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CHILD CUSTODY PROTECTION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 1755

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CHILD CUSTODY PROTECTION ACT

TUESDAY, JULY 20, 2004

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

The Subcommittee met, pursuant to notice, at 2:53 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. Good afternoon. This is the Subcommittee on the Constitution. I am Steve Chabot, the Chairman. Today the House Constitution Subcommittee holds a legislative hearing on the H.R. 1755, the "Child Custody Protection Act."

The Child Custody Protection Act would make it a Federal offense to knowingly transport a minor across a State line with the intent that she obtain an abortion in circumvention of a State's parental consent of notification law. This Act is a regulation of interstate commerce that seeks to protect the health and safety of young girls, as well as the rights of parents to be involved in the medical decisions of their minor daughters, by preventing valid and constitutional State parental involvement laws from being circumvented. This Act falls well within Congress' constitutional authority to regulate the transportation of individuals in interstate commerce.

A total of 44 States have enacted some form of a parental involvement statute. Twenty-four of these States currently enforce statutes that require 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. These laws not only help to ensure the health and safety of pregnant young girls, but also support fundamental parental rights.

Despite widespread support for parental involvement laws and clear public policy considerations justifying them, substantial evidence exists that such laws are regularly evaded by adults who transport minors to abortion providers in States that do not have parental notification or consent laws. The Child Custody Protection Act would curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors. The Act is not a Federal parental involvement law. Rather, it ensures that the State laws are not evaded through interstate activity. The Act does not encroach upon State powers; it reinforces

them, respecting the rights of the various States to make these policy decisions for themselves and ensuring that each State's policy aims regarding this issue are not frustrated.

Protecting State laws relating to parental involvement in the abortion decisions of minor girls will lead to improved medical care for minors seeking abortions and provide increased protection for young girls against sexual exploitation by adult men.

When parents are not involved in the abortion decisions of a child, the risks to the child's health significantly increase. Parental involvement will ensure that parents have the opportunity to provide additional medical history and information to abortion providers prior to performance of an abortion. The medical, emotional and psychological consequences of an abortion are serious and 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 such information for their daughters as well as any pertinent family medical history, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.

Only parents are likely to know a young girl's allergies to anesthesia and medication or previous bouts with specific medical conditions, including depression. A more complete and thus more accurate medical history of the patient will enable abortion providers to disclose not only medical risks that ordinarily accompany abortions but also those risks that may be specific to the pregnant minor.

Parental involvement will also improve medical treatment of pregnant minors by ensuring that parents have adequate knowledge to recognize and respond to any post-abortion complications that may develop. Without the knowledge that their daughters have had abortions, parents are incapable of ensuring that their children obtain routine postoperative care or of providing an adequate medical history to physicians called upon to treat any complications that may arise. These omissions may allow complications such as infection, perforation or depression to continue untreated and may be lethal.

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 for their children. Teenage pregnancies often occur as a result of predatory practices of men who are substantially older than the minor, resulting in the guidance of the girl across State lines by an individual who has a great incentive to avoid criminal liability for his conduct. Experience suggests that sexual predators recognize the advantage of their victims obtaining an abortion. Not only does an abortion eliminate a critical piece of evidence of the criminal conduct, it allows the abuse to continue undetected. Parental involvement laws ensure that parents have the opportunity to protect their daughters from those who would victimize them further.

The physical and psychological risks of abortions to minors are great, and laws requiring parental involvement in such abortions, subject to judicial bypass procedures, reduce that risk. The wide-

spread practice of avoiding such laws through interstate commerce may be prevented only through Federal legislation. The Child Custody Protection Act, this Act that we are considering today, will assist in the enforcement of parental involvement laws that meet the relevant constitutional criteria. The safety of young girls and the rights of parents demand no less.

I would now yield to the gentleman from New York, Mr. Nadler, for 5 minutes for the purpose of making an opening statement if he so chooses.

[The prepared statement of Mr. Chabot follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE CHABOT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Good afternoon. Today the House Constitution Subcommittee holds a legislative hearing on H.R. 1755, the "Child Custody Protection Act."

The Child Custody Protection Act would make it a federal offense to knowingly transport a minor across a state line, with the intent that she obtain an abortion, in circumvention of a state's parental consent or notification law. The Act is a regulation of interstate commerce that seeks to protect the health and safety of young girls, as well as the rights of parents to be involved in the medical decisions of their minor daughters, by preventing valid and constitutional state parental involvement laws from being circumvented. The Act falls well within Congress' constitutional authority to regulate the transportation of individuals in interstate commerce.

A total of forty-four states have enacted some form of a parental involvement statute. Twenty-four of these states currently enforce statutes that require 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. These laws not only help to ensure the health and safety of pregnant young girls but also support fundamental parental rights.

Despite widespread support for parental involvement laws and clear public policy considerations justifying them, substantial evidence exists that such laws are regularly evaded by adults who transport minors to abortion providers in states that do not have parental notification or consent laws. The Child Custody Protection Act would curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors. The Act is not a federal parental involvement law. Rather, it ensures that these state laws are not evaded through interstate activity. The Act does not encroach upon state powers; it reinforces them, respecting the rights of the various states to make these policy decisions for themselves and ensuring that each state's policy aims regarding this issue are not frustrated.

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Only parents are likely to know of a young girl's allergies to anesthesia and medication or previous bouts with specific medical conditions, including depression. A more complete and thus more accurate medical history of the patient will enable abortion providers to disclose not only medical risks that ordinarily accompany abortions but also those risks that may be specific to the pregnant minor.

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The physical and psychological risks of abortions to minors are great, and laws requiring parental involvement in such abortions, subject to judicial bypass procedures, reduce that risk. The widespread practice of avoiding such laws through interstate commerce may be prevented only through federal legislation. The Child Custody Protection Act will assist in the enforcement of parental involvement laws that meet the relevant constitutional criteria. The safety of young girls and the rights of parents demand no less.

Mr. NADLER. Have you ever known me not to so choose?

Mr. CHABOT. Never. [Laughter.]

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, I have to confess, I'm beginning to feel a bit like Sisyphus, condemned to re-visit, re-argue, re-vote and repeat every issue demanded by some conservative constituency gathered underneath the Republican big tent.

We are even calling some of the same witnesses. Today it's another abortion bill, a bill we've had how many, four times previously? Thursday it will be a facially unconstitutional and largely symbolic same-sex marriage court stripping bill.

I want to be a good sport, Mr. Chairman, but I'm beginning to feel like I'm 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 walk away, but we cannot do that. The stakes are too high. No matter how many times we 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. The consequences of this proposal will be indeed dire. We have debated them often.

As with most abortion-related legislation, this bill fails to take into account the real life problems faced by real people. Did the father rape the daughter? Why should that rapist be allowed to profit financially from the crime? According to this bill, the child's grandmother could go to jail and the rapist could sue her, because in the language of the bill he had been harmed by her action. Does the minor live in a jurisdiction where judges never grant the constitutionally mandated judicial bypass as is often the case?

How about this one? You can take the minor across State lines if her life is in danger, but not if there is a danger merely to her physical health, much less her mental health. How much physical injury should a young woman be forced to endure if her parents and local judges up for reelection are indifferent? Sterility? Almost

dying, but not quite? How life threatening must the physical condition be before the court will decide if the doctor guessed right?

Parents want to be involved with their children, especially in these very dire situations, and children overwhelmingly involve their parents. But real life is messy. This bill will only compound the human tragedies of these situations.

Let me make a couple of practical comments. This bill criminalizes transporting a minor across State lines for the purpose of getting an abortion. What does "transport" mean? Well, presumably, if I'm driving the car and she's sitting next to me, I'm transporting her. What if, as we cross the State line, we switch and she's driving the car? Then she's transporting me. So in other words, this bill will only affect people who are driving but not people who are sitting next to her if she's driving. Does that make a hell of a lot of sense? Excuse me. Does that make a heck of a lot of sense?

I would submit that this bill has not been very thought out and cannot be very well thought out because it ultimately does not make sense.

Thank you, Mr. Chairman.

Mr. CHABOT. Thank you. Would the gentleman yield for a moment?

Mr. NADLER. Sure.

Mr. CHABOT. I know the gentleman is tired of taking this bill up, and if the gentleman would join me in encouraging our colleagues over in the Senate to take up this bill and have a vote on the floor, perhaps we could, since we have passed it here several times before, perhaps we wouldn't have to take it up in the next Congress.

Mr. NADLER. Reclaiming my time, Mr. Chairman. I'm not that tired. [Laughter.]

Mr. CHABOT. Okay, thank you. The gentleman's time is expired.

The panel that we have here this afternoon, we have a very distinguished panel. Our first witness is Mrs. Joyce Farley, a mother from Pennsylvania who will share with us her own experience surrounding her minor daughter's experience in this area, and abortion.

Our second witness is Mark D. Rosen, Associate Professor of Law at Chicago-Kent College of Law. Prior to joining the Chicago-Kent faculty, Professor Rosen was a Bigelow Fellow and lecturer in law at the University of Chicago Law School. From 1994 to '97, he was an attorney at the law firm of Foley, Hoag, Eliot in Boston, where he focused on complex Federal court litigation. Professor Rosen teaches constitutional law, State and local government law, conflicts of law and contracts.

Our third witness is the Reverend Lois M. Powell. Reverend Powell is the 2004–2005 Chair of the Board of Directors of the Religious Coalition for Reproductive Choice. Reverend Powell is an ordained minister in the United Church of Christ and team leader for the United Church of Christ Human Rights, Justice for Women, and Transformation Ministry Team. Prior to becoming the team leader in 2000, Reverend Powell was Executive Director of the church's Coordinating Center for Women in Church and Society. From 1989 to '97, Reverend Powell was Pastor of the United Church of Tallahassee.

Our final witness is Professor Teresa Stanton Collett. From 1990 to 2003 Professor Collett was a Professor of Law at South Texas College of Law, where she taught various legal courses. Since 2003 she has served as a Professor of Law at University of St. Thomas College of Law, teaching bioethics, property and professional responsibility. Professor Collett has also served as a visiting professor at Notre Dame Law School, Washington University School of Law in St. Louis, Missouri, the University of Texas School of Law, the 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 Crowe & Dunlevy in Oklahoma City, Oklahoma.

We welcome all of our witnesses here this afternoon, and it is the practice of the Committee to swear in all witnesses appearing before it. So if you would all please rise. Raise your right hand.

[Witnesses sworn.]

Mr. CHABOT. Thank you very much. We'll begin with Mrs. Farley. I wanted to note some of you have testified before, as the Ranking Member mentioned, but we have a 5-minute rule, and there is a light system there that will be on the desk in front of you. The yellow light will come on when there's 1 minute of the 5 minutes left, and then the red light will come on when the 5 minutes is up, and we would ask that you try to keep your comments within the 5 minutes if at all possible. We will give you a little leeway, but not too much.

Mrs. Farley, you are recognized for 5 minutes.

TESTIMONY OF JOYCE FARLEY, VICTIM, DUSHORE, PA

Ms. FARLEY. Good afternoon, Members of the U.S. House of Representatives. My name is Joyce Farley, and I am a resident of the State of Pennsylvania.

Mr. CHABOT. Would you pull that mike just a little bit closer to you? Thank you. That whole box will move if you want to move it.

Ms. FARLEY. I have been asked to come before you today to explain why I support the Child Custody Protection Act.

About this time in 1995, my then 12-year-old daughter, Crystal, was intoxicated and raped by a 19-year-old male who she had met after entering the local high school as a 7th grade student. I was aware of this male trying to befriend my daughter and had requested that he not call or visit at the house. This male had a reputation of seeking out the 7th grade females to establish relationships for sex, and unfortunately, Crystal had become one of his victims. This male is currently in prison for a similar rape conviction.

Unfortunately, many perpetrators have more than one victim. I was at the time and still am a mother working full time away from home. Both parents working full time or single-parent families are not unusual in our society and why your support of the Child Custody Protection Act is so important. People of our Nation need to know that our children are a blessing, and that we will protect them from harm.

On August 31st, 1995, I discovered my 13-year-old daughter, Crystal, was missing from home. An investigation by the police, school officials and myself revealed the possibility that Crystal had been transported out of State for an abortion. I can't begin to tell

you the fear that enveloped me not knowing where my daughter was, who she was with, if she was in harm's way, and to learn in this manner that my young daughter was pregnant.

By early afternoon Crystal was home safe with me, but so much had taken place in that one day. The mother of this 19-year-old male had taken Crystal for an abortion in the State of New York. Apparently, this woman decided this was the best solution for the situation caused by her son, with little regard for the welfare of my daughter.

Situations such as this is what the Child Custody Act was designed to help prevent. I am a loving, responsible parent, whose parenting was interfered with by an adult unknown to me. My child was taken for a medical procedure to an unknown facility and physician without my permission.

When Crystal developed complications from this medical procedure, this physician was not available. He refused to supply necessary medical records to a physician that was available to provide Crystal the medical care she needed.

I ask you to please, in considering the Child Custody Protection Act, to put aside your personal opinions on abortion. Please just consider the safety of the minor children of our Nation whose lives are put at risk when taken out of their home State to avoid abortion laws that are designed to protect them from harm. Please don't allow harm to our children in order to protect abortion or any other medical procedure. Please allow loving, careful and responsible parents the freedom to provide the care their adolescent daughters need without interference from criminals or people who think they may be helping, but actually cause more harm than good.

An abortion is a medical procedure with physical and emotional risks. An adolescent who's had an abortion needs the care and support of family. Crystal, unfortunately, developed both physical and emotional side effects. Some of the effects are still present today after 9 years have lapsed.

In many ways time is a great healer, but as imperfect human beings we don't always realize the effect of our actions of how deep the physical and emotional scars actually dwell. The Child Custody Act will prevent an abortion decision that is based on fear of disappointing parents. It may discourage the use of abortion to hide criminal activity such as rape and statutory rape. For those who think they are just helping, they may realize that an abortion is a serious situation, and just providing an adolescent a ride for an abortion is not the answer.

I urge you again to help avoid the scarring of America's adolescent girls by voting in favor of the Child Custody Protection Act.

Thank you.

[The prepared statement of Ms. Farley follows:]

PREPARED STATEMENT OF JOYCE FARLEY

Good afternoon members of the U.S. House of Representatives. My name is Joyce Farley and I am a resident of the state of Pennsylvania. I have been asked to come before you today to explain why I support the "Child Custody Protection Act."

Just about this time in 1995, my then 12-year-old daughter Crystal was intoxicated and raped by a 19 year old male who she had met after entering the local high school as a 7th grade student. I was aware of this male trying to befriend my

daughter and had requested that he not call or visit at the house. This male had a reputation of seeking out the 7th grade females to establish relationships for sex and unfortunately Crystal had become one of his victims. This male is currently in prison for a similar rape conviction. Unfortunately many perpetrators have more than one victim. I was at the time and still am a mother working full time away from home. Both parents working full time or single parent families are not unusual in our society and why your support of the "Child Custody Act" is so important. People of our nation need to know that our children are a blessing and that we will protect them from harm. On August 31 1995, I discovered my 13-year-old daughter Crystal was missing from home. An investigation by the police, school officials, and myself revealed the possibility that Crystal had been transported out of state for an abortion. I can't begin to tell you the fear that enveloped me not knowing where my daughter was, who she was with, if she was in harms way, and to learn in this manner that my young daughter was pregnant. By early afternoon Crystal was home safe with me, but so much had taken place in that one day. The mother of this 19-year-old male had taken Crystal for an abortion in the state of New York. Apparently this woman decided this was the best solution for the situation caused by her son with little regard for the welfare of my daughter. Situations such as this is what the "Child Custody Act" was designed to help prevent. I am a loving responsible parent in whose parenting was interfered with by an adult unknown to me. My child was taken for a medical procedure to an unknown physician and facility without my permission. When Crystal developed complications from this medical procedure this physician was not available. He refused to supply necessary medical records to a physician that was available to provide Crystal the medical care she needed. I ask you to please in considering the "Child Custody Protection Act" to put aside your personal opinions on abortion. Please just consider the safety of the minor children of our nation who's lives are put at risk when taken out of their home state to avoid abortion laws, that are designed to protect them from harm. Please don't allow harm to our children in order to protect abortion or any other medical procedure. Please allow loving, caring, and responsible parents the freedom to provide the care their adolescent daughters need without interference from criminals or people who may think they are helping, but actually cause more harm than good. An abortion is a medical procedure with physical and emotional risks. An adolescent who has had an abortion needs the care and support of family. Crystal unfortunately developed both physical and emotional side effects. Some of the effects are still present today after 8 years have lapsed. In many ways time is a great healer but as imperfect human beings we don't always realize the effect of our actions or how deep the physical and emotional scars actually dwell. The "Child Custody Act" will help prevent an abortion decision that is based on fear of disappointing parents. It may discourage the use of abortion to hide criminal activity such as rape and statutory rape. For those who think they are "just helping," they may realize that an abortion is a serious situation and just providing an adolescent a ride for an abortion is not the answer. I urge you again to help avoid the scarring of America's adolescent girls by voting in favor of the "Child Custody Protection Act."

Thank you.

Mr. CHABOT. Thank you, Ms. Farley.

Professor Rosen, you're recognized for 5 minutes.

TESTIMONY OF MARK D. ROSEN, ASSOCIATE PROFESSOR (WITH TENURE), CHICAGO-KENT COLLEGE OF LAW

Mr. ROSEN. Thank you very much, Mr. Chairman.

I've been asked to opine as to whether Congress has the authority to enact this piece of legislation. I believe that Congress clearly does. It's authorized, in my view, under both the Commerce Clause and under the Effects Clause of the Full Faith and Credit Clause, and furthermore, there are not independent federalism right to travel or extraterritoriality limitations on Congress's power. This is just to say Congress, in my view, has the power. It's purely a political question that's not foreclosed by the Constitution.

With regard first to the Commerce Clause, the United States Supreme Court has upheld the Mann Act, which in some respects is very similar to this. It's an Act that barred the transportation of persons across State lines. The Court found that that power of Con-

gress came from Congress's authority to regulate interstate commerce, regulate interstate commerce, and that holding would clearly apply here. Since the Mann Act was upheld, the United States Supreme Court held in the *Morrison* case that Congress's powers may well be limited with respect to matters that are truly local, and the Court there indicated that family law matters might be truly local. I don't believe that this Act would run afoul of *Morrison's* limitations, however, because this Act has not prescribed a substantive rule with regard to family law.

What it does instead is it determines the extent of one State's legislative authority with regard to family law, namely, whether when a minor, who comes from a State with a parental notification law, is found in a State without a parental notification law, which law governs? And it seems to me that determining the scope of States' legislative authority is not only something that's not truly local, but it's something that is quintessentially a Federal function.

So I don't believe there are Commerce Clause limitations. I think Congress has the power under the Commerce Clause.

Furthermore, in my view, Congress has the power under the Full Faith and Credit Clause, and particularly the Effects Clause. The Effects Clause gives Congress the power to prescribe the effect of State laws, and that's what this law does in effect. It says, as I mentioned before, that a minor from a State that has parental notification law, who is in a State without, is going to be governed by the law of her home State. The United States Supreme Court has indicated many times in dicta that the Congress has the power under the Effects Clause to prescribe the extra-state effects of one State's law, and again, that's what's happening here.

So in my view, Congress has power under either the Commerce Clause or the Full Faith and Credit Clause to enact this.

It has been claimed by some that this legislation would run afoul of some extraterritoriality limitations that the States, some believe, have. Number one, I believe that the view that States have no power to regulate their citizens out—when their citizens are outside of their territories is a mistaken one, and in fact, scholarly restatements of the law, including the model penal code, recognized that States have the power to regulate even criminally the activity of their citizens when they're in other States.

Furthermore, even if States did not have that power, Congress has the power to extend States' regulatory authority. So under the Effects Clause, as I've mentioned, the Court, on more than one occasion, has said that Congress has the power to regulate the extra-state effects of one State's regulations. So there you go.

Similarly, with regard to the dormant Commerce Clause, Congress, in many respects, has the power again to extend regulatory authority that States wouldn't have on their own. So for instance, ordinarily States cannot discriminate against the goods that come from other States, but Congress, when it acts pursuant to the Commerce Clause, is able to bypass that and to allow States to discriminate against articles that are goods from other States.

So it seems to me that States have the extraterritorial authority to regulate their citizens, and even if they didn't, Congress clearly has the power to extend that regulatory authority, as Congress is doing here.

It's also been claimed that this Act would run afoul of federalism limitations, and I don't believe that's necessarily the case. Under certain conceptions of federalism, this Act might be inconsistent. However, my own view is that one of the great benefits of federalism is that with respect to policies that are not foreclosed by the Federal constitutional law or Federal statutory law, there can be diversity of approaches that States take, and when you have a law that by its nature can readily be circumvented through travel, as parental notification laws can be, then a Federal statute that helps to ensure the efficacy of constitutional policies does not undermine federalism, but it helps to enhance the diversity across States with regard to policies that they're able to pursue.

I have a few more seconds, but I think I'll stop here. Thank you.

[The prepared statement of Mr. Rosen follows:]

PREPARED STATEMENT OF MARK D. ROSEN

The Subcommittee has asked that I testify concerning Congress' power to enact H.R. 1755, the Child Custody Protection Act. I teach and write in the fields of constitutional law, choice-of-law, and state and local government law. Federalism is one of my principal interests.

The proposed legislation would make it a federal crime to knowingly transport "a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact 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 minor resides . . ." I believe that Congress has authority to enact this law under the Commerce Clause and the Full Faith and Credit Clause. In my view, H.R. 1755 is fully consistent with principles of federalism, and is not inconsistent with the right to travel or constitutional limitations connected to abortion rights. My testimony should not be construed as an argument in favor of the enactment of the Child Custody Protection Act. I only hope to establish that Congress is not constitutionally foreclosed from enacting such legislation, and that deciding whether to enact it accordingly is a political decision.

I. THE COMMERCE CLAUSE

Congress has the power to enact H.R. 1755 under its Commerce Clause powers.[1] H.R. 1755 is a regulation of commerce among the several States. "The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution . . ."[2] The power to regulate the transport of passengers is derived from Congress' powers over the "channels of interstate commerce,"[3] and recent Supreme Court case law continues to hold that "Congress may regulate the use of the channels of interstate commerce."[4] Because transportation itself qualifies as interstate commerce, it is not necessary to consider whether H.R. 1755 regulates "activities having a substantial relation to interstate commerce,"[5] that is to say, activities that themselves are not commerce but that "substantially affect interstate commerce."[6]

It is well established that Congress can adopt rules concerning interstate commerce, such as H.R. 1755, even if Congress is primarily motivated by non-economic goals.[7] The Court recently has warned that Congress cannot "use the Commerce

[1] The analysis that follows in this first section of my testimony is in substantial agreement with the testimony of Professor John C. Harrison, which was provided to this Subcommittee in respect of H.R. 1755's predecessor of H.R. 1218. *See* Statement of John C. Harrison, Professor of Law, University of Virginia, H.R. Rep. No. 106–204 (June 25, 1999).

[2] *Caminetti* v. *United States,* 242 U.S. 470, 491 (1917).

[3] *Id.*

[4] *United States* v. *Lopez,* 514 U.S. 549, 558 (1995).

[5] *Id.* at 558–59.

[6] *Id.* It is with respect to this category of regulations that the Supreme Court has limited congressional power in successive cases. *See Lopez,* 514 U.S. at 567–68; *United States* v. *Morrison,* 529 U.S. 598, 617–18 (2000).

[7] *See, e.g., Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241 (1964) (upholding enactment of Title II of the Civil Rights Act under Congress' commerce clause power); *see also Caminetti,* 242 U.S. at 491 (it is "within the regulatory power of Congress, under the commerce clause of the Constitution . . . to keep the channels of interstate commerce free from immoral and injurious uses . . .").

Clause to completely obliterate the Constitution's distinction between national and local authority," and has referred to the "family law context" as an area of "traditional state regulation."[8] H.R. 1755 would not run afoul of such commerce clause limitations because the proposed legislation supports rather than obliterates state and local authority by seeking to counter the circumvention of a class of state laws. In relation to the Court's concern that Congress not "completely obliterate the Constitution's distinction between national and local authority,"[9] it is critical that H.R. 1755 operates not by creating a substantive rule regarding family law but by sorting out a choice-of-law problem by indicating which state's substantive law is to govern under a certain context.[10] Determining the appropriate scope of a state's family law does not obliterate the distinction between what is national and local. To the contrary, sorting out the scope of states' competing regulatory efforts is a perfectly appropriate function for the federal government to serve that helps to govern the relationships among states, thereby securing the "horizontal federalism" component of our federal system. The next section more fully elaborates these points concerning the proposed legislation's choice-of-law character.

II. THE "EFFECTS CLAUSE" OF THE FULL FAITH AND CREDIT CLAUSE

Wholly independent of the Commerce Clause, Congress has the power to enact H.R. 1755 under the Effects Clause, which is part of the Full Faith and Credit Clause.[11] A clear understanding of the type of issue that H.R. 1755 addresses facilitates recognition why it falls within Congress' powers under the Effects Clause. The general question H.R. 1755 addresses is whether a person Z who resides in State A remains subject to a particular State A law when she is in State B. The determination of which of several states' law applies to a particular person, transaction, or occurrence is made by what is known as "choice-of-law" doctrines. At its core, H.R. 1755 is a federal choice-of-law rule. It determines which law governs a minor from a parental notification state who is visiting a state without such a requirement.

Under contemporary law, virtually all choice-of-law doctrines are a matter of state law. For almost a century, however, it has been vigorously argued by many legal scholars that choice-of-law is more appropriately a matter of federal law.[12] This conclusion is sensible because choice-of-law regulates the regulatory reach of each state, and it is unwise to leave resolution of this question to the states themselves; allowing each state to answer the question is akin to asking the fox to guard the proverbial henhouse. Quite apart from the normative question of whether choice-of-law should be federal law, virtually all legal scholars are of the view that Congress has authority under the so-called "Effects Clause" of the Full Faith and Credit Clause to enact choice-of-law rules.[13] That provision grants Congress the power to enact "general Laws" that "prescribe . . . the effect" that one state's laws shall have in other States.[14] Indeed, the Supreme Court on several occasions has observed in dicta that Congress has the power to enact choice of law rules under the Effects Clause.[15]

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[8] *Morrison,* 529 U.S. at 615–18. The *Morrison* Court discussed these limitations with regard to an analysis of congressional power to regulate matters that themselves are not commerce but that "substantially affect interstate commerce." It is possible that these limitations would not be applied at all to regulations of interstate commerce itself, such as H.R. 1755.

[9] *Morrison,* 529 U.S. at 615.

[10] Determining which of two competing states' laws is to apply necessarily means that one state's law will be deemed inapplicable, but resolving choice-of-law problems is fundamentally different from displacing state law with a substantive federal rule. To illustrate, a substantive federal rule would govern all scenarios within a given state. A choice-of-law rule such as H.R. 1755 does not displace the visited state's law, which does not require parental notification, but only indicates a class of persons to whom that law may not be applied.

[11] *See* U.S. CONST. ART. IV, § 1.

[12] *See, e.g.,* Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law,* 92 COLUM. L. REV. 249, 301 (1992); Michael Gottesman, *Draining the Dismal Swamp: The Case for Federal Choice of Law Statutes,* 80 GEO. L.J. 1 (1991); Walter Wheeler Cook, *The Powers of Congress under the Full Faith and Credit Clause,* 28 YALE L. J. 421, 425–26 (1919).

[13] See U.S. Const. Art. IV, § 1, cl. 2 and sources cited above at footnote 12.

[14] The Full Faith and Credit's term "public Acts" long has been understood to refer to legislation.

[15] For example, in *Sun Oil* v. *Wortman,* 486 U.S. 717 (1986), the Court decided that a forum state that was constitutionally obligated to apply non-forum law nonetheless could apply the forum state's statute of limitations. The Court rejected the modern view that statute of limitations are substantive, which would have led to the conclusion that the non-forum's statute-of-limitations had to be applied, and instead held that the historical understanding that statute

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Congress is authorized to enact a choice-of-law rule such as H.R. 1755 under the Effects clause. Dictum in a plurality opinion has stated that "there is at least some question whether Congress may cut back on the measure of faith and credit required by a decision of this Court."[16] H.R. 1755 is not inconsistent with this dictum[17] because the Supreme Court does not currently interpret the Full Faith and Credit Clause as dictating which substantive law one state must apply. Contemporary full faith and credit case law permits a state to apply its law if there is a "significant contact . . . creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair."[18] The Court's full faith and credit rule would permit the minor's state of residence to apply its law to the minor's activity in a sister state on account of the state of residence's continuing interests in protecting the parent's rights to "consult with [their daughter] in private, and to discuss the consequences of her decision in the context of the values and moral or religious principles of their family."[19] The proposed legislation hence does not contradict the case law, but specifies which state's law applies in a circumstance where Supreme Court case law has left the question unanswered.[20]

I recognize that it could be argued that H.R. 1755 dilutes "the measure of faith and credit required by a decision of this Court," *Thomas,* 448 U.S. at 272 n. 18, insofar as it could be argued that the visited state could apply its law under the Court's jurisprudence and H.R. 1755 in effect says that it cannot. There are two responses to this claim. First, case law that permits the application of two or more states' laws does not qualify as determining "the measure of faith and credit *required* by a decision of this Court." *Id.* at 272 n. 18 (emphasis supplied). Rather, the case law leaves undecided the question of what measure of full faith is required of another state's law. Second, it is conceptually incoherent to suggest that Congress lacks the power under the Effects Clause to "dilute" the effect of a state's law or judgment because determining that one state's law or judgment is to be given effect is to simultaneously decide that a sister state's law or judgment is not to be given effect and thereby dilutes the effect of that second state's law or judgment. Professor (now Judge) Michael McConnell has advanced this argument, *see* Hearing on S. 1740 Before the Senate Comm. on the Judiciary, 104th Cong. 57–58 (1996), and I believe it to be incontrovertible. If a dilution limitation as applied to the Effects Clause truly is incoherent, then the plurality's dictum in the *Thomas* case should be resisted.

H.R. 1755 does not appear to exceed Congress's powers under the Effects Clause in any other respects. Although H.R. 1755 provides a choice-of-law rule only with regard to parental notification requirements, the Effects Clause's language authorizing the enactment of "general Laws" has not prevented Congress from enacting subject-specific legislation in the past under the Effects Clause.[21] Indeed, there are strong reasons to believe that intelligent choice-of-law rules must be context-specific rather than trans-substantive, and that construing "general Laws" so as to disallow Congress from making subject-matter sensitive choice of law rules would jeopardize Congress' ability to create efficacious choice-of-law rules.[22] Because Congress has

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of limitations are procedural governed for purposes of the Full Faith and Credit Clause. *Id.* at 728–29. The Court nonetheless went on to state that "[i]f current conditions render it desirable that forum States no longer treat a particular issue as procedural for conflict of laws purposes . . . it can be proposed that Congress legislate to that effect under the second sentence of the Full Faith and Credit Clause." *Id.* at 729.

[16] 448 U.S. 261, 272 n. 18 (1980) (plurality). The plurality opinion's comments are dictum because the *Thomas* case did not analyze the scope of a congressional enactment under the Effects clause, but instead concerned the question of whether one state must give *res judicata* effect to a workmen's compensation claim that had been issued by another state's administrative agency. *Id.* at 286. The plurality opinion in *Thomas* also opined that "Congress clearly has the power to increase the measure of faith and credit that a State must accord to the laws or judgments of another State . . ." *Id.*

[17] This is not to suggest that I believe that Congress would be without the authority to do so, but only that H.R. 1755 does not raise the difficult question of whether Congress has authority under the Effects Clause to specify different full faith and credit rules than the Supreme Court has. *See infra* note 20.

[18] *Phillips Petroleum Co.* v. *Shutts,* 472 U.S. 797, 819 (1985) (internal quotation omitted).

[19] *Planned Parenthood* v. *Casey,* 505 U.S. 833, 899–900 (1992).

[20] The Supreme Court has recognized that its full faith and credit test allows more than one state's law to apply to a given person, transaction, or occurrence *Sun Oil Co.* v. *Wortman,* 486 U.S. 717, 727 (1988).

[21] *See* Parental Kidnaping Prevent act of 1980, 28 U.S.C. § 1738A; Full Faith and Credit for Child Support Orders Act of 1994, 28 U.S.C. § 1738B; Violence Against Women Act's full faith and credit provision, 18 U.S.C. § 2265 (requiring sister States to recognize and enforce a valid protection order issued by another state).

[22] Under all variants of modern interest analysis, choice-of-law is not conceptualized as a distinct body of "procedural" law but instead is largely a function of substantive law. The common

passed legislation pursuant to the Effects Clause only a handful of times, the Supreme Court has not had the opportunity to significantly develop the contours of Congress's Effects Clause powers. Although this means that analysis of Congress's powers under the Clause necessarily is speculative, such uncertainty is not a reason for Congress to avoid relying on the Effects Clause; after all, in view of Article III's "case or controversy" requirements, it is only by invocation of the Clause and subsequent judicial challenges that the scope of congressional power can ever be worked out. With all this in mind, a plausible limitation is that the Effects Clause not be used by Congress willy nilly to champion those substantive policies that it favors.[23] A feasible judicial check to ensure that Congress does not abuse its Effects Clause powers in this regard is to require that Congress' choice-of-law rule be reasonably consistent with general choice-of-law principles.[24] H.R. 1755 readily would pass such a test because the conclusion that the law of the minor's residence should govern is consistent with contemporary choice-of-law doctrines.[25] That is to say, a congressional determination that the minor should be governed by her home state's law is reasonable.

The proposed legislation does not simply specify the effect of one state's law, but also creates civil and criminal penalties for those who transport a minor across a state border for the purpose of evading her home state's parental notification law. The question is whether the power to "prescribe . . . the effect" of the home state's parental notification law includes the power to create such civil and criminal penalties for those who facilitate the law's circumvention. While we are without guidance from the Supreme Court in answering this specific question, there are good reasons to believe that the answer is yes. Congress has the power to "make all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers it has been granted.[26] If the "end be legitimate" then "all means which are

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ground of interest analysis is the effort to ascertain whether each of the multiple jurisdictions whose law potentially applies in fact has a governmental interest in applying its law to the facts at hand; if only one polity has an interest then there is a "false conflict" and only that jurisdiction's law is to be applied. *See* DAVID P. CURRIE, HERMA HILL KAY, LARRY KRAMER, CONFLICT OF LAWS: CASES, COMMENTS, QUESTIONS 132–33 (West Group 2001). The determination of whether there is a "false conflict" is made by considering the purpose of each state's substantive law, and asking whether the legislature would have wished to regulate the party, transaction, or occurrence. The process of deciding whether there is a false conflict hence involves ascertaining the scope of substantive law of each potentially interested jurisdiction. If this approach of first eliminating "false" conflicts indeed is a genuine contribution of modern approaches to conflicts analysis, then it would follow that efficacious choice-of-law doctrines invariably will be a tied to substantive law. If Congress is to have power under the Effects Clause to make efficacious choice-of-law doctrines, then the Effects Clause must include the power to tailor rules in a manner that is sensitive to the substantive law.

[23] The reason for this limitation is as follows. The Full Faith and Credit Clause seeks to accomplish the two somewhat mutually inconsistent goal of bringing about a federal union of meaningfully empowered States. *See Baker* v. *General Motors Corp.,* 522 U.S. 222 (1998) (discussing the goal of creating a federal union); *Pacific Employers Ins. Co.* v. *Indus. Accident Commission,* 306 U.S. 493, 502 (1939) (noting Full Faith and Credit's protection of each state's sovereign interests). Congress appropriately has broad latitude when legislating pursuant to the Effects Clause to decide how to harmonize these competing policies. There is no indication, however, the Full Faith and Credit Clause is an appropriate vehicle for Congress to foist its policy preferences upon the States.

[24] Such deferential review would be similar to the approach the Court once took to reviewing congressional enactments pursuant to Section 5 of the Fourteenth Amendment. *See Katzenbach* v. *Morgan,* 384 U.S. 641, 652–57 (1966). Although the Court no longer utilizes such deferential review in relation to Congress' Section 5 powers, *see City of Boerne* v. *Flores,* 521 U.S. 507 (1997), the more explicit grant of independent congressional authority under the Effects Clause could well lead the Court to utilize more deferential review in analyzing legislation enacted pursuant to the Full Faith and Credit Clause.

[25] Under classic interest analysis, the choice between the law of the minor's residence and the law of the visiting state might be characterized as a "false conflict"—it would be said that the visiting state has no interest in regulating non-citizens, whereas the state of residence has a strong interest in regulating its citizen's conduct—with the result that the home state's parental notification law would be applied. Alternatively, the situation might be analyzed as a "true conflict," in which case the home state's law still might be selected, depending upon the type of interest analysis that were used. Under the approach advocated by Brainerd Currie, for instance, the home state's law would be selected if the parents sued in a court located in their state of residence. Under the Second Restatement of Conflict's approach, a court could well conclude that the minor's home state is the state with the most significant relationship to the matter and hence the state whose law ought to apply. Even under traditional approaches, the parental notification law might be construed as a family law that accordingly is provided by the state of residence.

[26] U.S. CONST. ART. I., § 8, cl. 18.

appropriate, which are plainly adapted to that end" are constitutional.[27] As shown above, the end of specifying the effect of the home state's parental notification law is "legitimate." The question then becomes whether H.R. 1755's civil and criminal penalties are "appropriate" and "plainly adapted to that end." The Supreme Court has been famously deferential to congressional judgments about what means are appropriate to accomplishing legitimate ends,[28] and it seems plausible that measures of the sort found in H.R. 1755 are "useful"[29] for ensuring that the home state's parental notification laws will be given effect when the minor visits other states. Given the dynamics of family relations, there are good reasons to believe that there would be systematic evasion of parental notification laws if parents' only legal recourse were a lawsuit against their minor daughters who violated the parents' rights by crossing a border to obtain an abortion.

III. CRITICAL EXAMINATION OF POSSIBLE CONSTITUTIONAL OBJECTIONS TO H.R. 1755

A. H.R. 1755 and Extraterritoriality

Some opponents of H.R. 1755 have argued that the proposed legislation would give unconstitutional extraterritorial authority to the resident state's law. There are three fatal flaws to any such criticism. First, H.R. 1755 can be conceptualized as a federal law extension to state law that functions to increase the state law's efficacy. So understood, H.R. 1755 does not extend the operation of state law extraterritorially, but simply is federal law that operates across state borders, as federal law often does.

Second, the criticism that H.R. 1755 unlawfully extends state laws is based on the misconception that one state's regulatory authority ends at its borders. An early approach to choice-of-law believed that territorial location alone answered the question of what law applies, but this has been almost universally rejected in this country.[30] Today, state laws regularly apply to persons, transactions, and occurrences that occur outside the state's borders.[31] Thus scholarly restatements of the law and the Model Penal Code both understand that states may regulate their citizens out-of-state activities, and may even criminalize out-of-state activity that is permissible in the state where it occurs.[32]

Directed to the criminal context, the Model Penal Code provides that State A may impose liability if "the offense is based on a statute of this state that expressly prohibits conduct outside the state." Model Penal Code § 1.03(1)(f). The Model Penal Code provides that State A has extraterritorial legislative jurisdiction even if the activity it prohibits occurs in a State in which the activity is permissible. *Id.* The major limitation identified by the Model Penal Code is that the regulated conduct must "bear[] a reasonable relation to a legitimate interest of [the regulating] state." *Id.* at § 1.03(2). The Comment states that the "reasonable relation to legitimate interests" requirement "expresses the general principle of the fourteenth amendment limitation on state legislative jurisdiction." *Id.* at § 1.03(1)(f).

Third, even if states lacked the power to regulate their citizens' out-of-state activities under contemporary law, the Effects Clause and the Commerce Clause both can serve to extend states' regulatory powers. The Effects Clause gives Congress the power to alter the extraterritorial effect that one state's public acts, records and judicial proceedings have in other states. Thus before Congress enacted the Violence Against Women Act's full faith and credit provision, it was uncertain whether a protective order issued in State A would have effect in State B, whose laws differed from State A such that no protective order would be issued on the facts.[33] The federal act provided that State B was required to give effect to State A's protective

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[27] *See McCulloch* v. *State of Maryland,* 17 U.S. (4 Wheat.) 316, 421 (1819).

[28] *See, e.g., Jinks* v. *Richland County,* S.C., 123 S.Ct. 1667, 1671 (2003).

[29] *McCulloch,* 17 U.S. at 413; *see also id.* at 419.

[30] *See* CURRIE, ET. AL., *supra* note 22, at 2–6.

[31] For a comprehensive examination of states' powers to regulate their citizens' out-of-state activities, *see* Mark D. Rosen, *Extraterritoriality and Political Heterogeneity in American Federalism,* 150 U. PA. L. REV. 855 (2002).

[32] The Restatement (Third) of Foreign Relations Law provides that states "may apply at least some laws to a person outside [State] territory on the basis that he is a citizen, resident or domiciliary of the State." Restatement (Third) of Foreign Relations Law § 402 reporters' notes at 5 (1986). The Restatement asserts that this principle applies to both extraterritorial criminal and civil legislative powers. *See id.* at § 403, comment f. The Reporters Notes make clear that the Restatement understands that its principles apply to the extraterritorial powers enjoyed by states within the United States. *See id.* at § 402 and Reporters' Notes 5.

[33] *See* Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders,* 98 NW. U. L. REV. 827 (2004).

order.[34] Similarly, while states on their own may not enact protectionist legislation that disallows goods from other states to cross their borders,[35] the Commerce Clause allows Congress to grant states such powers to discriminate against goods from other states.[36] As a structural matter, a federal government that umpires the sister states' regulatory powers vis-a-vis one another is eminently sensible, and several constitutional provisions—including the Effects Clause and the Commerce Clause—empower Congress to serve this function.

B. Federalism and the Right to Travel

Some opponents of H.R. 1755 have argued that the Child Custody Prevention Act would be inconsistent with constitutional principles of federalism. To the contrary, I believe that H.R. 1755 is consistent with a more attractive conception of federalism than these opponents implicitly adopt.

States may have divergent substantive policies with respect to those matters that are not violative of the United States Constitution or displaced by federal law. Such diversity among states is one of the frequently heralded benefits of our federal system. Many constitutionally legitimate state laws, however, can be frustrated if citizens can free themselves of their home state's legal requirements merely by crossing a state border and availing themselves of their neighboring state's varying law. This is true of constitutionally permissible state laws that are paternalistic or that seek to protect third-party interests. By undermining the efficacy of such state laws, "travel-evasion" in effect thwarts the diversity of state laws that is theoretically permissible under our federal system.[37] A law such as H.R. 1755 supports diversity across states by ensuring that each state can pursue efficacious policies in those realms that are not foreclosed by the Constitution or other federal law. It is my view that the diversity that federalism can afford is an affirmative good in a country as large and diverse as ours.

Those who assert federalism challenges to H.R. 1755 are working with a different conception of federalism. They evidently are of the view that although diversity across states is good, citizens should be able to pick and choose the laws that are to govern them by traveling to whatever jurisdiction's law they wish to govern them on an issue-by-issue basis. Indeed, some opponents of H.R. 1755 have argued that H.R. 1755 interferes with minors' constitutional "right to travel." At least one noted scholar has advocated this type of position.[38]

To begin, the notion that H.R. 1755 is inconsistent with the constitutional right to travel is not supportable under the Supreme Court's jurisprudence. Neither a state nor the federal government can interfere with a citizens' ability to leave a state for the purpose of visiting another State or prevent its citizens from returning; either would violate "the right of a citizen of one State to enter and to leave another State."[39] H.R. 1755 does not even implicate this limitation, for it does not preclude the minor from traveling, and indeed explicitly provides that a "minor transported in violation of this section . . . may not be prosecuted or sued for a violation of this section."[40] The minor's right to travel to another state is wholly unimpeded by H.R. 1755.

Even if H.R. 1755's limitation on the transportation of minors were deemed to implicate the minor's ability to enter and leave another State, it is unlikely that this would be deemed by the Court to violate her right to travel. The Court has recognized that the right to interstate travel "may be regulated or controlled by the exercise of a State's police power" and by the federal government as well.[41] This is perfectly consistent with the nature of most constitutional rights, which virtually never establish categorical prohibitions on regulation but instead heighten the requirements that must be satisfied for regulation to be constitutional.[42] Particularly rel-

[34] *See* 18 U.S.C. § 2265 (2000).

[35] *See, e.g., City of Philadelphia* v. *New Jersey,* 437 U.S. 617 (1978).

[36] *See, e.g., New York* v. *United States,* 505 U.S. 144, 171 (1992) ("While the Commerce Clause has long been understood to limit the States' ability to discriminate against interstate commerce, that limitation may be lifted, as it has been here, by an expression of the 'unambiguous intent' of Congress.") (internal citations omitted).

[37] *See* Rosen, *supra* note 31, at 856–861.

[38] Seth F. Kreimer, *"But Whoever Treasures Freedom . . .": The Right to Travel and Extraterritorial Abortions,* 91 MICH. L. REV. 907, 915 (1993).

[39] *See Saenz* v. *Roe,* 526 U.S. 489, 500 (1999).

[40] *See* Sec. 2431(b)(2).

[41] *United States* v. *Guest,* 86 S. Ct. 1170, 1179 & n. 17 (1965).

[42] For example, notwithstanding the First Amendment's categorical statement that "Congress shall make no law . . . abridging the freedom of speech," Congress is constitutionally permitted to regulate speech, even political speech. *See, e.g., McConnell* v. *Federal Election Commission,*

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evant for present purposes, the Court has ruled that other components of the constitutional right to travel establish non-categorical rights. For instance, what the Court has identified as the "right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State,"[43] an aspect of the right to travel that the Court has tied to Article IV's Privileges and Immunities Clause, does not establish an "absolute" right for a visitor to be treated as citizens are.[44] Rather, states are permitted to distinguish between residents and nonresidents if "there is a substantial reason for the difference in treatment" and the "the discrimination practiced against nonresidents bears a substantial relationship to the State's objective."[45] If the Court were to utilize a similar test to determine whether a regulation impermissibly interfered with "the right of a citizen of one State to enter and to leave another State,"[46] the questions would be whether Congress has a substantial reason to proscribe the out-of-state transport of minors for the purpose of circumventing the home state's parental notification requirements and whether the imposition of civil and criminal penalties for such transportation bears a substantial relationship to Congress' objective. I believe that the answer to both questions vis-a-vis H.R. 1755 would be yes: Congress has a substantial reason to ensure that constitutional state policies are not undermined through travel-evasion, and, given the nature of family dynamics, civil and criminal penalties on those who facilitate the transportation of minors bear a substantial relationship to achieving Congress' objective.

Apart from the claim that H.R. 1755 would violate the right to travel refuted above, it still could be claimed that H.R. 1755 is inconsistent with federalism. The claim is that federalism allows diversity across states, but also requires that citizens be able to travel to other states so as to be subject to that other state's laws on an issue-by-issue basis. While such a claim is not illogical, it reflects, in my view, a less compelling conception of federalism than the diversity-supporting system that a law such as H.R. 1755 promotes.[47] In any event, my point here is not to vindicate my particular view of federalism, but to show that the argument that H.R. 1755 is flatly antithetical to federalism is groundless. Rather, the proposed legislation's relationship to federalism is a function of what conception of federalism one holds. The Supreme Court has not answered this question. It is my view that answering this question is Congress' prerogative, subject to only a highly deferential Supreme Court review.

C. Abortion Rights

Finally, some have argued that H.R. 1755 is inconsistent with the limitations on abortion that the Court has located in the Fourteenth and Fifth Amendments. The Supreme Court has held that laws regulating abortion must provide an exception for the "preservation of the *life or health* of the mother."[48] H.R. 1755 provides an

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124 S. Ct. 619, 660–61 (2003); *see generally* Richard H. Pildes, *Why Rights are not Trumps: Social Meanings, Expressive Harms, and Constitutionalism,* 27 J. LEGAL STUD. 725 (1998).

[43] *See Saenz,* 526 U.S. at 500.

[44] *See id.* at 489–502. This so-called "second component" of the right to travel would not be implicated by H.R. 1755. This second component limits the state that a citizen visits, but not her home state. It is an equal protection type principle that limits the extent to which the visiting state can treat visitors differently from its own citizens, but it in no way affects the home state's power to regulate its own citizens when they go out-of-state. *See* Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 75–77 (1873) (the Privileges and Immunities Clause of Article IV "does not profess to control the power of the State governments over the rights of its own citizens."); *see generally* Rosen, *supra* note 31, at 900–903. The third aspect of the right to travel—"the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State," *Saenz,* 119 S.Ct. at 1526—plainly is not implicated by H.R. 1755.

[45] *Lunding* v. *N.Y. Tax Appeals Tribunal,* 522 U.S. 287, 298 (1998) (internal quotations omitted).

[46] *See Saenz,* 526 U.S. at 500.

[47] "Pick and choose" federalism undermines diversity across states by systematically disfavoring those state laws that are more regulatory of their citizens than are other states' laws. "Less regulatory" should not be confused with liberty-enhancing. Those jurisdictions that wish to regulate more than their neighbor states do so because they have differing notions of the public good. Indeed, undermining laws that protect the rights of third-parties—as parental notification laws are designed to do—undercut those third parties' liberty interests. A fair way to decide between these competing conceptions of federalism, it seems to me, is to perform a thought experiment of the sort famously proposed by John Rawls. If one were behind a "veil of ignorance" and did not know whether she represented a libertarian (who chafed at regulation) or a regulationist who thought that regulation frequently was good, what type of federalist system would she opt for? It seems obvious to me that the favored federalist system would be one that permitted meaningful diversity across states with regard to those matters that federal constitutional and statutory law did not demand national uniformity. For a more elaborate discussion of this, *see* Rosen, *supra* note 31, at 882–91.

[48] *Stenberg* v. *Carhart,* 120 S. Ct. 2597, 2613 (2000) (emphasis supplied).

exception, however, only "if the abortion was necessary to save the life of the minor."[49] The bill's absence of an exception for the mother's health nonetheless does not violate the Court's requirement because H.R. 1755 piggybacks on state parental notification statutes. Assume for present purposes that state parental notification statutes must provide an exception for the health of the mother to be constitutional. If the mother's health is endangered, state law cannot require parental notification, and transportation of a minor across state lines[50] consequently would not run afoul of H.R. 1755's prohibition. On the other hand, if a state parental notification statute did not include an exception for the health of the mother, then it would be constitutionally invalid and for that reason could not provide the predicate for liability under H.R. 1755. In short, because the state law that H.R. 1755 operates in conjunction with state law that already must contain a health exception to be valid, H.R. 1755 itself need not contain such an exception. The absence of a health exception in H.R. 1755 does not render it inconsistent with the case law that defines rights in relation to abortion because H.R. 1755 in effect incorporates state parental notification laws, which must have an exception for the health of the mother in order to trigger H.R. 1755's application.

IV. CONCLUSIONS

For the reasons discussed above, I am of the view that Congress has power under the Full Faith and Credit Clause and under the Commerce Clause to enact H.R. 1755. The bill is not flatly contrary to principles of federalism, but rather is fully consistent with a plausible conception of federalism. H.R. 1755 does not run afoul of any constitutional limitations on state extraterritorial powers, nor is it inconsistent with the right to travel or with the abortion rights that the Court has located in the Fourteenth and Fifth Amendments.

In short, whether H.R. 1755 should be enacted is a purely political question that is not foreclosed to the Congress by the Constitution.

Mr. CHABOT. Thank you, Professor.

Reverend Powell, you're recognized for 5 minutes.

TESTIMONY OF LOIS M. POWELL, MINISTER, UNITED CHURCH OF CHRIST, ON BEHALF OF THE RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE

Rev. POWELL. Thank you, Mr. Chairperson, and gentlemen of the Committee present. I am pleased to be able to testify today. I am a person who has been counseling women facing difficult decisions around pregnancies, unwanted pregnancies since 1970. I have done that as a student in college and I have done that as an ordained person in the United Church of Christ.

I am here to represent many people who are deeply disturbed by the possibility that United States Congress might enact a law that would jeopardize the health and the well-being of many young women.

When a woman is young, of minor age, she too must be able to determine what is best for her. Optimally, optimally, she would be able to discuss this with her parents or her legal guardian, and together they would come to agreement about what path to take. And usually, young women do in fact discuss this with their parents, even in States without parental consent or notice laws. Of those young women who do not talk with their parents when they are pregnant as teenagers, over half do in fact involve a close adult relative or other responsible adult.

But unfortunately, we don't live in an optimal world. I am here today to bring a human face and a human reality to the potential effects of this Act.

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[49] *See* Sec. 2431(b)(1).

[50] Such transportation would not, of course be necessary, since an abortion without parental notification would be permissible in the minor's home state under such circumstances.

Someone once said that statistics are human faces without tears. As a pastor in Tallahassee, Florida, I extended counseling support to parishioners who were faced with unwanted and difficult pregnancy decisions, and also to clients at a local women's clinic, who struggled particularly with spiritual and religious aspects of these decisions.

In the capacity as a spiritual counselor to a 16-year-old woman who had traveled from South Georgia to the clinic in Tallahassee with her 20-year-old sister, I discovered that these young women were conservative Christians. They were members of a church, and their family were members of a church that had taken a very strong and public visible anti-abortion stance. The 16-year-old who was pregnant only had her older sister to turn to, she felt, when she learned she was pregnant. Neither felt that they could discuss this matter with their parents because their parents had made their disapproval of sexual activity before marriage abundantly clear, as had their church. Their worst fear was that they would be removed from this church, and in fact, abandoned by the faith they had known from childhood. The Child Custody Protection Act would only make this kind of a difficult situation even worse, possibly driving a wedge between the daughters and their parents and creating a lifelong breach in family communication.

Additionally, under this Act, the 20-year-old sister could be charged with a felony for accompanying her younger sister across State lines. And I ask you, is this just and is this justifiable? Does not this kind of punitive law unduly burden young women and place a formidable obstacle in the way of their securing legal and safe reproductive health?

I assured this young woman and her sister that God had not abandoned them and would remain with them always, and I encouraged them to find a safe way eventually to discuss this matter with their parents and restore family relationships.

Not one woman, whether a teen or adult woman, has the same set of circumstances that she confronts, but we can never forget that individual women, who themselves have been created in the image of God, struggle in each and every instance.

This Act will not protect girl children, nor will it make their struggles less difficult. It will make them even more vulnerable in times of deep crisis. Only 14 percent of our counties nationwide have abortion providers, and the majority of women will have to travel at least to another county, but the nearest abortion provider may in fact be across a State line. If that woman is a minor and if she is terrified to tell her parents because of a history of physical violence in the family, or for the other real concerns, how is she going to get there, alone, hitchhike, on a bus?

What if she had been raped by a father, as was the case with Spring Adams, a sixth-grader in Idaho, who became impregnated by her father and was forced by that State's parental consent and notification law to tell her mother that her father had raped her. The father then shot and killed her, her mother and then himself. Are these the family values we are to espouse?

Yes, parents are supposed to protect their children from harm, and most do, but even in the most loving of parent-child relationships harm can happen. Children who are close to their parents

may not know if the knowledge of a pregnancy will turn parents against them. They don't know if God will leave them alone or punish them. And so they are silent. Sometimes here is violence in the household. So it is reasonable that they turn to other adults whom they do trust and in whom they can confide. It would be the role of that adult to help them negotiate all of these matters, to help them make the best decision possible for them, and to assist her in achieving what she determines is best for her.

Should minors access the legal health care services be compromised in any way? I don't think so. I worry about every teenager who becomes pregnant, and I pray for the day when this is a rare occurrence in our society. I pray for the day when boy children are taught to respect girls, when they know that while the consequences for themselves of having impregnated a girl are different than they are for the girl, there are consequences nonetheless for them. I pray for the day when rape, statutory rape, date rape or stranger rape, that results in a pregnancy, becomes the issue itself that our society is forced to look at and must address, and not the resultant pregnancy.

Parents do need to be involved in their children's lives. We need to create a culture that encourages good parenting. Yet I know from my years in ministry that not all parents are equipped to be good parents.

Please do not support this Act. It is not really about protecting children, but it is about governmental interference in decisions of conscience that young people sometimes have to make. May you continue to hold the names, faces and hearts of those who would be most impacted by this Act, should it come to pass, before you.

Thank you.

[The prepared statement of Reverend Powell follows:]

PREPARED STATEMENT OF REVEREND LOIS M. POWELL

Ladies and gentlemen of the Committee, thank you for the invitation to speak with you today. My name is The Reverend Lois M. Powell, and I currently serve on the national denominational staff of the United Church of Christ in our Justice and Witness Ministries. I am also the Chairperson of the Board of Directors of the Religious Coalition for Reproductive Choice, the 31-year-old coalition of national religious and religiously affiliated organizations from 15 denominations and faith traditions, including the Episcopal Church, Presbyterian Church (USA), United Methodist Church, Unitarian Universalist Association, Christian Church (Disciples of Christ), Reform and Conservative Judaism, and my own denomination. Together, the denominations and traditions in the Coalition have more than 20 million members.

I am here today as a person who has counseled women facing unwanted or unintended pregnancies since 1970, when I started as a peer counselor with a campus chapter of Planned Parenthood at my college. I am here today to represent many people of faith who are disturbed by the possibility that the United States Congress might enact a law that would jeopardize the health and well being of minor young women. Since 1969, the United Church of Christ has supported the right of women to determine their reproductive health. Since 1973, it has consistently opposed efforts to limit or eliminate full access to these legal rights for any woman facing an unintended or unwanted pregnancy regardless of age or income. A majority of persons of faith in the United States—74%, in fact, according to a national survey conducted in 2000 by Lake Snell Perry and Associates—believe that these very private decisions are best made by the woman in accord with her religious and ethical beliefs, and her God.

When the woman is young, a minor, she, too, must be able to determine what is best for her. Optimally, she would be able to discuss this with her parents or legal guardian and together they would come to agreement about what path to take. Usually young women do involve their parents, even in states without mandatory paren-

tal consent or notice laws. Of those young women who did not involve a parent in their decision, over half involved a close relative or other responsible adult. (Stanley K. Henshaw and Kathryn Kost, Parental Involvement in Minors' Abortion Decisions, 24 Family Planning Perspectives 199—200, 207 [1992])

But we do not live in an optimal world. I am here today to bring a human face, a human reality to the potential effects of this Act. In the pre-*Roe* v. *Wade* era, when I began counseling women facing unwanted or unintended pregnancies with a campus chapter of Planned Parenthood, those who chose to terminate a pregnancy were referred to a member of the clergy in the Clergy Consultation Services, a network of ministers and rabbis who offered all-options counseling before referring women to places where safe abortions could be obtained. (In 1970, that place was the State of New York, which had made abortion legal that year.) In many cases, they did so in order to save the lives of women who might otherwise take desperate measures to end their pregnancies, attempts that often ended in death or the inability to have children at all.

Someone once said that statistics are human faces without the tears. After I was ordained in 1978, I continued to provide counseling and support to women struggling with whether or not terminate a pregnancy. As a pastor in Tallahassee, Florida, I extended this support to parishioners and to clients at a local women's clinic who struggled particularly with spiritual and religious issues. Currently, I receive an occasional request to counsel women who have contacted the Ohio Affiliate of the Religious Coalition for Reproductive Choice with a desire to talk with a minister.

While in Tallahassee, I counseled a 16-year-old woman at the clinic who had traveled from South Georgia with her 20-year-old sister. These sisters had grown up in a conservative Christian church that had a strong and publicly visible anti-abortion position. The 16-year-old had only her sister to turn to for support when she learned she was pregnant. Both felt they could not talk to their parents about the pregnancy because their parents had made their disapproval of sexual activity abundantly clear. Their church was a very important part of their family and community life, and the sisters were terrified at the prospect of public humiliation and shame that could fall upon the entire family if it became known that a member of the family had an abortion. Their worst fear was that they could be removed from this church and, in effect, abandoned by the faith they had known from childhood. The Child Custody Protection Act would only make this difficult situation worse. It would drive a wedge between the daughters and parents and could cause a lifelong breach in family communication.

Under the Child Custody Protection Act, the 20-year-old sister would be a federal criminal for accompanying her younger sister across state lines for an abortion. I ask you, is this just? Does not this kind of punitive law unduly burden young women and place a formidable obstacle in the way of their securing legal and safe reproductive health care?

I assured this young woman, and her sister, that God had not abandoned them but would remain with them always. I encouraged them to find a way—eventually—to talk with their parents but not without a supportive third person who could mediate on their behalf. I also encouraged them to find a counselor close to where they lived who would be able to offer emotional support in a non-judgmental manner should any issues arise when they returned home. This young woman did decide to have an abortion but many of the same questions and issues would have applied if she had decided to carry the pregnancy to term.

Statistics are human faces without the tears. Not one woman has the same story or set of circumstances as any another woman. Each situation is unique, shaped by the nuances of her religious background, her family setting, her finances, her emotional and psychological maturity, and other factors too complex and diverse to enumerate. Some women under the age of 18 are already mothers, some only want to finish high school. Some choose to terminate their pregnancy, some choose to carry their pregnancy to term. We can never forget that individual women, who themselves have been created in the image of God, struggled in each and every instance.

The Child Custody Protection Act will not protect girl children or make their struggle less difficult. It will make them even more vulnerable during a time of crisis. When only 14% of all counties nationwide have an abortion provider, a majority of women seeking to exercise their legal rights to full reproductive health care will have to travel at least to another county. The closest provider might, in fact, be across a state line. If that woman is a minor, and if she is terrified to tell her parents because of a history of physical violence in the family or for other real concerns, how is she going to get there? Alone? On a bus? What if she had been raped by a father, as was the case with Spring Adams, a sixth-grader in Idaho. Spring was impregnated by her father, and because of the parental consent requirement in her state, she was forced to tell her mother that her father had raped her. He then shot

and killed young Spring Adams, her mother and then himself. (Richard North Patterson, in a speech to the National Abortion Federation, April 23, 2001) This is one American family's story.

Parents are supposed to protect their children from harm. But even in the most loving of parent-child relationships, harm can happen. Children who are close to their parents may not know if the knowledge of a pregnancy will turn parents against them, or they do not know if God will punish them, and so they keep silent. In households in which distrust or violence prevail, children are even less likely to trust a parent or legal guardian in a time of crisis. So it is reasonable that they turn to other adults whom they do trust and in whom they can confide. It would be the role of that adult to help the young woman to negotiate the rocky waters of family conflict, to make a decision about what to do, and to assist her in achieving what she determines is best for her. If that assistance included accompanying her across a state line to terminate a pregnancy, that trusted adult would be a federal criminal.

I ask you, is this just? Should minors' access to legal health care services be compromised in this way? Should those who assist them in obtaining legal health care be criminalized? Are these the family values we choose to espouse?

I worry about every teenager who becomes pregnant, and I pray for the day when this is a rare occurrence in our society. I pray for the day when boy children are taught to respect girls, when they know that while the consequences for themselves of impregnating a girl are different than they are for the girl, there are consequences for them. I pray for the day when rape, whether date rape or stranger rape, that results in pregnancy becomes the real issue which we as a society must address, not the resultant pregnancy. I believe we all would affirm this.

Parents need to be involved in their children's lives, and we as a society need to create a culture that encourages good parenting. Yet I know from my years in the ministry that parents are not perfect and that many struggle to understand their own children. I also know parents who never grew up themselves and who impose on their children their own immaturity. The solution to involving parents is not to pass legislation that would mandate family communication on one particular issue—this issue of abortion. In reality, this legislation could end up destroying the family's relationships and endangering the girl's well-being.

Please do not support this Act. It is not about protecting children but about governmental interference in the decisions of conscience that young women sometimes have to make.

Thank you again for the opportunity to testify before you today. May you continue to hold the faces, names and hearts of those who would be most impacted by this Act, should it come to pass, before you.

Reverend Lois M. Powell, Child Custody Protection Act, House Subcommittee on the Constitution, July 20, 2004

Reverend Lois M. Powell, Child Custody Protection Act, House Subcommittee on the Constitution, July 20, 2004

Mr. CHABOT. Thank you.

Professor Collett, you're recognized for 5 minutes.

TESTIMONY OF TERESA STANTON COLLETT, PROFESSOR OF LAW, UNIVERSITY OF ST. THOMAS SCHOOL OF LAW

Ms. COLLETT. Thank you, Mr. Chairman, Members of the Committee.

I must confess I am puzzled by Reverend Powell's solution to the problem of Spring Adams, that a secret abortion would have allowed her to continue to reside in the incestuous home and be abused again. In fact, that was the solution of Planned Parenthood in Arizona, where a 13-year-old was being raped by her foster brother. They did indeed give her a secret abortion at a time when that State's parental involvement law had been enjoined by the court. They did not tell of the incest, as they were required under that State's law, but in fact, sent the little girl back to the same house. She was raped again, impregnated again, and it was only when she came back for a second abortion that it was discovered. Fortunately, it was discovered, and Planned Parenthood was found

civilly liable for the failure to report, and the girl was removed from the household.

That is one of the benefits of parental involvement laws. The law before you, as proposed, would not impose a national parental involvement law, but that's what motivates the overwhelming consensus in this country, that these are good laws. Forty-four states have passed parental involvement laws, but 10 of them have been found to be constitutionally defective, and another group of them have provisions that allow for someone other than the parent to bypass it, and other than a judge. So only in 24 States must a parent be notified or give consent.

This particular law is necessary because as telephone directories that are located in States that do not have effective parental involvement laws evidence, abortion providers recognize the absence of parental consent will increase their business. All you need to do is look at the Yellow Pages in cities like St. Louis or Philadelphia, and you'll see abortion providers' ads that include things like, "No parental consent required," and then you'll recognize the importance of this.

A *New York Times* article suggested that South Jersey Women's Center in Cherry Hill found a 25 percent increase when they began advertising no parental involvement required. There was a 200 percent increase in the number of girls seeking abortions after the Pennsylvania law went into effect in neighboring States. So it's clear that abortion providers are taking advantage of this, and this law allows States to ensure that the choice that they have made through the proper political process is given in effect to protect their minor citizens.

Is that important and valuable? Well, as this Congress learned through a congressional report from the Center for Disease Control, two-thirds of the fathers of teenage mothers are age 20 years or older, suggesting that there is in fact differences in power and status between the sexual partners. In addition to that, a survey of 1,500 unmarried minors having abortions revealed that among the minors who reported that neither parent knew of the abortion, 89 percent said that a boyfriend was involved in deciding or arranging the abortion, and 93 percent of those 15 and under said that the boyfriend was involved.

Abortion providers are reluctant to report information. It's not just an isolated case in Arizona. In fact, in Oregon, an abortion clinic provided an abortion to an 11-year-old, yet failed to report the sexual abuse. It was only because they botched the abortion and there were in fact pieces of fetal remains in the young girl causing stomach cramps, so when the child was taken to the hospital, the doctor there reported it, and it was discovered that she had been raped.

Or consider the case of Connecticut that is still before the courts, where a 10-year-old girl was impregnated by a 75-year-old man. The child was examined by two physicians who failed to report the sexual abuse to public authorities as required by Connecticut law.

A 36-year-old Nebraska man went so far as to impersonate the father of the 16-year-old girl he had impregnated in an attempt to obtain an abortion and thus hide the evidence of their illegal relationship.

These laws are an important deterrent to that sort of conduct, and the States have the rights to have those laws effective whether the girl chooses to cross State lines or not. Certainly this law is one way to make it work.

I see I'm out of time, Mr. Chairman.

[The prepared statement of Ms. Collett follows:]

PREPARED STATEMENT OF TERESA STANTON COLLETT

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON THE CONSTITUTION

The Honorable Steve Chabot, Presiding

July 20, 2004

Prepared Testimony of
Professor Teresa Stanton Collett*

Good afternoon Mr. Chairman, Members of the Committee, and other distinguished guests. My name is Teresa Stanton Collett and I am a professor of law at the University of St. Thomas School of Law in Minneapolis, Minnesota.

I am honored to have been invited to testify on House Bill HR 1755, the "Child Custody Protection Act" (the "Act"). My testimony represents my professional knowledge and opinion as a law professor who writes in the area of family law, and specifically on the topic of parental involvement laws. It also represents my experience in assisting legislators across the country in evaluating parental involvement laws during the legislative process and defending parental involvement laws in the courts. I have served as a member of the Texas Supreme Court Subadvisory Committee charged with proposing court rules implementing the judicial bypass of that state's parental notice law, and I am currently representing a group of New Hampshire legislators defending that state's law in the federal courts. I appeared before the House Judiciary Committees in 1998 and 2001 to testify in support of predecessors to HR 1755, as well as the Senate Judiciary Committee last month in support of S.B. 851, the companion bill to HR 1755. My testimony today is not intended to represent the views of my employer, the University of St. Thomas, or any other organization or person.

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]

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[1] Cases evidencing the general rule that parents are legally entitled to make medical decisions on behalf of their children include Miller v. HCA, 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

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 or information 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

The United States Supreme Court has 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]

It is this need to insure the availability of parental guidance and support that underlies the laws requiring a parent is notified or gives consent prior to the performance of an

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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).

[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).

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-four of the fifty states.[5] Only six states in the nation have not attempted to legislatively insure some level of parental involvement in a minor's decision to obtain an abortion.[6]

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[5] See Ala. Code § § 26-21-1 to-8 (Westlaw 2003 through organizational and 1st session); Alaska Stat. §§ 18.16.010(a)(3), .020, .030, .090(2) (Bender, WESTLAW through 2002 Replacement Set).; Ariz. Rev. Stat. Ann. § 36-2152 (West, WESTLAW through May 2004); Ark. Code Ann. § § 20-16-801 to-808 (WESTLAW through end of 2003 Reg. Sess.); Cal. Health & Safety Code § 123450 (West 1996 & Supp. 1999); COLO. REV. STAT. ANN. §§ 12-37.5-101 to -108 (WESTLAW through ch. 18 of 2003 1st Reg. Sess.); H.B. 1376, 64th General Assembly, Gen. Sess. (Co. 2003); Conn. Gen. Stat. Ann. § 19(a)-601 (WESTLAW current with amendments received through 2003 Jan. Reg. Sess., June 30 Sp. Sess. and Sept. 8 Sp. Sess.); Del. Code Ann. tit. 24, § § 1780-1789B (WESTLAW current through 2003 Regular Session of the 142nd General Assembly); Fla. Stat. Ann. § 390.01115 (WESTLAW current through May 12, 2004); Ga. Code Ann. § § 15-11-110 to-118 (WESTLAW current through end of 2003 Reg. Sess.); Idaho Code § 18-609(6) (WESTLAW current through end of 2003 session); 750 Ill. Comp. Stat. 70/1-70/99 (WESTLAW current through P.A. 93-673 of the 2004 Reg. Sess.); Ind. Code Ann. § § 16-18-2-267, 16-34-2-4 (WESTLAW current through P.L. 1 of 2004 2nd Regular Sess.); Iowa Code Ann. § § 135L.1-8 (WESTLAW current through end of 2003 1st Ex. Sess.); Kan. Stat. Ann. § 65-6705 (WESTLAW current through 2003 Reg. Sess.); Ky. Rev. Stat. Ann. § 311.732 (WESTLAW current through end of 2003 Reg. Sess.); La. Rev. Stat. Ann. § 40:1299.35.5 (WESTLAW current through all 2004 First Extraordinary Session Acts); Me. Rev. Stat. Ann. tit. 22, § 1597-A (WESTLAW current through 2003 First Special Session of the 121st Legislature); Md. Code Ann., Health-Gen. § 20-103 (WESTLAW current with laws from the 2004 Regular Session effective through May 11, 2004); Mass. Ann. Laws ch. 112, § 12s (WESTLAW current through Ch. 115 of the 2004 2nd Annual Sess.); Mich. Stat. Ann. § § 722.901 et seq. (WESTLAW current through P.A.2004, No. 102); Minn. Stat. Ann. § § 144.343 , 645.452 (WESTLAW current with 2004 Regular Session laws through Chapters 140, 144, 147, 150 to 152 and 158); Miss. Code Ann. § § 41-41-51 to-63 (WESTLAW current through end of 2003 Reg. Sess.); Mo. Ann. Stat. § § 188.015, 188.028 (WESTLAW current through the End of the First Regular and Second Extraordinary Sessions of the 92nd General Assembly (2003); Mont. Code Ann. § § 50-20-201 to-215 (WESTLAW current through the 2003 Regular Session of the 58th Legislature); Neb. Rev. Stat. § § 71-6901 to- 6909 (WESTLAW current through First Regular Session of the 98th Legislature (2003)); Nev. Rev. Stat. § § 442.255-.257 (WESTLAW current through the 2003 Reg. Sess. Of the 72nd Legislature and the 19th and 20th Spec. Sess. (2003)); N.H. Stat. Ann. §§132.25 et seq. (WESTLAW current through end of 2003 Reg. Sess.); N.J. Stat. Ann. § § 9:17A-1 to-1.12 (WESTLAW current through L.2004); N.M. Stat. Ann. § § 30-5-1(C) (WESTLAW current through the Spec. Sess. Of the 46th Legislature (2004)); N.C. Gen. Stat. § § 90-21.6 et seq. (WESTLAW current through the 2003 Second Ex. Sess.); N.D. Cent. Code § § 14-02.1 to 03.1 (WESTLAW current through 2003 General and Spec. Sess.); OHIO REV. CODE ANN. §§ 2151.85, 2505.073, 2919.12, 2919.122 (WESTLAW current through 2004 File 76 of the 125th GA (2003-2004), apv. by 5/6/04); 18 Pa. Cons. Stat. Ann. § 3206 (WESTLAW current through Act 2004-21); R.I. Gen. Laws § 23-4.7-6 (WESTLAW current through Jan. 2003 Sess.); S.C. Code Ann. § § 44-41-10, 30 to-37 (WESTLAW current through end of 2003 Reg. Sess.); S.D. Codified Laws § § 26-1-1, 34-23A-7 (WESTLAW current through the end of the 2004 Reg. Sess.); Tenn. Code Ann. § 37-10-301 et seq. (WESTLAW current with laws from 2004 Second Reg. Sess. eff. April 30, 2004); Tex. Fam. Code Ann. § 33.001-.004 (WESTLAW current through the end of the 2004 Fourth Called Session); Utah Code Ann. § 76-7-304 (WESTLAW current through 2003 2nd Spec. Sess.); Va. Code Ann. § 16.1-241(V) as amended by Senate Bill 335 (WESTLAW current through 2003 Reg. Sess.); W. Va. Code § § 16-2F-1 et seq. (WESTLAW current with Laws of the 2004 Regular Session effective before April 15, 2004); Wis. Stat. Ann. § 48.375 (WESTLAW current through 2003 Act 137, published 3/4/04); Wyo. Stat. Ann. § 35-6-118 (WESTLAW current through 2003 Reg. Sess.).

[6] These are Hawaii, New York, Oklahoma, Oregon, Vermont, and Washington. But see Gandy v. Nova Health Systems, No. 02-5094 (10th Cir. awaiting opinion) (dispute regarding proper characterization of Oklahoma's abortion liability law).

Of the forty-four states that have enacted laws, nine statutes have been determined to have state or federal constitutional infirmities. Therefore the laws of thirty-five states are in effect today.[7] Ten 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.[8] These laws are substantially ineffectual in assuring parental involvement in a minor's decision to obtain an abortion. However, parents in the remaining twenty-five states are effectively guaranteed the right to parental notification or consent in most cases.[9]

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.[10] To my knowledge, no organizations or

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[7] Courts in the face of claims of state or federal constitutional infirmity have enjoined the implementation of nine state statutes. See *Planned Parenthood v. State*, 3AN-97-6014 C1 (Alaska Super. Ct. Oct. 13, 2003) (Decision on Remand). The state has announced it will appeal the lower court decision. State to Appeal Abortion Decision, JUNEAU EMPIRE, Oct. 22, 2003;, *Glick v. McKay*, 616 F. Supp. 322, 327 (D. Nev. 1985), aff'd, 937 F.2d 434 (9th Cir. 1991); *American Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So.2d 612 (Fla. 2003) (parental notification requirement 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 (N.D. Ill. 1996) (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 Planned Parenthood of Northern New England v. Heed*, 296 F.Supp.2d 59 (D.N.H. 2003) (striking down statute due to absence of health exception) appeal filed, No. 04-1161 (1st Cir); and *Planned Parenthood of Idaho, Inc. v.Wasden*, No. 02-35700 (9th Cir. July 16, 2004) (inadequate emergency bypass).

[8] 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).

[9] 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.

[10] 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 <http://www.kcts.org/productions/youthpolitics/issues/index.asp l> (visited July 14, 2004). Similar results are found in polls taken from September 1981 to January 2004, which consistently reflect over 70% of the

individuals, whether abortion rights activists or pro-life advocates, dispute this point.[11] 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.

Various reasons underlie this broad and consistent support. As Justices O'Connor, Kennedy, and Souter observed in *Planned Parenthood v. Casey*,[12] 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."[13] This reasoning led the Court to conclude that the Pennsylvania parental consent law was constitutional.

Out of respect for the time constraints of this committee, I will limit my remarks to examining two of the benefits that are achieved by parental involvement statutes:

American public support parental consent or notification laws. See, e.g., Gallup/CNN/USA Today Poll (released Jan. 15, 2004) (73% favor requiring parental consent for abortion "for women under 18"); Gallup/CNN/USA Today Poll (Jan. 2003) (73% favor requiring parental consent for abortion "for women under 18") at http://www.ropercenter.uconn.edu/cgi-bin/hsrun.exe/Roperweb/HPOLL/StateId/CSueoIxGXgRkWdxycsQSKzWLZYY6u-U5Hp/HAHTpage/summary_link?QSTN_ID 480478; 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.

[11] "Adolescents should be encouraged to seek their parents' advice when facing difficult choices regarding family planning and prevention and treatment of sexually transmitted diseases (STDs)." NARAL Prochoice America, *Mandatory Parental Consent and Notice Laws and the Freedom to Choose*, Summary (Jan. 22, 2003) at http://www.naral.org/facts/parental_consent_laws.cfm; "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.")

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

[13] 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.

improved medical care for young girls seeking abortions and increased protection against sexual exploitation by adult men.

Improved Medical Care of Minor Girls

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 the abortion 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. In *Bellotti v. Baird*, the United States Supreme Court acknowledged the superior ability of parents to evaluate and select appropriate healthcare providers.[14]

> 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 latter 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.[15]

In testimony before a federal district court, one abortion provider described some clinics as having a "cattle herd mentality" [16] and published news accounts bear this out.[17]

Parents helping their daughters respond to an unplanned pregnancy through abortion will evaluate not only the clinic, but the physician performing the abortion. For example, historically the National Abortion Federation has recommended 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 the doctor have admitting privileges at a local hospital not more than twenty minutes away from the location where

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[14] 443 U.S. 622 at 641 (1979) (*Bellotti II*).

[15] *Bellotti v. Baird*, 443 U.S. 622 at 641 (1979) (*Bellotti II*).

[16] *Women's Medical Ctr. of NW Houston v. Archer*, 159 F.Supp. 2d 414 at 428 (S.D. Tex. 1999).

[17] See Warren King, *State, Osteopath Settle Case*, The Seattle Times (July 25, 1990) at http://archives.seattletimes.nwsource.com (abortionist agrees to discontinue his practices of using expired medications, nonsterile supplies and instruments, and failing to follow basic sanitation procedures such as washing his hands and putting on fresh gloves before approaching each patient); Steve Wheeler, *Ex-Delta Women's Clinic Workers File Complaints*, THE BATON ROUGE ADVOCATE 1B (Oct. 4, 1994) (former employees charge that that conditions at clinic are "unsafe and unsterile"); T.C. Brown, *Abortion Clinic Must Get License: Shaker Blvd. Center 1of 12 Under Order*, THE PLAIN DEALER (Cleveland, Ohio Nov. 12, 1999) (clinic referred to state attorney general due to infection control problem); and Leslie Reed, *Planned Parenthood Site Penalized: An Abortion Foe's Complaint Spurs Inspections; A Lincoln Clinic Gets Probation for Violating Instrument Sterilization Rules*, OMAHA WORLD-HERALD (Dec. 25, 2002).

the abortion is to occur in order to insure adequate care should complications arise.[18] These recommendations were deleted after they were introduced into evidence in malpractice cases against abortion providers. Notwithstanding this change in the NAF recommendations, 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.

Care in the selection of the individual performing the abortion is especially important as evidenced by the recent conviction of Dr. Brian Finkel on 22 counts of sexually abusing patients.[19] Dr. Finkel performed twenty percent of all abortions in Arizona, prior to the disclosure of the abuse.[20] Unfortunately his is not an isolated case. Dr. Phillip Alberts, an Oregon abortionist, died before trial could be completed on 29 counts of sexually abusing his patients.[21] Dr. Ronald Stevenson also provided abortions in Oregon prior to his conviction this year for sexual harassment of patients. Patients had previously complained to police of sexual assault in 1997.[22] These are just three of the reported cases of sexual assaults of patients by abortion providers.

A second benefit of parental involvement laws is that parents have the opportunity to provide additional medical history and information to abortion providers prior to performance of the abortion.[23]

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[18] National Abortion Federation, *Having an Abortion? Your Guide to Good Care* (2000) which was available at <http://www.prochoice.org/pregnant/goodcare.htm>, (visited Jan. 1, 2000).

[19] Carol Sowers, *Finkel Gets 35 Years; Phoenix Abortion Doctor Sentenced in Sex-Abuse Case*, ARIZONA REPUBLIC at B1 (Jan. 3, 2004) at 2004 WL 57356056.

[20] Carol Sowers, *Prosecutor Wraps Up Abortion Doctor Case*, ARIZONA REPUBLIC at B4 (Oct. 28, 2003) at 2003 WL 71410084.

[21] *Woman Wins Claim Against Dr. Alberts for Unneeded Surgery*, PORTLAND OREGONIAN D02 (Aug. 12, 1995) at 1995 WL 9181194.

[22] See e.g. Lisa Rosetta, *Doctor Convicted of Harassment*, The Bulletin (Bend, Ore. Feb. 14, 2004) at http://www.bendbulletin.com. ().

[23] See Kaisernetwork.org, *Texas Department of Health Tentatively Approves New Abortion Regulations*, State Politics and Policy (Nov. 3, 2003) (new regulations result of settlement of lawsuit over failure to properly enforce parental notification and informed consent requirements of Texas law.) at http://www.kaisernetwork.org/daily reports/rep index.cfm?hint 2&DR ID 20656. Plaintiffs in lawsuit resulting in new regulations included mother of minor who had history of mental health problems, yet obtained judicial bypass. Kaisernetwork.org, *Texas Justice Foundation Lawsuit Claims State Agencies Fail to Enforce Abortion Laws*, State Politics and Policy (Jan. 25, 2002).

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 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.[24]

Abortion providers, in turn, have the opportunity to disclose the medical risks of the procedure to the adult who can advise the girl in giving her informed consent to the surgical procedure.[25] Parental notification insures 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.[26] 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 because there is no coordinated national effort to collect and maintain this information.[27]

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.

See also Anna Glasier, *Counseling for Abortion, in* MODERN METHODS OF INDUCING ABORTION 112, 117 (David T. Baird et al. eds., 1995)("20% of women suffer from severe feelings of loss, grief and regret"); Jo Ann Rosenfeld, *Emotional Responses to Therapeutic Abortion*, 45 AM. FAM. PHYSICIAN 137, 138 (1992) ("Teenagers who do not tell their parents about their abortion have an increased incidence of emotional problems and feelings of guilt."); Mika Gissler, *Suicides After Pregnancy in Finland 1987-1994: Register to Linkage Study*, 313 BRIT. MED. J. 1431, 1433 (1996); H. David et al., *Postpartum and Postabortion Psychotic Reactions*, 13 FAMILY PLANNING PERSPECTIVES 889 (1981) and David C. Reardon, 95 So. Med. J. 834 (Aug. 2002) available at www.sma.org/smj/index.cfm. Additional sources are collected and discussed in Thomas R. Eller, *Informed Consent Civil Actions for Post-Abortion Psychological Trauma*, 71 NOTRE DAME L. REV. 639 (1996).

[24] *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).

[25] This is particularly important in cases where the consent forms signed by the patients often seemingly limit their ability recover should they be injured during the abortion. See e.g. *Broemmer v. Abortion Serv. of Phoenix, Ltd.*, 840 P.2d 1013 (Ariz. 1992) and *Blanton v. Womancare, Inc.*, 696 P.2d 645 (Cal. 1985).

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

[27] "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

Notwithstanding this failure by public health authorities, abortion providers have identified infection is one of the most common post-abortion complications.[28] The warning signs of infection typically begin within the first forty-eight to ninety-six hours after the abortion and can include fever, pain, pelvic tenderness, and elevated white blood count.[29] Caught early, most infections can be treated successfully with oral antibiotics.[30] Left untreated, it can result in death.

Similarly post-operative bleeding after an abortion is common, and even where excessive[31] can be easily controlled if medical treatment is sought promptly. However, hemorrhage is a one of the most serious post-abortion complications and should be evaluated by a medical professional immediately. [32] Untreated it can result in the death of the minor.[33]

Experts often characterize a perforated uterus is a "normal risk" associated with abortion.[34] This complication also can be easily dealt with if detected early, but lead to serious consequences if medical help is not sought promptly.

(Maureen Paul et al., eds. 1999).

[28] David A. Grimes, *Sequelae of Abortion*, *in* MODERN METHODS OF INDUCING ABORTION 95, 99-100 (David T. Baird et al. eds., 1995).

[29] *See* E. Steve Lichtenberg et al., *Abortion Complications: Prevention and Management, in* A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS 197, 206 (Maureen Paul et al. eds., 1999).

[30] *See id.* at 206-07.

[31] The National Abortion Federation defines excessive bleeding as "saturation of more than one pad per hour for more than three hours." NATIONAL ABORTION FEDERATION, CLINICAL POLICY GUIDELINES, *Delayed Bleeding*, Standard 3 (2002) available at http://www.guideline.gov and enter National Abortion Federation as search.

[32] NATIONAL ABORTION FEDERATION, CLINICAL POLICY GUIDELINES, *Complications: Bleeding*, Policy Statement (2002) available at http://www.guideline.gov and enter National Abortion Federation as search.

[33] See *Evans v. Mutual Assur., Inc.*, 727 So. 2d 66 (Ala. 1999) (discussing a dispute between a physician and the malpractice carrier regarding coverage for the death of an 18-year-old girl from hemorrhaging induced by abortion).

[34] *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

Many minors may ignore or deny the seriousness of post-abortion symptoms or may lack the financial resources to respond to those symptoms.[35] 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.[36] Absent parental notification, hemorrhaging may be mistaken for a heavy period and severe depression as typical teenage angst.

Increased Protection from Sexual Assault

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental notification will provide increased protection against sexual exploitation of minors by adult men. National studies reveal "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[37] 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*."[38] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[39]

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serious infections in his patients for money." *Id.* at 944.

[35] *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Health and Welfare*, 2001-2002 Legis. Sess. (Vt. 2001) 33 (testimony of ASue@ an anonymous Vermont mother, on March 20, 2001).

[36] *See id.*

[37] 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>. See also Nat'l Ctr. for Health Statistics, *Report to Congress on Out-of-Wedlock Childbearing*, DHHS Pub. No. (PHS) 95-1257 (1995) available at http://www.cdc.gov/nchs/data/misc/wedlock.pdf.

> In fact, data indicate that, among girls 14 or younger when they first had sex, a majority of these first intercourse experiences were nonvoluntary. Evidence also indicates that among unmarried teenage mothers, two-thirds of the fathers are age 20 or older, suggesting that differences in power and status exist between many sexual partners.

Id. at 12.

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

[39] *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>.

A survey of 1500 unmarried minors having abortions revealed that among minors who reported that neither parent knew of the abortion, 89% said that a boyfriend was involved in deciding or arranging the abortion (and 93% of those 15 and under said that a boyfriend was involved).[40] Further, 76% indicated that a boyfriend helped pay the expenses of the abortion. Clearly, a number of young girls who obtained abortions without their parents' knowledge were encouraged to do so by a sexual partner who could be charged with statutory rape. Secret abortions do nothing to expose these men's wrongful conduct.[41] In fact, by aborting the pregnancy abusive partners avoid the public evidence of their misconduct and are licensed to continue the abuse. Parental notification laws insure that parents have the opportunity to protect their daughters from those who would victimize their daughters further.

Abortion providers are reluctant to report information indicating a minor is the victim of statutory rape.[42] Failure to report may result in the minor returning to an abusive relationship. For example, a Planned Parenthood affiliate in Arizona was found civilly liable for failing to report the fact that the clinic had performed an abortion on a twelve-year-old girl who had been impregnated by her foster brother. The abortion provider did not report the crime as required by law and the girl returned to the foster home where she was raped and impregnated a second time.[43] An Oregon abortion clinic provided an abortion to an eleven-year-old, yet failed to report the sexual abuse as required by state law. The abuse was disclosed to law enforcement only because the abortion was incomplete and the girl was subsequently taken to the hospital where a doctor reported the abuse.[44] Or consider the case of the Connecticut ten-year old girl

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[40] Henshaw & Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Fam. Plan. Persp.196-213 (1992).

[41] 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.

[42] Patricia Donovan, *Caught Between Teens and the Law: Family Planning Programs and Statutory Rape Reporting*, 3 Family Planning Perspectives 5 (1998).

[43] See *Glendale Teen Files Lawsuit Against Planned Parenthood*, THE ARIZONA REPUBLIC, Sept. 2, 2001 and *Judge Rules Against Planned Parenthood* at www.12news.com/headline/PlannedParenthood122602.html.

[44] Inara Verzemnicks, *Child's Abortion: No Alarm Bells?*, THE OREGONIAN (Mar. 11, 1997) (reporting failure of abortion clinic to report sexual abuse of 11-year-old impregnated by 41-year-old live-in-lover of child's mother).

impregnated by a seventy-five year old man. The child was examined by two physicians who failed to report the sexual abuse to public authorities, as required by Connecticut law.[45] A 36-year-old Nebraska man went so far as to impersonate the father of the 16-year-old girl he had impregnated in an attempt to obtain an abortion, and thus hide any evidence of their illegal relationship.[46]

Furthermore, by failing to preserve fetal tissue the abortion providers may make effective prosecution of the rape impossible since the defendant's paternity cannot be established through the use of DNA testing.[47]

Today you will hear from Joyce Farley and her daughter about the attempt of the mother of rapist to insure that her son's misdeed would not be discovered. This conduct is not unique.[48] Just last December another woman impersonated the mother of her son's girlfriend in an attempt to bypass the parental involvement law of Wisconsin.[49] School officials also have taken it upon themselves to advise minors to have abortions and keep it secret from their parents.[50] Such conduct has been found to be unconstitutional, I should note.

States adopting parental involvement laws have come to the reasonable conclusion that secret abortions do not advance the best interests of most minor girls.[51]

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[45] Christine Walsh, *Conn. Doc Set to be Cleared in Abuse Case,* India New England (Jan. 15, 2003) available at http://www.indianewengland.com/news/2003/01/15/Connecticut/Conn-Doc.Set.To.Be.Cleared.In.Abuse.Case-345711.shtml. "Failure To Report Pregnancy Brings Charges." *The Hartford Courant*, April 27, 2002; John Christoffersen, Associated Press. "Medical Society Urges Dismissal of Charges Against Bridgeport Doctor." *Boston Globe*, August 21, 2002; Christa Lee Rock. "Doctors Want Case Dropped." *New Haven Register*, August 23, 2002; Colin Poitras. "Charges Against Doctors Let Stand In Child's Case." *The Hartford Courant*, September 24, 2002; "Doctors to Stand Trial for not Reporting Abuse, Referring for Abortion." Associated Press; September 26, 2002; Steve Ertelt's *Pro-Life Infonet* at http://www.prolifeinfo.org, September 27, 2002; Daniel Tepfer. "15 Year Sentence Wanted for Child Predator: Man, 75, Admits He Fathered Girl's Baby." *Connecticut Post*, October 9, 2002.

[46] *Omaha World-Herald*, June 14, 2000; "Omaha Man Sentenced in Abortion-Fraud Case."

[47] *See Commonwealth v. Sasville*, 616 N.E.2d 476 (Mass. 1993).

[48] *See* Jessica McBride, *Mother Charged with Falsifying Consent Form for Abortion*, Milwaukee Journal Sentinel (Dec. 22, 2003) available at http://www.jsonline.com.

[49] Jessica McBride, *Mother Charged with Falsifying Consent Form for Abortion*, MILWAUKEE JOURNAL SENTINEL (Dec. 22, 2003) at www.jsonline.com/news. /metro/dec03/194706.asp.

[50] Arnold v. Board of Education, 880 F.2d 305 (11th Cir. 1989). See also Gruenke v. Seip, 225 F.3d 290 306 (3rd Cir. 2000) (coach required player to take pregnancy test without advising parents of concern).

[51] 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

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 taking the girls across state lines for abortions.

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.[52]

In the past 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.[53] 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 established that these laws led to parental abuse or to self-inflicted injury.[54] Similarly, there is no evidence that these laws have led to an increase in illegal abortions.[55]

> 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.

[52] See n. 7 *supra*.

[53] 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.*

[54] 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).

[55] *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).

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.[56] Assessing the accuracy of this claim is difficult since parental notification or consent laws rarely impose reporting requirements regarding the use of judicial bypass. A few states however have begun to gather this information. In 2002, 852 girls got abortions in Alabama with a parent's approval and 12 with a judge's approval, according to state health department records. Idaho similarly reports less than five percent using judicial bypass to avoid that state's parental consent law (64 minors with parental consent/3 with judicial bypass) in 2002. South Dakota reports fourteen of seventy-six minors obtained judicial bypasses, rather than parental consent. In Texas where 3,654 minors obtained abortions, the Texas Department of Health paid for assistance in 284 judicial bypass proceedings. In Wisconsin, less than ten percent of the minors obtaining abortions did so with the use of an order obtained through judicial bypass (727 with parental involvement/63 with judicial bypass).

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 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.[57]

If the minor chooses to continue her pregnancy, involvement of her parents serves many of the same goals. 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,

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[56] *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).

[57] 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).

they can provide the love and support that is found in the many healthy families of the United States.

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, 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.

Mr. CHABOT. Thank you very much.

The panel up here will now have the opportunity to ask questions for 5 minutes. I'll begin with myself, and I'll begin with you, Ms. Farley, if I can.

In your opinion, would this Act, the Child Custody Protection Act, help deter individuals such as the woman who took your minor daughter from Pennsylvania to New York to obtain an abortion from doing that type of thing? Do you think there is—do you think this is a positive step in the direction of preventing things—what happened to you from happening to other women?

Ms. FARLEY. Yes, I do. I think it would not only prevent a situation like my daughter was in, but maybe the abortion providers would be more responsible as far as—with Crystal, right away when she had difficulties, I could never get hold of the physician that performed the abortion. He refused to provide the physician that was caring for Crystal any records. I had to take Crystal all the way back to New York for them to hand her the records in hand. It was a very difficult process. And this, you know, make it—somebody, the physicians responsible that are doing the abortions and not just a lucrative business.

Mr. CHABOT. Thank you.

Professor Collett, let me turn to you if I can. In your opinion is the judicial bypass, is it a viable option for girls who feel that they can't tell their parents that they're pregnant and they're considering having an abortion? Do you think that's an appropriate process? Does that seem to work?

Ms. COLLETT. Absolutely. In fact, I was puzzled by Mr. Nadler's comment that there are States where it doesn't work. That was one of the arguments that was raised when Texas was considering the parental notice law, that judges in Texas would never grant judicial bypass, and in fact, an ACLU memorandum on parental involvement laws cites Texas as one of the States that has a model bypass procedure. Girls who are unable to involve their parents are in fact able to obtain a bypass.

There are statistics in my written testimony, as a matter of fact, that I obtained from States that keep track of bypasses. In 2002 there were girls that in Alabama obtained approval, but what we see instead is approximately 90 percent of the girls in most States involve their parents, which is as it should be.

Mr. CHABOT. Thank you very much.

Professor Rosen, let me turn to you if I can. It's my understanding that it's your opinion that rather than undermining federalism, the Child Custody Protection Act actually reinforces basic constitutional principles of federalism; is that correct? And could you espouse on that a bit?

Mr. ROSEN. Yes, that is my view. I think one of the great benefits of federalism is that it permits coordination of a large number of people in our country, but at the same time it allows for differences at sub-Federal levels, and there are obviously different communities across the country who feel very differently about different things. And I think it's beneficial for federalism to encourage those differences across States.

That, I will say, however, is my personal view of federalism. I think that one could have a different conception of federalism. I

think one could espouse the view that federalism is better, you know, have the States have different laws, but allow people to—citizens to pick and choose laws and go and travel to other States and avail themselves of those laws. I think that's a plausible conception.

Others, like Professor Tribe and Rubin have argued that, but I certainly don't think that conception of federalism is required by the case law. In fact, I think that it is an open question that is appropriately solved by Congress.

Mr. CHABOT. Thank you. Thank you very much.

Rev. Powell, let me ask you. You had talked about a particularly horrible case in which a man killed his daughter and his wife and then ultimately himself, and that's obviously—I don't know if I want to say a rare case because it has happened on other occasions as well, terribly tragic case. But in most cases would you agree that when a minor has become pregnant and it's an unwanted pregnancy, at that point that she's going to make a decision as to whether she's going to keep the baby or not? Would you agree that in most cases it is the parents that ought to be involved in that decision along with that child?

Rev. POWELL. In the best of all possible worlds, yes, and in my experience that's not always possible. My concern about this Act is that that child may in fact turn to another responsible adult, whom they do trust, who could assist them with all the decisions that a parent might make in terms of medical concerns, place, the decision itself, where to go, how to get there.

Mr. CHABOT. Let me give myself an additional minute because I'm out of time. Let me just follow up on your response there. But you've heard some other cases in which—and we have documented cases of this nature, where sometimes the young girl is taken there by somebody who probably doesn't have her best interest in mind. Maybe they—an older boyfriend or an older adult male who got her into this situation to begin with, and that might be the person that does it. Now, this law would make it illegal for a person to do that if they're doing it in order to get around a parental notification law in that particular State. Don't you think that that would be a positive thing to involve the parent if she didn't have the option of the guy that may not have her best interest in mind?

Rev. POWELL. I recognize that those are tragic situations, but I would suggest that there are already laws in place that were not enforced and could be enforced in those situations that would prevent that from happening.

Mr. CHABOT. My time is expired.

We probably have time for one round of questions from the gentleman if he wants to take his time now. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

Professor Collett, most of your testimony involves crimes such as rape, incest, the failure to follow laws to report these crimes to the authorities. Do you believe that requiring reporting to a parent who is a rapist is the appropriate solution?

Ms. COLLETT. Since the situation is that less than 5 percent of pregnancies are involved, involving incest——

Mr. NADLER. Let's talk about those 5 percent, because this law does not—is not made of exceptions.

Ms. COLLETT. I believe that a judicial bypass would be the appropriate way to respond.

Mr. NADLER. And you're not aware of any judges in the United States who have refused bypasses because of their personal views on abortion?

Ms. COLLETT. I am aware that there have been allegations to that effect.

Mr. NADLER. Okay, thank you.

Rev. Powell, does the judicial bypass work? Was I wrong before when I said that there are cases when it doesn't work? Are there no problems for young women in this respect?

Rev. POWELL. In my view and in my experience in counseling with younger women, most of them are not aware of a judicial bypass. They have no knowledge of it. They don't know what the procedure is. They would have to navigate by themselves somehow what that is, going before a judge, figuring that out.

Mr. NADLER. There's no source of legal aid?

Rev. POWELL. There are sources of legal aid, yes, and if a teenager is directed into the right place, she in fact can receive that judicial bypass and it can work, certainly.

Mr. NADLER. Thank you.

Professor Rosen—excuse me.

Rev. Powell, it can work sometimes, but are you aware of many—of cases where it doesn't work?

Rev. POWELL. I personally am not aware of cases where it hasn't worked, but I certainly have heard that they have been refused.

Mr. NADLER. Thank you.

Professor Rosen, you referred to the Mann Act. The Mann Act sets a national rule. You may not go across State lines for this purpose anywhere. It doesn't depend on State law. The Fugitive Slave Act aside, this is the only bill that I'm aware of which essentially says to a resident of one State, that you carry the law of that State on your back as a burden in another State, when you go to another State to do something which is legal in that other State. This bill, in effect, nationalizes individual State laws. How can that be constitutional? And don't tell me about the Commerce Clause, because that's not the issue here. It's personal liberty.

Mr. ROSEN. I don't see any source in the Constitution that precludes States from——

Mr. NADLER. Exporting their law to another State?

Mr. ROSEN. Vis-a-vis their citizens, correct.

Mr. NADLER. So in other words, if you're a citizen of New York—could the State of New York enact a law saying that any New York citizen residing in New Jersey, it's a felony to do X, Y or Z in New Jersey?

Mr. ROSEN. Yes.

Mr. NADLER. It could?

Mr. ROSEN. Yes. Now, that's not——

Mr. NADLER. That's a rather surprising assertion of State power which I've never heard before.

Mr. ROSEN. Well, it's perfectly consistent with what the model penal code says, as——

Mr. NADLER. I don't care about the model penal code. It's not consistent with the Constitution.

Mr. ROSEN. Well, I don't see where in the Constitution it's not consistent with it. I don't see——

Mr. NADLER. So in other words, it's your testimony that States control their citizens while living—who live in other States?

Mr. ROSEN. Yes, they have the power because they have——

Mr. NADLER. Okay. I rest my case. Thank you.

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

The gentleman from Iowa is recognized for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I would direct my first question to Rev. Powell. And with regard to parental notification, parental consent, and there are, there are States that have a list of parents under that kind of statute that is sometimes quite extensive, and it often will include parents, legal guardians, which I believe it should. Then it goes to grandparents, brothers, sisters, aunts, uncles. And that brother or sister might be an estranged brother or sister that could live in another State that would be almost a generation removed, maybe never has met the young lady in question that has to, that has to be confronted with this issue. In addition to that, there's often judicial bypass included.

Now, as a young lady in this dilemma considers these alternatives on notification—and I'll just make this point—that I believe that if we statutorily set up a long list, a menu for that young lady to choose from on alternatives for notification, that if the parents are, I'll say, resistant to the abortion and maybe she's—certainly she's going to believe they're going to come down on her harder than they would on—or hard on her. That will be her decision—her fear, regardless of whether they do or whether they don't. What do you think that evaluation system will be for that young lady in that dilemma? Will she look at that and say, where do I get the best advice? Or will she look at that and decide what's the path of least resistance?

Rev. POWELL. Are you asking me about a young woman who wants to cross the State line with a responsible adult other than her parent? Because that's what the Act is about.

Mr. KING. I'm going to ask—generally, I'm asking about that decision-making process of a young woman who is considering an abortion, whether she goes to someone who is her best advice or whether she goes to the path of least resistance.

Rev. POWELL. The young women that I have spoken with and counseled have come to me because they regarded me as someone who could be—treat the information confidentially and provide her with trusted advice and counsel so that she could make up her own mind. I would always encourage her, if at all possible, to involve her parents in the decision.

Mr. KING. Then if I'm to interpret your answer, that is it would be a combination of that confidentiality and good advice in the same package if she can find it, which might also follow the path of least resistance.

Mrs. Farley, what would your opinion be of the question I've asked?

Ms. FARLEY. My opinion is that a minor would chose the path of least resistance. The person—my daughter told me she figured this woman that took her out of State to New York, she was an adult so she would know what to do. And she was scared and chose the path of least resistance.

Mr. KING. And would you think that would be typical of a young lady that age?

Ms. FARLEY. Yes, I do.

Mr. KING. Thank you.

Professor Collett?

Ms. COLLETT. I think it's human nature. I think we typically—when we're scared, we'll choose those who will affirm what we want to do.

Mr. KING. Especially at an immature age. The younger, the more immature, the more vulnerable they are to someone that will offer a hand, whether it's a helping hand or whether it's just a hand.

Ms. COLLETT. Unfortunately.

Mr. KING. Thank you. And then the discussion about whether judges are able to follow the law in spite of their convictions or their personal morality, I'd just make the statement that I do know judges who have to make that decision on whether to grant a judicial bypass in the case of an abortion and in spite of their religious beliefs and their personal convictions. They swallow hard and follow the law. I'd like to think that's what we do in all cases.

I would have no more questions, and I'd yield back the balance of my time. Thank you, Mr. Chairman.

Mr. CHABOT. I thank the gentleman. The gentleman's time is expired.

The bells that you heard were more votes on the floor. We have two votes, so my guess is we're going to be there for, ballpark a half hour or so. That's what they just told us. They called over there. There's a 15-minute vote followed immediately by another 15-minute vote. So we're down to the 5 minutes probably to go. That second bell went off. So we will be back. As soon as the second vote is over, we'll get back here as quickly as possible, and those that still have questions will have the opportunity to ask them. And so we're in recess. Thank you.

[Recess.]

Mr. CHABOT. The Committee will come back to order. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes to ask questions.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

Professor Collett—is that how you pronounce it, Collett?

Ms. COLLETT. Yes.

Mr. SCOTT. I just had a couple of kind of legalistic questions. I assume this bill would create a felony; is that right, for the violation, and not a misdemeanor?

Ms. COLLETT. I'm looking at——

Mr. CHABOT. Would the gentleman yield?

Mr. SCOTT. I'll yield.

Mr. CHABOT. Yes. It's 1 year maximum penalty, plus a fine, so it would actually be a first-degree misdemeanor.

Mr. SCOTT. I'm sorry? Misdemeanor?

Mr. CHABOT. First-degree misdemeanor.

Mr. SCOTT. Okay. Professor Collett, Rev. Powell indicated that an older sister could get caught up in this. What about a younger sister? If you had a 17-year-old minor with a 15-year-old sister, could the 15-year-old get caught in this and be exposed to criminal prosecution?

Ms. COLLETT. I don't believe there is a defense based on the age.

Mr. SCOTT. Transport is not defined. Would that include accompanying the minor?

Ms. COLLETT. I believe transport is defined in the Federal Code itself though, is it not, Representative?

Mr. SCOTT. I don't know.

Ms. COLLETT. I believe it is.

Mr. SCOTT. Would that include accompany, do you know?

Ms. COLLETT. I do not.

Mr. SCOTT. Usually in criminal code a word like that would be——

Ms. COLLETT. Defined narrowly. You would give the——

Mr. SCOTT. You'd define narrowly, and you would, if there was another definition somewhere, you would refer to it, and I don't see that in here. But do you think it ought to include accompany, ride the bus with?

Ms. COLLETT. With the intention of, with the proper mens rea, yes.

Mr. SCOTT. So it should, okay. Should the taxicab driver be exposed?

Ms. COLLETT. They would not have the proper mens rea.

Mr. SCOTT. If they're listening to the conversation in the back seat, "we're going to get an abortion?"

Ms. COLLETT. Again, they would not have the proper mens rea.

Mr. SCOTT. They know what they're doing. They're transporting someone across State line for the purpose of getting an abortion.

Ms. COLLETT. But not for the purpose of evading the parental involvement law.

Mr. SCOTT. And if the conversation, so that they knew what they were doing as they were driving along, if the ticket agent at the bus station, if the teenager confided in the ticket agent and said, "I need to go across State lines to avoid the parental consent laws in this State, so I need a ticket across the State line," and the ticket agent sold the ticket, would that be a violation of the law?

Ms. COLLETT. I do not believe so.

Mr. SCOTT. Where would that be an exception?

Ms. COLLETT. Again——

Mr. SCOTT. The bus is transporting the person across State lines, knowing that it's for the purpose of getting an abortion in violation of the local law?

Mr. CHABOT. Would the gentleman yield?

Mr. SCOTT. I yield.

Mr. CHABOT. Thank you for yielding. Just reading the law itself, it says, "Except as provided in Subsection such-and-such," whoever knowingly transports a minor across a State line with the intent that such minor obtain an abortion. So I think the argument would be that the person who sells the ticket or the person who drives the cab, their intention is not that the person get an abortion. Their intent is to get a fare in return for the service they're pro-

viding. So I would assume that that would probably be Professor Collett's point of view.

Ms. COLLETT. Yes, Mr. Chairman.

Mr. CHABOT. Thank you.

Mr. SCOTT. So I would assume then, if the gentleman would respond, that if we had a taxicab and bus exception, you wouldn't object?

Mr. CHABOT. I'm not—would the gentleman yield?

Mr. SCOTT. I'll yield.

Mr. CHABOT. He can offer that amendment if he'd like to at markup. I'd have to consider it. I probably would not. I don't think we need to further complicate the legislation. It seems pretty clear. I think they're talking about some adult——

Mr. SCOTT. I know what you're talking about. I'm reading the bill. And last time we had this, the taxicab amendment was rejected.

Professor Rosen, you indicated—talked about crossing State lines and how the law kept going. Would it be constitutional for the Commonwealth of Virginia to prohibit junkets to Atlantic City for the purpose of gambling at a casino? You can't gamble in casinos in Virginia.

Mr. ROSEN. Right. I'm of the view that it probably would be constitutional. There's a complication because there are—although States presumptively have significant powers to regulate their citizens when they're out of State, there are certain limitations. One is in respect of economic matters, the Dormant Commerce Clause creates certain limitations, and gambling could trigger one of those——

Mr. SCOTT. How would gambling not trigger it and getting an abortion would? I mean it would be the same principle, wouldn't it?

Mr. CHABOT. The gentleman's time is expired, but the witness can answer the question if he so wishes.

Mr. SCOTT. May I just ask for an additional minute?

Mr. CHABOT. Without objection.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CHABOT. Sure.

Mr. ROSEN. Well, in my view, there's uncertainty in the case law with regard to the Dormant Commerce Clause limitations on extraterritorial regulation. I think——

Mr. SCOTT. It's not extraterritorial regulation. It's crossing State line with the intent. So while you're in Virginia, you're heading toward the line, and that is the line, crossing the line, leaving Virginia with the intent to go to Atlantic City to gamble in a casino.

Mr. ROSEN. Yes.

Mr. SCOTT. So that would be as constitutional as this, same principle?

Mr. ROSEN. Yes.

Mr. SCOTT. Is the physician, Professor Rosen, liable under this law, the physician in the other State?

Mr. ROSEN. No, because the law is not written to cover the physician, but only the person who transports.

Mr. SCOTT. What about conspiring? If the physician invites the person to cross State lines to conspire for them to violate this law; would that not be a conspiracy charge for the doctor?

Mr. ROSEN. It might be. I'm not sufficiently familiar with the law of conspiracy, but it might be.

Mr. SCOTT. What about civil liability?

Mr. ROSEN. I'm not sufficiently familiar with the law of conspiracy and civil liability.

Mr. SCOTT. Anybody on the panel familiar with conspiracy and civil law, to know whether or not the physician gets caught up in this if they perform the abortion in the other State where it's legal without parental consent?

Mr. CHABOT. The gentleman's time is once again expired. The witness can answer the question if he'd like to.

Mr. ROSEN. Well, just a modification of your question. You're saying if the physician participates in transportation; that's your hypothetical, correct? I mean if the physician actually, for example, goes into the car and transports, I think the answer is yes. If the physician does less than that, it seems to me that the statutory language would not cover the physician.

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

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

Mr. FORBES. Thank you, Mr. Chairman.

I'd like to thank all the panelists for being here. We all wish we could spend more time asking you some questions to clarify your positions, but we're limited to 5 minutes, so I'm going to ask you if you can be as concise as possible, and you can elaborate on your answers in the record if you'd like to.

But Rev. Powell, let me ask you. Based on your testimony I would conclude that you counsel with and work with at least a significant number of teenagers so that you're aware of the pressures and problems that are confronting them on a day-to-day basis in today's society; is that true?

Rev. POWELL. Since 1970, when I had started this work, yes.

Mr. FORBES. And that would be a wide array of problems they're confronting, not just limited to pregnancies; is that correct?

Rev. POWELL. Yes.

Mr. FORBES. Are you aware of the huge marketing attacks that are taking place on teens today regarding credit cards?

Rev. POWELL. Yes.

Mr. FORBES. And do you understand that that has resulted in a number of suicides by teenagers?

Rev. POWELL. No, I'm not aware of that.

Mr. FORBES. It's in a lot of the literature, news articles and all, that a number of teens, because they are being sold credit cards as teenagers and they are becoming overwhelmed when they have to confront their parents, and actually committing suicide rather than doing that.

The question I would ask for you is, given this marketing scheme where they're trying to sell more and more teens credit cards, would you be in favor of having teens be able to sign for their own credit cards under the age of 18-years-old?

Rev. POWELL. I am stretching to see what the relevancy is for the current Act before us that we're discussing——

Mr. FORBES. Fortunately, we don't have a judge to answer the relevancy, so if you would just answer the question if you have an opinion or not.

Rev. POWELL. I would say yes if they're under the age of 18.

Mr. FORBES. So you think a 16-year-old or a 15-year-old ought to be able to sign to bind themselves to a credit card?

Rev. POWELL. No, they shouldn't.

Mr. FORBES. They shouldn't. Why shouldn't they?

Rev. POWELL. Because ultimately the parents are going to be responsible for those financial costs.

Mr. FORBES. Not if we give authority to the teenage to—teenager, and say that they would be liable themselves.

Rev. POWELL. If the teenager had been granted whatever the legal term is for being an adult on your own, I would say yes, that they should be able to sign their own credit card.

Mr. FORBES. So you think you would see nothing wrong with as a legislature us being able to say that a teenager could sign to bind themselves to credit card debt at 16-years-old just like they're doing at 18-years-old?

Rev. POWELL. No, I wouldn't advise that.

Mr. FORBES. I'm just asking would you see any legal problem with doing that?

Rev. POWELL. I don't know, because I'm not really familiar with what the legal ramifications would be.

Mr. FORBES. Okay. Let me ask you this. You recommend, you said, I think, that all of the teens that you counsel with, that they talk with their parents?

Rev. POWELL. No, I didn't say that, sir.

Mr. FORBES. Oh, you don't. Can you clarify what you—that's what I thought you said. Tell me what you——

Rev. POWELL. I would recommend that if at all possible teens be able to talk with their parents or legal guardians, yes.

Mr. FORBES. Now, you also indicated—and correct me if I'm wrong here—that you don't know what the parent will do; is that correct?

Rev. POWELL. Sometimes one does not know what the parent will do.

Mr. FORBES. Do you always know what the parent—do you ever—isn't it true that in many situations sometimes you think that a parent that would act good in a situation like that, when given the information that they have a teenage pregnancy, acts in a bad manner?

Rev. POWELL. Sometimes that occurs, yes.

Mr. FORBES. And sometimes the ones that you might think would act bad, act in a good manner; is that correct?

Rev. POWELL. Yes.

Mr. FORBES. Then why do you recommend that they talk with their parents if you have no idea at all what the outcome's going to be?

Rev. POWELL. Because the relationship between child and parents is an important relationship. It is often central in the child's life and in the parent's life, and certainly in the family life, how——

Mr. FORBES. If the State legislature concludes just what you've said, that that relationship between a parent and a child is central and a central relationship, and they determine, for example, Virginia determines that the children in Virginia should recognize that central relationship and consult with their parents before they make a decision as substantial as having an abortion, do you think that ought to be honored?

Rev. POWELL. If Virginia has made that decision, Virginia has made that decision. But the Child Custody Act is talking about another adult taking that child across State lines in order to obtain an abortion.

Mr. FORBES. My time's expired.

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

The gentleman from Indiana, Mr. Hostettler is recognized for 5 minutes.

Mr. HOSTETTLER. I thank the Chairman. I find it intriguing, in looking over the list of witnesses from the last hearing, that the other side often complains about the mixture of religion with regard to the abortion debate, and looking on the list last time, the minority asked a Reverend Catherine Ragsdale, a Vicar of St. David's Episcopal Church, former chair of the board of the Religious Coalition for Reproductive Choice to be their one witness, and today we have the Reverend Lois M. Powell, United Church of Christ, on behalf of the Religious Coalition for Reproductive Choice, and I just think the record should reflect that I guess both sides are very interested in the compelling discussion of religion and abortion.

That being the case, Rev. Powell, you say in your statement, quote: "We can never forget that individual women, who themselves have been created in the image of God, struggled in each and ever instance," unquote. I couldn't agree with you more about women who have been created in the image of God, and thank goodness for my daughters, they've also been created in the image of their mother.

But let me ask you something. At what point have these women that you speak of been created in the image of God?

Rev. POWELL. God creates life, I believe.

Mr. HOSTETTLER. At what point? The reason I'm saying is that court decisions have suggested that that question needs to be answered, and this is a good time to answer that question, and they've suggested that it's a theological discussion.

Rev. POWELL. It is a theological discussion, and there are varying theological opinions, and perspectives on that.

Mr. HOSTETTLER. Well, do you believe that God would have us be ignorant of when life beings, when it's created, in your words, in His image, in the image of God, I should say?

Rev. POWELL. I think that there is a difference between human life that is potential human life and human personhood, and the laws in our country cover human personhood. I do not believe a fetus is covered by laws that cover human personhood.

Mr. HOSTETTLER. And so a fetus is not created in the image of God?

Rev. POWELL. A fetus is becoming a person who is created in the image of God.

Mr. HOSTETTLER. Okay. So a fetus, a fetus is not created in the image of God. At what point does a fetus or a something become created in the image of God?

Rev. POWELL. I believe, along with the majority of people in the United Church of Christ that that begins in the terms of *Roe* v. *Wade*, that protectable human life begins at the point of in the third trimester.

Mr. HOSTETTLER. What did the Church of Christ say before 1973?

Rev. POWELL. In 1969 it said that women ought to have full access to full reproductive health care including abortion.

Mr. HOSTETTLER. What did they say before 1969?

Rev. POWELL. The United Church of Christ is not a doctrinal denomination. We have a vast, wide divergent opinion in our—among our members about this very question. I'm responding to you in terms of what my personal beliefs are, which are still in line with my denomination.

Mr. HOSTETTLER. So you would not suggest that they're based on scripture at all?

Rev. POWELL. Well, scripture can be read and interpreted in many, many ways.

Mr. HOSTETTLER. Okay, very good.

Let me ask, Mrs. Farley, you, in response to the Chairman's question earlier, you talked about taking your daughter to New York. Did you elaborate on that? You took your daughter somewhere after the, after the situation in question.

Ms. FARLEY. I had to take my daughter Crystal back to New York to the abortion clinic, and—for them to release her medical records. When she was at the hospital and signed a release of records, the physician that performed the abortion refused to release her records. So the physician here in Pennsylvania had to do the—an operation without the records.

Mr. HOSTETTLER. Very good.

Rev. Powell, I have a question, a follow-up question for you. This 16-year-old woman in South Georgia, was she the subject of—was she the victim of statutory rape?

Rev. POWELL. No.

Mr. HOSTETTLER. Was she the victim of any type of rape?

Rev. POWELL. No.

Mr. HOSTETTLER. Okay. How is this young woman today?

Rev. POWELL. That was in 1992. I do not know. I have not followed up with her. I only received a note when they returned home that everything was going all right.

Mr. HOSTETTLER. And that was in 1992?

Rev. POWELL. Yes.

Mr. HOSTETTLER. 12 years ago. Do you know if she suffers any post-abortion problems?

Rev. POWELL. I have no knowledge of that, sir.

Mr. HOSTETTLER. No knowledge of that. Now, are you saying that, quote, later it says, "I assured this young woman and her sister that God had not abandoned them but would remain with them always. I encouraged them to find a way eventually to talk with their parents, but not without a support of a third person who could mediate on their behalf," end quote. That's interesting, as the

father of two daughters. Mrs. Farley went to New York to be with her daughter as a result, to follow up on this. But this third person you're talking about doesn't really have any long-term relationships such as yourself with this lady—with this friend from Georgia, this young woman from Georgia, does she—do you?

Rev. POWELL. I did not say who that third person would be, but it would be someone whom they trust. It might be a counselor at their high school, at her high school, someone who they have confidence could help mediate any discussion with their parents should they be fearing a reaction from their parents.

Mr. HOSTETTLER. Can I ask for one additional minute because I had a different question.

Mr. CHABOT. Without objection.

Mr. HOSTETTLER. My question was—I'm not necessarily talking about right after the event, when the case is wrapped up and you say you made a move on to the next case. But I'm saying long term. You're suggesting in your testimony that this issue that has in many cases a long-term impact, should be mediated by someone who has a much shorter-term interest in the situation than does a parent.

Rev. POWELL. No, I was not necessarily suggesting that.

Mr. HOSTETTLER. With all due respect, your testimony says after 1992 you have no idea what's going on in this woman's life, and as opposed to a parent, who has a lifelong commitment to a child. And your testimony is troubling because it suggests that in this short span of time, that this decision is a very short-term decision that has no lasting ramifications, that in fact after the case is wrapped up and the file is signed and you put it away in a folder, that that's it. What I'm suggesting is that's not it, that there are long-term impacts to these decisions, and that parents should be involved in that process from the very start.

I thank the Chairman for his indulgence.

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

There are no additional Members of the Committee to ask questions, so that will conclude the questioning this afternoon. I would ask unanimous consent that all Members have five legislative days to revise and extend their remarks and submit additional materials for the record.

We want to thank all four of the folks that came here to testify today. We appreciate your testimony, wish you the best in the future, and thank all Members who participated this afternoon.

If there is no further business to come before the Committee, we're adjourned. Thank you.

[Whereupon, at 4:30 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF JOHN C. HARRISON

PROFESSOR OF LAW

UNIVERSITY OF VIRGINIA

The Subcommittee has asked that I give my views concerning Congress' power to enact H.R. 1755, 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. 1755 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. 1755 reflected a substantive congressional policy concerning abortion and 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. 1755 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. 1755 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 Com-*

[1] This statement is substantially identical to the testimony I provided the Subcommittee with respect to H.R. 476 in the 107th Congress and H.R. 1218 in the 106th Congress.

[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.

pany 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. 1755 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. 1755 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.

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

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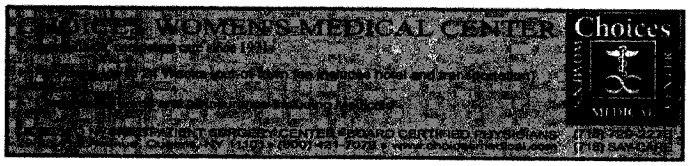

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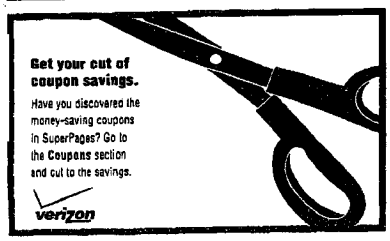

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See
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Security Alarm Systems
Security Control Equip., Systems & Monitoring
Security Systems-Access Control

Accordion Instruction

See
Music Instruction-Instrumental

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Nashville/Brown County Area 1/1

SBC SMART Yellow Pages

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ortion Alternatives

Organizations listed at this heading provide assistance, counseling, and/or information on abortion alternatives.
- They do not provide information/referenced on how to obtain an abortion, abortion services or birth control information.

IA ADOPTION ATTORNEYS JOEL & STEVE 858 ——— 888 332-5736

ON COUNTY PREGNANCY CARE CENTER
Free Pregnancy Tests
ion & Wed 1-4PM, Thurs 1-7PM • Across From Brown Co State Park Main Entrance
50 State Road 46 East Nashvi ——— 988-4508

S PREGNANCY CENTER
9 Lake 812 N Oakdale Bloomington ——— 334-0055
(See Display Ad This Page)

S PREGNANCY CENTER NEW BEGINNINGS
E 219 N Pendry Av Seymour ——— 524-2229

LEM PREGNANCY CENTER
11 N St Mary's ——— 275-2822

bortion Services

Advertisers at this heading perform abortion services or refer clients to businesses that do.

ORTION ACCESS-INDPLS WOMEN'S CENTER

Abortions Thru 24 Weeks

Safe and Confidential

Highly Skilled Physicians & Caring Staff

www.womensmedcenter.com

1201 N Arlington Ave Indianapolis
Toll Free Dial "1" & Then ——— 800 382-9029
1401 E Stroop Road Dayton OH
Toll Free Dial "1" & Then ——— 800 472-6810

ORTION CLINIC FOR WOMEN

Confidential & Supportive Staff

SURGERY OR THE PILL

Oral Sedation

Medicaid & Student Discounts

www.clinicforwomen.net

Indpls ——— 800 545-2409

FILIATED WOMEN'S SERVICES INC

ABORTION TO 12 WEEKS

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- Nitrous Oxide Gas Analgesia
- Excellent Physicians

1-800-692-3424

www.affiliatedwomensservices.com

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Let us help.

Free Pregnancy Tests

Confidential Results While You Wait

812-334-0055

800-395-HELP

Crisis Pregnancy Center

808 N. College Ave.
Bloomington, IN 47404

EMW WOMEN'S SURGICAL CENTER
The Only Licensed Surgical Center In K.Y. Offering Abortions Through 23 Weeks
Abortion Pill Available
- General Anesthesia
- Confidential Counseling

Louisville
Toll Free Dial "1" & Then ——— 800 626-3512

PLANNED PARENTHOOD OF GREATER INDIANA INC
Early abortion pill up to 7 weeks
Surgical abortions up to 13 weeks
Confidential-Affordable
www.ppin.org

WOMEN'S HEALTH PRACTICE
Abortion Services Through 22 Weeks
Suzanne Trupin, M.D., FACOG
AAAHC Accredited Surgery Center
Parental Consent Not Required and Completely Confidential
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General or Local Anesthesia - Abortion Pill
www.womenshealthpractice.com
2125 S Neil St Champ IL ——— 217 356-3734

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Bloomington

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303 S Walnut ——— 339-8434
BLOOMINGTON TITLE SERVICES INC
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401 W 7th St ——— 336-0121
MOCOTICO-THE TITLE COMPANY
The Sperry Building 116 N Walnut St ——— 332-7272
STEWART DANIEL C
Attorney At Law
See Our Ad Under Title Companies
409 S College Av ——— 339-4502
TITLEPLUS 410 S Auto Mall Rd ——— 336-3952

Access Control Systems

See Burglar Alarm Systems & Detection Devices; also Identification Equipment & Supplies; also Locks & Locksmiths; also Security Control Equipment & Systems

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LOWES ROBERT E PUBLIC ACCOUNTANT
52 Dos O'neil Dr Cloverdale ——— 765 795-5548
LYSHER LINDA 840 W 17th ——— 332-9400
MIKE ROGERS ACCOUNTING
1708 N Kinser Pkr ——— 331-0540
POLL & COMPANY 1802 W 17th ——— 334-7000
SAGE SANDRA K 22 Arch Dr Mooresville ——— 996-2040
WATKINS ACCOUNTING 123 E 10th ——— 339-0016

Accountants-Certified Public

GUIDE A List Arranged By Specialty Follows This Classification.

STEPHEN R. MILLER
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30 YEARS OF EXPERIENCE

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smillercpa@mail.com
Fax 332-0601
Miller Plaza 205 North College Ave

BKD LLP 400 W 7th ——— 336-8558
BLAGIOM DIANE CPA 620 N Walnut ——— 336-7667

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YELLOW PAGES

(Classified Telephone Directory)

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(INCLUDING SEA ISLAND, GA.)

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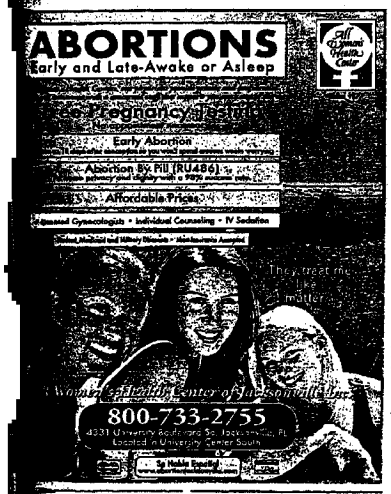

Abortion Alternatives

Note: Organizations Listed At This Heading Assert That They Provide Assistance, Counseling And / Or Information On Abortion Alternatives And That They Do Not Provide Abortion Services Or Counseling Or Information On The Attainment Of Abortion.

CARE NET
3548 Community Rd Brun ---------- 267-1100
(Please See Our Display Ad This Page)

Abortion Services

Note: Businesses At This heading Assert That They Perform Abortions Or Refer Clients To Businesses That Do.

A Jacksonville Women's Health Center
Jacksonville
Toll Free-Dial "1" & Then ---------- 800 298-8674
(Please See Our Display Ad Next Page)

ALL FLORIDA WOMEN'S CENTER
Toll Free-Dial "1" & Then ---------- 800 733-7993
(Please See Our Display Ad Next Page)

ALL WOMEN'S HEALTH CENTER OF JACKSONVILLE INC
4331 University Blvd S Jacksonville FL
Toll Free-Dial "1" & Then ---------- 800 733-2755
(Please See Our Display Ad This Page)

(Classification Continued Next Page)

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PREPARED STATEMENT OF CONGRESSWOMAN ILEANA ROS-LEHTINEN

I would like to begin by commending Chairman Chabot for his outstanding leadership, and especially for holding this important hearing. Mr. Chairman, thank you for considering this vital piece of legislation.

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 a guardian to decide what is best for a child. Nor did it legalize the right for strangers to place our children in a dangerous situation that is often described as being potentially fatal.

In most schools, an underage child is prohibited from attending a school field trip without first obtaining a signed permission slip from a parent or legal guardian. An underage child is also unable to receive mild medication at school, such as aspirin, for a headache, unless the parent signs a release form permitting the school nurse to administer such medication. In some schools, a child may not even take a sex education class without parental consent, yet nothing forbids this same child from being taken across state lines, in reckless disregard for state laws, for the purpose of undergoing a life-altering abortion.

There is outrage over cigarette ads which some say target minors. Where is the outrage over ads that clearly solicit business from frightened, confused girls for a complicated medical procedure?

Designed to ensure children's safety, cosmetic ear piercing requires parental consent for fear that girls may pick up dangerous infections. Who ensures safety for young girls who are ill advised to disobey state laws and are taken to undergo a highly dangerous procedure that may tragically result in death or severe medical complications?

As a mother of two teenage daughters, I realize the profound impact that a positive relationship with one's primary caregiver has on the development of our most important resource, our young people. I believe that programs that protect our youth are not only beneficial, but are also necessary for providing them with the skills and motivation necessary to live a productive life. We must ensure that our most precious natural resource, our children, are protected and afforded every opportunity.

Last year, in the 107th Congress, I introduced the Child Custody Protection Act, which passed the House with a vote of 260–161. In the 106th Congress, this legislation also passed with a vote of 270–159. In the 105th Congress, it 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 request an abortion."

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 notification laws, for the purpose of having an abortion. It will protect minors from exploitation form the abortion industry, promote strong family ties, and will help foster respect for state laws.

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. 1755 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.

PREPARED STATEMENT OF THE AMERICAN ACADEMY OF PEDIATRICS AND SOCIETY FOR ADOLESCENT MEDICINE

This statement is submitted on behalf of the American Academy of Pediatrics (AAP), an organization of 60, 000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are dedicated to the health, safety, and well being of infants, children, adolescents, and young adults, and the Society for Adolescent Medicine (SAM), a multidisciplinary organization of 1400 professionals including physicians, nurses, psychologists, social workers, and others committed to improving the physical and psychosocial health and well-being of all adolescents. AAP and SAM appreciate the opportunity to submit to the House Judiciary Committee a statement for the record on H.R.1755, the Child Custody Protection Act.

OVERVIEW:

The AAP and SAM firmly believe that parents should be involved in and responsible for assuring medical care for their children. Moreover, our organizations agree that parents ordinarily act in the best interests of their children and that minors benefit from the advice and the emotional support provided by parents. Both AAP

and SAM strongly encourage adolescents to involve their parents or other trusted adults in important health care decisions. This includes those regarding pregnancy and pregnancy termination. Research confirms that most adolescents do so voluntarily. This is predicated not by laws but on the quality of their relationships. By its very nature family communication is a family responsibility. Adolescents who live in warm, loving, caring environments, who feel supported by their parents, will in most instances communicate with their parents in a crisis, including the disclosure of a pregnancy.

The role of pediatricians and other adolescent health professionals is to support, encourage, strengthen and enhance parental communication and involvement in adolescent decisions without compromising the ethics and integrity of the relationship with adolescent patients.

The stated intent of those who support mandatory parental consent and notification laws is that such laws enhance family communication as well as parental involvement and responsibility. However, the evidence does not support that these laws have that desired effect. To the contrary, there is evidence that these laws may have an adverse impact on some families and that it increases the risk of medical and psychological harm to adolescents. The American Academy of Pediatrics reports, "[i]nvoluntary parental notification can precipitate a family crisis characterized by severe parental anger and rejection of the minor and her partner. One third of minors who do not inform parents already have experienced family violence and fear it will recur. Research on abusive and dysfunctional families shows that violence is at its worse during a family member's pregnancy and during the adolescence of the family's children."

CONFIDENTIALITY OF CARE:

Confidentiality of health care services is an important element in assuring adolescents' access to care—and it is compromised when adolescents are required to seek parental consent. The AAP and SAM, strongly believe that young people must have access to confidential health care services—including reproductive health care and abortion services. Every state has laws that provide for confidential access to some services for young people, including sexual assault, STDs, substance abuse, mental health counseling, or reproductive health care. Concern about confidentiality is one of the primary reasons young people delay seeking health services for sensitive issues, whether for an unintended pregnancy or for other reasons. While parental involvement is very desirable, and should be encouraged, it may not always be feasible and it should not be legislated. Young people must be able to receive essential health care expeditiously and confidentially.

Most adolescents will seek medical care with their parent or parents' knowledge. However, making services contingent on **mandatory** parental involvement (either parental consent or notification) may negatively affect adolescent decision-making. Mandatory parental consent or notification reduces the likelihood that young people will seek timely treatment for sensitive health issues. In a regional survey of suburban adolescents, only 45 percent said they would seek medical care for sexually transmitted diseases, drug abuse or birth control if they were required to notify their parents.

A teen struggling with concerns over his or her sexual health may be reluctant to share these concerns with a parent for fear of embarrassment, disapproval, or possible violence. A parent or relative may even be the cause or focus of the teen's emotional or physical problems. The guarantee of confidentiality and the adolescent's awareness of this guarantee are equally essential in helping adolescents to seek health care.

For these reasons, physicians and other adolescent health professionals strongly support adolescents' ability to access confidential health care. A national survey conducted by the American Medical Association (AMA) found that physicians favor confidentiality for adolescents. A regional survey of pediatricians showed strong backing of confidential health services for adolescents, with 75 percent favoring confidential treatment. Pediatricians and other adolescent health professionals describe confidentiality as "essential" in ensuring that patients share necessary and factual information with their health care provider. This is especially important if we are to reduce the incidence of adolescent suicide, substance abuse, sexually transmitted diseases and unintended pregnancies.

Many influential health care organizations support the provision of confidential health services for adolescents. Here is what they say:

The American Academy of Pediatrics. "A general policy guaranteeing confidentiality for the teenager, except in life-threatening situations, should be clearly

stated to the parent and the adolescent at the initiation of the professional relationship, either verbally or in writing."

The Society for Adolescent Medicine. "The most practical reason for clinicians to grant confidentiality to adolescent patients is to facilitate accurate diagnosis and appropriate treatment. . . . If an assurance of confidentiality is not extended, this may create an obstacle to care since that adolescent may withhold information, delay entry into care, or refuse care."

The American Medical Association. "The AMA reaffirms that confidential care for adolescents is critical to improving their health. The AMA encourages physicians to involve parents in the medical care of the adolescent patient, when it would be in the best interest of the adolescent. When in the opinion of the physician, parental involvement would not be beneficial, parental consent or notification should not be a barrier to care."

The AMA also notes that, "because the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a "back alley" abortion, or resort to a self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion since . . . 1973."

American College of Physicians. "Physicians should be knowledgeable about state laws governing the rights of adolescent patients to confidentiality and the adolescent's legal right to consent to treatment. The physician must not release information without the patient's consent unless required by the law or if there is a duty to warn another.

The American Public Health Association. APHA "urges that . . . confidential health services (be) tailored to the needs of adolescents, including sexually active adolescents, adolescents considering sexual intercourse, and those seeking information, counseling, or services related to preventing, continuing or terminating a pregnancy."

Of course, it is important for young people who are facing a health-related crisis to be able to turn to someone dependable, someone they trust, to help them decide what is best. Many times that person is a parent. Teenagers facing a crisis pregnancy should be encouraged to involve a parent, and most do so. In fact, over 75 percent of pregnant teens under age 16 involve at least one parent in their decision, even in states that do not mandate them to do so. In some populations as many as 91% of teenagers younger than 18 years voluntarily consulted a parent or "parent surrogate" about a pregnancy decision.

All too often, however, young women know that their parents would be overwhelmed, angry, distraught or disappointed if they knew about the pregnancy. Fear of emotional or physical abuse, including being thrown out of the house, are among the major reasons teenagers say they are afraid to tell their parents about a pregnancy. Young women who are afraid to involve their parents very often turn to another adult in times of difficulty. One study shows that, of young women who did not involve a parent in their abortion decision, over half turned to another adult; 15 percent of these young women involved a stepparent or other adult relative.

THE IMPLICATIONS OF H.R. 1755 FOR YOUNG WOMEN, FAMILIES, STATES, AND HEALTH CARE PROFESSIONALS:

H.R.1755 would harm young women who are most afraid to involve their parents in an abortion decision and who most need the support of other adults in their lives. Instead of encouraging young people to involve adults whom they trust, the law would discourage such communication. The bill would have the unintentional outcome of placing a chilling effect on teenagers' ability to talk openly with adults—including family members and medical providers—because it sends a message that adults who help young people grapple with difficult decisions are criminals. This disincentive is extremely dangerous for those young people most in need of support and guidance in a difficult time, particularly when they cannot involve their parents.

This legislation is not only troublesome with regard to its effect on confidential medical care for teens; it is also a harmful and potentially dangerous bill from the perspective of its intent and its potential effect on states' and individuals' rights.

As currently written, H.R. 1755, in effect would apply one state's laws to another state. Young women would be required to abide by the law of the "original" state (the state where the young woman resides) regardless of where they seek medical care. There are many reasons why women travel to obtain an abortion, including concerns about confidentiality and consent. An adult who accompanies a young woman to a **legal**, accessible, and affordable abortion provider would be placed in the position of risking criminal sanctions.

Applying the laws from one state to young women who seek medical care in another state, as H.R.1755 would do, raises important questions about the rights of states and of health care professionals. Physicians and other health professionals, have the responsibility to refer patients to the best care possible. With any other medical procedure physicians and other health professionals are not subject to guidelines that prohibit proceeding with medical care in one state based on guidelines from the referring state. In addition, in certain metropolitan areas physicians have a license to practice in more than one jurisdiction, such as Washington, D.C., Maryland, and Virginia. In other metropolitan areas that cross state lines most of the health services are in one state, and not the other. Imposition of the requirements contained in H.R.1755 not only would burden families but also would result in significant disruption of the relationships between health care professionals and their patients, too. It could also threaten other adults who help teenagers. As an example, consider the Greater Metropolitan Washington community—what would happen if a teen took the Metro subway or bus from Falls Church, Virginia to Washington, D.C.? Would an adult who loaned the teenager Metro fare be liable?

Furthermore, this law would be extraordinarily difficult to enforce. For example, does the law apply only to women who travel to another state in order to exercise their constitutional right to seek reproductive health care? The AAP and SAM are concerned that there could also be implications for young women who are temporarily living outside their home state because of travel, education or employment. The legal ramifications could be severe for an adult traveling with a young woman even if the adult believes that the home state parental consent or notification laws have been followed.

Moreover, AAP and SAM are troubled by the legislation's potential effect on the responsibilities of the health care providers involved. Health care providers have a "fiduciary duty" (the highest degree of a legal obligation or duty) to protect the confidentiality of their patients, and a number of federal and state laws mandate protection of the confidentiality of medical records and information. One of the most common requirements is found in state licensing statues for physicians. Often, a physician who violates a patient's confidentiality is subject to disciplinary action, including revocation of his/her license. Many states mandate that health records must be kept confidential and cannot be released without the patient's consent. AAP and SAM are concerned that Congress may put health care providers in the position where they must violate their legal or ethical confidentiality obligations in order to meet the requirements imposed by a neighboring state.

CONCLUSION

In conclusion, AAP and SAM reiterate a statement previously made by a former president of the Society for Adolescent Medicine: "[C]learly the proposed bill is designed to eliminate this [abortion] option for many adolescents. Adolescents who cannot rely on one or both parents to help them through the trauma of a pregnancy and who, for legal or geographical reasons, may need to go to an adjoining state for termination, are effectively precluded from receiving help from those (such as other relatives, health professionals, or even the clergy) who would be there to help them. In essence, this law would put adolescents in the position of having to take care of themselves (possibly traveling long distances in the process), without supportive care during a traumatic time in their lives."

OTHER RESOURCES

1. Gans, J.E. McManus, M.A., Newacheck, P.W. Profiles of Adolescent Health Services, Vol. 2, Adolescent Health Care: Use Costs and Problems of Access AMA:1991, Wash., D.C. at 52–53.
2. Marks A. Malizio, J. Hoch, J. Brody, R. & Fisher, M., Assessment of health needs and willingness to utilize health care resources of adolescents in a suburban population, J of Pediatrics 1983; 102: 456–460.
3. Resnick, M.D., Litman, T.J. and Blum, R.W. Physicians attitudes towards 1confidentiality of treatment for adolescents: findings from the Upper Midwest Regional Survey, J of Adol. Health, 1992; 13:616–22.
4. Gans, J.E. Compendium on Reproductive Health Issues Affecting Adolescents, AMA:1996, Wash. D.C. at 10.
5. American College of Legal Medicine, Legal Medicine at 278 (1995).
6. Colo.Rev.Stat 25–4–1409 (2) (1995). The statute does not address physician protection of adolescent patients' confidentiality.

7. American Medical Association. Council on Ethical and Judicial Affairs. "Mandatory Parental Consent to Abortion." JAMA. Vol. 269. No.1, January 6, 1993 p. 83.

MATERIAL SUBMITTED BY CONGRESSMAN NADLER

July 19, 2004

U.S. House of Representatives
Washington, DC 20515

Dear Representative:

We, the undersigned organizations dedicated to protecting reproductive rights and enhancing women's health, write to express our opposition to H.R.1755, the so-called "Child Custody Protection Act."

The "Child Custody Protection Act" would make it a federal crime for any person, other than a parent, to accompany a young woman across a state line for the purpose of obtaining abortion care, if the home state's parental-involvement law has not been met.

This bill poses a serious threat to young women's health. Most young women who are faced with the decision to have an abortion already involve their parents in their decision. Even in states in which mandatory parental involvement is not required, over 60 percent of parents knew of their daughter's pregnancy. And among young women who did not tell their family, 30 percent had experienced or feared violence in their family or feared being forced to leave home.

Those young women who decide they cannot involve a parent often seek help and guidance from other trusted adults. Unfortunately, this bill would deter young women from seeking assistance from a trusted adult. Under this legislation, grandparents, aunts, uncles, adult siblings or clergy could be prosecuted and jailed simply for supporting a young woman in crisis who seeks reproductive health services - even if that person does not intend, or even know, that the parental-involvement law of the state of residence has not been followed.

Moreover, this legislation is unconstitutional and tramples on some of the most basic principles of federalism. In the words of legal scholars Laurence Tribe of Harvard University and Peter J. Rubin of Georgetown University, the legislation "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 affirmed by the Supreme Court . . ."

While we share the belief that young women should involve parents when facing difficult reproductive-health choices, in situations where such communication is not possible, we believe young women should be encouraged to involve other trusted adults. Unfortunately, this bill does not accomplish that goal. In fact, it does the exact opposite by forcing women to face important decisions alone, without any help. We urge you to stand against this dangerous legislation.

Sincerely,

Advocates for Youth
American Association of University Women
American Civil Liberties Union
American Humanist Association
American Medical Women's Association
Center for Reproductive Rights
Central Conference of American Rabbis
Disciples for Choice
Disciples Justice Action Network
Law Students for Choice
Legal Momentum (the new NOW Legal Defense and Education Fund)
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Family Planning and Reproductive Health Association
National Organization for Women
National Partnership for Women & Families
National Women's Law Center
People For the American Way

Physicians for Reproductive Choice and Health(r)
Planned Parenthood Federation of America
Population Connection
Religious Coalition for Reproductive Choice
Reproductive Health Technologies Project
Sexuality Information and Education Council of the United States
The Alan Guttmacher Institute
Union for Reform Judaism
Unitarian Universalist Association of Congregations

PREPARED STATEMENT OF THE REV. DOCTOR KATHERINE HANCOCK RAGSDALE

EPISCOPAL PRIEST

ON BEHALF OF NARAL PRO-CHOICE AMERICA

Ladies and gentlemen of the subcommittee, thank you for the opportunity to submit this testimony for the record. My name is Katherine Hancock Ragsdale. I am an Episcopal priest and former chair of the board of the Religious Coalition for Reproductive Choice, the 31-year-old coalition of 39 national religious and religiously affiliated organizations from 15 denominations and faith traditions. I also serve on the board of NARAL Pro-Choice America. 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 offer this testimony. 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 compelled to share this story with you.

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 we 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 child care 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 bypass. 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 members of Congress want that. And, in fact, most girls - more than 60 percent - do turn to their parents. We'd like it to be 100 percent. 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 can tell you, teenagers will, from time to time, exercise poor judgment. It's a fact of nature and there is no law Congress 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 provide this testimony.

Written Testimony of

Diana Philip

July 20, 2004

For consideration by members of the House Judiciary Committee
HR 1755, the "Child Custody Protection Act"

My name is Diana Philip and I have served as a legal advocate in non-profit organizations for the last 15 years covering issues of domestic violence, sexual assault, civil liberties and reproductive rights. I have worked on behalf of those who have been wary to access legal services in search of safety, freedom and autonomy. I have witnessed how well a legal system can respond to victims of crime or to the disenfranchised. I have also witnessed how the system can fail and the negative aftermath for those denied the legal relief they so desperately sought.

In the last few years, I have become immersed in the realities regarding the legal rights of pregnant minors by creating a statewide response to the Texas state parental notification law enacted January 2000. I am the co-founder of a non-profit organization called Jane's DUE PROCESS and currently serve as its executive director. The agency offers accurate information on how to comply with the state parental notification law for abortion services and free legal representation to engage in the judicial bypass option. This organization is dedicated to offering legal relief to minors seeking to comply with the law and not circumvent it. It is for this reason that I submit this testimony as an individual, and not on behalf of Jane's Due Process. As an agency, Jane's DUE PROCESS (JDP) does not assist minors in circumventing state law; however, as an individual, I am aware of reasons why a pregnant minor may choose to not engage in judicial bypass or to seek abortion services outside of her home state.

Before the passage of the state parental notification law, Texas abortion providers reported that 80-95% of minors had a parent involved in the decision to terminate a pregnancy. The ones that did not have a parent involved had compelling reasons. Parents had abandoned or disowned their children or created a dysfunctional home environment from which teenagers fled in search of safety or stability. The same percentages apply today. If at least one parent cannot be notified by the clinic, minors are able to receive judicial bypass waivers by demonstrating those same compelling reasons but only in those areas of the state that allow confidentiality, fair hearings and due process. Now each of these abortion procedures is delayed when a minor participates in the legal process, increasing the costs, and at times, the risks of complication in terminating a pregnancy at a more progressed stage.

Since January 1, 2000, Texas law requires that when a minor chooses to obtain an abortion, the physician shall notify a parent or legal guardian at least 48 hours before the procedure. For abused or orphaned teenagers, parental involvement regarding such a decision is not a safe or feasible option. The Texas Legislature included a judicial bypass option for a minor, known as "Jane Doe," to petition for the parental notification by the physician to be waived. A judge has the authority to grant a waiver when a minor demonstrates:

- that she is mature and well-informed to make such a decision,
- that notification of a parent or legal guardian would not be in her best interest and/or
- that notification could lead to physical, sexual or emotional abuse of her.

However, when the law went into effect, questions were raised regarding access to the judicial bypass process and fair application of the law. Advocates grew concerned that most

Texas teenagers did not know they had the right to legally bypass notification. Family planning clinics knew little about referring minor patients to attorneys able to provide effective counsel in this issue, particularly in local legal systems where court personnel had little interest in following the law or maintaining confidentiality. Attorneys wanting to assist these minors had no training or support system to aid their work, especially through the appellate process.

In response to these concerns, the JDP 24-hour toll-free hotline, website, and statewide lawyer referral programs were launched in January 2001. During its first year, over 1,000 hotline calls were received from pregnant minors and their partners, friends, relatives, counselors, and teachers, as well as from legal and medical professionals about how to comply with the new law. In JDP's second year, patient advocacy services were added to better assist minors in participating in medical and legal appointments by providing transportation, childcare, over-night accommodation and financial assistance for pre-court sonograms and pregnancy options counseling. In response to an increase of inquiries from minors who did not wish to end their unexpected pregnancies, research was conducted during its third year on how to assist minors seeking legal relief in order to continue their pregnancies while facing potential abuse and/or abandonment. Now in its fourth year, JDP has expanded its services to include information and referrals for pregnant minors seeking protective orders, emancipation actions and Title IX public school discrimination claims in order to become a true pro-choice organization.

I want you to become familiar with the population of pregnant minors that have contacted Jane's DUE PROCESS through its hotline seeking abortion services. At this writing, approximately 5,400 hotline calls have been received in the last three and half years and over 1,450 minors have been screened for legal services. These "Jane Does" have much in common with one another, although they span the socio-economic scale and vary racially and geographically. The vast majority are adamant that they want to be parents one day. All want to be in a better or more mature position in their lives to be good parents and productive adults. They fear the consequences of allowing a parent or legal guardian the power to decide that an unintended pregnancy of a minor daughter should continue against the minor's better judgment. Advocates for pregnant minors in Texas still marvel at the irony that those behind the parental notification law believe that minors are always too immature to make the decision to terminate a pregnancy without a parent being involved, yet are mature enough to become adolescent parents, whether or not the parents will be supportive of daughter's baby.

The majority of pregnant minors contacting JDP report that they are 17 years old, approximately 56%, with one-fourth within two months of their 18th birthdays. In Texas, 17 year-olds may legally consent to sexual contact, stand trial as adults and no longer be reported as runaways, yet they cannot consent to an abortion without parental notification. The majority of Jane Does are often the most insightful and mature members of their families. They understand that a family that is unable to communicate on a daily basis due to a significant degree of dysfunction, separation and/or abuse is less likely to act appropriately while in crisis. A little less than one third of the pregnant minors who contact the hotline are 16 years old, while only 10% are 15 years of age.

When Jane Does are not the most mature among their peers, they are most often the victims of an abusive family and have more to fear when faced with the possibility of a judicial bypass waiver being denied. One out of four minors contacting the JDP hotline report having experienced physical abuse by a parent or legal guardian. Some report fear that the domestic violence will extend to other family members due to a parent's rage over the news of an unexpected pregnancy of the minor daughter. Thirty-seven percent of these pregnant minors report having been threatened by a parent or legal guardian with bring kicked out of the home for being pregnant through actual warnings or witnessing it happen to other household members. Twenty-seven percent report the high probability that family members will pressure or force them to continue an unintended pregnancy if notification occurs. Those that have been victims of sexual assault discuss how they fear their parents will not ever believe they were raped and will force them to continue the pregnancy as a punishment for "youthful indiscretion" or due to certain religious beliefs.

Forty-four percent are of Anglo descent, 32% of Hispanic ethnicity, while 16% are from African or Caribbean heritage. The majority of those minors who are not of Anglo descent are first-generation American or immigrants themselves. They speak of the disgrace and sometimes ostracism of other relatives who experience unintended pregnancies, the cultural differences that can lead to physical abuse by parents in responding to average adolescent behavior and the economic struggles in adequately supporting their immigrant families let alone another unexpected child.

Depending on which study one reads, it appears that Texas is ranked among the top three states with the highest ratios in teen pregnancies, teen births and subsequent teen births. One-fourth of minors contacting the JDP hotline have experienced a prior pregnancy. These Jane Does are among the most confused when trying to comprehend legal rights regarding teen pregnancy. Texas law requires no parental involvement of a minor who seeks medical services regarding her pregnancy, be it a pregnancy test, sonogram, amniocenteses, fetal surgery, or C-section delivery, but mandates a parent or legal guardian to be notified at least 48 hours before an abortion is performed.

Fourteen percent of the pregnant minors contacting JDP are active teen parents. Since parenting minors are not considered emancipated under Texas law, they too are required to have a parent or legal guardian notified or have that notification waived by a judge. They are among the most frightened in having a parent forced to be involved in a subsequent pregnancy due to threats of abuse, homelessness and abandonment with a repeat pregnancy. Some talk about how their parents stopped them from ending their first pregnancies and how they fear their parents having that type of power over them again. Other minors who had parents that forced them to give up babies up for adoption are still devastated by their parents' actions and are very reluctant in seeking future parental involvement in pregnancy decisions.

It is also important to note that over one-third of the Jane Does report no longer living with a parent or legal guardian. Fourteen percent are living with relatives who were never established as legal guardians, primarily due to lack of financial resources to secure a lawyer for representation. The majority of the others live alone, with friends or their boyfriends. Some reside in emergency shelters or juvenile detention centers. If there is enough information to contact at least one parent, they will comply with the law by providing that

information to the clinic to make the contact. Thirty-five percent have no feasible way to contact at least one parent due to that parent being missing, incarcerated or deceased. Twelve percent are orphans or defacto orphans as both parents are missing, incarcerated or deceased. Minors unable to contact either parent are not exempt from the parental notification law in Texas and must seek judicial bypass. Although the majority of those not residing with a parent or legal guardian are being cared for by other family members or relatives, there is no alternative consent provision in the statute to address this population of minors.

The founding mission of JDP was to serve pregnant minors who sought assistance in complying with the Texas parental notification law to receive abortion services. The issue of concern was, and still is, the ability for a minor to receive a fair hearing should she choose to ask a judge to grant a waiver to bypass the physician's legal obligation to notify a parent or legal guardian. To aid minors in successfully seeking this legal relief, JDP has trained lawyers statewide to be on-call and represent these teens pro bono in order to ensure due process in each case presented in court. To help minors learn more about their pregnancy options and receive sonograms to verify the stage of pregnancy, JDP has identified allies among family planning clinics willing to effectively assist minors in considering all their choices before making a solid decision regarding an unintended pregnancy. To inform as many minors as possible about the judicial bypass option, JDP actively seeks outreach opportunities with social service and crisis intervention agencies. Unfortunately, pregnant minors still experience barriers placed by adults in learning more about their legal rights and being encouraged to exercise them.

Although it has been over four years since the law was enacted, minors seeking judicial bypass still experience bias from local court personnel, and attorneys struggle with due process issues while encouraging fair application of the law. Some teenagers have been turned away from the district and county clerks, told to seek hearings elsewhere or just simply were refused to the right to submit applications for judicial bypass hearings. Some judges have decided not to honor the open venue measure allowed in the statute, blocking minors from other counties from applying for legal relief. Confidentiality measures have been questionable, especially in smaller counties, and the ability to apply for a waiver outside one's home county may be necessary when the minor knows those who work in the local courthouse. In at least one instance, a judge demanded to know the name of the Jane Doe. In another case, court personnel were allowed to remain present in what is supposed to be a confidential setting. Through body language and facial expressions they intimidated the minor during her testimony. Confidentiality is such an issue in these cases, that a judge once bought a laminating machine to seal the records shut after each judicial bypass hearing before sending it down for the clerk to file.

Some judges have been known to have personal practices to make the "Jane Does" cry during testimony before granting waivers. Rulings have been delayed by judges who require the minor to continue a hearing so she may visit a psychologist, clergyman or a different kind of family planning clinic before ruling in her case. Judges have been known to appoint anti-choice guardian ad litems to harshly confront minors with inappropriate inquires and comments. If minors fail to respond or have a "wrong" answer, they are deemed "immature" or "poorly informed about pregnancy options". Some guardians ad litem have been reported as saying that instead of representing the "best interests of the minor", they

represent "the fetus" or "the absent parents" from the judicial bypass process. Teens seeking waivers while in their second trimester or who admit to prior pregnancies have been known to face more bias and have their waivers denied even after strongly proving their grounds.

Along with the barriers in seeking fair access and due process, minors also find inaccurate information about the existence of judicial bypass. Social service agencies, crisis intervention hotlines and family planning clinics do not always give complete information to minors about the state parental notification law and the judicial bypass option. This may be due to bias against abortion as a pregnancy option or discomfort with the idea of a minor having an abortion without parental knowledge.

Since there are few abortion providers in Texas (only 15 out of 254 counties have abortion clinics), there is a concern that some minors feel they have no choice due simply to the lack of actual access to abortion services. To make matters more difficult, some family planning clinics are wary of serving minor patients without parental permission. This means that there are fewer clinics accessible to teenagers that will work with minors who wish to notify a parent or obtain a judicial bypass waiver. Denial of safe and legal health care services may force a minor to make unhealthy choices. Minor patients have been known to delay seeking abortion services until in their second trimester after receiving false information earlier in their pregnancies about the state parental notification law.

Another barrier for minors trying to access health care and legal assistance involves the trouble brought about by missing school. Students continually face the consequences of skipping classes to make clinic appointments, meet with attorneys and guardians ad litem or attend court hearings. School policies and practices vary and students themselves are unsure of how closely administrators enforce rules, such as contacting a parent about a student's absence, excused or not. JDP attorneys frequently air their concerns about how the judicial bypass process undermines student's academic success and about the types of strategies a minor has to employ to not tip off teachers, nurses and counselors who would not agree with the decision to terminate a pregnancy. Eighty-five percent of these minors are attending high school, being home schooled or obtaining their GEDs. Eight percent are high school graduates (most of which are in college), while 6% are drop-outs. Those minors who work have the added burden of not getting in trouble with their employers or risk losing the income they need to pay for the medical services they seek. Over one third of pregnant minors contacting the hotline report both working and attending school.

What happens after pregnant minors contact the JDP hotline? These are the best estimates:

- 43% seek judicial bypass with the assistance of a JDP lawyer or through an established court appointed system referred by JDP that is known to be appropriate in its expediency and confidentiality.
- 27% of pregnant teens who contact the hotline indicate that they intend to have a parent notified upon completion of our screening process. The majority of these teens had been given misinformation that the law was parental consent or had not been told how notification by an abortion clinic is actually handled.
- The remaining 5% of callers are able to obtain emergency contraception, experience miscarriages or choose to continue their pregnancies after speaking to hotline staff.

- It is unknown the actions of 25% of the pregnant teens advised to seek pregnancy options counseling

I have heard of many scenarios that lead me to believe that a minor would seriously consider seeking abortion services out of state rather than comply with a state's parental involvement law. For example, I remember in the summer of 2001 receiving hotline calls from pregnant minors in Oklahoma, looking for information about receiving abortions in Texas. Oklahoma had just passed a vague law concerning the liability issues a physician would face performing an abortion on a minor without parental knowledge or consent (this statute since has been successfully challenged on constitutional grounds). The few number of abortion clinics resorted to parental consent polices. Since there was no legal remedy to allow minors to bypass the new state law, Oklahoma teens were seeking services in surrounding states. The stories ranged from minors whose parents refused to walk into an abortion clinic to give consent, to those whose parents would harm them for seeking to end an unintended pregnancy if forced to have knowledge of the pregnancy decision.

One situation in Oklahoma involved a Native American minor who was thrown out of her home by her adopted parents when she told them she was pregnant. A family friend found that the teenager was being forced to sleep in the backyard and that her parents intended to disown her completely. When the minor decided to seek abortion services, her parents refused to go to the clinic to give their consent. Although they were not interested in stopping her from getting the abortion, they certainly had no intention to help her either. The family friend call the JDP hotline and requested information about how the minor could seek services in Texas, since notification of a parent was an option since both parents were already aware of her intention. If the minor could get transportation to Texas, she could have a parent notified by phone or by letter, since it could not be done in person. I have no idea if that minor was able to access abortion services in Texas or another state.

Another situation from Oklahoma came from a minor in foster care. Her foster mother became excited by the news that the minor was pregnant and made the decision for the teen that she would continue the pregnancy and give any baby over to her son and his wife who were having difficulty conceiving. Obviously the foster mother had no interest in giving consent to the minor's abortion. The minor's older sister contacted the JDP hotline wanting to know how her younger sister could possibly still have an abortion without the foster mother's involvement and was willing to transport the minor to any clinic in any state that would be willing to help her.

Lack of access to abortion clinics is another reason why a minor may seek services out of state. Due to the limited number of clinics in such a large state, some must travel many hours to receive these medical services. If a border state has facilities that are closer to the residence of the minor, she may choose to seek services there and abide by that state's parental involvement law. A relative or friend may try to assist her with transportation. For instance, a minor who lived with her disabled mother 45 minutes from the Louisiana state line thought it was best for her aunt to drive her to one of the clinics there. The decision to end the pregnancy was made with the support of her family. The closest clinic to her in Texas had a parental consent policy and was located 3 hours away. Her mother could not physically go to the clinic and give consent. There was no need for the minor to go through

a judicial bypass hearing, since the same clinic does not honor judicial bypass waivers. She would have had to travel 5 hours to the closest clinic that would do notification by telephone to her mother, but the aunt was her only means of transportation and could not take significant time off from work nor afford the travel involved in such a lengthy trip.

Confidentiality is a prime reason for minors who fear that no matter what guarantees are being made in the court house, if a parent works in the local legal system or is well known in the political community, she may find that the decision can only remain private if she leaves the state to seek services. One minor who contacted us decided to seek services out of state as her step-father was a prominent figure in law enforcement and she knew that no matter where she traveled in Texas, he would have ways of finding out where she went missing for a day to participate in a court hearing during school hours. She chose to travel out of state on a Saturday with friends because not only did she fear that he would become abusive with her mother for the minor's pregnancy if her mother was to be notified of her decision (heavy domestic violence issues), but that she did not wish to embarrass her family if the news came out to the community in any way. Although the statute clearly defines that judicial bypass cases are to be kept confidential as set out in the U.S. Supreme Court ruling *Bellotti v. Baird* (1979), folks in Texas know that next to junior high schools, courthouses are the worse gossip mills you are going to find and that not a lot escapes a law enforcement man in search of a trouble making step-daughter.

Another reason why minors would seek services out of state is when access to the judicial bypass process is denied. Despite the efforts of an organization like JDP, actors in the legal system who are uncomfortable with the parental notification statute find creative ways for non-compliance. One court appointed lawyer told his client two weeks after he filed her application for judicial bypass that he wasn't really interested in representing her so she just need to call the judge and see what she was supposed to do next. (A hearing and decision is to be made no later than 5:00 p.m. of the second business day after an application is filed or the waiver is deemed granted.) Thinking that it was this way everywhere in Texas, the minor called the hotline to see where she could go out of state to get the medical services for which she could not seem to get an order. It would not surprise me to learn that others have sought services out of state for the same reason.

I am also hearing more stories about judicial activism. One particular judge on at least one occasion threatened to rescind a waiver to be granted until the minor met with an anti-choice counselor, who in the meeting arranged by the judge demanded to know the minor's name and her parent's contact information. The minor indicated to me that she had not chosen to provide that information, and felt she had no choice but to leave the state. If a minor is intent on not becoming a parent, it is reasonable for her to consider seeking abortion services out of state when she feels that she is being denied such services in her home state with failed attempts to comply with her home state's law.

Another instance in which a minor would seek services outside her home state is when the waiver is denied. In our first year of services, we had a case in which a 14 year-old being raised by her grandmother was seeking a judicial bypass. Her mother had been murdered the year before and her father was missing. The grandmother was doing the best she could in raising the young teen, but the youth was acting out and had been taken advantage of by a 20 year-old man. The minor was too afraid to tell her grandmother that had she had gotten

pregnant and delayed telling her until she was in her second trimester. During the hearing, the judge stayed fixated on the issue that the minor was in a more progressed stage of pregnancy and made inappropriate statements regarding how the minor was "taking a life" and "stopping a beating heart". The waiver was denied. When the attorney tried to discuss with the grandmother the notion of appealing, the grandmother cut him off and said that she would "just handle it somehow". I have no idea what she did to help her granddaughter. Grandmother and granddaughter disappeared and were not heard from again.

Texas also has a new obstacle for minors seeking abortion services in their home state: HB15. This law was enacted January 2004 and stipulates that abortion procedures performed post 15.9 weeks can only be done in ambulatory surgical centers. At the time of the bill's passage, not one of the 36 licensed abortion clinics was assessed as an ambulatory surgical center and at this writing not one clinic has been able to renovate its existing structure to be deemed such. Clinics are now forced to refer adult and minor patients out of state, delaying the second trimester procedure further and creating an additional financial burden by adding significant costs in transportation.

Of the 25% in which we have no indication of how the pregnant minor chose to deal with her unintended pregnancy after contacting JDP, I have no idea the number that choose to seek services out of state. I know that those minors considering such an option had supportive friends and relatives that were willing to transport them to any clinic they needed to follow through with their pregnancy choice. I can understand why minors are so reluctant to trust other adults to help them comply with the state law. They must hear stories from other teens who have had a parent notified about an abortion and met with harmful consequences or attempted to access the judicial bypass process and were treated with disrespect or insensitivity.

It is my opinion, any measure that mandates that a minor seek to comply with her home state parental involvement law before seeking services out of state will add significant delay in receiving these medical services. It is also my opinion that no adult should be punished for transporting a minor across state lines to seek this particular type of safe and legal medical procedure. I have spoken with minors who are too frightened to comply with the state parental notification law. They inquire about methods to self-abort such as drinking bottles of bleach or vinegar, buying illegal drugs off the street or seeking illegal abortions in Mexico. Even when we offer extensive support, some are still too afraid and decline to use our services. This generation of young women, 30 years after abortion has been recognized as a constitutional right, need not be placed in harm's way by creating further obstacles. They have enough to contend with as it is.

Statistics regarding Jane Does screened for JDP services
(1/22/01- 5/31/04 representing 1462 minors)

- 56% are 17 years old, 26% of which report being within two months of their 18th birthdays
- 30% are 16 years old
- 10% are 15 years old
- 44% are of Anglo descent
- 32% are of Hispanic descent
- 16% are of African or Caribbean descent
- 85% are attending high school, being home schooled or getting their GEDS
- 8% are high school graduates, while 6% are high school drop outs
- 40% are employed
- 35% are working and attending school
- 14% are already mothers supporting at least one child
- 24% have had at least one prior pregnancy
- 7 weeks is the average stage of pregnancy reported at the time of the first call
- 65% have yet to confirm the stage of pregnancy by a clinic
- 25% are fast approaching or already in their second trimester at first contact
- 3 days to 4 weeks is the range of time a minor prepares and participates in the judicial bypass process depending on the number of barriers to navigate
- 25% report having experienced physical abuse by a parent or legal guardian
- 37% report having been threatened by a parent or legal guardian to be kicked out of the home for being pregnant or already have been kicked out
- 27% report the high probability that family members will force or pressure them to continue an unintended pregnancy
- 35% of the minors do not live with a parent or legal guardian
- 35% report not knowing how to contact at least one parent because she or he is missing, deceased or incarcerated.
- 12% report being unable to contact either parent

- 28% of minors contacting the hotline indicate the intention to notify a parent or legal guardian of an abortion decision at the end of the screening process
- 16% report birth control failure, 48% report condom failure
- 25% report knowing about parental notification law prior to pregnancy
- 17% report knowing about parental notification law due to experience with prior pregnancy

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