CHILD CUSTODY PROTECTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 476

SEPTEMBER 6, 2001

Serial No. 36

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

75–018 PDF WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., WISCONSIN, *Chairman*

HENRY J. HYDE, Illinois
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
LINDSEY O. GRAHAM, South Carolina
SPENCER BACHUS, Alabama
JOE SCARBOROUGH, Florida
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL E. ISSA, California
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
[VACANCY]

JOHN CONYERS, JR., Michigan
BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California

PHILIP G. KIKO, *Chief of Staff-General Counsel*
PERRY H. APELBAUM, *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON THE CONSTITUTION

STEVE CHABOT, Ohio, *Chairman*

WILLIAM L. JENKINS, Tennessee
LINDSEY O. GRAHAM, South Carolina
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MELISSA A. HART, Pennsylvania, *Vice Chair*
LAMAR SMITH, Texas
[VACANCY]

JERROLD NADLER, New York
BARNEY FRANK, Massachusetts
JOHN CONYERS, JR., Michigan
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina

BRADLEY S. CLANTON, *Chief Counsel*
PAUL B. TAYLOR, *Counsel*
CRYSTAL M. ROBERTS, *Counsel*
DAVID LACHMANN, *Minority Professional Staff Member*

CONTENTS

SEPTEMBER 6, 2001

OPENING STATEMENT

The Honorable Steve Chabot, a Representative in Congress From the State of Ohio, and Chairman, Subcommittee on the Constitution 1
The Honorable Jerrold Nadler, a Representative in Congress From the State of New York, and Ranking Member, Subcommittee on the Constitution 3

WITNESSES

Ms. Eileen Roberts, Mothers Against Minors' Abortions, Fredericksburg, VA
Oral Testimony 5
Prepared Statement 7
Mr. John Harrison, Professor of Law, University of Virginia School of Law
Oral Testimony 8
Prepared Statement 9
Rev. Katherine Ragsdale, Vicar, St. David's Episcopal Church
Oral Testimony 10
Prepared Statement 12
Ms. Teresa S. Collett, Professor of Law, South Texas College of Law
Oral Testimony 14
Prepared Statement 16

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

The Honorable Ileana Ros-Lehtinen, a Representative in Congress From the State of Florida 31
Mr. Laurence H. Tribe, Tyler Professor of Constitutional Law, Harvard University and Mr. Peter J. Rubin, Associate Professor of Law, Georgetown University 35

APPENDIX

STATEMENTS SUBMITTED FOR THE RECORD

Testimony of Bill and Karen Bell 51
Testimony of Rosemary J. Dempsey, Director of Washington, D.C. Office of the Center for Reproductive Law and Policy (CRLP) 52

CHILD CUSTODY PROTECTION ACT

THURSDAY SEPTEMBER 6, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in Room 2237, Rayburn House Office Building, Hon. Steve Chabot [Chairman of the Subcommittee] presiding.

Mr. CHABOT. The Committee will come to order.

I am Steve Chabot, the Chairman of the Subcommittee on the Constitution.

This morning, the Subcommittee on the Constitution convenes to receive testimony concerning H.R. 476, the Child Custody Protection Act. The Child Custody Protection Act would make it a Federal offense to knowingly transport a minor across the State line with the intent that she obtain an abortion in circumvention of a State's parental consent or notification law.

Over 20 States currently enforce laws requiring the consent or notification of at least one parent or court authorization before a minor can obtain an abortion. Such laws reflect widespread agreement that it is the parents of a pregnant minor who are best suited to provide her counsel, guidance and support as she decides whether to continue her pregnancy or to undergo an abortion.

Despite public support and court approval of parental consent, there exists substantial evidence that they are regularly evaded. Abortion counselors often refer girls to out-of-State abortion clinics, claiming that this is the only option for girls who don't want to tell their parents about their pregnancy. Studies confirm the prevalence of this practice and reveal an unmistakable correlation between the number of girls seeking abortions out-of-State and the existence of parental consent or notification laws in the girls' home States. One prominent abortion rights advocate even stated that there are thousands of minors who cross State lines every year in order to obtain an abortion.

This conduct is only aided by the dubious practices of many abortion clinics located in States lacking parental involvement laws. To gin up business, some clinics even advertise in the Yellow Pages distributed in nearby States that require parental involvement—advising young girls that they can obtain an abortion without parental consent or notification. Such ads only serve to lure young girls residing in States with parental involvement laws to these clinics, denying parents the opportunity to provide love, support,

and advice to their daughter as she makes one of the most important decisions of her life.

When parents are not involved in the abortion decisions of a child, the risks to the child's health significantly increase. Only parents have the knowledge to provide a physician with important family medical history and information on their daughter's medical and psychological health. Only parents may provide authorization for the release of pertinent data from family physicians.

Few could argue that providing a complete and thorough medical history before an abortion is performed on a young girl is not critical to ensure quality care and an accurate medical assessment. Parental involvement also ensures that young girls who undergo abortions receive appropriate post-abortion care, especially if they show symptoms of complications. Post-abortion medical care is critical because young adolescent girls are more likely to suffer complications, some of which can lead to a lifetime of reproductive health complications.

It is likely a girl's parents, not the individuals who have assisted or transported her across State lines, who will have the best opportunity to recognize symptoms indicating post-abortion complications. They will also be able to assist her in obtaining immediate medical care should symptoms persist. Clearly, this is not possible if a girl's parents have been kept in the dark about their daughter's abortion.

When confused and frightened young girls are assisted in and encouraged to circumvent parental notice and consent laws by crossing State lines, they are led into what will likely be a hasty and potentially ill-advised decision. Often these girls are being guided by those who do not share the love and affection that most parents have that for their children. In the worst of circumstances, these individuals have a great incentive to avoid criminal liability for their conduct, given the fact that a majority of teenage pregnancies are caused by adult men.

Parental notice and consent laws reflect a State's reasoned and constitutional conclusion that the best interests of a pregnant minor are served when her parents are consulted and involved in the process. States are free to craft their parental notice and consent laws to allow a minor to consult a grandparent or other family member in lieu of parents and a few States have, in fact, made such a choice. Most, however, have chosen not to allow close relatives to serve as surrogates for parents in the abortion context.

If a young girl's circumstances are such that parental involvement is not in her best interest, grandparents and close relatives are free to assist that girl in pursuing a judicial bypass. Indeed, the U.S. Supreme Court has required judicial bypass procedures to be included in State's parental consent statutes.

As the U.S. Supreme Court has stated, "the natural bonds of affection lead parents to act in the best interest of their children." The decision to obtain an abortion is, as the Court also stated, "a grave decision and a girl of tender years under emotional stress may be ill-equipped to make it without mature advice and emotional support."

In light of the widespread practice of circumventing validly enacted parental involvement laws by transporting minors across

State lines, it is entirely appropriate for Congress with its exclusive constitutional authority to regulate interstate commerce to enact the Child Custody Protection Act. The safety of young girls and the rights of parents demand no less.

I now yield to the Ranking Member of the Committee, Mr. Nadler, for any opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

I have to confess that I am beginning to feel a bit like Sisyphus, condemned to revisit, reargue, revote and repeat every issue endlessly—every issue that is demanded by some faction of the fanatical right wing gathered underneath the Republican big tent. Not content to make the elephants dance in a circle, we in the minority must also assume the burden of keeping these constituencies happy by helping the majority push their burden up the mountain again and again and waste our time with the same nonsensical bills, the same hearings, the same votes, the same lack of legislative product.

We know this bill is going nowhere in the Senate. Why are we wasting our time on it for the third year in a row?

So far this year we have done the Flag Constitutional Amendment again. This is the third abortion bill that is going nowhere. We are even calling the same witnesses. Every single one of these witnesses has testified before this Committee in the past on this bill. We have heard their testimony.

Frankly, if you see me reading the newspaper, it is not out of rudeness. It is out of the fact that I don't have to waste my time hearing the same testimony again on the same subject again for no purpose.

I want to be a good sport, Mr. Chairman, but I am beginning to feel like I am being punished for some unknown offense against heaven. Were it not for the fact that the consequences of this ill-advised and unconstitutional proposal would cost lives and destroy families, I would be tempted to throw up my hands and simply walk away from this hearing. I cannot do that. The stakes are too high. No matter how many times I have to repeat this, I know that both you and I and our colleagues on this Committee feel too strongly about what is at stake here.

Mr. Chairman, you have given arguments eloquently in the last few minutes about why it is advisable to have in various States a parental consent bill. Those are issues for the States. Some States have chosen to do so. If I were a State legislator, as I used to be, I would certainly vote against such a bill, as I did repeatedly. But those are issues for the States. Some States have chosen to do so. Some States have chosen not to do so.

How dare we—by what arrogation of power, by what contempt for States' rights, by what contempt for civil liberties of individuals, do we arrogate to ourselves the power to pass a bill or try to pass a bill—because it is going nowhere, as we know—but to go through the motions and pretend that we are passing a bill that would punish someone for crossing a State line to help someone do in that State what is legal to do in that State?

I cannot imagine that that is a constitutional provision. If it were, the results of the Civil War would be reversed. This would be a confederation again, and people would refer to the United

States as they did before the Civil War instead of as we refer to the United States today as one single country.

People can do in a given State what is legal to do in that State without fearing punishment, period. To attempt to make it a crime to cross a State line or to assist someone who has a right to cross that State line for the purpose of doing something legal in that State is clearly unconstitutional. But it is a sop for the right wing, and I suppose it gets a few votes.

The Chairman mentioned statistics that show—and they may very well be—I have no idea—I assume he is telling the truth—that there are statistics that show where there are States which permit abortions without parental consent adjacent to States that do not, the rate of abortion in those States go up. The conclusion that I draw from that is it shows the desperation with which young girls who cannot, out of terror or fear, inform their parents of their desperate need for an abortion, in their opinion, that they are willing to go to those other States to get the abortion.

If you have a family where a daughter has any kind of normal relationship—what we call normal relationship with her parents—of course, she is going to tell her parents and seek their help and guidance and love and assistance in this situation instead of going to another State, a strange town, to people she does not know, to get an abortion. Unfortunately, not every family in the United States has such a characteristic. There are people who created pregnancies through incest. There are people who would beat their daughters if they were told of this. There are families where there is domestic violence and domestic abuse. There are all kinds of situations.

And if a daughter is so desperate that she would rather seek the assistance of a grandmother or a friend to help her go to another State to get an abortion where it is legal to do so, by what arrogance do we say to her, no, do it alone. Don't let your grandmother assist you. Don't let your best friend assist you. Don't let your boyfriend or fiancee assist you.

This is not only unconstitutional, and wrong-headed, it is vicious legislation. It is also fictitious legislation, because it is not going anywhere.

Thank you, Mr. Chairman.

Mr. CHABOT. Thank you.

Do any of the other Members of the Committee wish to make an opening statement?

Then we will get to the testimony.

Before I do that, I would like to mention that our distinguished colleague, Ileana Ros-Lehtinen, the principal sponsor of this legislation, will be joining us here shortly. She had another thing that she had to go to first. I would ask unanimous consent that when she does join that she be permitted to make a brief statement at an appropriate time.

Without objection, we will now proceed with the witness introduction.

On our panel this morning we will hear from Ms. Eileen Roberts. Ms. Roberts is the founder of Mothers Against Minors' Abortion, an organization that educates the public and informs State legislators of the need for public policy that protects minors and the rights of

their parents to be involved in the abortion decisions of their children. And we welcome you here this morning.

Our second witness will be John C. Harrison, a Professor of Law at the University of Virginia Law School. Professor Harrison started his tenure at the University of Virginia in 1993 after working as Deputy Assistant Attorney General in the Department of Justice, Office of Legal Counsel. Professor Harrison teaches various courses, including administrative law, constitutional history, constitutional law and Federal courts. Professor Harrison was associated with the Washington, D.C., law firm of Patton, Boggs and Blow.

Our third witness this morning will be the Reverend Doctor Katherine Hancock Ragsdale, testifying on behalf of the Religious Coalition for Reproductive Choice and National Abortion and Reproductive Rights Action League. A former staff officer at the Episcopal Church's national offices, the Reverend Doctor Ragsdale is a member of the Executive Committee of the Religious Coalition for Reproductive Choice and was Chair of the Religious Coalition Board from 1992 to 1999. In addition, she is a member of the board of the National Abortion Reproductive Rights Action League and the White House Project.

This morning, the Reverend Doctor Ragsdale will testify about her experiences as Vicar of David's Episcopal Church located just outside of Boston, Massachusetts.

Our final witness is Professor Teresa S. Collett. Since 1990, Professor Collett has taught various legal courses at South Texas College of Law, including professional responsibility; property, wills and trusts; church-state relations and the legal limits of medical decision-making. Professor Collett has also served as a visiting professor at Notre Dame Law School; Washington University School of Law in St. Louis, Missouri; University of Texas School of Law; University of Houston Law Center and the University of Oklahoma College of Law. Prior to joining South Texas College of Law, Professor Collett was affiliated with the law firm of Crow and Dunlevy in Oklahoma City, Oklahoma.

We thank all of you for being here this morning. I ask each of you try to summarize your testimony in 5 minutes or less, if at all possible. We do have the written statements and can go into more detail for a longer amount of time should Members choose to do that.

We do have a lighting system here which we ask you to sort of glance at periodically. The green light means you have 5 minutes. When the yellow light comes on, that means please wrap it up. When the red light comes on, please stop.

I have a gavel, but I try not to use that if I do don't have to.

So we thank you all for being here, and we will start here this morning with Ms. Roberts.

STATEMENT OF EILEEN ROBERTS, MOTHERS AGAINST MINORS' ABORTIONS, FREDERICKSBURG, VA

Ms. ROBERTS. Thank you, Mr. Chairman and Members of the Committee. Thank you for allowing me to testify this morning.

As stated, my name is Eileen Roberts; and I am the founder of an organization called Mothers Against Minors' Abortions or

MAMA. This organization was formed to serve as a collective voice for others who also seek to restore the rights of parents to be involved when their minor-aged daughter seeks an abortion, whether in their community or for those who are taken across State lines.

More significant, however, is the fact that I am a mother of a daughter who at age 14 underwent an abortion without my knowledge. During my daughter's rebellion toward parental authority, my daughter was encouraged by her boyfriend, with the assistance of an adult friend, to obtain a secret abortion without my knowledge. This adult friend even drove my daughter to the abortion clinic 45 miles from our home and even paid for my daughter's abortion.

Wondering why our daughter had become depressed over the next 2 weeks, my husband and I had thought perhaps her boyfriend had introduced her to drugs so we searched for answers. Words cannot express the—cannot adequately express the Orwellian nightmare of discovering that your child had undergone an abortion from a questionnaire that we found under her pillow which she failed to return to the abortion clinic. As a result of her depression my daughter was hospitalized, at which time it was discovered that the abortion had been incompletely performed, requiring surgery to repair the damage done by the abortionist. I was called and told that that surgery could not be performed unless I signed a consent form. The following year, my daughter developed an infection also requiring hospitalization, which I had to sign a consent form. To add insult to injury, my husband and I are responsible for over $27,000 in medical costs.

I am here today to ask this Committee to reject the eccentric notion that any adult stranger has the right to abduct our minor-aged daughters and take them to another State for a secret abortion. I speak for those parents that I know around the country whose daughters has been taken out of States for their abortions. Many times, these attempts are to evade parental notification and consent laws and also attempts to conceal criminal activity and statutory rape. Certainly, if a child is raped, a parent needs to know about it so this criminal, whether an uncle, a brother, can be prosecuted to the fullest extent of the law.

I am horrified that our daughters are being dumped in our driveways after they are seized from our care, made to skip school, lie and deceive their parents, to be transported across State lines, whether that distance is 2 miles or 100 miles away. Where are these strangers when the emotional and physical repercussions occur? They are kidnapping another young adolescent girl and transporting her for another secret abortion; and, thus, the malicious activity occurs over and over again.

When will this activity stop? When will those responsible for these secret abortions be held accountable for the financial costs and emotional and physical follow-up care from a disastrous legal abortion?

I am aware and concerned, Mr. Nadler, for the many teens who are truly from abused homes who were snatched away and given a secret abortion and then sent back home to the abuser. This activity is contrary to the laws of this country and these girls need

to be removed from that home and the environment and the family encouraged to pursue professional help.

Additionally, if my daughter, Mr. Nadler, was raped, especially by a family member, I certainly would want to be notified so I could have this criminal brought to justice.

While testifying at hearings such as this I am reminded of the many young adult teens, especially Dawn from New York whose parents were notified in time to make funeral arrangements after their daughter's legal abortion. Mrs. Ruth Ravenell and her husband were awarded $1.3 million by the State of New York for the wrongful death of their 13-year-old daughter. Mrs. Ravenell shared with me in the Senate Education and Health Committee in Richmond, Virginia, that she sat next to the hospital bed before her daughter died, with her hand over her mouth to help keep herself from screaming.

In conclusion, what has happened to my family has happened and cannot be changed. Had I had the opportunity though, to be notified I would have put my arms around my daughter and said, I love you. We can work this through together. By supporting and passing the Child Custody Protection Act, parental notification and consent laws will be secured; and I can say with confidence that our young adolescent daughters will be protected and family dignity will be restored.

And just to mention one other thing, Mr. Nadler. I am sorry that we are wasting your time in trying to protect the 12, 13 and 14-year-old children in this country who are snatched from their parents and are dumped on their driveways to pick up the pieces, as in my family, and be responsible for the financial costs of over $27,000. Let us make those people, like the Reverend Ragsdale, responsible if she is taking those people over State lines to pay the financial costs, which this Child Custody Protection Act will help.

Thank you.

Mr. CHABOT. Thank you very much.

[The prepared statement of Ms. Roberts follows:]

PREPARED STATEMENT OF EILEEN ROBERTS

Mr. Chairman and Members of the Committee, thank you for allowing me to testify this morning. My name is Eileen Roberts. I am the founder of an organization called Mothers Against Minor's Abortions, or MAMA. This organization was formed to serve as a collective voice for others who also seek to restore the rights of parents to be involved when their minor-aged daughter seeks an abortion, whether in their community or for those who are taken across State lines.

More significant, however, is the fact that I am a mother of a daughter, who at the age of 14 underwent an abortion without my knowledge. At age 13 a close relationship I had with my daughter was interrupted by a period of her rebelling, which included a relationship with a boy which I knew was not in her best interest. My daughter refused my request not to see this boy, but I continued to unconditionally love her and care for her to the best of my ability, during this difficulty time.

During my daughter's rebellion towards parental authority, my daughter was encouraged by her boyfriend, with the assistance of an adult friend, to obtain a secret abortion without my knowledge. This adult friend drove my daughter to the abortion clinic 45 miles away from our home and even paid for my daughter's abortion.

Wondering why our daughter had become depressed over the next two weeks, my husband and I thought perhaps her boyfriend had introduced her to drugs, so we searched for answers. Words cannot adequately communicate the Orwellian nightmare of discovering that your child had undergone and abortion from a questionnaire we found under her pillow, which she failed to return to the abortion clinic.

As a result of her depression, my daughter was hospitalized at which time it was discovered that the abortion had been incompletely performed, requiring surgery to

repair the damage done by the abortionist. I was called and was told that my daughter could not have that surgery without a signed consent by myself or my husband.

The following year my daughter developed an infection and was diagnosed as having pelvic inflammatory disease as a direct result of that abortion, which again required a two day hospitalization for IV antibiotic therapy and required a signed consent form. To add insult to injury, my husband and I were responsible for the medical costs, which amounted to over $27,000.

I am here today to ask this committee to reject the eccentric notion that any adult stranger has the right to abduct our minor-aged daughters and take them to another state for a secret abortion. I speak for those parents I know around the country whose daughters have been taken out of State for their abortions. Many times these are attempts to evade parental notification and consent laws and also attempts to conceal criminal activity, such as statutory rape. Certainly if a child is raped, a parent needs to know about it so this criminal can be prosecuted to the fullest extent of the law.

I am horrified that our daughter are being dumped on our driveways after they are seized from our care, made to skip school, lie and deceive their parents to be transported across State lines, whether that distance be two miles or 100 miles. Where are these strangers when the emotional and physical repercussions occur? They are kidnapping another young adolescent girl and transporting her for another secret abortion, and thus the malicious activity occurs over and over. When will this activity stop? When will those responsible for these secret abortions be held accountable for the financial costs of emotional and physical follow-up care from a disastrous legal abortion?

I am reminded of the many young adolecent teens, especially Dawn from New York whose parents were notified in time to make funeral arrangements, after their daughter's legal abortion. Mrs. Ruth Ravenell and her husband were awarded $1.3 million dollars by the State of New York for the wrongful death of their 13-year-old daughter. Mrs. Ravenell, shared with me and the Senate Education and Health Committee in Richmond, Virginia that she sat in the hospital before her daughter died, with her hand over her mouth to help keep herself from screaming.

I am aware and concerned for the many teens who are truly from abusive homes who are snatched away, given a secret abortion, and then sent back home to the abuser. This activity is contrary to the laws of this country and these girls need to be removed from that home and the environment and the family encouraged to pursue professional help. Additionally, if my daughter was raped, especially by a family member, I certainly would want to be notified, so I could have this criminal brought to justice.

On September 2, 2001 the New York Times Magazine featured an advertisement, regarding the Becky Bell family. I have testified with the Bell's in committee hearings throughout this country. The lesson to be learned from Becky's death is not that parental notification laws are bad, but just the opposite. Had Becky Bell been encouraged to obey the Indiana law, by the Planned Parenthood Clinic Becky sought counseling from, to tell her parents, rather than that most teens go to the neighboring State of Kentucky, Becky Bell would be alive today. The Indiana parental notification law did not kill Becky, but rather the denial of parental involvement, deceit and false information did.

In conclusion, what has happened to my family, has happened, that cannot be changed. Had I had the opportunity to be notified, I would have put my arms around my daughter and said "I love you, we can work this through together". By supporting and passing the Child Custody Protection Act, parental notification and consent laws will be secured, and I can say with confidence that our young adolescent daughters will be protected, and family dignity will be restored.

Mr. CHABOT. Professor Harrison.

STATEMENT OF JOHN HARRISON, PROFESSOR OF LAW, UNIVERSITY OF VIRGINIA SCHOOL OF LAW

Mr. HARRISON. Thank you, Mr. Chairman. I think I can be quite brief.

The Subcommittee has asked me again to comment on the constitutionality of this proposed legislation. I believe it is within Congress' power to adopt. It is a regulation of interstate commerce of the transportation by one person of someone else across a State line.

It is also the performance of a function that Congress periodically performs in resolving conflicts and inconsistencies created by the existence of the Federal union, States in the union that have different social policies, different rules, in this case different rules about parental notification and parental consent with respect to abortions by minors. That nature of the Federal union creates a conflict of jurisdictions, one under which one State says—the State in which the minor resides says that the consent of the parent or guardian is required and another State, one in which the abortion is to be performed, says that it is not. It is a conflict between State jurisdictions.

A resolution of that conflict deciding which State's policy is to prevail is one of the functions that Congress periodically performs. It is not the most common exercise of the commerce power, but it is one that periodically does underlie the commerce power. So it is a familiar exercise of congressional authority.

I also think the bill does not raise any independent questions concerning the right to privacy because the Supreme Court has explained that parental consent and notification requirements are frequently constitutional. They are certainly, in general, constitutional. Some of them are unconstitutional. But were a State to have an unconstitutional parental consent requirement, the requirement itself would be inoperative and Congress could not act to enforce it. I don't think that is the standard situation. States now well know the rules and can conform their laws to it.

But, in any event, this bill does not raise an independent problem under it. So I believe it to be constitutional, Mr. Chairman.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Harrison follows:]

PREPARED STATEMENT OF JOHN C. HARRISON

The Subcommittee has asked that I testify concerning Congress' power to enact H.R. 476, the Child Custody Protection Act.[1]

The proposed legislation would make it a federal crime knowingly to transport across a state line "an individual who has not attained the age of 18 years . . . with the intent that such individual obtain an abortion, and thereby in fact [to abridge] the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the individual resides."

H.R. 476 is a regulation of commerce among the several States. Commerce, as that term is used in the Constitution, includes travel whether or not that travel is for reasons of business. *E.g., Caminetti v. United States,* 242 U.S. 470 (1917). To transport another person across state lines is to engage in commerce among the States. There is thus no need to address the scope of Congress' power to regulate activity that is not, but that affects, commerce among the States, *see, e.g., A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495 (1935); *Wickard v. Filburn,* 317 U.S. 111 (1942); *Katzenbach v. McClung,* 379 U.S. 294 (1964); *United States v. Lopez,* 514 U.S. 549 (1995).

Under the Supreme Court's current doctrine, Congress can adopt rules concerning interstate commerce, such as this one, for reasons related primarily to local activity rather than commerce itself. *United States v. Darby,* 312 U.S. 100 (1941).[2] Hence even if H.R. 476 reflected a substantive congressional policy concerning abortion and

[1] This statement is substantially identical to the testimony I provided the Subcommittee at a hearing on May 27, 1999, with respect to H.R. 1218 in the 106th Congress. See H.R. Rep. No. 106–204 (June 25, 1999).

[2] *Darby* overruled *Hammer v. Dagenhart,* 247 U.S. 251 (1918), which held unconstitutional a ban on interstate shipment of goods made with child labor. The Court in *Hammer* found that the statute was in excess of the commerce power, even though it regulated only interstate transportation, because its purpose was related to production, which is a local activity.

domestic relations it would be a valid exercise of the commerce power because it is a regulation of interstate commerce.

Even under the more limited view of the commerce power that has prevailed in the past, H.R. 476 would be within Congress' power. This legislation, unlike the child labor statute at issue in *Hammer v. Dagenhart,* does not rest primarily on a congressional policy independent of that of the State that has primary jurisdiction to regulate the subject matter involved. Rather, in legislation like this Congress would be seeking to ensure that the laws of the State primarily concerned, the State in which the minor resides, are complied with. In doing so Congress would be dealing with a problem that arises from the federal union, not making its own decisions concerning local matters such as domestic relations or abortion.

H.R. 476 in this regard resembles the Webb-Kenyon Act, Act of March 1, 1913, 37 Stat. 699, which dealt with a problem posed by then-current dormant commerce clause doctrine for States with strong prohibition laws. Such States, under *Leisy v. Hardin,* 135 U.S. 100 (1890), were limited in their power to regulate liquor that was shipped from out of state. Under the Webb-Kenyon Act, liquor was "deprived of its interstate character" (to use the old terminology) and its introduction into a dry State prohibited. The Court upheld the Webb-Kenyon Act in *Clark Distilling Company v. Western Maryland Railway Company and State of West Virginia,* 242 U.S. 311 (1917).[3]

My testimony is concerned with the Commerce Clause, not with the limitations on the regulation of abortion that the Court has found in the Due Process Clauses of the Fifth and Fourteenth Amendments. That focus is appropriate, I think, because H.R. 476 does not raise any questions concerning the permissible regulation of abortion that are independent of the state laws that it is designed to effectuate. To the extent that a state rule is inconsistent with the Court's doctrine, that rule is ineffective and this bill would not make it effective. Hence it is unnecessary to ask, for example, whether subsection (b)(1) of proposed section 2431 of title 18 would constitute an adequate exception to a rule regulating abortion. Because constitutional limits on the States' regulatory authority are in effect incorporated into proposed Section 2431, subsection (b)(1) is in addition to any exceptions required by the Court's doctrine.

This testimony on legal issues associated with H.R. 476 is provided to the Subcommittee as a public service. It represents my own views and is not presented on behalf of any client or my employer, the University of Virginia.

Mr. CHABOT. Reverend Ragsdale.

STATEMENT OF REV. KATHERINE RAGSDALE, VICAR, ST. DAVID'S EPISCOPAL CHURCH

Rev. RAGSDALE. Good morning again.

I am a priest of a small parish in Massachusetts; and I am here, I think, for pretty much the same reason that Mrs. Roberts is here and that everyone is here, because we care very much about the safety, health, and well-being of women and particularly of girls. What we disagree about is how best to accomplish that.

As a parish priest, I deal with people every day who are wrestling with how to make the best decisions that they can, the most responsible moral decisions that they can. That is my joy to do.

I want to tell you about another situation, another young girl. I didn't know this girl, who I will call Karen, before I was called by her school nurse, who wanted to know if I could come up with not the $27,000 Ms. Roberts suggest I fork over but at least bus and cab fare to get her to the hospital for a scheduled abortion. And I was stunned, not at the request for the money but at the idea that this 15-year-old girl would be making a several-hour trip alone by bus and cab to her abortion and, even worse still, back home from it.

[3] The rule of the Webb-Kenyon Act currently appears in Section 2 of the Twenty-First Amendment.

As it happened, I was going to be in town that day; and so I went and picked this girl up—Karen. The nurse explained that she also was sorry that Karen had to travel that way, but there was no one to take her. Her father could not be trusted with the information. They were afraid that he would throw her out of the house, if not beat her. And her mother wasn't on the scene. There were no other relatives on the scene. There was no one to take care of her. So I went and drove her to Boston.

While we drove, we talked; and she told me about her dreams for the future, what she wanted to do, what she wanted to be. I talked to her about the hard work and personal responsibility that would be necessary to get there. She also told me how she got pregnant, how guilty she felt. It was date rape. She didn't know to call it that. The boy pushed her down, forced himself on her. But he didn't use a knife and he didn't use a gun, and so she didn't realize that it was rape. She just felt guilty.

And I talked to her about the limits of personal responsibility and how not everything that happens to us is what God wants for us and how much God loved her and what she would have to do to get where she wanted to go in life. And I took her in for her procedure. I took her back to school to her nurse's office; and I drove home wondering how many other bright, funny, thoughtful girls brimming with possibilities weren't lucky enough to know somebody who knew somebody who could help them. Back then, before this all started, it never occurred to me that anyone would criminalize someone who was able and willing to help such a girl.

I find it troubling that those of us in this room should be at odds, because I think what we are trying to do is the same thing. We want fewer unplanned pregnancies. We want young people who face problems, particularly problems that have to do with their health and their futures, to receive love and support and counsel from responsible adults, preferably their parents.

Mr. Chairman, you talked about all the reasons it is important for a girl to have parental involvement before a medical procedure; and you are absolutely right. And if I thought that this bill would accomplish parental involvement, if I thought it would eliminate the kind of pain Ms. Roberts spoke about, this panel would be even more on balance than it is because I would be on the other side, but it won't do that. This bill isn't about resolving problems. This bill is about punishing people. And while I understand that even the best of us have punitive impulses from time to time, we have no business codifying then. They are venal. They are beneath the dignity of any member of the human family.

What we need to be talking about is reality-based, age-appropriate sex education and safe and affordable contraception. We need to be talking about welfare, child care and violence at home, on the streets and our families. We need to be looking for new ways to solve our problems, not new ways to punish victims and the people who care for them.

But no matter how successful we are at that, there will still be kids who can't talk to their parents. And there will still be kids who can and should talk to their parents—like Becky Bell—kids who should, but they won't. Is that a bad idea? Yeah. Is that bad judgment? Absolutely. But friends, teenagers have been known to

exercise bad judgment. It is what they do. And there is no law any of us can pass that will stop that from happening.

We need to protect the children who cannot trust their parents. There is no excuse good enough to justify further imperiling children who are already in danger in their own homes.

If we can't bring ourselves to find the compassion to do that for them, then do it out of self-interest. Do it because—oppose this bill because it is punitive and mean-spirited. Oppose out of compassion for those kids who can't talk to their parents. And, if all else fails, oppose it for purely selfish reasons. Oppose it because you don't want your daughter or granddaughter or niece to die just because she couldn't face her parents and you had outlawed all her other options.

Mr. CHABOT. Thank you.

[The prepared statement of Rev. Ragsdale follows:]

PREPARED STATEMENT OF KATHERINE HANCOCK RAGSDALE

Ladies and gentlemen of the Subcommittee, thank you for the invitation to speak with you this morning. My name is Katherine Hancock Ragsdale. I am an Episcopal priest and former chair of the board of the Religious Coalition for Reproductive Choice, a 28-year-old coalition of over 40 national religious organizations representing over a dozen mainline denominations and faith groups. I also serve on the board of the National Abortion and Reproductive Rights Action League. I am the vicar, or priest in charge, of a congregation in a very small town in Massachusetts. It is primarily as a parish priest that I am here today. As a parish priest it is my privilege to be intimately involved in the lives of a variety of people who struggle every day with what it means be ethical, morally responsible people of God in an always complex, frequently confusing, sometimes difficult, and occasionally tragic modern world. It is my job, and my joy, to try to help, and that's why I'm here today.

I recall vividly a day when I left my home near Cambridge, Massachusetts, and drove to one of the economically challenged cities to the north of me to pick up a fifteen-year-old girl and drive her to Boston for an 8 a.m. appointment for an abortion. I didn't know the girl—I knew her school nurse. The nurse had called me a few days earlier to see if I knew where she might find money to give the girl for bus fare to and cab fare home from the hospital. I was stunned—a fifteen-year-old girl was going to have to get up at the crack of dawn and take multiple buses to the hospital alone? The nurse shared my concern but explained that the girl had no one to turn to. She feared for her safety if her father found out and there was no other relative close enough to help. There was no one to be with her. So I went. And during our hour-long drive to Boston we talked.

She told me about her dreams for the future—all the things she thought she might like to do and be. I talked to her about the kind of hard work and personal responsibility it would take to get there.

She told me about the guilt she felt for being pregnant—even though the pregnancy was the result of a date rape. She didn't call it that. She just told me about the really cute guy from school who seemed so nice and about how pleased she was when he asked her out. And then, she told me, he asked her to have sex with him and she refused. And he asked her again—and again. And then he pushed her down and forced himself on her. But he didn't pull a gun, or break any bones, or cause any serious injury—other than a pregnancy and a wounded spirit—so she didn't know to call it rape. She figured the fault was hers for not somehow having known that he wasn't really the "nice boy" he had seemed. And I talked to her about the limits of personal responsibility; about how not everything that happens to us is our own fault, or God's will; and about how much God loves her.

Then I took her inside and turned her over to some very kind nurses. I went downstairs to get a couple of prescriptions filled for her. I paid for the prescriptions after I was informed that they'd either need the girl's father's signature in order to charge them to his insurance, or the completion of a pile of forms that looked far too complex for any fifteen-year-old to have to deal with. I drove her back to her school and walked her to the nurse's office and turned her over to someone who would look out for her for the rest of the day. And then I drove home wondering how many bright, funny, thoughtful girls, girls brimming with promise, were not

lucky enough to know someone who knew someone who could help. I despaired that in a society as rich and, purportedly, reasonable and compassionate as ours, any young woman should ever find herself in such a position. It never occurred to me that anyone would ever try to criminalize those who were able and willing to help.

Although New Hampshire was closer to that girl's home than Boston, as it happened, I did not take her across state lines. Nor did I, to my knowledge, break any laws. But if either of those things had been necessary in order to help her, I would have done them. And if helping young women like her should be made illegal I will, nonetheless, continue to do it. I have no choice because some years ago I stood before an altar and a Bishop and the people of God and vowed "to proclaim by word and deed the Gospel of Jesus Christ and to fashion (my) life in accordance with its precepts—to love and serve the people among whom (I) work, caring alike for young and old, strong and weak, rich and poor." I have no choice. Even if you tell me that it is a crime to exercise my ministry, I will have no choice. And, I assure you, I am not alone.

I find it troubling, to say the least, that those of us in this room should find ourselves at odds over this issue. Presumably we all want the same things. We want fewer unplanned pregnancies and we want young people who face problems, particularly problems that have to do with their health and their futures, to receive loving support and counsel from responsible adults. This bill, however, doesn't help to achieve those goals. It doesn't resolve the problems with which we are faced. It doesn't even address those problems. This is not a bill about solutions; it's a bill about punishments. And, while it is the rare saint who is not sometimes subject to punitive impulses, such impulses are, nonetheless, venal and beneath the dignity of Americans or of any member of the human family.

We should be talking, instead, about reality-based, age-appropriate sex education for all young people, and about safe, affordable, and available contraception. We should be figuring out how we impress upon boys that "no" really does mean "no," and about how to teach girls to defend themselves. We should be talking about education and economics; about childcare and welfare; about violence at home and on the streets; not about new ways to punish victims and those who care for them.

Yet, no matter how intense and successful our efforts, there will still be minors who face unplanned pregnancies. And some of them will still decide that abortion is the best—sometimes the most responsible—option for them. And then, as now, we will want them to be able to turn to their parents for love and support and guidance.

That is, I have to assume, the noble motive behind this bill. We are appalled at the thought of any girl having to face and make such a decision without the help of her parents, as well we should be. Still, several years ago the Episcopal Church passed a resolution opposing any parental consent or notification requirements that did not include provision for non-judicial by-pass. In our view, any morally responsible notification or consent requirement had to allow young women to turn for help to a responsible adult other than a parent or a judge—to go instead to a grandparent or an aunt, a teacher or neighbor, a counselor, minister or rabbi. Our resolution encourages the very things this bill would outlaw. Sure, we want young people to be able to turn to their parents. But when they can't or won't we want to make it easier, not harder, for them to turn to other responsible adults.

We adopted this resolution (by a large majority) not because we don't care about parental involvement. The Episcopal Church wants young women to be able to turn to their parents for help when faced with serious decisions. I want that. I'm sure you, and everyone in this room, wants that. And, in fact, most girls—more than 60%—do turn to their parents. We'd like it to be 100%. But we know that no one can simply legislate healthy communication within families. And we know that, of those girls who do not involve their parents, many feared violence or being thrown out of their home. Statistical and anecdotal evidence demonstrates that, in far too many American homes, such fears are not unfounded. There is no excuse good enough to justify legislation or regulation that further imperils young people who are already living in danger in their own homes.

Even if we were to find ourselves drained of the last vestiges of our compassion there would still be a self-interested reason to fear and oppose this legislation. It imperils all young women, even those in our own families. One hopes that none of the young women we know and love has anything to fear from their parents. We may even be quite confident that this is true. But let's not kid ourselves. Even in the happiest and healthiest of families teens sometimes cannot bring themselves to confide in their parents. Even in families like Rebecca Bell's. Perhaps you remember her story. Becky's parents report that they had a very good and loving relationship with their daughter. They believed that there was nothing that she couldn't or wouldn't tell them. But when Becky became pregnant she apparently couldn't stand

the thought of disappointing and hurting the parents she loved. And she lived in a state that required parental notification. So she had an illegal abortion—and she died.

Should Becky Bell have talked to her parents? I think so. Did she exercise poor judgment? Absolutely. But, sisters and brothers, I'm here to tell you, teenagers will, from time to time, exercise poor judgment. It's a fact of nature and there is no law you can pass that will change that. The penalty should not be death.

Oppose this bill. Oppose it because no matter how good the intentions of its authors and supporters, it is, in essence, punitive and mean-spirited. Oppose it out of compassion for those young people who cannot, for reasons of their safety, comply with its provisions. If all else fails, oppose it for purely selfish reasons. Oppose it because you don't want your daughter, or granddaughter, or niece to die just because she couldn't face her parents and you had outlawed all her other options.

Thank you for the opportunity to testify before you today.

Mr. CHABOT. Professor Collett.

STATEMENT OF TERESA S. COLLETT, PROFESSOR OF LAW, SOUTH TEXAS COLLEGE OF LAW

Ms. COLLETT. Thank you, Mr. Chairman.

The views I am about to express do not represent the views of my law school or any other organization or individual. What they do express are the views I have come to after my study of parental involvement laws throughout the country and also my role in assisting the State legislative sponsors in the State of Texas in the adoption of the Texas Parental Notification Act, which became effective in January of 2000.

In fact, Mr. Chairman, there are not 20 effective parental involvement laws in this country. There are currently parental involvement laws on the books of 43 States in this country. Now, of those 43, eight of those States have laws that have been determined to be constitutionally affirmed either under the State Constitution or the Federal Constitution. Nine of the remaining States have laws that empower abortion providers or other third parties to determine the level of involvement. So, in fact, we have 26 States that have laws that effectively guarantee parental involvement in the vast majority of cases.

But that still reflects a remarkable consensus in this country, a consensus that we also find in the public opinion polls. In fact, that consensus even extends to young adults.

MTV, not typically identified as a member of the right wing conspiracy mentioned by Mr. Nadler, did a survey of 18 to 24-year-olds and found that 68 percent of those surveyed agreed that parents should have to consent, not simply be notified, consent prior to the performance of an abortion on a minor. In addition to that, all other surveys asking neutral questions about parental involvement reflect 70 to 80 percent consensus in this country in favor of parental involvement.

The reason for that are the very reasons that the Supreme Court has articulated in upholding the constitutionality of those laws, and there are two primary reasons:

Number one, parental involvement laws improve the medical care of young girls facing an unplanned pregnancy. They do so in three ways.

First, as the Supreme Court has observed, parents are in a better position to select, in the words of the Court, competent and ethical abortion providers. The National Abortion Federation in their

Guide to Good Care advises women seeking an abortion to determine whether or not the abortion provider, first, is a licensed physician in the jurisdictions where the abortion is going to occur and, second, whether he or she has admitting privileges in a hospital within 20 minutes from the site where the abortion is going to occur. A concerned parent is far more likely to inquire into those qualifications than a panicky teen who simply no longer wants to be pregnant.

The second benefit that the Supreme Court has identified is that parents are in a better position to give a full and complete medical history. With the onset of chemically-induced abortions as well as surgical abortions, there are choices that have to be made even beyond the simple decisions to continue or terminate the pregnancy. Parents have better knowledge of the pharmacology of the girl, whether or not she is going to have an adverse reaction, whether a surgically-induced abortion would be a better option than a chemically-induced abortion; and parents need to be in a position to give that information to physicians.

And third and perhaps most importantly and reinforced by a recent opinion of the Florida intermediate appellate court upholding that State's parental involvement law is the fact that parents have to know that the abortion has occurred in order to respond appropriately to post-abortion complications.

I agree with Reverend Ragsdale that, in fact, there are girls that find themselves experiencing an unplanned pregnancy who, because of their family circumstances, could not safely go to a parent. But that is not the vast majority of cases. In fact, studies published by the Family Planning Perspectives magazine from the Gutmacher Institute, a research affiliate of Planned Parenthood, have determined that the major reason that girls won't go to their parents is because they don't want to disappoint them. They don't want to face their parents and tell them that they have engaged in sex, either because they feel wrongfully guilty or because they feel like they screwed up and they really did intentionally engage in sexual conduct contrary to the parents' wishes.

That cannot be an adequate justification to keep parents in the dark so that these parents mistake hemorrhaging for a heavy period or post-abortion stress syndrome for ordinary teenage angst.

Parents have a right to know so that they can be the first to help. And in fact, that is what parental involvement laws are about.

Now this particular legislation does not create a national parental consent or notification law. But what it does do is ensure that the reasonable judgment of those States that have enacted such legally effective laws are observed by other States concerning those residents. It is an ordinary exercise of this power in the Congress, and I urge Members of this Committee to enact what is one of the few points of consensus on what is otherwise a very divisive political issue.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Collett follows:]

Prepared Testimony of

Professor Teresa Stanton Collett[1]

UNITED STATES HOUSE OF REPRESENTATIVES
Committee on the Judiciary
Subcommittee on the Constitution
Congressman Steve Chabot, Subcommittee Chair

September 6, 2001

Good morning Mr. Chairman, Members of the Committee, and other distinguished guests. My name is Teresa Stanton Collett and I am a professor of law at South Texas College of Law. My testimony is not intended to represent the views of South Texas College of Law or any other organization or person.

I am honored to have been invited to testify on H.R. 476, the "Child Custody Protection Act" (the "Act"). My testimony represents my professional knowledge and opinion as a law professor who writes on the topic of family law, and specifically on the topic of parental involvement laws. It also represents my experience in assisting the legislative sponsors of the Texas Parental Notification Act during the legislative debates prior to passage of the act, and as a member of the Texas Supreme Court Subadvisory Committee charged with proposing court rules implementing the judicial bypass created by the Texas act. I appeared before this committee in 1998 to testify in support of H.R. 3682, a predecessor to HR 476, and I continue to support the passage of the Child Custody Protection Act.

It is my opinion that the Child Custody Protection Act will significantly advance the legitimate health and safety interests of young girls experiencing an unplanned pregnancy. It will also safeguard the ability of states to protect their minor citizens through the adoption of effective parental involvement statutes.[1]

*Professor of Law, South Texas College of Law, 1303 San Jacinto, Houston, Texas 77002-7000.

[1]Cases evidencing the general rule that parents are legally entitled to make medical decisions on behalf of their children include Newmark v. Williams, 588 A.2d 1108 (Del. Super. Ct. 1991) (upholding parents' rejection of chemotherapy in favor of prayer treatment where survival was not assured even with medical intervention.); *In re* Eric B., 235 Cal Rptr. 22 (Cal. Ct. App. 1987) (requiring medical monitoring of child following court-ordered chemotherapy treatments over renewed parental objections); *In re* Green, 292 A.2d 387 (Pa. 1972) (dismissing court ordered medical intervention for seventeen-year-old poliomyelitis patient suffering from 94% curvature of the spine on basis that condition is not considered life-threatening); and *In re* Baby K, 832 F.Supp. 1022 (E.D. Va. 1993), *aff'd*, 16 F.3d. 590 (4th Cir.), *cert. denied*, 115 S.Ct. 91(1994) (court rejected petition by hospital and natural father to remove anacephalic child from life support over mother's objection). *See also* Gina Kolata, *Battle over a Baby's Future Raises Hard Ethical Issues*, NY TIMES, Dec. 27, 1994, at A1, and Michelle O. Ray, *Defying Death Sentence, Baby Ryan Heads Home*, NEWS TRIB., Mar. 6, 1995, at A1 (news reports of successful effort by parents of premature handicapped infant to enjoin hospital from discontinuing dialysis without their consent).

While the primary focus of my testimony will be on the reasons for and effect of parental involvement laws, it is important at the outset of my testimony to emphasize that this proposed legislation does not establish a national requirement of parental consent or notification prior to the performance of an abortion on young girls who lack sufficient maturity to determine whether abortions are in their best interest. It does not attempt to preempt, interfere with or regulate any purely intrastate activities related to the procurement of abortion services.[2] Rather the modest aim of this Act is to protect the right of each state to determine the level of parental involvement required prior to the performance of an abortion on any of state's minor citizens.

Parental Rights to Control Medical Care of Minors

Just this past year, in a case involving the competing claims of parents and grandparents to decisionmaking authority over a child, the United States Supreme Court described parents' right to control the care of their children as "perhaps the oldest of the fundamental liberty interests recognized by this Court."[3] In addressing the right of parents to direct the medical care of their children, the Court has stated:

> Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." Surely, this includes a "high duty" to recognize symptoms of illness and to seek and follow medical advice. The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.[4]

---

[2]While such legislation may be a highly desirable means to promote the health and well-being of young girls confronting an unplanned pregnancy, the jurisdictional basis for federal action of this type may be limited. Cf. *United States v. Lopez*, 514 U.S. 549 (1995)(striking down the Gun-Free School Zones Act on the basis that it exceeded Congressional authority under the Commerce Clause).

[3]Troxel v. Granville, 530 U.S. 57, 120 U.S. Sup. Ct. 2054 at 2060 (2000)(overturning Washington visitation statute which unduly interfered with parental rights).

[4]Parham v. J.R., 442 U.S. 584 at 602 (1979)(emphasis added)(rejecting claim that minors had right to adversarial proceeding prior to commitment by parents for treatment related to mental health).

It is this need to insure the availability of parental guidance and support that underlies the laws requiring a parent be notified or give consent prior to the performance of an abortion on his or her minor daughter. The national consensus in favor of this position is illustrated by the fact that there are parental involvement laws on the books in forty-three of the fifty states.[5] Of the statutes in these forty-three states, eight have been determined to have state or federal constitutional infirmities. Therefore the laws of thirty-five states are in effect today.[6] Nine of these states have laws that empower abortion providers to decide whether to involve parents or allow notice to or consent from people other than parents or legal guardians.[7] These laws are substantially ineffectual in assuring parental

[5]See Ala. Code § § 26-21-1 to-8 (1992 & Supp. 1999); Alaska Stat. § § 18.16.010-030 (Michie 1998); Ariz. Rev. Stat. Ann. § 36-2152 (West 1993 & Supp. 1999); Ark. Code Ann. § § 20-16-801 to-808 (Michie 2000); Cal. Health & Safety Code § 123450 (West 1996 & Supp. 1999); Colo. Rev. Stat. Ann. § § 12-37.5-101 to-108 (West Supp. 1999); Conn. Gen. Stat. Ann. § 19(a)-601 (West 1997); Del. Code Ann. tit. 24, § § 1780-1789B (1997); Fla. Stat. Ann. § 390.01115 (West Supp. 2000); Ga. Code Ann. § § 15-11-110 to-118 (Harrison 1998); Idaho Code § 18-609(6) (1997); 750 Ill. Comp. Stat. 70/1-70/99 (West 1999); Ind. Code Ann. § § 16-18-2-267, 16-34-2-4 (West 1997); Iowa Code Ann. § § 135L.1-8 (West 1997 & Supp. 2000); Kan. Stat. Ann. § 65-6705 (1992 & Supp. 1999); Ky. Rev. Stat. Ann. § 311.732 (Michie 1995 & Supp. 1998); La. Rev. Stat. Ann. § 40:1299.35.5 (West 1992 & Supp. 2000); Me. Rev. Stat. Ann. tit. 22, § 1597-A (West 1992 & Supp. 1999); Md. Code Ann., Health-Gen. § 20-103 (1996); Mass. Ann. Laws ch. 112, § 12s (Law. Co-op. 1991 & Supp. 2000); Mich. Stat. Ann. § § 25.248 (101)-(109) (Law. Co-op. 1999 & Supp. 2000); Minn. Stat. Ann. § 144.343 (West 1998); Miss. Code Ann. § § 41-41-51 to-63 (1993 & Supp. 1998); Mo. Ann. Stat. § § 188.015, 188.028 (West 1996 & Supp. 2000); Mont. Code Ann. § § 50-20-201 to-215 (1999); Neb. Rev. Stat. § § 71-6901 to- 6909 (1996); Nev. Rev. Stat. § § 442.255-.257 (2000); N.J. Stat. Ann. § § 9:17A-1 to-1.12 (West 1993 & Supp. 2000); N.M. Stat. Ann. § § 30- 5-1 to-3 (Michie 2000); N.C. Gen. Stat. § § 90-21.6 to .10 (1999); N.D. Cent. Code § § 14-02.1 to 03.1 (1997); Ohio Rev. Code Ann. § 2919.12 (Anderson 1996); 18 Pa. Cons. Stat. Ann. § 3206 (West 1983 & Supp. 2000); R.I. Gen. Laws § 23-4.7-6 (1996); S.C. Code Ann. § § 44-41-30 to-37 (Law. Co-op. 1985 & Supp. 1999); S.D. Codified Laws § 34-23A-7 (Michie 1994 & Supp. 1999); Tenn. Code Ann. § 37-10-301 to-304 (1996 & Supp. 1999); Tex. Fam. Code Ann. § 33.001-.004 (Vernon Supp. 2000); Utah Code Ann. § 76-7-304 (1999); Va. Code Ann. § 16.1-241(D) (Michie 1999 & Supp. 2000); W. Va. Code § § 16-2F-1 to-8 (1998); Wis. Stat. Ann. § 48.375 (West 1997); Wyo. Stat. Ann. § 35-6-118 (Michie 1999).

[6]The implementation of seven state statutes has been enjoined by courts in the face of claims of state or federal constitutional infirmity. See Planned Parenthood of Rocky Mountain Services Corp. v. Owens, 107 F.Supp.2d 1271 (D. Colo. 2000) (medical emergency exception in parental notice statute impermissibly narrow); Glick v. McKay, 616 F. Supp. 322, 327 (D. Nev. 1985), aff'd, 937 F.2d 434 (9th Cir. 1991); Planned Parenthood of Alaska, Inc. V. State, No. 3AN-97-6014 CI (Alaska Super. Ct. Feb. 25, 1998) (summary judgment) (parental consent law with judicial waiver violates state constitution); American Acad. of Pediatrics v. Lungren, 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); Planned Parenthood of Central New Jersey v. Farmer, 762 A.2d 620 (N.J. 2000) (parental notification law with judicial waiver violates state constitution); Zbaraz v. Ryan, No. 84 C 771 (Ill. Supreme Ct. refused to issue rules implementing Ill. Stat.); Wicklund v. State, No. ADV-97-671 (Mont. Dist. Ct. Feb. 25, 1999) (parental notification law violated state constitution) available at http://www.mtbizlaw.com/1stjd99/WICKLUND_2_11.htm. According to news reports, the federal district court lifted the injunction prohibiting enforcement of the Arizona parental consent law on August 9, 2001. Carol Sowers, *Abortion Opponents Win Twice*, THE ARIZONA REPUBLIC, Aug. 10, 2001 at A1. The New Mexico statute was ruled unconstitutional by the state attorney general. N.M. Ag. Op. 90-19, 1990 WL 509-590.

involvement in a minor's decision to obtain an abortion. However, parents in the remaining twenty-six states are effectively guaranteed the right to parental notification or consent in most cases.[8]

Widespread Public Support

There is widespread agreement that as a general rule, parents should be involved in their minor daughter's decision to terminate an unplanned pregnancy. This agreement even extends to young people, ages 18 to 24.[9] To my knowledge, no organizations or individuals, whether abortion rights activists or pro-life advocates, dispute this point.[10] On an issue as contentious and divisive as abortion, it is both remarkable and instructive that there is such firm and long-standing support for laws requiring parental involvement.

---

[7]See Conn. Gen. Stat. Ann. § 19(a)-601 (stating that the abortion provider need only discuss the possibility of parental involvement); Del. Code Ann. tit. 24, § 1783(a) (allowing notice to a licensed mental health professional not associated with an abortion provider); Kan. Stat. Ann. § 65-6705(j) (allowing a physician to bypass parental notice in cases where the physician determines that an emergency exists that threatens the "well-being" of the minor); Me. Rev. Stat. Ann. tit. 22, § 1597- A(2) (allowing a minor to give informed consent after counseling by the abortion provider); Md. Code Ann., Health-Gen. § 20-103(c) (allowing a physician to determine that parental notice is not in the minor's best interest); Ohio Rev. Code Ann. § 2919.12 (stating that notice may be given to a brother, sister, step-parent, or grandparent if certain qualifications are met); Utah Code Ann. § 76-7-304 (stating that a physician need notify only if possible); W. Va. Code § 16-2F-1 (stating physician not affiliated with an abortion provider may waive the notice requirement); Wis. Stat. Ann. § 48-375 (stating that the notice may be given to any adult family member).

[8]The guarantee is qualified by the fact that every state with an effective parental involvement law has judicial bypass of parental involvement for mature and well informed minors and minors for whom the court determines that abortion is in their best interest.

[9]A Kaiser Family Foundation/MTV Survey of 603 people ages 18-24 found that 68% favored laws requiring parental consent prior to performance of an abortion on girls under 18. *Sex Laws: Youth Opinion on Sexual Health Issues in the 2000 Election* (conducted July 5-17, 2000) available at <www.mtv.com/sendme.tin?page=/mtv/news/chooseorlose/features/feature_1009.html> (visited April 21, 2001). Similar results are found in polls taken from September 1981 to January 1998, which consistently reflect over 70% of the American public support parental consent or notification laws. See, e.g., CBS News/ NY Times Poll (released Jan. 15, 1998) (78% of those polled favor requiring parental consent before a girl under 18 years of age could have an abortion); Americans United for Life, Abortion and Moral Beliefs, A Survey of American Opinion (1991); Wirthlin Group Survey, Public Opinion, May-June 1989; Life/Contemporary American Family (released December, 1981) (78% of those polled believed that "a girl who is under 18 years of age [should] have to notify her parents before she can have an abortion"). Other polling results are available in Westlaw, Dialog library, poll file.

[10]"Responsible parents should be involved when their young daughters face crisis pregnancies." National Abortion and Reproductive Rights Action League Publications -- *Factsheet: Mandatory Parental Consent and Notice Laws and the Freedom to Choose* (1999). "Physicians should strongly encourage minors to discuss their pregnancy with their parents. Physicians should explain how parental involvement can be helpful and that parents are generally very understanding and supportive. If a minor expresses concerns about parental involvement, the physician should ensure that the minor's reluctance is not based on any misperceptions about the likely consequences of parental involvement." Council on Ethical and Judicial Affairs, American Medical Association, *Mandatory Parental Consent to Abortion*, JAMA 82 (January 6 1993) (opposing laws that mandate parental involvement on the basis that such laws may expose minors to physical harm, or compromise "the minor's need for privacy on matters of sexual intimacy.")

Various reasons underlie this broad and consistent support. As Justices O'Connor, Kennedy, and Souter observed in *Planned Parenthood v. Casey*,[11] parental consent and notification laws related to abortions "are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart."[12] This reasoning led the Court to conclude that the Pennsylvania parental consent law was constitutional. Two of the benefits achieved by parental involvement laws include improved medical care for young girls seeking abortions and increased protection against sexual exploitation by adult men.

Improved Medical Care of Minors Seeking Abortions

Medical care for minors seeking abortions is improved by parental involvement in three ways. First, parental involvement laws allow parents to assist their daughter in the selection of a healthcare provider. As with all medical procedures, one of the most important guarantees of patient safety is the professional competence of those who perform the medical procedure or administer the medical treatment. In *Bellotti v. Baird*, the United States Supreme Court acknowledged the superior ability of parents to evaluate and select appropriate abortion providers.[13]

For example, the National Abortion Federation recommends that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the state Board of Medical Examiners, and that he or she have admitting privileges at a local hospital not more than twenty minutes away from the location where

---

[11]*Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

[12]505 U.S. at 895. In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976), the first of a series of United States Supreme Court cases dealing with parental consent or notification laws, Justice Stewart wrote, "There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision of whether to have a child." *Id.* at 91. Three years later the Court acknowledged that parental consultation is critical for minors considering abortion because "minors often lack the experience, perspective and judgment to avoid choices that could be detrimental to them." *Bellotti v. Baird*, 443 U.S. 622, 640, (1979) (*Bellotti II*) (plurality opinion). The *Bellotti* Court also observed that parental consultation is particularly desirable regarding the abortion decision since, for some, the situation raises profound moral and religious concerns. *Bellotti II*, 443 U.S. at 635.

[13]443 U.S. 622 at 641 (1979) (*Bellotti II*).

> In this case, however, we are concerned only with minors who according to the record range in age from children of twelve years to 17-year-old teenagers. Even the later are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.

Id.

the abortion is to occur.[14] A well-informed parent seeking to guide her child is more likely to inquire regarding these matters than a panicky teen who just wants to no longer be pregnant.

Parental involvement laws also insure that parents have the opportunity to provide additional medical history and information to abortion providers prior to performance of the abortion.[15]

> The medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.[16]

Abortion providers, in turn, will have the opportunity to disclose the medical risks of the various procedures to an adult who can advise the girl in giving her informed consent to the procedure ultimately selected. Parental notification or consent laws insure that the abortion providers inform a mature adult of the risks and benefits of the proposed treatment, after having received a more complete and thus more accurate medical history of the patient.

The third way in which parental involvement improves medical treatment of pregnant minors is by insuring that parents have adequate knowledge to recognize and respond to any post-abortion complication that may develop.[17] In a recent ruling by a

---

[14]See National Abortion Federation, *Having an Abortion? Your Guide to Good Care*, http://www.prochoice.org/pregnant/goodcare.htm visited 09/03/01.

[15]In *Edison v. Reproductive Health Services*, 863 S.W.2d 621 (Mo. App. E.D. 1993), the court confronted the question of whether an abortion provider could be held liable for the suicide of Sandra, a fourteen-year-old girl, due to depression following an abortion. Learning of the abortion only after her daughter's death, the girl's mother sued the abortion provider, alleging that her daughter's death was due to the failure to obtain a psychiatric history or monitor Sandra's mental health. *Id.* at 624. An eyewitness to Sandra's death "testified that he saw Sandra holding on to a fence on a bridge over Arsenal Street and then jumped in front of a car traveling below on Arsenal. She appeared to have been rocking back and forth while holding onto the fence, then deliberately let go and jumped far out to the driver's side of the car that struck her. A second car hit her while she was on the ground. Sandra was taken to a hospital and died the next day of multiple injuries." *Id.* at 622.

The court ultimately determined that Sandra was not insane at the time she committed suicide. Therefore her actions broke the chain of causation required for recovery. Yet evidence was presented that the daughter had a history of psychological illness, and that her behavior was noticeably different after the abortion. *Id.* at 628. If Sandra's mother had known that her daughter had obtained an abortion, it is possible that this tragedy would have been avoided.

[16] H.L. v. Matheson, 450 U.S. 398 at 411 (1981). Accord Ohio v. Akron Ctr. For Reproductive Health, 497 U.S. 502, 518-19 (1990).

[17] See Ohio v. Akron Ctr. For Reproductive Health, 497 U.S. 502, 519 (1990).

Florida intermediate appellate court upholding that state's parental involvement law, the court observed:

> The State proved that appropriate aftercare is critical in avoiding or responding to post-abortion complications. Abortion is ordinarily an invasive surgical procedure attended by many of the risks accompanying surgical procedures generally. If post-abortion nausea, tenderness, swelling, bleeding, or cramping persists or suddenly worsens, a minor (like an adult) may need medical attention. A guardian unaware that her ward or a parent unaware that his minor daughter has undergone an abortion will be at a serious disadvantage in caring for her if complications develop. An adult who has been kept in the dark cannot, moreover, assist the minor in following the abortion provider's instructions for post-surgical care. Failure to follow such instructions can increase the risk of complications. As the plaintiffs' medical experts conceded, the risks are significant in the best of circumstances. While abortion is less risky than some surgical procedures, abortion complications can result in serious injury, infertility, and even death.[18]

Abortion proponents often claim that abortion is one of the safest surgical procedures performed today. However the actual rate of many complications is simply unknown.[19] At least one American court has held that a perforated uterus is a "normal risk" associated with abortion.[20] Untreated, a perforated uterus may result in an infection, complicated by fever, endometritis, and parametritis.[21] "The risk of death from

---

[18]State of Florida Department of Health v. North Florida Women's Health and Counseling Service, 2001 WL 111037 at *6 (Fla. App. 1 Dist., Feb 9, 2001).

[19]"The abortion reporting systems of some countries and states in the United States include entries about complications, but these systems are generally considered to underreport infections and other problems that appear some time after procedure was performed." Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective* in *A Clinician's Guide to Medical and Surgical Abortions* at 20 (Maureen Paul et al., eds. 1999).

[20]Reynier v Delta Women's Clinic, 359 So.2d 733 (La. Ct. App. 1978). "All the medical testimony was to the effect that a perforated uterus was a normal risk, but the statistics given by the experts indicated that it was an infrequent occurrence and it was rare for a major blood vessel to be damaged." *Id.* at 738. Frequent injuries from incomplete abortions in Texas are discussed in Swate v. Schiffers, 975 S.W.2d 70, 26 Media L. Rep. 2258 (Tex.App.-San Antonio, 1998) (abortionist unsuccessful claim of libel against journalist for reports based in part upon one disciplinary order that doctor had failed to complete abortions performed on several patients, and that he had failed to repair lacerations which occurred during abortion procedures) Compare Sherman v. District of Columbia Bd. of Medicine, 557 A.2d 943 (D.C. 1989) "Dr. Sherman placed his patients' lives at risk by using unsterile instruments in surgical procedures and by intentionally doing incomplete abortions (using septic instruments) to increase his fees by making later surgical procedures necessary. His practices made very serious infections (and perhaps death) virtually certain to occur. Dr. Sherman does not challenge our findings that his misconduct was willful nor that he risked serious infections in his patients for money." *Id.* at 944.

[21]Phillip G. Stubblefield and David A. Grimes, *Current Concepts: Septic Abortions*, New England J. Med. 310 (Aug. 4, 1994).

postabortion sepsis [infection] is highest for young women, those who are unmarried, and those who undergo procedures that do not directly evacuate the contents of the uterus. . . . A delay in treatment allows the infection to progress to bacteremia, pelvic abscess, septic pelvic thrombophlebitis, disseminated intravascular coagulophy, septic shock, renal failure, and death."[22]

Without the knowledge that their daughter has had an abortion, parents are incapable of insuring that the minor obtain routine post-operative care[23] or of providing an adequate medical history to physicians called upon to treat any complications the girl might experience.

Increased Protection from Sexual Assault

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental involvement laws are intended to afford increased protection against sexual exploitation of minors by adult men.[24] National studies reveal that "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[25] In a study of over 46,000 pregnancies by school-age girls in California, researchers found that "71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers. . . . Even among junior high school mothers aged 15 or younger, most births are fathered by adult men 6-7 years their senior. *Men aged 25 or older father more births among California school-age girls than do boys under age 18.*"[26] Other studies have found that

---

[22]*Id.*

[23]While it is often claimed that abortion is one of the safest surgical procedures performed today, the actual rate of many complications is simply unknown. This is because some of the most serious complications are delayed, and only detected during the follow-up visit; yet only about one-third of all abortion patients actually keep their appointments for post-operative checkups. Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective* in *A Clinician's Guide to Medical and Surgical Abortions* at 20 (Maureen Paul et al., eds. 1999).

[24]On June 14, 2000 a 36-year-old Omaha man who impersonated the father of his teen-age victim in order to assist her in obtaining an abortion was sentenced to 1 1/2 to two years in prison for felony child abuse. Angie Brunkow, *Man Who Said He Was Girl's Dad Sentenced*, Omaha World-Herald (June 14, 2000) at 20. A similar attempt to hide the consequences of statutory rape is reflected in the testimony of Joyce Farley before this committee in 1998. Child Custody Protection Act: hearings on H.R. 3682 Before the Subcomm. On Constitution, of the House Comm. on the Judiciary (1998) (testimony of Joyce Farley) available at http://www.house.gov/judiciary/222460.htm.

[25]American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues: 1998*, 103 PEDIATRICS 516, 519 (1999), also available on the worldwide web at <http://www.aap.org/policy/re9828.html>.

[26]Mike A. Males, *Adult Involvement in Teenage Childbearing and STD*, LANCET 64 (July 8,1995) (emphasis added).

most teenage pregnancies are the result of predatory practices by men who are substantially older.[27]

Abortion providers have resisted any reporting obligation to insure that men who unlawfully impregnant minors are identified and prosecuted.[28] Just this week, a lawsuit was filed in Arizona alleging that Planned Parenthood failed to report the sexual molestation of a twelve year-old leading to her continued molestation and impregnation.[29] If true, this conduct is consistent with the position of many abortion providers who argue that encouraging medical care through insuring confidentiality is more important than insuring legal intervention to stop the sexual abuse. While seemingly well intentioned, this reasoning fails since the ultimate result of this approach is to merely address a symptom of the sexual abuse (the pregnancy) while leaving the cause unaffected. The minor, no longer pregnant, then returns to the abusive relationship, with no continuing contact with an adult (other than the abuser) knowing of her plight. The clinic won't tell, the police and parents don't know, and the girl, still under the abuser's influence, is too confused or afraid to tell. [30]

Cooperation by abortion providers in reporting is especially important for prosecution of sexual abuse cases. Some courts have thrown out convictions of sexual

---

[27]*Id.* citing HP Boyer and D. Fine, *Sexual Abuse as a Factor in Adolescent Pregnancy and Child Maltreatment*, FAM. PLAN. PERSPECTIVES at 4 (1992); and HP Gershenson, et al. *The Prevalence of Coercive Experience Among Teenage Mothers*, J. INTERPERS. VIOL. 204 (1989). "Younger teenagers are especially vulnerable to coercive and nonconsensual sex. Involuntary sexual activity has been reported in 74% of sexually active girls younger than 14 years and 60% of those younger than 15 years." American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues: 1998*, 103 PEDIATRICS 516 (1999), also available on the worldwide web at <http:// www.aap.org/policy/re9828.html>.

[28]See Brief of Plaintiffs/Appellants (Planned Parenthood of Central New Jersey v. Farmer) available on the worldwide web at < http://www.aclu.org/court/plannedparenthood_v_farmer.html>. See also Patricia Donovan, *Can Statutory Rape Laws Be Effective in Preventing Adolescent Pregnancy?*, 29 FAMILY PLANNING PERSPECTIVES (1997)(quoting representatives of various family planning associations and clinics) available on the worldwide web at < http://www.agi-usa.org/pubs/journals/2903097.html>.

[29]*Glendale Teen Files Lawsuit Against Planned Parenthood*, THE ARIZONA REPUBLIC, Sept. 2, 2001 available at http://www.arizonarepublic.com/arizona/articles/0902lawsuit02.html.

[30]The Texas Legislature heard testimony from a woman, who at age sixteen, had been seduced by her high school teacher. When she became pregnant, he persuaded her to have a secret abortion. She went to the clinic alone, obtained the abortion her seducer had paid for, and returned to continue the abusive relationship for another year. "No matter what their reaction would have been, they were my parents and they were adults, and they did love me, it would not have been a secret and the man would have been exposed." Testimony of Dee Dee Alonzo, Hearing before the Senate Human Services Committee, March 10, 1999, tape 2 at 4-5. A similar incident involved another high school student impregnated by her teacher, the football coach. Unfortunately she was injured during the abortion which resulted in a lawsuit against the abortion provider. *Clement v. Riston, M.D.*, No. B-131,022 (Jefferson Co., Texas 1990), settlement reported in Jury Verdict Research, LRP Pub. No. 65904 available on Lexis-Nexis. See also *Patterson v. Planned Parenthood of Houston and Southeast Texas, Inc.*, 971 S.W.2d 439 at 447 (Tex. 1998) (Gonzales, J. concurring) (describing sexual abuse of young girl resulting in two pregnancies, and two secret abortions).

assault because the fetal tissue that would have provided DNA evidence related to the perpetrator's identity was destroyed.[31]

States adopting parental involvement laws have come to the reasonable conclusion that secret abortions do not advance the best interests of most minor girls.[32] This is particularly reasonable in light of the fact that most teen pregnancies are the result of sexual relations with adult men, and many of these relationships involve criminal conduct. Parental involvement laws insure that parents have the opportunity to protect their daughters from those who would victimize their daughters again and again and again. The Child Custody Protection Act would insure that men cannot deprive these minors of this protection by merely crossing state lines.

Effectiveness of Judicial Bypass

In those few cases where it is not in the girl's best interest to disclose her pregnancy to her parents, state laws generally provide the pregnant minor the option of seeking a court determination that either involvement of the girl's parent is not in her best interest, or that she is sufficiently mature to make decisions regarding the continuation of her pregnancy. This is a requirement for parental consent laws under existing United States Supreme Court cases, and courts have been quick to overturn laws omitting adequate bypass.[33]

Opponents of the Child Custody Protection Act have argued that its passage would endanger teens since parents may be abusive and many teens would seek illegal abortions.[34] This is a phantom fear. Parental involvement laws are on the books in over two-thirds of the states, some for over twenty years, and there is no case where it has been

---

[31]See Anderson v. State, 544 A.2d 265 (Del. 1988)(evidence of abortion tends to prove penetration requirement for rape conviction) and Commonwealth v. Sasville, 35 Mass. App. Ct. 15 (1993)(state's failure to preserve aborted fetal tissue for examination by a defendant charged with the rape has required the dismissal of the indictment against the defendant).

[32]See *Manning v. Hunt*, 119 F.3d 254 (4th Cir. 1997). In disposing of a constitutional challenge to a reporting duty imposed in the North Carolina parental consent statute, the court stated:

> Appellants would have a judge, who is sworn to uphold the law, withhold vital information regarding rape or incest which would allow state authorities to end the abuse, protect the victim, and punish the abuser. Not only would Appellants' position prevent the judge from helping the victim seeking the abortion, but it would prevent the judge from helping other juveniles in the same household under the same threat of incest. This Court does not believe that the Constitution requires judges be placed in such an untenable position. . . . Appellants' position would instead afford protection to rapists and perpetrators of incest. This can only serve the interests of the criminal, not the child.

Id. at 273-74.

[33]See n. 7 *supra*.

[34]See Donna Leusner, *Parental Notification of Abortion Approved*, The Star-Ledger (June 25, 1999) available online at www.nj.com/page1/ledger/c21e74.html. "They would go to New York. They would go to a back alley. They would do what they have to do to avoid telling their parents. . . . Don't force them to do that," said Sen. Richard C. Codey (D-Essex) who voted no [to passage of the Parental Notification of Abortion Act]. *Id.*

established that these laws led to parental abuse or to self-inflicted injury.[35] Similarly, there is no evidence that these laws have led to an increase in illegal abortions.[36]

It often asserted that parental involvement laws do not increase the number of parents notified of their daughters' intentions to obtain abortions, since minors will commonly seek judicial bypass of the parental involvement requirement.[37] Assessing the accuracy of this claim is difficult since parental notification or consent laws rarely impose reporting requirements regarding the use of judicial bypass. The Idaho parental consent law enacted in 2000 is one of the few exceptions to this general rule.[38] Based upon the

[35]A 1989 memo prepared by the Minnesota Attorney General regarding Minnesota's experience with its parental involvement law states that "after some five years of the statute's operation, the evidence does not disclose a single instance of abuse or forceful obstruction of abortion for any Minnesota minor." Testimony before the Texas House of Representatives on the Massachusetts' experience with its parental consent law revealed a similar absence of unintended, but harmful, consequences. Ms. Jamie Sabino, chair of the Massachusetts Judicial Consent for Minors Lawyer Referral Panel, could identify no case of a Massachusetts' minor being abused or abandoned as a result of the law. *See Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (Apr. 19, 1999) (statement by Jamie Sabino, JD).

[36]*See Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (Apr. 19, 1999) (statement by Jamie Sabino, J.D. testifying that there had been no increase in the number of illegal abortions in Massachusetts since the enactment of the statute in 1981).

[37]*Statement of Bear Atwood, Public Information director in Opposition to A-CR2*, Public Hearing before N.J. Assembly Judiciary Committee, Oct. 16, 2000, at p. 113x. "Studies show that about the same number of teens involve their parents in their abortion instates that have parental involvement laws and those that don't." *Id.* See also Testimony of Jamie Sabino before the Vermont House of Representatives' Committee on Health & Welfare, February 20, 2001 (reporting no change in the percentage of teens notifying their parents in Massachusetts after enforcement of parental consent law).

[38]18 Idaho §609A(4) provides:

(a) The vital statistics unit of the department of health and welfare shall, in addition to other information required pursuant to section 39-261, Idaho Code, require the complete and accurate reporting of information relevant to each abortion performed upon a minor which shall include, at a minimum, the following:
  (i) Whether the abortion was performed following the physician's receipt of:
    1. The written informed consent of a parent and the minor; or
    2. The written informed consent of an emancipated minor for herself; or
    3. The written informed consent of a minor for herself pursuant to a court order granting the minor the right to self-consent; or
    4. The written informed consent of a court pursuant to an order which includes a finding that the performance of the abortion, despite the absence of the consent of a parent, is in the best interests of the minor; or
    5. The professional judgment of the attending physician that the performance of the abortion was immediately necessary due to a medical emergency and there was insufficient time to obtain consent from a parent or a court order.
  (ii) If the abortion was performed due to a medical emergency and without consent from a parent or court order, the diagnosis upon which the attending physician determined that the abortion was immediately necessary due to a medical emergency.

(a) The knowing failure of the attending physician to perform any one (1) or more of the acts required under this subsection is grounds for discipline pursuant to section 54-1814(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure

reporting required under that law, no abortions obtained by minors were pursuant to a judicial bypass. From September 1, 2000 through April 3, 2001, thirty-three minors have been reported as obtaining an abortion in Idaho. Thirty-one of these abortions were performed after obtaining parental consent. One minor was legally emancipated, and did not need parental consent, and one report did not indicate the nature of the consent obtained prior to performance of the abortion.[39]

Obtaining comparable information in states having parental involvement laws with no mandatory reporting requirement is difficult. State agencies will not accumulate such information absent a legislative mandate. Nonetheless, it is safe to say that the use of judicial bypass to avoid parental involvement varies significantly among the states. While commonly used in Massachusetts,[40] judicial bypass is seldom used in many states.[41] In 1999, 1,015 girls got abortions in Alabama with a parent's approval and 12 with a judge's approval, according to state health department records.[42] Indiana also has few bypass proceedings according to an informal study.[43] In Pennsylvania, approximately 13,700 minors obtained abortions from 1994 through 1999. Of these only about seven percent or

---

continues, payable to the center for vital statistics and health policy, but such failure shall not constitute a criminal act.

[39]Email communication to Teresa S. Collett from Janet M. Wick, Vital Statistics Unit of the Idaho Department of Health and Welfare, April 4, 2001.

[40]Testimony of Jamie Sabino before the Vermont House of Representatives' Committee on Health & Welfare, February 20, 2001 (reporting on 13 of 16,000 bypass applications have been denied). See also Blum, Robert, Resnick, Michael, & Stark, Trisha, *The Impact of Parental Notification Law on Adolescent Abortion Decision-Making*, 77 Amer. J. Pub. Health 619 (May 1987)(50% of the minors in Minn. utilize judicial bypass), Robert H. Mnookin, *Bellotti v. Baird, A Hard Case* in IN THE INTEREST OF CHILDREN: ADVOCACY, LAW REFORM, AND PUBLIC POLICY 149 at 239 (Robert H. Mnookin ed., 1985); and Susanne Yates & Anita J. Pliner, *Judging Maturity in the Courts: the Massachusetts Consent Statute*, 78 Am. J. Pub. Health 646, 647 (1988).

[41]"No one is really sure which choices girls are making in the 39 states that have 'parental involvement' laws. But lawyers and clinic directors in Pennsylvania and Virginia say few girls choose to brave the legal system." Nancy Parello, *Few Pregnant Girls Turn to the Courts: Abortion Notification Laws Vary*, The Record (Bergen County, NJ), May 24, 1999, at A3.

[42]Email communication from a representative of the Alabama Department of Health to Teresa S. Collett on May 25, 2001. *See also Court Denies Pregnant 17-year-old an Abortion*, COLUMBUS LEDGER-ENQUIRER, May 24, 2001, available online at www.l-e-o.com/content/columbus/2001/0.../0524CourtAbortionhtm. See also *Court Approves Abortion for Teen*, THE DECATUR DAILY, Nov. 10, 2000, available online at www.decaturdaily.com/decaturdaily/news/001110/abortion.shtml.

[43]"In Indiana's most populous county, for instance, from mid-1985 to mid-1991, only four minors asked the juvenile court for bypasses. In the state's second most populous county, over the same six year period, only one minor requested a bypass." Note, Steven F. Stuhlbarg, *When is a Pregnant Minor Mature? When is an Abortion in her Best Interests? The Ohio Supreme Court Applies Ohio's Abortion Parental Notification Law: In re Jane Doe 1, 566 N.E.2d 1181 (Ohio 1991)*, 60 U. CIN. L. REV. 907 at 929-30 (1992).

1,000 girls bypassed parental involvement via court order.[44] Texas implemented its Parental Notification Act in 2000. During the state legislative hearings, the Texas Family Planning Council submitted a study indicating that a parent accompanied 69% of minors seeking abortions in Texas.[45] After passage of the Texas Parental Notification Act, 96% of all minors seeking an abortion in Texas involved a parent.[46]

Conclusion

By passage of the Child Custody Protection Act, Congress will protect the ability of the citizens in each state to determine the proper level of parental involvement in the lives of young girls facing an unplanned pregnancy.

Experience in states having parental involvement laws has shown that, when notified, parents and their daughters unite in a desire to resolve issues surrounding an unplanned pregnancy. If the minor chooses to terminate the pregnancy, parents can assist

---

[44]Marie McCullough, *A 15-year-old Anguishes Over Abortion Decision*, Philadelphia Inquirer, May 29, 2001 available via http://inq.philly.com/content/inquirer/2001/05/29/front_page/CONSENT29.htm.

[45]*See Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.*, 76th Leg., R.S. 21 (Apr. 19, 1999) (submission of Texas Family Planning Association). Of the 245 minors obtaining abortions at Planned Parenthood of Dallas 67% involved a parent. Of the 131 minors obtaining abortions at Planned Parenthood of Houston 67% involved a parent. Of the 23 minors obtaining abortions at Planned Parenthood of San Antonio 91% involved a parent. Of the 22 minors obtaining abortions at Planned Parenthood of Central Texas 73% involved a parent. Of the 21 minors obtaining abortions at Planned Parenthood of West Texas 76% involved a parent. Id. During the survey period 305 of the 442 minors obtaining abortions involved a parent. After passage of the Texas Parental Notification Act, 424 would have involved a parent.

[46]The Texas Parental Notification Act took effect January 1, 2000. While no official statistics regarding the number of judicial bypass proceedings are available, the Texas Department of Health accumulates statistics regarding the payment of attorney ad litems in judicial bypass proceedings. Texas law requires the appointment of an attorney ad litem in every bypass proceeding. Tex. Fam. Code §33.003.

On January 28, 2001, a Houston newspaper article quoted a lawyer working with the Texas Civil Liberties Union as stating that during 2000 "the state has paid more than $125,000 for lawyers representing 172 girls who have taken their cases to court." *Group Offers Online Abortion Aid/Web Site Guides Underage Girls Who Want Legal Permission*, Houston Chronicle, Jan. 28, 2001 at 3. This number is slightly lower than the annual average of 180 judicial bypass proceedings that can be derived from the Texas Department of Health statistics reflecting payment of 225 orders for attorney ad litem fees during the fifteen month period from January 1, 2000, to April 1, 2001. Email communication from Susan Steeg, General Counsel, Texas Department of Health to Teresa S. Collett, April 2, 2001.

In 1999, the most recent year for which official statistics are available, there were 4,721 abortions performed on minors in Texas. See Texas Dept. of Health, Bureau of Vital Statistics, Table 14B - Reported Pregnancies, Births, Fetal Deaths, and Abortions, Women Age 13-17 - Texas, 1999 at http://www.tdh.state.tx.us/bvs/stats99/ANNR_HTM/99t14b.HTM. Assuming the same number of abortions were performed on Texas minors in 2000, and that all abortion providers are complying with the law, and taking into account the statement of the Texas Department of Health that no certificates of abortions performed without parental notification due to emergency circumstances as defined under Tex. Fam. Code §33.002 (a)(4) had been received as of April 1, 2001, 4,541 Texas minors should have had parents notified. This means that 96% of the Texas parents now know of their daughter's decision and therefore are able to help them respond to the unplanned pregnancy.

their daughters in selecting competent abortion providers, and abortion providers may receive more comprehensive medical histories of their patients. In these cases, the minors will more likely be encouraged to obtain post-operative check-ups, and parents will be prepared to respond to any complications that arise.[47]

If the minor chooses to continue her pregnancy, involvement of her parents serves many of the same goals.[48] Parents can provide or help obtain the necessary resources for early and comprehensive prenatal care. They can assist their daughters in evaluating he options of single parenthood, adoption, or early marriage. Perhaps most importantly, they can provide the love and support that is found in the many healthy families of the United States.[49]

Regardless of whether the girl chooses to continue or terminate her pregnancy, parental involvement laws have proven desirable because they afford greater protection for the many girls who are pregnant due to sexual assault. By insuring that parents know of the pregnancy, it becomes much more likely that they will intervene to insure the protection of their daughters from future assaults.

In balancing the minor's right to privacy and her need for parental involvement, the majority of states have determined that parents should know before abortions are preformed on minors. This is a reasonable conclusion and well within the states' police powers. However, the political authority of each state stops at its geographic boundaries. States need the assistance of the federal government to insure that the protection they wish to afford their children is not easily circumvented by strangers taking minors across state lines.

The Child Custody Protection Act has the unique virtue of building upon two of the few points of agreement in the national debate over abortion: the desirability of parental involvement in a minor's decisions about an unplanned pregnancy, and the need to protect the physical health and safety of the pregnant girl. I urge members of this committee to vote for its passage.

Thank you, Mister Chairman, for allowing me the time to appear before the committee and to extend my remarks in the form of this written testimony.

---

[47]Compare the experience recounted in *Testimony of Marie P. Carter*, Public Hearing before N.J. Assembly Judiciary Committee, Oct. 16, 2000, at p. 90x (secret abortion by teen resulting in emotional harm).

[48]A legal requirement of notification in cases where the minor continues the pregnancy is often unnecessary.

> For parental notification purposes, the Legislature also has a legitimate basis for distinguishing between abortion and other pregnancy-related medical treatment. . . Absent abortion, pregnancy-related treatment includes general checkups as a matter of course, perhaps ultrasound studies or x-rays, but by no means always surgery. Such surgery as is necessary commonly occurs at the time of birth. By then most minors' pregnancies are likely to be known to a parent or guardian so that a formal, legal requirement to give notice would not meaningfully advance any state purpose."

State of Florida Department of Health v. North Florida Women's Health and Counseling Service, No. 1DOO-2106 (First District Court of Appeal Feb 9, 2001) (upholding the constitutionality of the Florida parental notification law).

[49]See *Statement of Marie Sica, Constitutional Amendment ACR-2/SCR86*, Public Hearing before N.J. Assembly Judiciary Committee, Oct. 16, 2000, at p. 16x.

Mr. CHABOT. Thank you very much. We appreciate the witnesses' testimony here this morning.

We have a joint session with the President of Mexico, Mr. Fox, starting at 11 o'clock. We've got six Members here, counting the proponent of this legislation, Ms. Ros-Lehtinen. I am going to suggest that we limit the statement by Ms. Ros-Lehtinen and the questioning by ourselves to 3 minutes so everybody has an opportunity to do that. If that is acceptable to do that, I would ask unanimous consent that we do that.

Mr. NADLER. I object to that, Mr. Chairman.

Mr. CHABOT. The objection is noted.

Ms. Ros-Lehtinen, pursuant to our unanimous consent, you are recognized for the purpose of making an opening statement.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman; and I thank the witnesses and the Subcommittee Members for this opportunity to testify.

Abortion is perhaps one of the most life-altering and life-threatening of procedures. It leaves lasting medical, emotional and psychological consequences and, as noted by the United States Supreme Court, particularly so when the patient is immature.

Although *Roe* v. *Wade* legalized abortion in 1973, it did not legalize the right for persons other than a parent or a guardian to decide what is best for a child. Nor did it legalize the right for strangers to place a child in a dangerous situation that is often described as potentially fatal.

My legislation, the Child Custody Protection Act, will make it a Federal misdemeanor to transport an underage child across State lines in circumvention of State and local parental and notification laws for the purpose of obtaining an abortion.

Last year, in the 106th Congress, I introduced this legislation; and it passed the House with a vote of 270 in favor and 159 against, almost a two-thirds majority. In the Congress before that, this legislation also passed with a vote of 276 to 150. Significant support for this legislation is not surprising because, according to Zogby International, 66 percent of people surveyed believed that doctors should be legally required to notify the parents of a girl under the legal age who request an abortion.

In addition, a 1999 fact sheet created by the Planned Parenthood Federation of America entitled Teenagers, Abortion and Government Intrusion Laws cites "few would deny that most teenagers, especially younger ones, would benefit from adult guidance when faced with an unwanted pregnancy. Few would deny that such guidance ideally should come from the teenager's parents."

Parental consent or parental notification laws may vary from State to State, but they are all made with the same purpose in mind, to protect frightened and confused adolescent girls from harm.

I thank you, Mr. Chairman, for considering this vital piece of legislation; and I hope that this Subcommittee will support H.R. 476 for the purpose of upholding safety laws designed by individual States, a bill that would protect parents' rights to be involved in decisions involving their minor children and would work to strengthen the bonds of America's families.

Thank you, Mr. Chairman, and thank you the Members of the Subcommittee.

Mr. CHABOT. Thank you, Ms. Ros-Lehtinen.

[The prepared statement of Ms. Ros-Lehtinen follows:]

COMMITTEES:
INTERNATIONAL RELATIONS
GOVERNMENT REFORM
CHAIR:
SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS
VICE CHAIR:
SUBCOMMITTEE ON
WESTERN HEMISPHERE

Congress of the United States
House of Representatives
ILEANA ROS-LEHTINEN
18TH DISTRICT, FLORIDA

PLEASE RESPOND TO:
2160 RAYBURN BUILDING
WASHINGTON, DC 20515-0918
(202) 225-3931
FAX (202) 225-5620

DISTRICT OFFICE:
9210 SUNSET DRIVE
SUITE 100
MIAMI, FL 33173
(305) 275-1800
FAX (305) 275-1801

The Honorable Ileana Ros-Lehtinen
H.R. 476, The Child Custody Protection Act
Subcommittee on the Constitution - Thursday, September 5, 2001

Abortion is perhaps one of the most life-altering and life-threatening of procedures. It leaves lasting medical, emotional and psychological consequences and, as noted by the Supreme Court, "particularly so when the patient is immature."

Although Roe v. Wade legalized abortion in 1973, it did not legalize the right for persons, other than a parent or guardian, to decide what is best for a child. Nor did it legalize the right for strangers to place our children in danger that is often described as being potentially fatal.

My legislation, The Child Custody Protection Act will make it a Federal misdemeanor to transport an underage child across state lines, in circumvention of state and local parental and notification laws, for the purpose of obtaining an abortion.

Last year in the 106th Congress, I introduced this legislation which passed the House with a vote of 270-159, almost 2/3 majority. In the 105th Congress, this legislation also passed with a vote of 276-150. Significant support for this legislation is not surprising because according to Zogby International, 66% of people surveyed believe that doctors should be "legally required to notify the parents of a girl under the legal age who requests an abortion."

In addition, a 1999 fact sheet created by the Planned Parenthood Federation of America entitled *Teenagers, Abortion, and Government Intrusion Laws* cites "few would deny that most teenagers, especially younger ones, would benefit from adult guidance when faced with an unwanted pregnancy. Few would deny that such guidance ideally should come from the teenagers' parents."

Parental consent or parental notification laws may vary from state to state, but they are all made with the same purpose in mind: to protect frightened and confused adolescent girls from harm.

I thank you, Mr. Chairman, for considering this vital piece of legislation, and I hope that this subcommittee will support H.R. 476 for the purpose of upholding safety laws designed by individual states, protecting parents' rights to be involved in decisions involving their minor children, and working to strengthen the bonds of America's families.

Mr. CHABOT. At this point, we will move to the questioning portion; and I recognize myself for 5 minutes for questions.

Ms. Roberts, if I could start with you. You have heard some of the concern and criticism or whatever from some of the opponents of this legislation; and one of the arguments they make is that, you know, some parents are abusive and their children are afraid to go to those parents. That obviously affects the parents who really do love and care and are not abusive to their children which, in my view, is the vast majority. Could you comment on that issue and what your thoughts and concerns are about that?

Ms. ROBERTS. As I said in my testimony, that what we are doing in this country is we are giving a girl from an abusive home who claims to the authorities if she has to go before the judge, well, I can't tell my parents because I am beaten. But what we are doing in this country, instead of investigating the abuse, going to that family, the likes of Planned Parenthood and the feminists for the majority—majority of feminists are encouraging girls to have secret abortions, not telling on those abusers and then sending them back home to the abuser where they can be abused again. That seems a little bit uncompassionate in my eyes.

I would rather the family gather together in a social service situation to investigate the abuse and why it is happening and get that child out of the home, investigate the abuse, and then go on and get that family the help they need. Because the abuse most likely started way back and it is just a continuous situation that won't stop without professional help.

Mr. CHABOT. Thank you very much.

Professor Harrison, in your written testimony you had stated that the Child Custody Protection Act is similar to the Webb-Kenyon Act enacted by Congress back in 1913 in order to prohibit the transportation of liquor from a wet State to a dry State. Could you explain to us the rationale applied by the Supreme Court in upholding that provision in *Clark Distilling Company* v. *Western Maryland Railway Company*?

Mr. HARRISON. The Court's thinking was that Congress has authority over interstate commerce and that the States have authority over whether to be wet or dry. So this falls into the situation where there is a potential conflict created by the existence of the Federal union.

Some States—a State can decide to be wet. A State can decide to be dry. And the problem for the dry State—there was a problem for the dry States that was created specifically by their being in a Federal union with some wet States. The Dormant Commerce Clause the Court had earlier decided about 15, 20 years before that, they decided that the Dormant Commerce Clause made it impossible for the States—took away from the States part of their normal legal armament to control their domestic policy and made it impossible for the States to limit the introduction of liquor from out-of-State. But the power to do that had not sort of all together gone away but had been transferred from one level of government to the other.

So Congress decided that the policy that ought to govern there was the policy where the liquor would be consumed and so reinforced the authority of that State by making it illegal to transport

liquor into a State in violation of the laws of that State, a principle that is now in the Constitution in section 2 of the 21st amendment.

So the decision, which of the two possible States is going to have jurisdiction, is one that is often made at the higher—the Federal level.

Mr. CHABOT. Just to be clear, it is your opinion the passage of this legislation would withstand a constitutional challenge—in your opinion?

Mr. HARRISON. I believe that it would.

Mr. CHABOT. Reverend Ragsdale, if I could ask you a question, also. In your statement, you had stated—and I quote again. This is from the statement, although your oral testimony may have been slightly different but I think very similar: Of those girls who do not involve their parents, many fear violence or being thrown out of their home. Are you familiar with judicial bypass procedures and are you aware that during such procedures judges routinely address such tragic consequences and circumstances when reviewing a pregnant minor's petition for a judicial bypass?

Rev. RAGSDALE. I am aware that 75 percent of girls already do talk to their parents about this; and of those who don't, judicial bypass is an option.

The Episcopal Church nationally some years ago dealt with this issue and decided that we could only support parental consent and notification laws that allowed for a nonjudicial bypass, something pretty much exactly like what this bill tries to outlaw, the ability for persons other than the parents, the judiciary, priests, counselors, teachers, precisely because we understand that the judicial bypass system, one, is very difficult for a young teenager to navigate and is intimidating.

Frankly, I would be intimidated by it, and I am way more than a teenager and not easily intimidated. So the idea of a 15-year-old trying to navigate that system is a little overwhelming.

Secondly, we know that in not every State and area is the judiciary inclined to behave fairly regarding these petitions; and there is not a lot of time to go through an appellate process when a young girl is facing a pregnancy.

Mr. CHABOT. Thank you.

Finally, Professor Collett, I realize that parental involvement laws are not identical from State to State. They vary, as you indicated in your testimony. Can you tell us generally what factors judges take into consideration when hearing a judicial bypass case?

Ms. COLLETT. Well, under Supreme Court precedent, if you have a parental consent law the courts are required to grant an exemption from that parental consent requirement under two circumstances at a minimum. Number one, they have to grant an exemption where the girl can establish that she is sufficiently mature and well-informed or, in the alternative, if the girl can establish that parental involvement or parental consent is not in her best interest.

Now the United States Supreme Court case law in giving further definition to those terms is rather scanty. There is simply not much elaboration. But when you look at the State Supreme Court opinions and intermediate appellate opinions, what we begin to see is the standard for mature and well-informed are standards that

courts are fairly familiar with. Because courts throughout the country have had emancipation statutes for minors for a number of years that have required them to determine whether a minor is sufficiently mature to emancipate here entirely from her parents.

For example, in Texas, we have had an emancipation statute for over 100 years. So our courts are familiar with that.

Well-informed is a similar standard to that for informed consent that courts use routinely in informed consent tort cases. So, again, there is adequate case law and information available.

The second best interest test is a standard courts use in custody disputes. Again, it is a standard that is familiar to family law courts and jurists that apply the standard in a number of contexts unrelated to abortion. Typically, it is things like the age; whether or not the girl knows the complications associated with the procedure that she is proposing to undergo; whether or not she has been the victim of sexual assault and abuse; whether the choice of abortion is the product of coercion; whether or not she is aware of other options, like carrying the pregnancy to term and raising the child by herself or carrying the pregnancy to term and placing the child with adoption. Those sorts of considerations are legitimate, and courts have sustained them.

Mr. CHABOT. Thank you very much. My time has expired.

The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Since we have so little time, I will simply start by observing that most of the testimony of Professor Collett and several other people is entirely irrelevant to this bill since the worthiness and intelligence or lack thereof of parental notification or consent laws is not before us today. They are the subjects of State legislative action.

The question before us today is with respect to a bill that would criminalize someone accompanying a minor across a State line for the purpose of doing something legal in the State in which they go.

I would similarly observe that Professor Harrison's comparison to the Webb-Kenyon Act of 1913 is exactly backwards since that act made it criminal to go from a wet State to a dry State; in other words, to perform something illegal in the State you are going to. The bill we are dealing with today says in effect that we are going to force a young woman trying to obtain an abortion to carry with her on her back across State lines through restrictive laws of the State that she is leaving to give extra territorial effect in the State she is going to the laws of the State she is no longer in.

Now, presumably, if she travelled across State lines with the intention of establishing residence in that new State, we wouldn't even be talking about this because she would have no connection with that old State. But if she has an intent to return to that old State, we are saying that under those circumstances we can make it criminal for someone to accompany her.

Let me say that there is no doubt in my mind that, Professor Harrison to the contrary, notwithstanding that this is an unconstitutional bill, I ask to enter into a record a memo here from Professor Tribe, Laurence Tribe, the Professor of Constitutional Law at Harvard and Peter Rubin, Associate Professor of Law, Georgetown University.

Mr. CHABOT. Without objection.
Mr. NADLER. Thank you, Mr. Chairman.
[The information referred to follows:]

PREPARED STATEMENT OF LAURENCE H. TRIBE AND PETER J. RUBIN

INTRODUCTION

We have been asked to submit our assessment of whether H.R. 476, now pending before the House, is consistent with constitutional principles of federalism. It is our considered view that the proposed statute violates those principles, principles that are fundamental to our constitutional order. That statute violates the rights of states to enact and enforce their own laws governing conduct within their territorial boundaries, and the rights of the residents of each of the United States and of the District of Columbia to travel to and from any state of the Union for lawful purposes, a right strongly reaffirmed by the Supreme Court in its recent landmark decision in *Saenz v. Roe,* 526 U.S. 489 (1999). We have therefore concluded that the proposed law would, if enacted, violate the Constitution of the United States.

H.R. 476 would provide criminal and civil penalties, including imprisonment for up to one year, for any person who

> knowingly transports an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion . . . [if] an abortion is performed on the individual, in a State other than the State where the individual resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law in the State where the individual resides.

H.R. 476, § 2 (a) (proposed 18 U.S.C. § 2431(a)(1) and (2)). In other words, this law makes it a *federal crime* to assist a pregnant minor to obtain a lawful abortion. The criminal penalties kick in if the abortion the young woman seeks would be performed in a state other than her state of residence, and in accord with the less restrictive laws of that state, unless she complies with the more severe restrictions her home state imposes upon abortions performed upon minors within its territorial limits. The law contains no exceptions for situations where the young woman's home state purports to disclaim any such extraterritorial effect for its parental consultation rules, or where it is a pregnant young woman's close friend, or her aunt or grandmother, or a member of the clergy, who accompanies her "across a State line" on this frightening journey, even where she would have obtained the abortion anyway, whether lawfully in another state after a more perilous trip alone, or illegally (and less safely) in her home state because she is too frightened to seek a judicial bypass or too terrified of physical abuse to notify a parent or legal guardian who may, indeed, be the cause of her pregnancy. It does not exempt health care providers, including doctors, from possible criminal or civil penalties. Nor does it uniformly apply home-state laws on pregnant minors who obtain out of-state abortions. The law applies only where the young woman seeks to go from a state with a more restrictive regime into a state with a less restrictive one.

This amounts to a statutory attempt to force this most vulnerable class of young women to carry the restrictive laws of their home states strapped to their backs, bearing the great weight of those laws like the bars of a prison that follows them wherever they go (unless they are willing to go alone). Such a law violates the basic premises upon which our federal system is constructed, and therefore violates the Constitution of the United States.[1]

---

[1] Each of us has already made a written submission to Congress demonstrating that the proposed statute also violates the Constitution because of the cruel and dangerous method it employs to attempt to deter pregnant young women from obtaining lawful abortions in neighboring states; because it places an "undue burden" upon the pregnant young woman's night to choose to terminate her pregnancy; and because it lacks a constitutionally-mandated exception for abortions necessary to protect the health of the pregnant woman. See "The Constitution and the Proposed Child Custody Protection Act," Written Testimony of Peter J. Rubin before the Senate Committee on the Judiciary ("Rubin Testimony"), May 20, 1998 at 6–7 (proposed law will brutally endanger the safety of pregnant minors to whom it applies in violation of the Due Process Clause); Memorandum of Law of Professor Laurence H. Tribe to the Hon. Orrin G. Hatch and the other Members of the Senate Committee on the Judiciary, June 23 1998 ("Tribe Memorandum") at 6–9 (proposed law would impose an "undue burden" under *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833 (1992), and lacks a required health exception); Rubin Testimony at 7–10 (same). This testimony was submitted in 1999, and addressed identically-worded bills considered by a previous Congress. The Supreme Court's subsequent decision

Continued

ANALYSIS

The essence of federalism is that the several states have not only different physical territories and different topographies but also different political and legal regimes. Crossing the border into another state, which every citizen has a right to do, may perhaps not permit the traveler to escape all tax or other fiscal or record-keeping duties owed to the state as a condition of remaining a resident and thus a citizen of that state,[2] but necessarily permits the traveler temporarily to shed her home state's regime of laws regulating primary conduct in favor of the legal regime of the state she has chosen to visit. Whether cast in terms of the destination state's authority to enact laws effective throughout its domain without having to make exceptions for travelers from other states, or cast in terms of the individual's right to travel—which would almost certainly be deterred and would in any event be rendered virtually meaningless if the traveler could not shake the conduct-constraining laws of her home state—the proposition that a state may not project its laws into other states by following its citizens there is bedrock in our federal system.

One need reflect only briefly on what rejecting that proposition would mean in order to understand how axiomatic it is to the structure of federalism. Suppose that your home state or Congress could lock you into the legal regime of your home state as you travel across the country. This would mean that the speed limits, marriage regulations, restrictions on adoption, rules about assisted suicide, firearms regulations, and all other controls over behavior enacted by the state you sought to leave behind, either temporarily or permanently, would in fact follow you into all 49 of the other states as you traveled the length and breadth of the nation in search of more hospitable "rules of the road." If your search was for a more favorable legal environment in which to make your home, you might as well just look up the laws of distant states on the internet rather than roaming about in a futile effort at sampling them, since you will not actually experience those laws by traveling there. And if your search was for a less hostile legal environment in which to attend college or spend a summer vacation or obtain a medical procedure, you might as well skip even the internet, since the theoretically less hostile laws of other jurisdictions will mean nothing to you so long as your state of residence remains unchanged.

Unless the right to travel interstate means nothing more than the right to change the scenery, opting for the open fields of Kansas or the mountains of Colorado or the beaches of Florida but all the while living under the legal regime of whichever state you call home, telling you that the laws governing your behavior will remain constant as you cross from one state into another and then another is tantamount to telling you that you may in truth be compelled to remain at home—although you may, of course, engage in a simulacrum of interstate travel, with an experience much like that of the visitor to a virtual reality arcade who is strapped into special equipment that provides the look and feel of alternative physical environments—from sea to shining sea—but that does not alter the political and legal environment one iota. And, of course, if home-state legislation, or congressional legislation, may saddle the home state's citizens with that state's abortion regulation regime, then it may saddle them with their home state's adoption and marriage regimes as well, and with piece after piece of the home state's legal fabric until the home state's citizens are all safely and tightly wrapped in the straitjacket of the home state's entire legal regime. There are no constitutional scissors that can cut this process short, no principled metric that can supply a stopping point. The principle underlying H.R. 476 is nothing less, therefore, than the principle that individuals may indeed be tightly bound by the legal regimes of their home states even as they traverse the

---

in *Stenberg v. Carhart* confirms and reinforces the constitutional analysis contained in that testimony. *See Stenberg v. Carhart,* 530 U.S. 914, 930, 930–938 (2000) (invalidating an abortion restriction that contained only an exception for the woman's life *identical to the one included in H.R. 476* because, like H.R. 476, it failed to include a constitutionally-required "exception for the preservation of the . . . health of the mother"); *cf. id* at 930, 945–946 (citations and internal quotation marks omitted) (independently invalidating that statute because it "impose[d] an undue burden on . . . the ability" of those among the approximately ten percent of women seeking abortions who do so during the second trimester of pregnancy "to choose a [particular method of obtaining an] abortion"). Although the purpose of this memorandum is to address questions of federalism, each of us adheres to his previously expressed views.

[2] There are significant constitutional limits, of course, even upon a state's authority to tax its residents on transactions undertaken, or income earned, in other states, but so long as there is no taxation without representation (as there is not if the resident's eligibility to vote remains intact notwithstanding temporary absence from the state) and so long as the subject of the tax is not such as to incur a danger of multiple taxation, the absent resident's continuing eligibility for whatever benefits and services the state constitutionally extends to all its residents and only to its residents imposes a potential burden on state resources for which at least a minimal tax may in some circumstances be warranted.

nation by traveling to other states with very different regimes of law. It follows, therefore, that—unless the right to engage in interstate travel that is so central to our federal system is indeed only a night to change the surrounding scenery—H.R. 476 rests on a principle that obliterates that right completely.

It is irrelevant to the federalism analysis that the proposed federal statute does not literally prohibit the minor herself from obtaining an out-of-state abortion without complying with the parental consent or notification laws of her home state, criminalizing instead only the conduct of *assisting* such a young woman by transporting her across state lines. The manifest and indeed avowed purpose of the statute is to prevent the pregnant minor from crossing state lines to obtain an abortion that is lawful in her state of destination whenever it would have violated her home state's law to obtain an abortion there because the pregnant woman has not fully complied with her home state's requirements for parental consent or notification. The means used to achieve this end do not alter the constitutional calculus. Prohibiting assistance in crossing state lines in the manner of this proposed statute suffers the same infirmity with respect to our federal structure as would a direct ban on traveling across state lines to obtain an abortion that complies with all the laws of the state where it is performed without first complying also with the laws that would apply to obtaining an abortion in one's home state.

The federalism principle we have described operates routinely in our national life. Indeed, it is so commonplace it is taken for granted. Thus, for example, neither Virginia nor Congress could prohibit residents of Virginia, where casino gambling is illegal, from traveling interstate to gamble in a casino in Nevada. (Indeed, the economy of Nevada essentially depends upon this aspect of federalism for its continued vitality.) People who like to hunt cannot be prohibited from traveling to states where hunting is legal in order to avail themselves of those pro-hunting laws just because such hunting may be illegal in their home state. And citizens of every state must be free, for example, to read and watch material, even constitutionally unprotected material, in New York City the distribution of which might be unlawful in their own states, but which New York has chosen not to forbid. To call interstate travel for such purposes an "evasion" or "circumvention" of one's home-state laws—as H.R. 476 purports to do, see H.R. 476, § 2(a) (heading of the proposed 18 U.S.C. § 2431) ("Transportation of minors in circumvention of certain laws relating to abortion")—is to misunderstand the basic premise of federalism: one is entitled to avoid those laws by traveling interstate. Doing so amounts to neither evasion nor circumvention.

Put simply, you may not be compelled to abandon your citizenship in your home state as a condition of voting with your feet for the legal and political regime of whatever other state you wish to visit. The fact that you intend to return home cannot undercut your right, while in another state, to be governed by *its* rules of primary conduct rather than by the rules of primary conduct of the state from which you came and to which you will return. When in Rome, perhaps you will not do as the Romans do, but you are entitled—if this figurative Rome is within the United States—to be governed as the Romans are. If something is lawful for one of them to do, it must be lawful for you as well. The fact that each state is free, notwithstanding Article IV, to make certain *benefits* available on a preferential basis to its own citizens does not mean that a state's *criminal laws* may be replaced with stricter ones for the visiting citizen from another state, whether by that state's own choice or by virtue of the law of the visitor's state or by virtue of a congressional enactment. To be sure, a state need not treat the travels of its citizens to other states as suddenly lifting otherwise applicable restrictions when they return home. Thus, a state that bans the possession of gambling equipment, of specific kinds of weapons, of liquor, or of obscene material may certainly enforce such bans against anyone who would bring the contraband items into the jurisdiction, including its own residents returning from a gambling state, a hunting state, a drinking state, or a state that chooses not to outlaw obscenity. But that is a far cry from projecting one state's restrictive gambling, firearms, alcohol, or obscenity laws into another state whenever citizens of the first state venture there.

Thus states cannot prohibit the lawful out-of-state conduct of their citizens, nor may they impose criminal-law-backed burdens—as H.R. 476 would do—upon those lawfully engaged in business or other activity within their sister states. Indeed, this principle is so fundamental that it runs through the Supreme Court's jurisprudence in cases that are nominally about provisions and rights as diverse as the Commerce Clause, the Due Process Clause, and the right to travel, which is itself derived from

several distinct constitutional sources.[3] See, e.g., *Healy v. Beer Institute,* 491 U.S. 324, 336 n. 13 (1989) (Commerce Clause decision quoting *Edgar v. Mite Corp.,* 457 U.S. 624, 643 (1982) (plurality opinion), which in turn quoted the Court's Due Process decision in *Shaffer v. Heitner,* 433 U.S. 186, 197 (1977)) ("The limits on a State's power to enact substantive legislation are similar to the limits on the jurisdiction of state courts. In either case, "any attempt 'directly' to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limit of the State's power.'").

The Supreme Court recently reaffirmed this fundamental principle in its landmark right to travel decision, *Saenz v. Roe,* 526 U.S. 489 (1999). There the Court held that, even with congressional approval, the State of California was powerless to carve out an exception to its otherwise-applicable legal regime by providing recently-arrived residents with only the welfare benefits that they would have been entitled to receive under the laws of their former states of residence. This attempt to saddle these interstate travelers with the laws of their former home states—even if only the welfare laws, laws that would operate far less directly and less powerfully than would a special criminal-law restriction on primary conduct—was held to impose an unconstitutional penalty upon their right to interstate travel, which, the Court held, is guaranteed them by the Privileges or Immunities Clause of the Fourteenth Amendment. See *Saenz*, 526 U.S. at 503–504.

Although *Saenz* concerned new residents of a state, the decision also reaffirmed that the constitutional right to travel under the Privileges and Immunities Clause of Article IV, Section 2, provides a similar type of protection to a non-resident who enters a state not to settle, but with an intent eventually to return to her home state:

> [B]y virtue of a person's state citizenship, a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the "Privileges and Immunities of Citizens in the several States" that he visits. This provision removes "from the citizens of each State the disabilities of alienage in the other States." *Paul v. Virginia,* 8 Wall.168,180(1869). It provides important protections for nonresidents who enter a State whether to obtain employment, *Hicklin v. Orbeck,* 437 U.S. 518 (1978), to procure medical services, *Doe v. Bolton,* 410 U.S. 179, 200 (1973), or even to engage in commercial shrimp fishing, *Toomer v. Witsell,* 334 U.S. 385 (1948).

Saenz, 526 U.S. at 501–502 (footnotes and parenthetical omitted).

Indeed, *Doe v. Bolton,* 410 U.S. 179 (1973), which was decided over a quarter century ago, and to which the Saenz court referred, specifically held that, under Article IV of the Constitution, a state may not restrict the ability of visiting non-residents to obtain abortions on the same terms and conditions under which they are made available by law to state residents. "[T]he Privileges and Immunities Clause, Const. Art. IV, § 2, protects persons . . . who enter [a state] seeking the medical services that are available there." Id. at 200.

Thus, in terms of protection from being hobbled by the laws of one's home state wherever one travels, nothing turns on whether the interstate traveler intends to remain permanently in her destination state, or to return to her state of origin. Combined with the Court's holding that, like the states, Congress may not contravene the principles of federalism that are sometimes described under the "right to travel" label, Saenz reinforces the conclusion, if it were not clear before, that even if enacted by Congress, a law like H.R. 476 that attempts by reference to a state's own laws to control that state's resident's out-of-state conduct on pains of criminal punishment, whether of that resident or of whoever might assist her to travel interstate, would violate the federal Constitution. See also *Shapiro v. Thompson,* 394 U.S. 618, 629–630 (1969) (invalidating an Act of Congress mandating a durational residency requirement for recently-arrived District of Columbia residents seeking to obtain welfare assistance).

In 1999, this Committee heard testimony from Professor Lino Graglia of the University of Texas School of Law. An opponent of constitutional abortion rights, he candidly conceded that the proposed law would "make it . . . more dangerous for young women to exercise their constitutional right to obtain a safe and legal abortion." Testimony of Lino A. Graglia on H.R. 1218 before the Constitution Subcommittee of the Committee on the Judiciary, U.S. House of Representatives, May 27, 1999 at 1. He also concluded, however, that "the Act furthers the principle of federalism to the extent that it reinforces or makes effective the very small amount of policymaking authority on the abortion issue that the Supreme Court, an arm of

[3] *See Saenz v. Roe*, 526 U.S. 489, 500–504 (1999) (describing the various components of the right to travel and their constitutional derivation).

the national government, has permitted to remain with the States." Id. at 2. He testified that he supported the bill because he would support "anything Congress can do to move control of the issue back into the hands of the States." Id. at 1.

Of course, as the description of H.R. 476 we have given above demonstrates, that proposed statute would do nothing to move "back" into the hands of the states any of the control over abortion that was precluded by *Roe v. Wade,* 410 U.S. 113 (1973), and its progeny. The several states already have their own distinctive regimes for regulating the provision of abortion services to pregnant minors, regimes that are permitted under the Supreme Court's abortion rulings. That, indeed, is the very premise of this proposed law. But, rather than respecting federalism by permitting each state's law to operate within its own sphere, the proposed federal statute would contravene that essential principle of federalism by saddling the abortion-seeking young woman with the restrictive law of her home state wherever she may travel within the United States unless she travels unaided. Indeed, it would add insult to this federalism injury by imposing its regime *regardless of the wishes of her home state,* whose legislature might recoil from the prospect of transforming its parental notification laws, enacted ostensibly to encourage the provision of loving support and advice to distraught young women, into an obstacle to the most desperate of these young women, compelling them in the moment of their greatest despair to choose between, on the one hand, telling someone close to them of their situation and perhaps exposing this loved one to criminal punishment, and, on the other, going to the back alleys or on an unaccompanied trip to another, possibly distant state. This federal statute would therefore violate rather than reinforce basic constitutional principles of federalism.[4]

The fact that the proposed law applies only to those assisting the interstate travel of minors seeking abortions may make the federalism-based constitutional infirmity somewhat less obvious—while at the same time rendering the law more vulnerable to constitutional challenge because of the danger in which it will place the class of frightened, perhaps desperate young women least able totravelsafelyontheirown. The importance of protecting the relationship between parents and their minor children cannot be gainsaid. But in the end, the fact that the proposed statute involves the interstate travel only of minors does not alter our conclusion.

No less than the right to end a pregnancy, the constitutional right to travel interstate and to take advantage of the laws of other states exists even for those citizens who are not yet eighteen. "Constitutional 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." *Planned Parenthood of Central Missouri v. Danforth,* 428 U.S. 52, 74 (1976). Nonetheless, the Court has held that, in furtherance of the minors' best interests, government may in some circumstances have more leeway to regulate where minors are concerned. Thus, whereas a law that sought, for example, to burden adult women with their home state's constitutionally acceptable waiting periods for abortion (or with their home state's constitutionally permissible medical regulations that may make abortion more costly) even when they traveled out of state to avoid those waiting periods (or other regulations) would *obviously* be unconstitutional, it might be argued that a law like the proposed one, which seeks to force a young woman to comply with her home state's parental consent laws regardless of her circumstances, is, because of its focus on minors, somehow saved from constitutional invalidity.

It is not, for at least two reasons. First, the importance of the constitutional right in question for the pregnant minor too desperate even to seek judicial approval for abortion in her home state—either because of its futility there,[5] or because of her

---

[4] Although the failure of H.R. 476 to exempt states that would not opt to give their parental involvement laws extraterritorial effect certainly aggravates its violation of federalism, this proposed statute would, as we have shown, violate federalism principles even if it permitted states to opt out. Just as Congress may not license the state of destination of an interstate traveler to hobble the new resident, even temporarily, with the laws of her former state of residence (even with respect to mere benefits that the state of destination is free to limit to its own residents), see *Saenz v. Roe,* 526 U.S. at 507–508, so Congress may not license an interstate traveler's home state, during the time of that traveler's sojourn in other states, to hobble her with its laws.

[5] In this regard, the Subcommittee on the Constitution has previously heard the testimony of Billie Lominick, a 63-year-old grandmother who helped a pregnant minor from a physically and sexually abusive household cross state lines to obtain an abortion after she was unable to find any judge in her home state of South Carolina who would hear her judicial bypass petition. There is also evidence that the rate at which some state judges grant these petitions is disproportionately low, something that appears to reflect their own personal views about abortion rather than the legal standards they are supposed to apply: For example, in 1992 the director

Continued

terror at a judicial proceeding held to discuss her pregnancy and personal circumstances [6]—means that government's power to burden that choice is severely restricted. As Justice Powell wrote over two decades ago:

> The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. . . . A pregnant adolescent . . . cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Bellotti v. Baird (Bellotti II), 443 U.S. 622, 642 (1979) (plurality opinion) (citations omitted).

Second, the fact that the penalties on travel out of state by minors who do not first seek parental consent or judicial bypass are triggered only by intent to obtain a lawful abortion and only if the minor's home state has more stringent "minor protection" provisions in the form of parental involvement rules than the state of destination, renders any protection-of-minors exception to the basic rule of federalism unavailable.

To begin with, the proposed law, unlike one that evenhandedly defers to each state's determination of what will best protect the emotional health and physical safety of its pregnant minors who seek to terminate their pregnancies, simply defers to states with *strict* parental control laws and subordinates the interests of states that have decided that legally-mandated consent or notification is not a sound means of protecting pregnant minors. The law does not purport to impose a uniform nationwide requirement that all pregnant young women should be subject to the abortion laws of their home states and only those abortion laws wherever they may travel. Thus, under H.R. 476, a pregnant minor whose parents believe that it would be both destructive and profoundly disrespectful to their mature, sexually active daughter to require her by law to obtain their consent before having an abortion, and who live in a state whose laws reflect that view, would, despite the judgment expressed in the laws of her home state, *still* be required to obtain parental consent should she seek an abortion in a neighboring state with a stricter parental involvement law—something she might do, for example, because that is where the nearest abortion provider is located. This substantively slanted way in which H.R. 476 would operate fatally undermines any argument that might otherwise be available that principles of federalism must give way because this law seeks to ensure that the health and safety of pregnant minors are protected in the way their home states have decided would be best.[7]

---

of a woman's clinic in Indianapolis reported that in six years she had never known of any minor successfully obtaining a judicial bypass in that city. See Lewin, Parental Consent to Abortion: How Enforcement Can Vary, *The New York Times,* May 28,1992 at Al. In Ohio, one 17° year old had a petition denied by a judge who concluded that she had "not had enough hard knocks in her life." *Id.*

[6] For a description of the emotional trauma that may be involved in judicial bypass proceedings, see *Hodgson v. Minnesota,* 497 U.S. 417, 441–442 and n. 29 (1990). Although bypass procedures are required by the Constitution in order to *prevent* imposition by parental consent or notification laws of a substantial obstacle in the path of a pregnant minor who wishes to have an abortion, in at least some states "[t]he court [bypass] experience [itself] produced fear, tension, anxiety, and shame among minors, causing some who were mature, and some whose best interests would have been served by an abortion, to 'forego the bypass option and either notify their parents or carry to term.'" *Hodgson,* 497 U.S. at 441–442 (quoting the unchallenged finding of the district court). Indeed, rather than undergo the judicial bypass process, some girls have apparently been driven to obtain unlawful abortions, which has led to death of at least one 17 year old, Becky Bell. See Lewin, supra note 5.

[7] Nor does this law even purport to be justified as a reflection of Congress's own vision of what would best protect the pregnant minor. This law does not impose a federal parental involvement standard either nationwide or, assuming it would be constitutionally permissible, upon all pregnant minors engaged in interstate travel for purposes of having an abortion. For Congress to decide to apply its parental involvement regime only when minors travel from more restrictive to less restrictive states, and for it to do so without itself determining what level of parental involvement is appropriate—as is the case with H.R. 476—is incompatible with either a protection-of-minors purpose or a federalism-promoting purpose.

In addition, the proposed law, again unlike one protecting parental involvement generally, selectively targets one form of control: control with respect to the constitutionally protected procedure of terminating a pregnancy before viability. The proposed law does not do a thing for parental control if the minor is being assisted into another state (or, where the relevant regulation is local, into another city or county) for the purpose of obtaining a tattoo, or endoscopic surgery to correct a foot problem, or laser surgery for an eye defect. The law is activated only when the medical procedure being obtained in another state is the termination of a pregnancy. It is as though Congress proposed to assist parents in controlling their children when, and only when, those children wish to buy constitutionally protected but sexually explicit books about methods of birth control and abortion in states where the sale of such books to these minors is entirely lawful.

The basic constitutional principle that such laws overlook is that the greater power does not necessarily include the lesser. Thus, for example, even though so-called "fighting words" may be banned altogether despite the First Amendment, it is unconstitutional, the Supreme Court held in 1992, for government selectively to ban those fighting words that are racist or anti-semitic in character. See *R.A. V. v. City of St. Paul,* 505 U.S. 377, 391–392 (1992). To take another example, Congress could not make it a crime to assist a minor who has had an abortion in the past to cross a state line in order to obtain a lawful form of cosmetic surgery elsewhere if that minor has not complied with her state's valid parental involvement law for such surgery. Even though Congress might enact a broader law that would cover all the minors in the class described, it could not enact a law aimed only at those who have had abortions. Such a law would impermissibly single out abortion for special burdens. The proposed law does so as well. Thus, even if a law that were properly drawn to protect minors could constitutionally displace one of the basic rules of federalism, the proposed statute can not.[8]

Lastly, in oral testimony given in 1999 before the Subcommittee on the Constitution, Professor John Harrison of the University of Virginia, while conceding that ordinarily a law such as this, which purported to impose upon an individual her home state's laws in order to prevent her from engaging in lawful conduct in one of the other states, would be constitutionally "doubtful," argued that the constitutionality of this law is resolved by the fact that it relates to "domestic relations," a sphere in which, according to Professor Harrison, "the state with the primary jurisdiction over the rights and responsibilities of parties to the domestic relations is the state of residence . . . and not the state where the conduct" at issue occurs. See transcript of the Hearing of the Constitution Subcommittee of the House Judiciary Committee on the Child Custody Protection Act, May 27,1999.

This "domestic relations exception" to principles of federalism described by Professor Harrison, however, does not exist, at least not in any context relevant to the constitutionality of H.R. 476. To be sure, acting pursuant to Article IV, § 1, Congress has prescribed special state obligations to accord full faith and credit to judgments in the domestic relations context—for example, to child custody determinations and child support orders. 28 U.S.C. §§ 1738A, 1738B. These provisions also establish choice of law principles governing modification of domestic relations orders. In addition, in a controversial provision whose constitutionality is open to question, Congress has said that states are not required to accord full faith and credit to same-sex marriages. Id. at § 1738C.

But the special measures adopted by Congress in the domestic relations context can provide no justification for H.R. 476. There is a world of difference between provisions like §§ 1738A and 1738B, which prescribe the full faith and credit to which *state judicial decrees and judgments* are entitled, and proposed H.R. 476, which in effect gives state statutes extraterritorial operation—by purporting to impose criminal liability for interstate travel undertaken to engage in conduct lawful within the territorial jurisdiction of the state in which the conduct is to occur, based solely upon the laws in effect in the state of residence of the individual who seeks to travel to a state where she can engage in that conduct lawfully.

The Supreme Court has always differentiated "the credit owed to laws (legislative measures and common law) and to judgments." *Baker v. General Motors Corp.,* 522 U.S. 222, 232 (1998). For example, while a state may not decline on public policy grounds to give full faith and credit to a judicial judgment from another state, *see, e.g., Fauntleroy v. Lum,* 210 U.S. 230, 237 (1908), a forum state has always been

[8] We have not raised any objection that H.R. 476 would exceed Congress's affirmative Commerce Clause authority under *Lopez v. United States,* 514 U.S. 549 (1995). We do not believe such an objection would be well-taken. Of course, to the extent an affirmatively authorized federal requirement of parental involvement in interstate surgical trips would unduly burden the abortion rights of minors, it would be unconstitutional.

free to consider its own public policies in declining to follow the legislative enactments of other states. *See Nevada v. Hall,* 440 U.S. 410, 421–24 (1979). In short, under the Full Faith and Credit Clause, a state has never been compelled "to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins. Co. v. Industrial Accident Comn'n,* 306 U.S. 493, 501 (1939). In fact, the Full Faith and Credit Clause was meant to prevent "parochial entrenchment on the interests of other States." *Thomas v. Washington Gas Light Co.,* 448 U.S. 261, 272 (1980) (plurality opinion). A state is under no obligation to enforce another state's statute with which it disagrees.

But H.R. 476 would run afoul of that principle. It imposes the restrictive laws of a woman's home state wherever she travels, in derogation of the usual rules regarding choice of law and full faith and credit.

Mr. NADLER. I would like to read a couple of sentences from that memo and ask Professor Harrison to comment on them.

The federalism principle we have described operates routinely in our national life and is so commonplace that it is taken for granted. For example, neither Virginia nor Congress could prohibit residents of Virginia, where casino gambling is illegal, from traveling interstate to gamble in a casino in Nevada. People who like to hunt cannot be prohibited from travelling to States where hunting is legal in order to avail themselves of those pro-hunting laws just because such hunting may be illegal in their own States.

In the recent case of *Saenz* v. *Roe*, 2 years ago, the Supreme Court held that, even with congressional approval, the State of California was powerless to carve out an exception to its otherwise-applicable legal regime by providing recently arrived residents with only the welfare benefits they would have been entitled to receive under the laws of their former States. This attempt to saddle these interstate travellers with the laws of their former home States was held to impose an unconstitutional penalty upon their right to interstate travel, which the Court has held is guaranteed them by the Privileges or Immunities Clause of the 14th amendment.

Quote, by virtue of a State person's private citizenship, a citizen of one State who travels to other States, intending to return home at the end of the journey, is entitled to enjoy the privileges and immunities of States of citizens in the several States that he visits. This provision removes from the citizens of each State the disabilities of alienage in other States. These are quotes from that decision.

It provides important protections for nonresidents who enter a State whether to obtain employment, to procure medical services or even to engage in commercial shrimp fishing. That is the end of that quote.

Indeed, finally, the case of *Doe* v. *Bolton*, Supreme Court, specifically held that, under article IV of the Constitution, a State may not restrict nonresidents to obtain abortions on the same terms and conditions under which they are made available by law to State residents; protects persons seeking medical services available there.

And it is obvious that if it is legal for them to do that, it is just as legal for anyone to accompany them to help them to do that.

Can you comment on how this bill could possibly be constitutional?

Mr. HARRISON. Quite briefly, the answer with respect to the right to travel is that we are dealing with minors whose general control over their own——

Mr. NADLER. Excuse me. The Court has held—and I will get to the quote in a moment if you want—that a minor's constitutional rights are exactly the same, especially with respect to the right to travel, as a nonminor.

Mr. HARRISON. They have said that minors do not lack all constitutional rights. They have not said as a general matter, I don't believe, that minors have every right that an adult has. That, for example, a 6-year-old has a right to decide where to reside. I think that the custodial authority of a parent generally extends to deciding where to reside.

Mr. NADLER. Do you think we can pass a law that says that a minor cannot cross the State line against the wish of a parent?

Mr. HARRISON. Quite possibly.

Mr. NADLER. Could you criminalize that?

Mr. HARRISON. For example, could Congress make it a crime for someone to transport a minor across the State line to consume alcohol?

Mr. NADLER. If it were legal——

Mr. HARRISON. Yes. To go to a place——

Mr. NADLER. That is exactly—excuse me. There is no point in asking that question. That is exactly the same bill as this one. It is exactly the same question. And I would suggest the answer is no.

Mr. HARRISON. I think it is yes precisely because of parental authority with respect to minors.

Mr. CHABOT. The gentleman's time has expired. The gentleman from Indiana is recognized for 5 minutes.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

I find it interesting that those who espouse the idea of the separation of church and State would have an Episcopal priest come and testify before us on this issue. But that notwithstanding and given the fact that in your testimony, Reverend Ragsdale, you say it is primarily as a parish priest that I am here today, I will ask you some questions. Could you quote me book, chapter and verse in the Bible that supports your stance?

Rev. RAGSDALE. No, nor could you quote one that opposes my stance. The Bible does not consider American constitutional law or abortion. And certainly it doesn't speak about parental consent and notification, unless you would like to consider Jesus in the temple at 12 years old without his parents' consent talking with the rabbis and worrying them half to death. However, it doesn't say whether that should be legislated.

Mr. HOSTETTLER. Let me respond to you. You don't care either, because in your own testimony it says, "and if helping young woman like her should be made illegal I will, nonetheless, continue to do it." I am not talking about constitutional law. I am talking about the higher authority that I believe that you are invoking by saying you will disregard Federal law and do whatever it is you feel led to do.

Rev. RAGSDALE. It is not a matter of what I feel led to do. It is what I have vowed. I vowed obedience to my church, and I have

vowed obedience to God. Consequently, if this is criminalized, I will have no alternative but to be a criminal——

Mr. HOSTETTLER. Let me tell you what David says about it.

Rev. RAGSDALE. David whom?

Mr. HOSTETTLER. He was King of Israel at one time.

I will praise thee—in Psalm 139:14, I will praise thee for I am fearfully and wonderfully made. Marvelous are thy works and that my soul knowest right well. My substance was not hid from thee when I was made in secret and curiously wrought in the lowest parts of the earth. Thine eyes did see my substance yet being unperfect and in thine book, all my members were written, which in continuance were fashioned when as yet, there was none of them.

And I will get to another discussion.

Rev. RAGSDALE. I understand that you are using this to suggest that abortion should not be legal, which I don't think is the question at hand here. But I would also say that Psalms doesn't discuss abortion any more than we should assume from that verse that babies are formed in the bowels of the earth and magically transported into their mother's wombs, which is what a literal interpretation of that Psalm would have us believe. It is not about gestation or abortion. It is about the magnificence of God.

Mr. HOSTETTLER. Jeremiah 1:4–5. And the word of the Lord came unto me saying, before I formed thee in the belly, I knew thee. And before thou camest forth out of the womb, I sanctify thee and I ordain thee a prophet into the nations.

And then——

Rev. RAGSDALE. Congressman, I am real familiar with the text. You could——

Mr. HOSTETTLER. Well, you didn't know who David was.

Rev. RAGSDALE. There are a lot of them. I didn't know which one you referred to. You didn't say the Bible. Perhaps you could go directly to your question.

Mr. HOSTETTLER. Let me just say one more, and I will get back to the point that you made in your testimony.

Luke 1:39–42, where it says, and Mary rose in those days and went to the hill country with haste into a City of Judah and entered into the house of Zachariah and saluted Elizabeth. And it came to pass that when Elizabeth heard the salutation of Mary, the babe leaped in her womb and Elizabeth was filled with the Holy Ghost. And she spoke out with a loud voice and said, blessed art thou among women and blessed is the fruit of thy womb.

Now, in your testimony, you speak about the will of God and that not everything happens by the will of God, and I talked to her about the limits of personal responsibility, about how not everything that happens to her is her own fault or God's will and about how much God loves her.

Now was it in God's will, in your opinion, after hearing those verses, for her to have an abortion? Because that is what we are talking about. Because you are exactly right in your point. Was it in your opinion God's will for her to have an abortion or was it David—was there a David, former King of Israel or a Jeremiah or maybe even a Jesus Christ that you were in the process of assisting a young woman into destroying? Did you know for a fact that,

for example, it was God's will and that God had not wrought that child within that young woman's womb to be someone special, to be someone extra special in that case?

Rev. RAGSDALE. Congressman, you are arguing against abortion, which is a different issue.

Mr. HOSTETTLER. Hey, please believe me. I am a Congressman. I know exactly what the issue is we are talking about. We are talking about transporting people not to have a drink but to have an abortion.

You say you are here as a parish priest. That is fine. I appreciate that. I am asking you, as a priest—and you are talking about God's will in your testimony. I didn't bring up God's will in the testimony. You brought it up. So I am simply asking you, did you feel it was God's will——

Rev. RAGSDALE. As a priest and a professional theologian who has spent years and years studying those texts in the Hebrew and the Greek and the history of scholarship of them, I am aware that we can't translate them literally and that none of us are capable ever of knowing in the moment with certainty what God's will is. What we do is struggle with faith and trust God to be with us in the struggle, make the best decisions we can and trust that, right or wrong, God will be with us through them.

Mr. CHABOT. The gentleman's time has expired.

Mr. HOSTETTLER. Mr. Chairman, I want to ask one more question.

Mr. CHABOT. Unanimous consent. The gentleman has 1 minute.

Mr. HOSTETTLER. Did you accommodate the young woman's reporting of the rape to the authorities?

Reverend RAGSDALE. It was a date rape.

Mr. HOSTETTLER. It was rape. I mean, my understanding is——

Reverend RAGSDALE. The precise description was a date rape that would have been very, very difficult to prosecute and something she was not prepared to do.

Mr. HOSTETTLER. So I guess the question is no, you did not accommodate her in reporting rape?

Reverend RAGSDALE. She was in a sexual act with another minor who did not beat her up and to whom she did not kick, scream, or yell no. She just kept telling him she was not interested. That traditionally is not a case that would stand up in to prosecution. Clearly, she was forced against her will, but it wouldn't stand up to prosecution. And, no, I didn't decide to put her on trial make her a test case when she had enough going on in her life.

Mr. CHABOT. The gentleman's time has expired. We appreciate that last point the gentleman made.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Professor Harrison, let me ask a couple of questions. As I understand the bill, if the minor drives herself, transports herself, nobody else in the car, to get an abortion across State lines, there is, in fact, no violation of this Act, is that correct?

Mr. HARRISON. I believe that there is—you have in mind subsection B-2, is that——

Mr. SCOTT. No. The whole thing. I mean, the whole thing is about somebody transporting. It says except whoever knowingly transports an individual who has not attained the age of 18. If the person under 18 transports herself, there is no violation of the bill, is that right?

Mr. HARRISON. I confess, I hadn't thought about that, Mr. Scott. Because the question would be if you transport yourself, does that——

Mr. SCOTT. Then you go down a little later that there is an exception, the person getting the abortion can't be prosecuted.

Mr. HARRISON. That is why I went to B-2. That was the point.

Mr. SCOTT. So that if the child goes alone, there is no violation of the act. You can skip past all the parental content laws you want so long as you go alone. Is that right?

Mr. HARRISON. If that is what subsection B-2 means, that is right.

Mr. SCOTT. I think that is what the bill means. I was a little confused with your exchange with the gentleman from New York. Could we pass a bill that prohibits people traveling, transporting people from Virginia where casino gambling is not legal to Atlantic City? Could Congress pass such a law and withstand constitutional challenge?

Mr. HARRISON. Quite possibly not. I don't want to be too strong about that, Mr. Scott. I doubt it. But I do want to make——

Mr. SCOTT. Without regard to the policy.

Mr. HARRISON. I know. I am not talking about policy with respect to anything here. I do want to say that the Supreme Court's cases on the right to travel are few. They are generally about actions by the States, for example *Saenz* v. *Roe* is about the States, *Crandall* v. *Nevada* is about the State. So limitations on Congress's power are much less understood. I think—I am not disagreeing with you, I am just saying——

Mr. SCOTT. How is this bill different from that question?

Mr. HARRISON. Again, the crucial point with respect to this bill is that it involves minors who are on—the whole point——

Mr. SCOTT. Do we pass a law prohibiting minors leaving Virginia to go gamble in Atlantic City?

Mr. HARRISON. Without the consent of their parents, quite possibly, yes. One of the things of the existence of parental notification and consent requirements and their constitutionality with respect to abortion demonstrates is that the legal treatment of minors, the legal treatment of people who are——

Mr. SCOTT. So if a bus company had one of these tours to Atlantic City from Virginia, it would be possible to prohibit such an act, you would be able to prohibit that.

Let me ask another question. There is another question I am trying to get in. If a child arrives at a doctor's office in the State without the parental content laws, having left a State with the parental consent laws, if the doctor knows she got there by herself, there would be no violation, he could proceed with the abortion without any jeopardy; is that right?

Mr. HARRISON. Again, assuming what we are assuming about subsection B-2, yeah.

Mr. SCOTT. Is a cab driver in jeopardy by giving someone a taxicab ride from Virginia to an abortion clinic in Washington D.C.?

Mr. HARRISON. I certainly don't think so. I think it would be very unusual for the cab driver or the bus driver to have the intent that the minor receive an abortion. The cab driver or bus driver's intent is just to get the person where they are going.

Mr. NADLER. Would the gentleman yield for a moment? What if the minor, in the course of the cab ride, told the cab driver why she was going to Washington. Would he then be liable under this statute?

Mr. HARRISON. I don't think so. Because again, I wouldn't describe it as being part of the cab driver's intent and one——

Mr. NADLER. It is now part of his intent since he now knows why she is going.

Mr. HARRISON. No. Knowledge isn't intent. It doesn't matter to the cab driver. Is the cab driver's reason for taking her across the border to get the—no, the cab drivers reason is to get the fare. The cab driver doesn't care whether she is trying to get an abortion or not.

Mr. SCOTT. After the parents find out that the cab driver picked her up in Virginia and took her directly to an abortion clinic in Washington D.C., and found out that, in the course of the trip, found out exactly why she was going, can the parents sue the cab driver?

Mr. HARRISON. I don't think so.

Mr. SCOTT. Why not?

Mr. HARRISON. It is the minor's intent to get the abortion, it is not the cab driver's.

Mr. SCOTT. How is that different from the next door neighbor taking the child to the abortion clinic?

Mr. HARRISON. Because the reason the next door neighbor did it, or hypothetically, the reason the next door neighbor does it is in order to get the abortion. That matters to the next door neighbor. It is a cause of the next door neighbor's action, it is not a cause of the cab driver's action.

Mr. CHABOT. The gentleman's time has expired. If he needs an additional minute.

Mr. SCOTT. I will yield to the gentleman from New York.

Mr. CHABOT. The gentleman from New York is recognized for 1 minute.

Mr. NADLER. Let's assume the fact that the next door neighbor is motivated by the fact the minor paid her to accompany her across the State line for the purpose of getting the abortion. She is now just as not liable as the cab driver? Her motive now is to get paid.

Mr. HARRISON. If that is—yeah, I don't think you would say under those circumstances that the person who did the transporting had the intent that the minor——

Mr. NADLER. In order to get around this statute, if it is ever passed, all you have to do is provide that the minors are told by the abortion clinics make sure you give her a dollar to pay her to accompany you across the State line. That is okay.

Mr. HARRISON. I don't think so, because it is possible to have more than one intent. We are talking about the situation—the cab driver, as far as——

Mr. NADLER. Let's assume it is $50. Not a nominal amount. In other words, this bill is entirely ineffectual as long as the person accompanying the minor across the State line is motivated by the fact that she is being paid to do. So we are going to set up a commercial operation to do that and that would be fine under this bill.

Mr. HARRISON. Again, I don't think so.

Mr. NADLER. Why not?

Mr. HARRISON. Because the cases I have been, like the cab driver and the bus driver, are those in which the only motivation for the cab driver or the bus driver is to get the fare.

Mr. NADLER. Let's assume the only motivation of the people—we are now saying we are going to have people, we are going to pay somebody—we are going to go to local unemployment line and offer people $100 a piece to accompany minors across State lines to abortion clinics. Under this, if the cab driver is not liable under the bill, how could that person be liable?

Mr. HARRISON. Probably not if that individual doesn't have the intent that the abortion take place, if it doesn't matter to that individual.

Mr. NADLER. Could you make this bill entirely ineffectual simply by paying people, by paying people to run a courier service rather than having trusted friends do it?

Mr. CHABOT. The gentleman's time has expired. If you want to answer the question. We have gotten into so many hypotheticals here.

Mr. NADLER. Constitutionally, you would have to be able to do that.

Mr. HARRISON. We have haven't been talking about that. We have been talking about what the coverage of the bill is.

Mr. NADLER. No. No. No. What I am saying is, as you said, the cab driver, and the bus driver would not be liable and Constitutionally, you probably couldn't make them liable. Forget the Constitutional issue.

Mr. HARRISON. I didn't say that.

Mr. NADLER. But they are not liable under the terms of this bill because they have no intent. They don't care why she is going, they are just being paid a fare. So if that is the case, then you could evade the bill. Someone who wanted to could evade the bill simply by setting up—soliciting contributions, we are going to get $50,000 for the purpose of paying people who will be motivated solely by the cash to accompany minors who want such assistance to go to abortion clinics in States which permit them without parental consent from States which don't. Then this bill would be evaded, correct?

Mr. HARRISON. I don't want to unduly occupy the Subcommittee's time, but it seems to me in that situation, the person who raised the $50,000 would, in a meaningful sense, be doing the transporting, paying for it and they would have the intent. But again, we are into deep hypothetical.

Mr. CHABOT. The gentleman's time has expired. The Chairman would just note that every law that Congress has ever passed is

subject to hypotheticals that could be thrown up in and to make that law look like it is unnecessary to be passed. That is why we have courts that ultimately determine these situations when they come up.

Mr. NADLER. Mr. Chairman, since the Chairman commented, I would like to comment. Certainly people think of ways to evade laws. Nonetheless one of the things we in Congress do, or ought to do, is consider whether there are easy ways to evade laws that we are considering passing, and if there are, either you do something about that or maybe you think that your law is ineffective and you shouldn't pass it.

Mr. CHABOT. I want to thank the witnesses for their testimony here this morning. It was mentioned that we have had this hearing before and some of these witnesses have already testified. I would just personally say that I thought they all did a very good job. This was a very informative hearing, I think, for all the Members here. Those Members that were not here hopefully will read the testimony so that they can get up to speed on this. I want to thank all the witnesses for coming at this time.

Mr. NADLER. Mr. Chairman, before we adjourn. Mr. Chairman I ask unanimous consent that all Members be permitted to submit additional testimony and other materials for the record.

Mr. CHABOT. Without objection.

Mr. NADLER. I would like to ask you a couple questions if I may. Could you give the minority some indication of the majority's intention with respect to the schedule in this legislation? Does the majority intend to have a Subcommittee markup and could you give us some indication of when this might be, and does the Chairman have any indication where the full Committee Chairman plans further action on this legislation? And if so, when that might be?

Mr. CHABOT. The Chairman will speak to the Chairman of the full Committee, Chairman Sensenbrenner, and provide that information as soon as it is available.

Mr. NADLER. What about a Subcommittee markup? Do we have any intention of that?

Mr. CHABOT. Same answer. We will look at that and talk to the Chairman and get back to you just as quickly as possible.

Mr. NADLER. Thank you.

Mr. CHABOT. We are adjourned. Thank you.

[Whereupon, at 11:13 a.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF BILL AND KAREN BELL

We appreciate the opportunity to address this committee concerning the legislation that is being considered in Congress, the "Teen Endangerment Act." This legislation would make it a federal crime to transport a minor across state lines for the purpose of accessing an abortion.

Because of our daughter Becky's death from an illegal abortion, we have traveled the country speaking about teen pregnancy, abortion and parental involvement laws. We feel we can speak to these issues and laws with some knowledge and authority.

September of this year marks the 12th anniversary of our Becky's death.

Do you remember when you were sixteen and fell in love for the first time? I remember when my daughter Becky was 16. She was our sunshine. She had the kindest heart and loved old people, animals and babies.

In 1988, our beautiful, vibrant, 17-year-old daughter Becky died suddenly, after a six-day illness. The pathologist who directed her autopsy concluded that the cause of her death was streptococcus pneumonia, brought about by an illegal abortion. Learning this, we finally understood our daughter's last words. In the hospital, she had taken off her oxygen mask and said, "Mom, Dad, I love you. Forgive me."

How could this have happened? Why would Becky have risked an illegal abortion? How could parents as close to their daughter as we had always been not have known that she was pregnant and desperate to deal with a situation that she believed she couldn't share with us?

We learned the sad answers to these questions in the weeks following our daughter's death. Becky had told her girlfriends that she believed we would be terribly hurt and disappointed in her if she told us about her pregnancy. Like a lot of young people, she was not comfortable sharing intimate details of her developing sexuality with her parents.

Becky discovered that our state has a parental consent law, which requires girls under the age of 18 to get their parent's permission before they can get an abortion. A Planned Parenthood counselor told her that she could apply for a judicial bypass as an alternative to parental consent. The counselor remembered Becky's response: "If I can't talk to my parents, how can I tell a judge who doesn't even know me?" We now know that in over ten years on the bench, the judge in our district has never issued a waiver to a teen for an abortion.

Desperate to avoid telling us about her pregnancy, and therefore unable to go to a reputable medical establishment, where abortions are performed compassionately and safely every day, Becky found someone operating outside the law who would help her. Becky had a back alley abortion. Indiana's parental involvement law ultimately led our daughter to her death.

Studies have established that the majority of teenagers (60–70%) do talk to their parents when they become pregnant. Of those who don't, about one-third are at risk of physical or emotional abuse. The rest, like Becky, believe for myriad reasons that this is a problem they must face without their parents. Yes, we want very much for our daughters to involve us, but once they make the decision, this law being considered will not force these young women to involve their parents. Are we willing to sacrifice any of our young women so that the proponents of these laws can have their way?

Parental involvement laws further isolate girls, who feel it is impossible to turn to their parents, forcing them to instead make decisions and arrangements on their own.

All parents would want to know if their child was in a situation like Becky's. In fact, we would have supported the law in our state before we experienced the loss

of our daughter. We have been forced to learn in the most painful way imaginable that laws cannot create family communication. We would rather have not known that our daughter had had an abortion, if it meant that she could have obtained the best of care, and come back home safely to us.

Many of you have daughters and granddaughters, and we are sure that you would want to be involved in any issues relating to their health and well-being—just as we did. Yet, the law in Indiana did not force Becky to involve us at her most desperate time.

As much as we would have wanted to help Becky through this crisis, the law did not succeed in forcing her to talk to us about issues she found too upsetting to share with us. For the sake of other parents' daughters, we urge legislators who are considering this very dangerous bill to remember Becky Bell, and to pass no laws that will increase the chances that even one desperate girl will feel that her only choice is an illegal abortion.

We speak out against this dangerous legislation because of our granddaughter. Someday she will be 17. We realized we'd do everything possible to ensure that she will have options her aunt Becky did not.

The law in Indiana did not make Becky come to us. Will these laws be any different?

Thank you.

PREPARED STATEMENT OF ROSEMARY J. DEMPSEY

I offer this testimony in opposition to the Child Custody Protection Act (CCPA) as Director of the Washington, D.C. office of the Center for Reproductive Law & Policy (CRLP), a legal advocacy organization dedicated to protecting and defending women's reproductive rights both in the United States and internationally. Since 1992, CRLP attorneys have represented millions of women and health care providers, at every level of the state and federal court systems, whose access to safe abortion is threatened by this bill. CRLP is committed to defending the reproductive rights of the most vulnerable and often disenfranchised members of society, including minor women.

CRLP has worked to block enforcement under state constitutions of onerous and discriminatory cases in Alaska, Florida, Louisiana, Montana, Pennsylvania, and Virginia. CRLP's President, Janet Benshoof, argued the landmark Supreme Court forced parental involvement case of *Hodgson v. Minnesota* 497 U.S.417 (1990) and CRLP lawyers were the counsel of record in the two most recent reproductive rights cases decided by the United States Supreme Court: *Ferguson v. City of Charleston,* 523 U.S. 67 (2001) and *Stenberg v. Carhart,* 530 U.S. 914 (2000).

We submit as our testimony the attached briefing paper which clearly demonstrates that passage of CCPA would violate the established Constitutional principles of *federalism, reproductive rights, the right to travel, and First & Fifth Amendment protections.* If enacted into law, the Act would create chaos for health care providers, in enforcement, and for the young women and persons seeking to assist them.

Furthermore, the Act *punishes adolescents* by making it more difficult for them to safely access constitutionally protected abortion services. CCPA will not protect young women nor will it strengthen family ties. Rather, it will punish and endanger those women who cannot discuss an unwanted pregnancy with their parents by forcing them to travel to another state alone, seek an unsafe illegal abortion, attempt to self-abort, or carry an unwanted pregnancy to term.

We ask you to carefully read and seriously evaluate our legal analysis and reject the Child Custody Protection Act, H.R. 476.

THE CHILD CUSTODY PROTECTION ACT (CCPA):
CREATING CHAOS AND PUNISHING ADOLESCENTS

Overview

The Child Custody Protection Act (CCPA) would make it a crime for any person, other than a parent, to knowingly transport a woman under the age of 18 across a state line to obtain an abortion if the minor does not comply with the requirements of the forced parental involvement law of her state of residence. An indi-

vidual who assists a young woman in violation of this proposed measure faces both civil and criminal liability, including imprisonment for up to one year, fines of up to $100,000, or both. The bill would also allow parents to bring civil suits against anyone assisting the young woman. Prosecution may be avoided only if the abortion is necessary to save the life of the minor because of a physical disorder, physical injury, or physical illness.

CCPA discriminates amongst state laws: not every state's parental involvement law will follow a minor from her state of residence to the state where she obtains an abortion. The bill's requirements apply to only those "parental involvement laws" as defined by CCPA. CCPA defines "parental involvement laws" as a law "requiring, before an abortion is performed on a minor, either (i) the notification to, or consent of, a parent of that minor; or (ii) proceedings in a State court" waiving the requirement. CCPA's definition of "parental involvement laws" explicitly excludes state laws that permit, as an alternative, notification to or consent of *any other person,* such as a grandparent or aunt. Therefore, under CCPA, the requirements of "strict" parental involvement laws—those that match the CCPA definition—will be imposed on minors traveling out-of-state with companions and abortion providers in those states. However, CCPA will not impose the requirements of a state law that is "broader" than the CCPA definition—such as a law that allows a grandparent to consent to the minor's abortion—on accompanied minors or providers in other states.

CCPA alters the general principles that the laws of one state are not enforceable in another state and that people are required to comply with the laws of the state in which they are located but not the laws of any other state. CCPA would make minors seeking out-of-state abortions who are accompanied by non-parents (i.e. trusted relatives or friends) subject to the laws of the state in which she seeks an abortion and the laws of her state of residence. Although the minor herself is exempt from prosecution under CCPA, she must comply with both states' laws or risk federal criminal prosecutions of her companion as well as the abortion provider. Minors' fears of prosecution of those who help them may lead them to travel out-of-state alone, the only certain way to avoid all risk of prosecution. In the alternative, minors may seek illegal abortions in their own state, attempt to self-abort or carry unwanted pregnancies to term. CCPA is an extreme and intrusive attempt to prohibit young women from obtaining safe and legal abortions.

The deceptively titled "Child Custody Protection Act" would:

- *Violate Established Constitutional Principles* of reproductive rights, federalism, the right to travel, the First Amendment and the Equal Protection prong of the Fifth Amendment
- *Create Chaos* for health care providers, in enforcement, and for the young women and persons seeking to assist these women by forcing them to negotiate a maze of state laws
- *Punish Adolescents* by endangering young women who are afraid or unable to discuss their unwanted pregnancies with their parents, potentially forcing them to travel alone to another state or even to seek an illegal abortion

I. VIOLATING THE CONSTITUTION

CCPA's radical attempt to limit young women's access to abortion would come at the expense of the right to reproductive choice established in *Roe v. Wade* and numerous other established constitutional principles.

The Child Custody Protection Act would unconstitutionally:

- *violate principles of federalism*
- *burden young women's access to abortion*
- *endanger young women due to its lack of a health exception and an adequate life exception*
- *hinder the right to travel recognized under the Privileges and Immunities Clause*
- *compromise the First Amendment right to associate*
- *infringe upon the Equal Protection prong of the Fifth Amendment*

Violating Principles of Federalism

CCPA would violate fundamental principles of federalism and state sovereignty. A core principle of American federalism is that laws of a state apply only within the state's boundaries. CCPA would require some people to carry their own state's laws with them when traveling within the United States. Under CCPA, a minor

crossing state lines with a trusted relative or friend would not only be subject to the parental involvement law of the state she has entered, but would be subject to the parental involvement law of her home state, if her home state's law is as strict as the CCPA definition.

Allowing a state's laws to extend beyond its borders runs completely contrary to the state sovereignty principles on which this country is founded. For example, gambling is legal in the state of Nevada, but not in California. Residents of Nevada are prohibited from gambling while in California, while residents of California are permitted to gamble while in Nevada. Forcing California citizens to carry their home state's law into Nevada, thereby prohibiting them from gambling while in Nevada, would be inconsistent with federalism principles. In addition, requiring Nevada officials to monitor California residents and enforce California law within Nevada's borders would be nonsensical. Enforcing different states' laws within a state's borders would be even more ludicrous in the case of abortion—a constitutionally protected right—then it would be in the case of casino gambling, which is not a constitutionally protected activity.

Twenty-seven states and the District of Columbia either have parental involvement laws that do not meet the "strict" definition in CCPA, have parental involvement laws which are not enforced in their state, or have not enacted a parental involvement law. (See State Chart). These laws regarding abortion and minors are treated as second-class laws by CCPA. Within those twenty-seven states and the District, CCPA would impose the requirements of other states, whose laws come within CCPA's definition of parental involvement, on non-resident minors accompanied by a non-parent. Thus, CCPA would displace the laws of those states and the District, representing approximately 58% of the U.S. population, with the laws of the other twenty-three states, representing just 42% of the population. Health care providers would be forced to comply, *within their own state's borders,* with laws that their own state has not adopted and, in some cases, has explicitly rejected. This is an unprecedented Congressional intrusion into what should be an area of state prerogative.

Proponents of CCPA advocate its adoption as a means to promote federalism. However, the explicit aim of CCPA is to supplant the laws of a majority of states with those of a Congressionally-preferred minority. In effect, CCPA would make those state laws that Congress prefers (those requiring "strict" parental involvement) controlling in states with laws that they do not like (those with broader or no parental involvement requirements). This is an unprecedented Congressional intrusion into what has traditionally been an arena in which each state regulates its own citizens.

Burdening Young Women's Access to Abortion

CCPA would unduly burden access to abortion for young women who travel across state lines to obtain services and who choose not to involve their parents. In 1973, the U.S. Supreme Court recognized a constitutional right to choose whether or not to have an abortion in the landmark decision *Roe v. Wade*. The Court reaffirmed the right to choose in *Planned Parenthood of Southeastern Pennsylvania v. Casey,* holding that restrictions on this right are unconstitutional if they impose an "undue burden" on a woman's access to abortion. The right extends to both minors and adults, but the Supreme Court has permitted individual states to restrict the ability of young women to obtain abortions within that state's borders.

The United States Supreme Court has ruled that states may require parental consent or notification before a minor obtains an abortion in that state, provided the law also provides an "alternative" to parental involvement, such as a judicial bypass procedure, by which a young woman can obtain an abortion without involving a parent. To obtain a judicial bypass, a young woman must appear before a judge and prove either that she is mature enough to decide whether to have an abortion or that an abortion would be in her best interests.

Thirty-three states enforce parental involvement laws. These laws vary in their requirements, but, absent CCPA, they apply only to minors receiving an abortion within the state. Twenty-three of these states have "strict" laws that fit CCPA's restrictive definition of a "parental involvement law." Nine states have parental involvement laws that are "broader" than the definition in CCPA, in that they do not limit the notification or consent requirement to a parent exclusively, but allow involvement of some other adult, such as a grandparent or other relative, clergy member, or counselor. One state has requirements that are more restrictive than, but do not match, the CCPA definition. Of the remaining seventeen states, ten have enacted parental involvement laws, which are not enforced within the state due to court rulings or Attorney General opinions; seven states and the District of Columbia have not enacted forced parental involvement laws. (See State Chart).

Under current law, a minor must always meet the requirements of the state in which she is receiving an abortion. Under CCPA, a minor from one of the twenty-three states that has a forced "parental involvement law," as defined by CCPA, would carry her home state's law with her when she travels across state lines with a trusted relative or friend to receive an abortion. She would therefore have to meet the requirements of both her home state and the state in which she receives the abortion. If the minor does not comply with her home state's requirements in the state to which she traveled, the person who assists the minor would face liability, as would the medical professionals who provide the health services. Every minor from a state with a "strict" parental involvement law will be faced with a choice: overcome the extra obstacles created by CCPA or travel alone out of state.

In order to protect a supportive non-parent who is accompanying her from criminal liability, a minor would need to determine both her own state's law and that of the state in which she is seeking an abortion. CCPA would create an undue burden for these young women by requiring them to comply with multiple state laws. For example, both Minnesota and Pennsylvania have "strict" parental involvement laws under CCPA. Pennsylvania requires that a minor obtain the written consent of one parent. Minnesota requires that a minor provide written notice to both parents at least forty-eight hours prior to having an abortion. A minor from Pennsylvania may choose to travel to Minnesota to receive an abortion from a provider close to her extended family. The young woman would need to comply with both states' forced parental involvement laws—getting the written consent of one parent and providing written notification to the other parent—in order to protect an accompanying non-parent from liability.

If a young woman chooses to obtain a judicial bypass of the parental involvement requirements, she will also face an undue burden under CCPA, as she may need to go to court in two states—her home state and the state in which she seeks the abortion. For example, a Pennsylvania resident traveling to Minnesota with a non-parent to obtain an abortion would have to obtain a judicial bypass in both states because the minor carries Pennsylvania's "strict" parental involvement law with her wherever she goes. While going to court can be a daunting experience even for adults, minors face additional difficulties in judicial bypass proceedings. It is frightening for many minors to disclose intimate details of her life to strangers in a formal, legal process. Some minors live in regions in which the local judges never grant bypass petitions, or the closest court that hears the petitions is located hundreds of miles away. Moreover, many young women find it difficult to take time off from school or work in order to appear at a hearing. Going through this process just one time is a burden on minors; doing it two times in two different states would place an unconstitutional undue burden on a young woman's access to abortion.

CCPA would also create an undue burden on minor's access to abortion by deterring trusted relatives and friends from helping a young woman due to fear of criminal and civil liability. Even if some people were willing to take this risk, young women seeking abortions may refrain from seeking advice and assistance for fear of exposing family members, clergy, counselors, or other supportive friends to liability. As a result, young woman may choose to instead travel alone across state lines.

In addition to putting persons who travel with the minor at risk of liability, CCPA places health care providers at risk, thus further unduly burden minors' access to abortion services. Fear of prosecution may lead some clinics, which already face harassment and a myriad of other state regulations, to refuse services to young women.

Failing to Provide a Health or an Adequate Life Exception

The Supreme Court held in *Roe v. Wade*, Planned Parenthood of *Southeastern Pennsylvania v. Casey,* and *Stenberg v. Carhart* that restrictions on abortion must contain exceptions to allow for abortions necessary to protect both the life and health of the pregnant woman. In another ruling, *Doe v. Bolton,* the Court held that factors including age, emotional state, and psychological status could be considered in defining a woman's well-being and health. Nonetheless, CCPA fails to provide any health exception. Moreover, CCPA provides an inadequate life exception by failing to allow for abortion in cases of a life-threatening mental illness. The failure to include these provisions shows an utter lack of regard for established constitutional law and seriously endangers the health and safety of young women.

Hindering the Right to Travel

CCPA would unconstitutionally regulate interstate travel between certain states, for *certain* people and under certain conditions. It would make the legality of interstate travel dependent upon the traveler's *state of residency,* the *purpose* of the travel, and the *people with whom* she is traveling.

The right to travel freely between the states is a fundamental right of state citizenship, which is protected by the Privileges and Immunities Clause of Article IV of the Constitution. This includes "the right to be treated as a welcome visitor rather than an unfriendly alien" when traveling between the states. The Supreme Court has held that the Privileges and Immunities Clause "protect[s] persons who enter [a state] seeking the medical services that are available there." Thus, Article IV gives constitutional protection to a minor who travels from her home state to another state to "procure medical services," including, specifically, abortion services (the subject of the Court's 1973 decision in *Doe v. Bolton*). Therefore, a minor transported from, for example, Massachusetts to Maine by a friend or relative for an abortion—as well as the person who accompanies her—has the right to be treated as a "welcome visitor rather than an unfriendly alien."

Under CCPA, minors crossing state lines to seek medical services would be subjected to different treatment than minors who seek those services in their home state. Also, minors crossing state lines to seek medical services would be treated differently depending on their state of origin: minors from states without parental involvement laws would be treated as a favored class, while minors from states with "strict" parental involvement laws would face special burdens. Moreover, a minor who traveled alone into a state from a state with a "strict" parental involvement law would be treated more favorably than a minor from the same state who traveled with a non-parent: the lone minor would only need to comply with the law of the state she entered, but the accompanied minor would have to comply with the requirements of the state she entered as well as her home state. CCPA creates a hodgepodge of restrictions on interstate travel and results in the disparate treatment of people based on their state of residence, thereby violating the rights of citizenship recognized by the Privileges and Immunities Clause of Article IV.

Violating the First Amendment Right to Associate

The First Amendment protects freedom of association through its explicit guarantee of the right to peaceably assemble. This protection includes the rights of individuals, including minors, to come together to advance their rights and interest. To that end, people may "pool their resources" to effectuate both their right to travel and obtain an abortion.

CCPA would directly attack this right of association by criminalizing the association between a minor and another person for the purpose of effectuating the minor's right to choose abortion. The right to choose abortion inevitably involves an association between the woman seeking abortion and, at a minimum, the health care provider who will perform the procedure. In some cases, the association may involve pooling of financial resources to pay for the procedure, an association with family and friends to make a decision and effectuate it, and an association with counselors and spiritual leaders, amongst other associations. CCPA would single out one such association—association between a minor and another person who accompanies her across state lines—and criminalize it.

Infringing Upon the Equal Protection Prong of the Fifth Amendment

The Fifth Amendment prohibits Congress from depriving individuals of equal protection of the law. Equal protection case law prohibits Congress from creating a classification that penalizes the exercise of a constitutional right, except in furtherance of a compelling interest. When such a classification is formed, it is subject to strict scrutiny, the highest level of judicial scrutiny. Under strict scrutiny analysis, the government has the burden of establishing that the classification is narrowly tailored and based on the furtherance of a compelling governmental interest. CCPA would impermissibly classify persons based on the exercise of two fundamental rights; the constitutional right to choose abortion and the right to interstate travel, because it is not narrowly tailored nor does it further a compelling governmental interest.

As to the right to reproductive choice, CCPA explicitly classifies among minors being transported across state lines as well as among those persons transporting them: it penalizes only those persons who are assisting minors in exercising their right to abortion. CCPA further classifies, in an arbitrary manner, among persons assisting minors by drawing distinctions based on the minor's state of residence. However, persons transporting minors across state lines are not penalized by CCPA if the minors are being transported for any of a host of purposes, including a number of other medical procedures far riskier than abortion, or, for example, to exercise the right to marry.

Any claimed interest in effectuating state laws is implemented by CCPA in such a discriminatory fashion that the interest itself can hardly be called compelling, or even legitimate. In addition, even if the purpose of CCPA is to prevent minors from

evading *certain* state abortion laws, and even if that interest were legitimate, CCPA is unconstitutionally underinclusive. Because parents are exempt from liability under CCPA, a mother living in Minnesota who drives her daughter to Iowa to avoid Minnesota's two-parent notice law (and the alternative judicial bypass) would not be punishable under CCPA but any other adult who does so commits a crime. Further, any interest in parental involvement per se is not compelling—instead, the Supreme Court has recognized that such interests are at best substantial or significant. Were they compelling, they could completely override the minor's right to abortion—and they cannot.

As to the right to interstate travel, CCPA also impermissibly classifies among both minors and the persons transporting them. The minor's state of residency determines whether the person transporting her is committing a crime. No other federal statute classifies among interstate travelers based upon their state residency. Indeed, the Court's decision in Saenz v. Roe confirms the illegitimacy of classifying based on state of residence. In that case, the Court held that state residency is not a permissible classification among welfare beneficiaries. Surely, if it is unconstitutional for the government to reduce welfare benefits based on state residency, it is similarly unconstitutional to bar a person from entering a state to exercise a constitutional right based on her state of residency.

II. CREATING CHAOS

CCPA would create chaos for everyone involved in a minor's abortion decision: the young woman, the supportive individuals on whom she relies, and health care providers. Health care providers would be faced with the task of comparing their own state's laws to the laws of other states and to CCPA's definition of "parental involvement laws" and then, if necessary, making sure that minors had complied with all applicable laws before providing an abortion. Minors will face the increased burden of deciphering these laws in an attempt to protect those caring relatives and friends who assist them.

Chaos for Young Women

CCPA would trap the unwary minor in a chaotic maze of conflicting state laws. Currently, a minor seeking an abortion can expect the health care providers from whom she seeks an abortion to be familiar with their state's applicable legal requirements and the minor can rely on those persons for assistance in understanding how to comply with the law. However, under CCPA, the minor could no longer rely solely on the assistance of the provider in making sure that she and those accompanying her are meeting all applicable legal requirements. Minors in these circumstances would need to determine the law in both her home state and the state to which she is traveling in order to protect those assisting her. This may require contacting clinics in multiple states or researching the applicable forced parental involvement statutes, using the definition specified under CCPA, to determine which laws are applicable.

Chaos in the Enforcement of CCPA

CCPA would create chaos by pitting conflicting state laws against each other and by mandating that the strictest parental involvement laws be met in multiple states. CCPA would require all states, even those with no forced parental involvement law, to enforce the parental involvement laws of the twenty-three "strict" states. If CCPA were to become law, states would no longer have control over the applicable laws within their own borders. For example, within a state that does not enforce a parental involvement law, such as New York, some people will be subject to parental involvement laws enacted by legislature of other states, such as Pennsylvania. The result would be that laws of one state would be supplanted by decisions made by state legislatures of other states.

Enforcement of CCPA would be chaotic for state and federal officials. In our highly mobile society, minors may arrive in a state from anywhere in the country for the purpose of having an abortion. Although violation of CCPA would be a federal—not local—crime, it is likely that complaints of alleged violations will be made to local law enforcement officials. To properly enforce CCPA, law enforcement officials would need to be familiar with the current parental involvement requirements of all fifty states and the District of Columbia, as well as with the CCPA definition of a "parental involvement law." Officials would have to determine the state of residence of the minor and identify any non-parent(s) who accompanied the minor. Obtaining and maintaining familiarity with these numerous laws and allocating the necessary resources to identify individuals who may have violated CCPA would be chaotic for local law enforcement.

Chaos for Health Care Providers

Health care providers who know that a minor has been transported across state lines by a non-parent would also be at risk from a number of complex provisions regarding conspiracy, accomplice and accessory liability. Under these provisions, a medical professional that provides services to a minor would be forced to act as an agent of law enforcement by policing waiting rooms for potential violators. The provider would have to determine whether the minor seeking an abortion is from another state; whether she was accompanied across state lines by a non-parent; whether, under CCPA, she is required to comply with the forced parental involvement law of her home state and, if so, whether she did. Of course, the provider will have to determine whether the minor also complied with the parental involvement requirements, if any, of the state in which she is seeking the abortion. If the provider determines that the minor was required to, but did not comply with the law of her home state, the provider must deny services and report the accompanying adult to the authorities or risk liability himself. Thus, to avoid criminal liability, health care providers in every state would need to be familiar with, and be ready to comply with, numerous state laws, or deny services to any minor who cannot prove she resides in the state where the provider is located.

CCPA would subject health care workers to liability for providing abortions to minors from states with "strict" forced parental involvement laws as defined by CCPA if the minors are transported across state lines by non-parents. Conversely, providers would face no such liability for the provision of abortion services to minors from states with "broader" forced parental involvement laws than those which are defined by CCPA. In this way, CCPA would force providers to treat minors from states without "strict" parental involvement laws as a favored class, while minors from states with "strict" parental involvement laws would face special burdens and maybe even a denial of abortion services.

III. PUNISHING ADOLESCENTS

The deceptively titled "Child Custody Protection Act" would not "protect" minors. By making it more difficult for them to safely access constitutionally protected abortion services, CCPA would punish the very adolescents that it purports to protect. CCPA would punish those young women who decide to seek an abortion in another state by requiring them to comply with laws of multiple states, or to travel alone if they cannot involve their parents. In addition, by mandating communication only with parents, CCPA would punish minors by criminalizing assistance received from close family and friends, clergy or counselors. Finally, CCPA would discourage non-parents from assisting minors in obtaining desired medical care by the threat of criminal penalties.

Ignoring Geographic and Economic Realities

Minors may decide to obtain an abortion outside of their state of residency for a variety of reasons. These young women's decisions may not be related to the particular laws of a state but may be based on important factors in obtaining any health care services, such as location, recommendations of others, and the proximity of loved ones.

The location of the closest abortion provider may be a factor in deciding where a minor chooses to obtain an abortion. As of 1996, 86% of all counties in the United States did not have an abortion provider. Therefore, for some young women, the closest provider may be in a neighboring state.

Minors may also travel to neighboring states based on clinic recommendations or for financial reasons. A minor may receive a recommendation from a trusted individual for a doctor or a clinic that happens to be in a neighboring state. Or varying medical costs may mean that a clinic in a neighboring state provides a more economical option for a minor. If minors are prevented from going out of state for abortions in such situations, they may obtain unsafe, illegal abortions, attempt to self-abort or carry an unwanted pregnancy to term.

Legislating Family Dynamics

Regardless of state mandates requiring disclosure, young women's parents often are aware of the minor's decision to have an abortion. In addition, whether or not they are required to do so by law, health care providers routinely suggest that a young woman involve her parents if possible. Attempts to legislate family dynamics without considering the differing relationships that exist within families is dangerous and unrealistic.

When young women avoid parental involvement in their abortion decision, the choice is usually well justified. In families where abusive relationships or other problems prevent good communication between parents and their teenage daugh-

ters, state-mandated discussions can exacerbate existing problems. For battered teenagers and incest survivors in particular, forced parental involvement laws increase the risks in an already dangerous situation. Even in the best of circumstances, candid communication about sexuality and reproductive issues may not take place in families. Generally, mandatory notification and consent requirements are not an effective means of encouraging more open discussion and can actually damage relations among family members.

CCPA is not designed to enhance communication between minors and their parents. Rather, CCPA seeks to deter young women from obtaining a safe and legal abortion, thus forcing them to act alone, seek risky alternatives within their state of residence or to carry unwanted pregnancies to term.

Discouraging Non-Parents from Helping Young Women

CCPA also fails to recognize the importance of other family members and trusted adults in a young woman's life. The law ignores the fact that many young women involve adults, other than their parents, whom they trust and to whom they are close in their decisions to seek an abortion. These adults can include: grandparents, siblings, or other extended family members; clergy, teachers, social workers, or other counselors; and supportive friends. CCPA would preclude a minor from receiving assistance from these supportive adults in traveling across state lines for an abortion or risk exposing them to criminal liabilities, including jail time and fines. CCPA could lead to the arrest of clergy and grandmothers who are looking out for the best interests of the young women they care about.

V. CONCLUSION

The deceptively titled "Child Custody Protection Act" would create chaos and punish young women by restricting their access to abortion services. The bill would violate the federal constitution, in particular by contravening principles of federalism and infringing the rights to reproductive choice, interstate travel, and freedom of association. CCPA does not "protect" minors. CCPA does not foster family communication. CCPA's sole purpose is to punish caring relatives and friends and abortion providers who seek to provide guidance and support to minors seeking abortions. Consequently, CCPA will force many young women to travel alone, seek risky alternatives, or carry unwanted pregnancies to term.

VI. APPENDIX

A. Language of H. R. 476 (2001) as Introduced in the House of Representatives

A BILL

To amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Child Custody Protection Act.'

SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.

(a) IN GENERAL—Title 18, United States Code, is amended by inserting after chapter 117 the following:

'CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION

'Sec. 2431. Transportation of minors in circumvention of certain laws relating to abortion.

'Sec. 2431. Transportation of minors in circumvention of certain laws relating to abortion.

'(a) OFFENSE—

'(1) GENERALLY—Except as provided in subsection (b), whoever knowingly transports an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in

a minor's abortion decision, in force in the State where the individual resides, shall be fined under this title or imprisoned not more than one year, or both.

'(2) DEFINITION—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed on the individual, in a State other than the State where the individual resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the individual resides.

'(b) EXCEPTIONS—(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

'(2) An individual transported in violation of this section, and any parent of that individual, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

'(c) AFFIRMATIVE DEFENSE—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant reasonably believed, based on information the defendant obtained directly from a parent of the individual or other compelling facts, that before the individual obtained the abortion, the parental consent or notification, or judicial authorization took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the individual resides.

'(d) CIVIL ACTION—Any parent who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

'(e) DEFINITIONS—For the purposes of this section—

'(1) a law requiring parental involvement in a minor's abortion decision is a law—

'(A) requiring, before an abortion is performed on a minor, either—

'(i) the notification to, or consent of, a parent of that minor; or

'(ii) proceedings in a State court; and

'(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

'(2) the term 'parent' means—

'(A) a parent or guardian;

'(B) a legal custodian; or

'(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides,

who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required;

'(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision; and

'(4) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States.'.

(b) CLERICAL AMENDMENT—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new item:

'117A. Transportation of minors in circumvention of certain laws relating to abortion—2431'.

B. America Speaks Out Against CCPA

Newspapers from across the country recognize CCPA as an attempt to block young women from exercising their constitutionally protected right to obtain an

abortion. These editorials also recognize that this legislation attempts to ban abortions at the cost of American constitutional tradition and principles.

THE NEW YORK TIMES, June 30, 1999
A Cruel Scheme to Curb Abortion

"Don't be misled by the label. The benignly titled 'Child Custody Protection Act' . . . is in fact a cold-hearted piece of legislation that would jeopardize the health of desperate young women seeking abortions and potentially imprison adults who help them. The bill also flouts the Constitution. . . . Apart from undermining the constitutional right to an abortion, the legislation violates the right of citizens to travel freely and to be treated as 'a welcome visitor rather than an unfriendly alien' when entering another state—a right recently upheld by the Supreme Court in a California welfare case. . . . In addition, the bill could result in legal chaos as Federal prosecutors try to figure out the interaction between this new Federal statute and a host of different parental notification laws in the states. Lawmakers on both sides of the aisle and the abortion debate should join to defeat this misguided proposal. . . ."

ST. LOUIS POST DISPATCH, July 5, 1999
Locking Up Grandma

"If the House of Representatives really was trying to protect young women seeking abortions, it would not have passed the Child Custody Protection Act [during the 106th Congress].

The bill would make it harder for young women with abusive parents to obtain a safe and legal abortion. . . . If, on the other hand, the purpose of the House was to make abortions even more difficult to obtain, then the bill makes perfect sense. . . . Most members of Congress are voting for these bills with one goal in mind—stopping abortion. . . ."

THE COURIER JOURNAL, July 2, 1999
Punishing Helpers

"THE ASSAULT on abortion rights continued . . . as the U. S. House voted [in the 106th Congress] to make it a crime for a non-parent to accompany a minor to receive an abortion in a state that does not require parental consent.

This latest action by House Republicans has been touted as a protective Measure. . . . How unfortunate that the writers of the bill have chosen to hide behind a pro-family stance to cover their real intent, which is to make abortion for many young, vulnerable women nearly impossible. . . . [T]he horror stories of women unable to receive safe, legal abortions are not so far behind us that we should force today's young women back into those same life-threatening predicaments."

THE WASHINGTON POST, July 28, 1998
The Abortion Legislation

". . . The Child Custody Protection Act does not seem, on its face, to be a particularly extreme piece of antiabortion legislation. . . . The bill, however, is considerably dicier than it initially appears. Abortion foes know that they could not pass a national law requiring parental notification or consent. And this backdoor effort to approximate that goal has serious problems that should trouble even those who don't oppose state laws requiring parental involvement in minors' abortions.

The central problem with the proposal is that it causes restrictive state laws to follow residents in their travels outside of their home state and then has the federal government prosecuting people for activity that is lawful in the locations in which it takes place. The right to travel between states is constitutionally protected, abortion rights similarly are guaranteed and it is legal in many states to accompany a minor to an abortion clinic without telling her parents. It is, therefore, hard to fathom how it could be a crime to cross state lines in helping a minor obtain an abortion."

PITTSBURGH POST GAZETTE, August 1, 1998
Run For The Border; State Lines Mean Nothing In Congress' Anti-Abortion Zeal

"One of the keystones of the American federal system is that, so long as they comply with the U.S. Constitution and its Bill of Rights, states can enact criminal laws of their own choosing. . . .

That is, of course, unless Congress decides to turn the federal system on its head and ban people from helping a minor cross state lines to get an abortion. . . ."

THE NEWS & OBSERVER, July 28, 1998
Congress Crosses the Line

". . . [C]ongress does not—and should not—have the power to follow residents across state lines to enforce laws that don't apply in neighboring jurisdictions. After parental consent, what would be next?

The ability of individual states to determine their own laws, within certain limits, is fundamental to our way of government. The inappropriately named Child Custody Protection Act would establish a dangerous precedent that could damage that tradition and would be ripe for abuse."

STAR TRIBUNE, July 13, 1998
Antiabortion Bill: Don't Make Adult Helpers Criminals

". . . Concocted by the formidable antichoice movement, this 'Protection Act' is one more in a long, tiresome series of legislative efforts to chip away at a woman's right to choose. They cannot dismantle Roe vs. Wade directly, so they go to the states, or target doctors or clinics. They harass women outside medical facilities; they try to block FDA approval of the abortion pill RU-486, which is widely used in Europe. Now they want to intimidate friends and family members out of helping young women consider all of their options when faced with an unwanted pregnancy. . . ."

ST. PETERSBURG TIMES, June 9, 1998
Abortion Politics

"Republicans in Congress have recently been under tremendous pressure from conservative religious activists to move on their legislative priorities. That explains why a particularly dangerous anti-abortion measure, the Child Custody Protection Act of 1998 (S. 1645/H.R. 3682), is on a fast track through Congress. . . .

This legislation is not about promoting families or parental rights. It's about stopping young women from exercising their right to abortion."

C. The Medical Community Speaks Out Against CCPA

The American medical community opposes forced parental involvement laws on the grounds they pose dangers to the health and well-being of young women. CCPA would exacerbate the problems posed by such laws by delaying access to abortion services and requiring young women to travel alone to obtain an abortion. CCPA could lead to a new generation of back alley abortions for those young women who are determined to end their pregnancies.

American Medical Association (AMA)

"With respect to parental involvement when minors seek an abortion, the AMA believes that the following guidelines constitute good medical practice: (1) Physicians should ascertain the law in their state on parental involvement. . . . (2) Physicians should strongly encourage minors to discuss their pregnancy with their parents. . . . (3) Physicians should not feel or be compelled to require minors to obtain consent of their parents before deciding whether to undergo an abortion. The patient—even an adolescent—generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate. (4) Physicians should try to ensure that minor patients have made an informed decision. . . . Minors should be urged to seek the advice and counsel of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers, or the clergy." *(Council on Ethical and Judicial Affairs; Report H; House of Delegates Meeting; June 1992)*

The American Academy of Pediatrics (AAP)

"The AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects. . . . There is evidence that such legislation may have an adverse impact on some families and that it increases the risk of medical and psychological harm to the adolescent. Judicial bypass provisions do not ameliorate the risk." *(The Adolescent's Right to Confidential Care When Considering Abortion (RE9614); American Academy of Pediatrics, Policy Statement; Vol. 97, Number 5; May 1996, pp 746–751)*

American Medical Women's Association (AMWA)

"We feel that abortion is a decision that should be reached between patients and physicians, and we believe that forced parental involvement will have a negative im-

pact on the doctor-patient relationship." *(Letter from AMWA president Clarita E. Herrera to Congresswoman Ros-Lehtinen expressing opposition to H.R. 1218; April 22, 1999)*

American Public Health Association (APHA)

"Confidential family planning and primary care services are necessary for adolescents and teenagers to receive immediate quality medical treatment. Fear of parental knowledge or abuse often deters adolescents from seeking family planning services and medical care." *(Fact Sheet: Parental Consent for FamilyPlanning; http://www.apha.org/legislative/factsheets/fs10.htm)*