on a forearm, many people claim that piercing is a form of body art as well. Modernly, people often use piercings as a way to break out of the mold that society has set for them. Other people choose piercings as a way of expressing their cultural values and heritage. Some may even choose a piercing for a more personal reason, such as to remember a lost family member or friend. Taking into account the variety of reasons people choose to get them, piercings, which are similar to tattoos, are a form of body art. Some minors, similar to some adults, wish to express themselves using forms of body art—namely, piercings and tattoos. In order to facilitate this process, states should use parental consent laws rather than place age restrictions on minors.

II. THE MODERN TATTOO AND PIERCING TREND

Before delving into the legal implications of restrictions on parental rights of discretion, it is important to consider the trend itself. Pop culture shows that the body piercings have become more prevalent in the last thirty years. This trend is especially noteworthy in regard to adolescents. During a piercing procedure, metal is placed through a hole made in the skin. Piercings have a healing time that ranges between four weeks and nine months. Piercings are generally inexpensive, ranging from twenty dollars to one hundred dollars, depending on the complexity of the piercings. A study done at the Feinberg School of Medicine found that sixteen percent of people in the 500-person study pool had obtained their

15. Martell, supra note 9.
17. Id.
19. Id.
21. Id.
22. Karen Thomas, States Take Stab at Regulating Teen Body Piercing, USA TODAY, July 7, 1999, at 5D.
23. Body Piercing, CENTER FOR YOUNG WOMEN'S HEALTH, http://www.youngwomenshealth.org/body-piercing.html (last updated Apr. 27, 2011) (informational website helping teens become informed about risks of piercings, precautions that they should take during and after piercings, and education for teens about how to choose a good shop for their piercing).
first tattoo by age eighteen and a third had gotten their first body piercing by the age of eighteen.  

It is important to not only look at the population of minors that have already received tattoos and piercings, but also those that are interested in getting them, since they would be most affected by subsequent restricting legislation. A study conducted in Italy looked at the differences between adolescents who wanted or had body piercings and tattoos, and those that did not. What distinguishes minors that want a piercing or a tattoo from those who do not? One of the study’s findings was that those who had or wanted piercings and tattoos were not as well-informed about health risks associated with tattoos or piercings. Thus, education presents one method to reduce the number of minors receiving tattoos and piercings without restricting minors’ autonomy. As evidenced by the Italian study, the more knowledgeable minors were about health risks, the less interested they were in receiving a piercing or tattoo. By educating minors, those considering body art will be able to make more informed decisions, while at the same time retaining their right of choice. This is a workable compromise: not banning piercings and tattoos for minors while still reducing the prevalence of piercings and tattoos for adolescents.

There are also therapeutic reasons to avoid complete restrictions on children’s body alterations. Some children choose to get tattoos and piercings because they have suffered some form of physical or sexual abuse in the past, and a tattoo or piercing may allow them to express a sense of empowerment. It is empowering because the act of acquiring body art can reduce tension through a relaxation response that occurs after getting a piercing or a tattoo. This therapeutic aspect to piercings and tattoos would not be available to the population of minors if piercings and tattoos were banned for everyone under the age of eighteen.

Before delving into the United States laws regarding tattoos and body piercings for minors, it is important to distinguish another kind of

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25. Tattoos and Piercings Go Mainstream, but Risks Continue, NORTHWESTERN UNIVERSITY NEWSCENTER (June 12, 2006), http://www.northwestern.edu/newscenter/stories/2006/06/tattoos.html [hereinafter Tattoos and Piercings] (Dr. Anne E. Laumann and colleagues found tattoos were most prevalent in those participants that were less educated, were of Hispanic origin, and were of the age range of eighteen to twenty-nine).

26. Luca Cegolon et al., Characteristics of Adolescents Who Expressed Indifference or No Interest Towards Body Art, 10 BMC PUB. HEALTH 605 (2010) (examining Italian secondary schools; the sample size was 4,277 students who answered questions to a self-reported questionnaire).

27. Id.

28. Id.

29. Laura M. Koenig & Molly Carnes, Body Piercing: Medical Concerns with Cutting-Edge Fashion, 14 JGIM 379, 383 (1999) (a MEDLINE search for terms “body piercing” and “ear piercings” from 1966-1968 and the results were examined for medical complications, psychological implications, and legislation).

30. Id.

31. Id.
piercings: earlobe piercing. Earlobe piercings face drastically different treatment when compared to other types of body piercings. Earlobe piercing is the most socially acceptable form of piercing, and has not faced the same restrictions as other body piercing. In fact, Connecticut defines a body piercing as a "piercing or creating a channel through any part of the body other than the earlobe for the purpose of inserting a decorative object, and 'earlobe' means the lower portion of the auricle having no cartilage." Earlobe piercings are culturally more accepted, the health risks are low, and the healing time ranges from only eight to ten weeks.

Perhaps one of the reasons that earlobe piercings are distinguished from other types and less scrutinized is because of their historical roots. According to Cheyenne Morrison, the earlobe was probably man’s first attempt at body piercing due to the ease with which it can be pierced. The oldest mummified body containing earlobe piercings was found frozen in an Austrian glacier in 1991, and tests showed the body to be over 5,000 years old. Primitive tribes believed that ear piercings would help repel demons entering a person’s body. Furthermore, “in many societies ear piercing is done as a puberty ritual, [and] in Borneo the Mother and Father each pierce one ear as a symbol of the child’s dependence on their parents.” Perhaps in the United States earlobe piercings are stigmatized less because of their high prevalence in the population. One study found that fifty-nine percent of respondents had a soft earlobe piercing.

It is currently legal even for infants to receive earlobe piercings, with their parent’s consent. Although this trend has faced some disapproval in areas such as the United Kingdom, it persists in the United States. One group of doctors, objecting to parents piercing their children’s ears,

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32. CONN. GEN. STAT. ANN. § 19a-92g (West 2011).
36. Id.
37. Id.
38. Id.
39. Anne E. Laumann & Amy J. Derick, Tattoos and Body Piercings in the United States: A National Data Set, 55 J. AM. ACAD. DERMATOLOGY 413-21 (2006), available at http://www.bxscience.edu/ourpages/auto/2010/5/13/443313724/Tattoos.pdf (looking at prevalence and consequences of body art. The study was conducted on a random sample of 243 women and 247 men who were between the ages of eighteen to fifty. The study found that women are more likely to have body piercings while tattoos were equally prevalent in both populations).
40. Ban the Ear Piercing of Babies and Infants Under 6 Years Old, HM Gov’t, http://epetitions.direct.gov.uk/petitions/18977 (last visited Nov. 6, 2011) (proposed petition in the UK to ban piercings for those under the age of six).
asserted "[c]hildren should be involved in their health care according to their age and maturity rather than becoming 'passive recipients' of their parent's views." If the view that parents can make the decision for children to get their ears pierced involuntarily as babies is socially accepted, then it raises the question of why minors under the age of eighteen, who are fully capable of taking part in the decision, should not be able to get piercings and tattoos with parental consent? The reasoning used in the British study to argue for banning babies from getting ear piercings can be applied to support this analysis. If the problem with infants getting piercings is that the child has no say in the cosmetic alteration of their body, these children should be allowed to get piercings and tattoos with their parent's support then when they become teenagers and can make choices.

Aside from the historical tradition of earlobe piercings, another potential reason that such piercings receive less scrutiny is because of the reduced health risk compared to other types of body piercings. The Montana Department of Health and Human Services found:

[A]ll medical information available to the department indicates that there is a substantially higher risk of infection in ear cartilage piercing as opposed to earlobe piercing due to the reduced blood flow in cartilaginous tissues, resulting in a reduced capacity for the body to fight any infectious agent introduced to that area of the body.

Earlobe piercings are less likely to become infected than other piercings because less bacteria live around the earlobe compared to other parts of the body. Ear piercings, because they have been "mainstream" for many generations, have not been colloquially included in the category of "different body alterations." Legislation regarding acceptable and unacceptable forms of body art should not just be based on historical roots and medical risks. If a parent can make the decision to pierce his or her baby's ears, entirely without the child's consent, then it follows that similar decisions regarding body alterations should be honored when both the child and the parent approve. The government should not prevent body piercings

43. Id.
and tattoos for minors because it is in direct conflict with the laws regarding earlobe piercings for babies.

III. LEGISLATION DEALING WITH BODY PIERCINGS AND TATTOOS

The body-art craze has been met with disapproval in state legislatures. One example is a bill that has been introduced in Vermont. Vermont lawmakers are trying to make it illegal for anyone under the age of eighteen to receive any piercings beyond their earlobes. Vermont House Bill 501 would bar anyone underage from receiving any piercings.\(^{46}\) Such a law would in some ways equalize everyone under the age of eighteen in this regard. As a result, age would determine when people are allowed to get certain piercings, rather than the consent of their parents. The argument for the bill rests upon the idea that "[m]ost kids can’t take care of their room, let alone a belly button ring, which takes six months to two years to heal."\(^{47}\) This argument, premised on the immaturity of people under the age of eighteen, is not enough to justify legislation banning all minors from receiving piercings and tattoos without any regard to their individual maturity level.

This legislation is not unique to Vermont. Other states, such as Mississippi, have already passed similar legislation banning piercings and tattoos for all underage children regardless of parental consent.\(^{48}\) California has also taken a stance in banning tattoos for anyone under the age of eighteen; even offering a minor a tattoo is punishable as a misdemeanor in the state.\(^{49}\) However, it is important to note that the law in California does not penalize the minor who acquires the piercing or tattoo, only those who perform the piercing or tattooing.\(^{50}\)

In 2010, Minnesota also followed the trend of banning anyone under the age of eighteen from receiving tattoos, even with parental consent.\(^{51}\) Additionally, the law requires body art businesses to meet state training and experience standards.\(^{52}\) What makes Minnesota’s law particularly interesting is that at least some supporters of the legislation sought to help increase blood donations in the state.\(^{53}\) In a state that does not regulate

\(^{46}\) Molly McDonough, *No Piercings for Kids: Vermont Set to Limit Body Piercings to Earlobes*, A.B.A. J. EREPORT, Apr. 12, 2002, 14 (the push behind the Bill has resulted from the opinion that there are not a lot of reputable tattoo and piercing shops in Vermont, and that as a result kids are often getting bad piercings; also addressing the issue as a public health concern).

\(^{47}\) Id.


\(^{50}\) In re Victor L., 182 Cal. App. 4th 902, 929 (2010).


\(^{52}\) Id.

\(^{53}\) Id.
tattooing, blood banks must wait twelve months after a person has gotten a tattoo before accepting that person's blood donation, which prevented many Minnesota residents from donating blood. As of 2009, Minnesota also lowered the age eligibility requirement for blood donation from seventeen to sixteen years of age, despite the fact that donors less than twenty years of age tend to experience adverse side effects more often than older donors. The combined effects of these statutes make it much easier for the state to collect blood from teenage donors.

Both giving blood and getting a tattoo are choices that minors should be allowed to make regarding their own bodies with the consent of their parents. Accomplishing the state interest in increasing rates of blood donation by banning tattoos and piercings is contradictory. At the age of sixteen, minors with parental consent will now be allowed to give blood, which is an invasive procedure that is not medically necessary. Although it is true that most people who donate blood have no serious consequences, some have had complications from the procedure. The American Red Cross states that a person after giving blood "may feel lightheaded or dizzy, have an upset stomach or experience a bruise or pain where the needle was inserted," and, very rarely, serious consequences including loss of consciousness, nerve damage, or artery damage may occur. These are serious medical consequences that children, as well as adults, are exposed to when they donate blood. It does not make sense that children are mature enough to consent to take on the aforementioned risks with blood donation, but at the same time are unable to consent to the similar levels of risk when it comes to body alterations such as tattoos and piercings.

Age-restricting legislation can be viewed as protecting children from making inappropriate decisions. This view raises several issues. Part of the Vermont legislature's initial goal was to increase health regulations in tattoo and piercing shops. However, this initial motivation was superseded by legislators being "swayed by graphic testimony about how body piercings can damage the physique of an undeveloped teen, with belly button rings sometimes leaving long scars up the abdomen." This should not be a persuasive argument for passing this kind of legislation, because the health goals set forth in it can be accomplished by more direct means other than generally banning an age group from receiving piercings.

Another potential problem identified by states banning piercings and tattoos for minors is that minors may bring in other adults to pose as their

54. Sommerhauser, supra note 51.
57. McDonough, supra note 46.
parents or guardians in order to satisfy the parental consent requirement. This argument is weak because, having a general ban on the entire population of minors to prevent occasional incidents of fraud is not justifiable. One state passed more narrow legislation to directly address this problem.\textsuperscript{58} In Illinois, pretending to be a legal parent or guardian of a minor for the purpose of the minor receiving a tattoo or body piercing is punishable as a Class C misdemeanor.\textsuperscript{59} There should not be overly inclusive legislation passed such as an outright ban in order to help curb one type of potential fraud at the expense of preventing an entire age group from access to piercings and tattoos.

Further, issues of fraud and safety can be alleviated by adopting legislation akin to what some states already have on the books. Currently, some states have contrasting legislation that actually allows minors to receive tattoos. For example, Virginia allows minors to get piercings and tattoos in the presence of a parent or guardian or a medical professional.\textsuperscript{60} Under Virginia law, tattoo artists and piercers must comply with the Blood and Body Fluid Precaution Guidelines provided by the Centers for Disease Control and Prevention.\textsuperscript{61} In addition, there is a large disclosure regarding risks of piercings and tattoos that the person must agree to prior to getting any body art.\textsuperscript{62} Virginia enforces the law by making the failure to comply with any portion of the law punishable as a misdemeanor.\textsuperscript{63} By tailoring the law with more stringent guidelines regarding informing recipients about dangers in addition to requiring parental consent, many of the problems discussed above would be solved. I also propose adding more stringent parental or guardian verification if necessary, such as a law requiring several forms of identification to verify parent or guardian status.

IV. COMPARISON OF LAWS RESTRICTING MINORS RECEIVING TATTOOS AND PIERCINGS TO OTHER SIMILAR LAWS REGARDING THE RIGHTS OF MINORS

The laws seeking to restrict parental choices regarding body art for their children can be analogized to laws addressing medical treatment. In general, a minor's parents or legal guardians have to grant consent for most medical procedures.\textsuperscript{64} The only notable exceptions to this have been life or death cases and cases regarding abortion or rights to contraceptives. In life

\textsuperscript{59} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id.
\textsuperscript{63} Id.
or death cases, physicians have been able to provide emergency medical help without the consent of a child’s parents to the treatment.⁶⁵ Parents are unable to refuse life-sustaining treatment for a minor when the child’s condition is deemed not to be terminal.⁶⁶ Using that reasoning, courts have held that hospitals are not required to seek court intervention prior to providing emergency aid to a child without parental consent.⁶⁷ However, in an emergency situation it is the physician’s duty, whenever possible, to find and aid the parent in fully appreciating the danger involved with the procedure in order to get their informed consent.⁶⁸

Recently there has also been an expansion of the ability of minors to consent to procedures on their own. One such advancement has been the mature minor doctrine, which is a legal principal “allowing a minor to make decisions about his or her health and welfare, if they can show that they are mature enough to make a decision on their own.”⁶⁹ This prevents parental consent, which is usually necessary for other medical procedures, from becoming a barrier to treatment and procedures that children may be reluctant to inform their parents of.

However, “[n]ot all states recognize the common-law mature-minor doctrine. In the states where it exists, the mature minor doctrine takes into consideration the age and situation of the minor to determine maturity, in addition to factors and conduct that can prove maturity.”⁷⁰

The mature minor doctrine should be expanded to allow body piercings and tattoos for those that are deemed “mature minors.” The test articulated above could be used to determine if a minor is mature based on the ability of the teenager to understand the procedure in question and the level of seriousness of the procedure. This standard test could apply to a nonmedical body-alteration procedure, such as piercing and tattooing, given that they are not serious and that the minor can understand the nature of the procedure. Surely, if a minor is capable of consenting to other more invasive medical procedures, then it does not seem reasonable to legally prevent him or her from consenting to piercings and tattoos.

Currently, there is pending legislation in Michigan that would allow minors to waive the parental consent requirement necessary to receive an abortion.⁷¹ The waiver would be allowed if one of the following two prongs were satisfied: either that the minor be deemed mature and well-informed enough to be able to make the decision without her parents, or

⁶⁵. 70 C.J.S. Physicians and Surgeons § 116 (2005).
⁶⁷. Id.
⁶⁸. Physicians and Surgeons, supra note 65.
⁶⁹. Id.
that the waiver would be in the best interest of the minor. This standard is less stringent than the mature minor doctrine because of the second prong. The mature minor doctrine has also held up in court. The United States Supreme Court has held that a judge cannot veto an abortion decision made by a mature minor who has been found capable of giving informed consent. The district court concluded that “no reasonable basis for distinguishing between a minor and an adult [could be found in such a scenario]. . .”

The legislative trend towards allowing minors to make greater authoritative decisions on serious medical procedures, such as abortions, should also apply to decisions regarding nonmedical procedures, such as tattoos and piercings. If minors can, under certain circumstances, consent to an abortion on their own, they should also be allowed to consent to piercings and tattoos with parental consent.

Perhaps one reason why the mature minor doctrine has not been expanded into the body art arena is because decisions regarding medical treatment are perceived as having the potential benefit of making the individual arguably healthier, whereas body art does not. This is not always the case. Invasive medical procedures, including abortions, carry risks. The risks related to abortion include infection, heavy bleeding, and uterus damage. Furthermore, medical abortions can result in incomplete abortions that may require a follow-up surgical abortion.

The fact that a judge does not have the authority to veto a mature minor’s informed decision to have an abortion demonstrates the potential strength of a minor’s ability to make important decisions about her body. Such decision-making should extend to body art as well. The threshold for allowing a minor to make competent decisions about his or her own body should not rest on whether such a decision presents a potential benefit for the minor. Once a minor is determined to be mature enough to make decisions on body alteration, they should be able to do so without additional restriction. Furthermore, the potential for self-expression is an added nonmedical benefit.

It is easy to analogize parental consent to children’s body piercings or tattoos with the parental ability to elect to have their sons circumcised at birth. Currently, circumcision is legal in the United States for minor males with parental consent. The procedure of infant circumcision of males in

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72. S. 135, supra note 71.
74. Id.
76. Id.
77. Id.
78. Ross Povenmire, Do Parents Have the Legal Authority to Consent To the Surgical Amputation of Normal, Healthy Tissue from Their Infant Children: The Practice of
the United States involves surgically amputating healthy tissue from a male organ.\textsuperscript{79} The procedure is performed mostly at the parents' discretion, and usually there is no compelling medical purpose.\textsuperscript{80} In fact, in California, statutory law allows parents to consent to surgical procedures "regardless of purpose."\textsuperscript{81} The right of parents in California to consent to male circumcision was upheld by the appellate court on that narrow ground, while ignoring other applicable law.\textsuperscript{82} Not only is the procedure of male circumcision legal, it is also fully covered by insurance in some states, such as New Mexico.\textsuperscript{83}

Parental consent to circumcision should not be treated any differently than consent to piercings and tattoos. For example, when a piercing is negligently performed, there is a risk of infection; however, when a circumcision is negligently performed the consequences can be far more serious. In \textit{Felice v. Valleylab Inc.}, a child's penis was burned off when a circumcision was negligently performed.\textsuperscript{84} It is clear that the potential harm that can be done by a negligently performed circumcision is far greater than that for piercings and tattoos, yet the law stands to favor permitting the former and restricting the latter.

The legislative argument that the activity of receiving piercings and tattoos is simply too dangerous for children to be engaging in is a weak one. Children are currently allowed to engage in more dangerous activities than piercings and tattoos prior to the age of eighteen. For example, in Vermont, an individual can get a learner's permit at the age of fifteen with parental consent, which enables them to drive a car in the presence of a parent, guardian, person over twenty-five, or instructor.\textsuperscript{85} Furthermore, a year later at the age of sixteen, minors are able to receive a Junior Operator License with parental permission which allows them to drive a car alone.

Arguably, the dangers of a teenage driving recklessly are more serious than that from a carelessly performed belly button piercing. With driver's licenses, it is the parents who make the choice about whether to allow their underage children to drive. Parents are the ones making the maturity determination for their children. Parents have the ability to consent not only to their child driving, but other dangerous activities as well. For example, parents can allow their teenagers to participate in recreational
sports. Some of these sports, such as rugby or boxing, carry a high risk of injury, yet minors are still not banned from engaging in such conduct. If parents are making the maturity determination in these cases, they should have discretion to allow their children to receive tattoos and piercings.

V. CONSTITUTIONAL IMPLICATIONS OF BANNING TATTOOS AND PIERCINGS FOR MINORS

The right of self-expression is protected by the U.S. Constitution. The Constitution applies to the actions of the government and protects the people’s—which includes minors’—rights to speech and self-expression. The category of what speech encompasses has been defined broadly to include forms of expression not traditionally thought of as speech, such as parades. Furthermore, the constitutional concept of speech has also been extended to encompass video displays of nude dancing under the First Amendment. If dancing and parades, which are forms of expression using the body, are considered speech, then it arguably follows that body art is also speech.

The prohibition on minors receiving tattoos and piercings can be viewed as an infringement on the freedom of expression protected by the First Amendment of the Constitution. The government, in U.S. v. O’Brien, applied a several step test to evaluate whether the defendant’s conduct passed constitutional muster. First, the government looks to see if the ban on expressive conduct furthers an important or compelling governmental interest. The interest must also be unrelated to suppression of free expression, otherwise, strict scrutiny should be applied. Finally, the incidental restriction must not be greater than essential to further the government interest.

Applying the test from U.S. v. O’Brien, the ban on minors getting tattoos does not pass strict scrutiny. First, the banning of those under the age of eighteen from receiving tattoos does not further any important or compelling governmental interest. If the government’s interest in this ban is the protection of health and safety of minors, it does not directly further

87. U.S. CONST. amend. I.
90. U.S. CONST. amend. I. ("Congress shall make no law . . . abridging the freedom of speech").
92. Id.
93. Id.
94. Id.
95. Id.
96. Id.
this objective. The government’s objective in banning tattoos is unrelated to the suppression of free speech because the government is banning the action of minors acquiring tattoos, not the types of tattoos and their content. However, the final prong of the test articulated in O’Brien is not met, because the incidental restriction is greater than essential to further the governmental interest. The government’s interest in health and safety could be achieved with legislation tailored to regulate health practices rather than a ban on a type of expression for minors.

It is important to note that one court’s holding that the act of tattooing is not speech, “or even symbolic speech” does not apply here. The holding did not extend to the issue of whether the display of tattoos on one’s own body was protected speech. Such a distinction is paramount, because unlicensed tattooing is a danger to public health in general, whereas getting the tattoos from a presumably clean and safe parlor requires that the government apply a different standard of scrutiny. Minor interferences on liberty or property in the interest of public health were accepted in the case, and the reasoning for the decision was that “when the sole object and general tendency of legislation is to promote the public health, there is no invasion of the Constitution, even if the enforcement of the law interferes to some extent with liberty or property.”

Another constitutional argument to be made focuses on the Fourteenth Amendment right to liberty under the Due Process Clause. Under the “substantive due process branch of Fourteenth Amendment jurisprudence... courts examine whether government intrusions into citizens’ liberties are justified by adequate state interests.” Courts then apply a tiered framework of analysis, subjecting infringements on liberties deemed constitutionally “fundamental” to a heightened or “strict” level of judicial scrutiny, and examining encroachments on lesser rights under traditional standard of review, which requires only that “challenged state action” be shown to bear some rational relationship to legitimate state purposes.

The question, then, is what rational relationship the banning of piercings and tattoos has to what state interest related to underage children. If the governmental interest is to protect health, then piercings and tattoos should be banned uniformly, regardless of age, due to their danger. One possible counterargument would be that certain activities that are dangerous to health are only allowed for minors when they reach the age of eighteen, regardless of parental consent. For example, there is a ban on

98. Id.
101. Id.
providing tobacco to minors under the age of eighteen. However, the use of tobacco is known to be harmful, whereas if piercings and tattoos are done in a safe and clean environment, and then subsequently cared for, the potential health risks are low.

VI. ASSOCIATED HEALTH RISKS WITH THE PRACTICE OF TATTOOS AND PIERCINGS

There can be many negative health consequences of tattoos and piercings, which range from minor irritation to AIDS. However, the risks associated with tattoos and piercings only become dangerous when ink or needles become contaminated. Such contamination can lead to diseases such as hepatitis, tuberculosis, and AIDS. Similar risks, including a potentially higher danger of infection, are present with piercings if a contaminated needle is used.

Yet, the risk of complications is rare. "Only 13 percent of those with a tattoo reported any problems with healing during the first two weeks after the tattoo, and most of those individuals had had his or her procedure done outside of a professional tattoo parlor. Fewer than 2 percent reported any ongoing problems."

There is also some debate over whether piercings pose a health risk to school-age children. Studies have shown that students with piercings can pass on an infection to those that do not have such piercings. However, this slight risk is not a significant enough health concern to warrant governmental interference. In the context of piercings at school, the school's concern is with students without piercings resorting to piercing themselves and each other. Prohibiting children from wearing piercings to school in order to avoid such risk is inadequate. These students are still exposed to television and media as well as to the outside world where those over the age of eighteen display piercings.

Stringent guidelines should keep the practice of tattooing and piercing safe for minors and adults. Having stricter safety standards would lower the risks for minors involved in tattooing (as well as lower the risk for adults). Addressing health concerns of body art directly through tailored legislation rather than by a broad ban on minors getting piercings and tattoos would lead to safer tattooing practices.

104. Id.
105. Id.
106. Id. at 697.
108. Id. at 995.
VII. THE PROTECTION OF MINORS

Another possible reason that states consider banning minors from receiving tattoos may have to do with the permanent nature of tattoos. A study at the Feinberg School of Medicine found that tattoo regret is common, with about a quarter of study participants reporting regrets about their tattoo. About five percent had already covered a tattoo with a new tattoo, and another seventeen percent said they were considering tattoo removal. Individuals who were younger than eighteen when they were first tattooed were more likely than those who received tattoos at an older age to have regrets.

The mere fact that a minor may grow to regret his or her tattoo decision is a weak justification for several reasons. First, tattoo removal is available and is especially effective for removing dark pigments such as black and blue inks. This method is the most extreme form of dealing with unwanted tattoos. Additionally, tattoos can be covered up with another tattoo that is larger than the original tattoo. There are also other methods of dealing with unwanted tattoos such as using makeup or clothing to cover the tattoo.

Another potential reason the government may be seeking to protect minors is the association of tattoos and piercings with other risky or unwanted behaviors. A study that looked at tattoos and body piercings as indicators of adolescent risk-taking behaviors found that participants with tattoos and/or body piercings showed greater degrees of involvement in risk-taking behaviors than those without either. The behaviors included “disordered eating behavior, gateway drug use, hard drug use, sexual activity, and suicide.” Further, the study found violence as being most prevalent among male participants with tattoos and female participants with body piercings. Another study found that people with

110. Tattoos and Piercings, supra note 25.
111. Id.
112. Id.
118. Id.
119. Id. at 1026.
120. Id. at 1027.
one or more tattoos drank five times the mean number of alcoholic beverages than those in the non-tattooed comparison group. At first glance, these findings are alarming and may help justify a ban on piercings and tattoos for this age group. However, it is important to understand that there is a simply a correlation between these two findings rather than a causation. Tattoos and piercings, themselves, do not cause violence or excessive drinking.

VIII. PROPOSAL FOR CHANGE

There are other legislative measures that could be taken to accomplish the governmental goals, rather than banning minors from receiving piercings and tattoos before the age of eighteen. A better way to address the health risks associated with tattoos and piercings is by increasing practice regulations and implementing a system of fines in tattoo parlors and shops that perform illegal body piercings. To address the governmental actions aimed at reducing the number of minors who are getting piercings and tattoos out of a governmental interest in increasing blood donations, there could be mandates about educating school children on the risks and health effects of tattoos and piercings. One study has shown that children of educated parents are less likely to be interested in body art than children of parents with less education—a finding that the study authors attributed to the parents’ “cultural and educational” influence on their children. Schools could also take part in educating children about the risks of body art. One way to increase education among minors would be to add a lesson about the risks associated with tattoos and piercings to the general health curriculum for middle and high school students. This would allow minors to make more educated choices about their own bodies, but would not inhibit the practice of body art for minors.

With respect to the belief that the presence of tattoos and piercings increases other risk-taking behaviors, there is no legislation that can effectively decrease those associated behaviors. It is possible that individuals who have more risk-taking personalities are drawn to piercings and tattoos and banning the practice of this medium of expression will not likely reduce other risk-taking behaviors that youth might choose to engage in. Tattoos and piercings alone do not cause people to go out and engage in other risk-taking behavior.

The primary reason tattooing and piercing should be allowed for minors with parental consent is because it is consistent with other laws that provide minors with expanded freedoms. For example, with parental

121. Laumann & Derick, supra note 39, at 419.
consent minors are able to drive, have circumcisions, get their ears pierced, and often, even without parental consent, get abortions. Thus, tattoos and piercings should not be targeted when there are more dangerous activities that minors are allowed to engage in with parental consent.\footnote{Alternatively, a more expanded proposal would allow minors to receive piercings and tattoos without parental consent. This might be accomplished by expanding the mature minor doctrine to include tattoos and piercings. If a court can make the determination that the minor is at a level of development that they can make such decision, then parental consent would not even be necessary.}