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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 109–51

CHILD INTERSTATE ABORTION NOTIFICATION ACT

APRIL 21, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 748]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 748) to amend title 18, United States Code, to prevent the transportation of minors in circumvention of certain laws relating to abortion, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Interstate Abortion Notification Act".

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

Title 18, United States Code, is amended by inserting after chapter 117 the following:

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

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

"§ 2431. Transportation of minors in circumvention of certain laws relating to abortion

"(a) OFFENSE.—

"(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

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

"(b) EXCEPTIONS.—

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

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

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant—

"(1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or

"(2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to procure an abortion.

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

"(e) DEFINITIONS.—For the purposes of this section—

"(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;

"(2) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

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

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

"(ii) proceedings in a State court; and

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

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

"(4) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

"(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required; and

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

SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.

Title 18, United States Code, is amended by inserting after chapter 117A the following:

"CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION

"Sec.
"2432. Child interstate abortion notification.

"§ 2432. Child interstate abortion notification

"(a) OFFENSE.—

"(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than one year, or both.

"(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.

"(b) EXCEPTIONS.—The notification requirement of subsection (a)(2) does not apply if—

"(1) the abortion is performed or induced in a State that has a law in force requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;

"(2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;

"(3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; or

"(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

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

"(d) DEFINITIONS.—For the purposes of this section—

"(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

"(2) the term 'actual notice' means the giving of written notice directly, in person;

"(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours fol-

lowing noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

"(4) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

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

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

"(ii) proceedings in a State court;

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

"(5) the term 'minor' means an individual who is not older than 18 years and who is not emancipated under State law;

"(6) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

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

as determined by State law;

"(7) the term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and

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

SEC. 4. CLERICAL AMENDMENT.

The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new items:

"117A. Transportation of minors in circumvention of certain laws relating to abortion 2431
"117B. Child interstate abortion notification ..... 2432".

SEC. 5. SEVERABILITY AND EFFECTIVE DATE.

(a) The provisions of this Act shall be severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) The provisions of this Act shall take effect upon enactment.

PURPOSE AND SUMMARY

H.R. 748, the "Child Interstate Abortion Notification Act" ("CIANA"), has two primary purposes. The first is to protect the health and safety of young girls by preventing valid and constitutional state parental involvement laws from being circumvented. The second is to protect the health and safety of young girls by protecting the rights of parents to be involved in the medical decisions of their minor daughters when such decisions involve interstate abortions. To achieve these purposes, CIANA contains two sections, each of which creates a new Federal crime subject to a $100,000 fine, or 1 year in jail, or both.[1]

First, CIANA makes it a Federal crime to transport a minor across state lines to obtain an abortion in another state in order to avoid a state law requiring parental involvement in a minor's abortion decision. Twenty-three states currently have parental involvement laws.[2] The purpose of the first section of CIANA is to prevent people—including abusive boyfriends and older men who may have committed rape—from pressuring young girls into cir-

[1] Under 18 U.S.C. § 3559(a)(6) ("An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is 1 year or less but more than 6 months, as a Class A misdemeanor."), CIANA would be classified as a Class A misdemeanor. Under the Federal fine statute, the sentence for a Class A misdemeanor that does not result in death is not more than $100,000. *See* 18 U.S.C. § 3571(b)(5). Therefore, the maximum allowable fine under CIANA is $100,000.

[2] Those states are Alabama, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

cumventing their state's parental involvement laws by receiving a secret out-of-State abortion. This section of CIANA does not apply to minors themselves, or to their parents. It also does not apply in life-threatening emergencies that may require that an abortion be provided immediately.

Second, CIANA applies when a minor from one state crosses state lines to have an abortion in another state that does not have a state law requiring parental involvement in a minor's abortion decision, or when a minor from one state crosses state lines to have an abortion in another state that does have a state law requiring parental involvement in a minor's abortion decision, but the physician fails to comply with such law. In such a case, CIANA makes it a Federal crime for the abortion provider to fail to give one of the minor's parents, or a legal guardian if necessary, 24 hours' notice (or notice by mail if necessary) of the minor's abortion decision before the abortion is performed. The purpose of this section is to protect fundamental parental rights by giving parents a chance to help their young daughters through difficult circumstances as best they can, including by giving a health care provider their daughter's medical history to ensure she receives safe medical care and any necessary follow-up treatment.

Dr. Bruce A. Lucero, an abortion provider, has supported this legislation because "parents are usually the ones who can best help their teenager consider her options" and because "patients who receive abortions at out-of-State clinics frequently do not return for follow-up care, which can lead to dangerous complications."[3] Parental notification also allows parents to assist their daughter in the selection of a competent abortion provider. This section of CIANA does not apply in the following circumstances: where the abortion provider is presented with court papers showing that the parental involvement law in effect in the minor's state of residence has been complied with; where the minor states that she has been the victim of abuse by a parent and the abortion provider informs the appropriate state authorities of such abuse; or where a life-threatening emergency may require that an abortion be provided immediately.

CIANA supports state laws that provide parents with the necessary information to fulfill their obligation to care for their minor children, and it affirms the common-sense notion that parents have the legal right to be involved in medical decisions relating to their minor children when those decisions involve interstate abortions.

CIANA does not supercede, override, or in any way alter existing state parental involvement laws. CIANA addresses the interstate transportation of minors in order to circumvent valid, existing state laws, and uses Congress' authority to regulate interstate activity to protect those laws from evasion and to protect parental involvement when minors cross state lines to obtain an abortion.

A total of 44 States have enacted some form of a parental involvement law. Twenty-three 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,

[3] Bruce A. Lucero, M.D., "Parental Guidance Needed," *The New York Times* (July 12, 1998).

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 protect 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. CIANA would curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors. CIANA ensures that State parental involvement laws are not evaded through interstate activity.

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. An adequate medical and psychological case history is important to the physician, and 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 also improves 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 unable to ensure that their children obtain routine postoperative care and unable to provide 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. Such complications may be lethal if left untreated.

Teenage pregnancies often occur as a result of predatory practices of men who are substantially older than the minor victim, resulting in the transportation 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 critical 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.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 748 is much-needed legislation, overwhelmingly supported by the American people, that will protect both the health and safety of our minor children and parental rights.

SUPPORT FOR CIANA

Polls show that the American people overwhelmingly support parental involvement laws by huge majorities that have grown over the last decade. As recently as March, 2005, 75 percent of over 1,500 registered voters surveyed favored "requiring parental notification before a minor could get an abortion," and only 18 percent were opposed.[4] According to another poll conducted in 2003, 73 percent of non-whites and 82 percent of Hispanics support parental notification laws.[5] A Wirthlin Worldwide poll conducted in October, 2001, found that 83 percent of those surveyed support laws requiring notification to one parent before an abortion can be performed on a minor daughter.[6]

African Americans and Hispanics overwhelmingly support parental notification laws. A Public Opinion Strategies poll surveyed 1,000 African-American registered voters on the question: "Would you favor or oppose a law that would require a parent or guardian to be notified before a minor child, under the age of 18, undergoes an abortion procedure?" 84 percent favored such a law (74 percent "strongly favor" and 10 percent "somewhat favor").[7] A Zogby poll of California voters showed that 71 percent of those surveyed in that state support laws requiring notification to one parent before an abortion can be performed on a minor daughter.[8]

Moreover, during the November, 2004, elections, Florida overwhelmingly passed an amendment to its state constitution that provides that "the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy."[9] Nearly 65 percent of Florida voters in November, 2004, approved this state constitutional amendment.[10]

Even more rigid requirements of parental consent are overwhelmingly supported by the American public. A Gallup poll conducted in January, 2003, showed that 78 percent of those surveyed favor laws requiring a 24-hour waiting period before an abortion can be obtained, and 73 percent favor laws requiring minors to get parental consent before an abortion can be obtained.[11] These numbers have been confirmed in other polls.[12] Similar results are found in polls that consistently reflect over 70 percent of the American

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[4] Quinnipiac University Poll (conducted March 2-7, 2005, with 1,534 registered voters surveyed; margin of error: ±2.5percent).

[5] Wirthlin Worldwide Poll (October 21-23, 2003).

[6] Wirthlin Worldwide National Poll (October 19-22, 2001).

[7] Public Opinion Strategies Survey (July 30, 2002).

[8] Zogby California Poll (June 2002).

[9] F.S.A. Const. Art. 10 § 22.

[10] *See* Jackie Hallifax, "Group Seeks Parental Notice End," *The Brandenton Herald* (January 11, 2005) at 5.

[11] Lydia Saad, Gallup News Service (January 20, 2003).

[12] *See Los Angeles Times* Poll (June 8-13, 2000); CBS News/New York Times Poll (January 1998).

public support parental consent or notification laws,[13] including 69 percent of the Hispanic population.[14]

As the Associated Press has reported, even "[o]pponents [of parental notice laws] agree that young women are better off telling parents about a pregnancy[.]"[15] Even Senator John Kerry, the former Democratic nominee for President, has said he supports parental notification laws. On the NBC News program "Meet the Press," Senator Kerry said "I am for parental notification."[16]

There is widespread agreement among abortion rights advocates and pro-life advocates 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. Organizations such as Planned Parenthood and the National Abortion and Reproductive Rights Action League all advise pregnant minors to consult their parents before proceeding with an abortion.[17] In addition, the American Medical Association urges physicians to "strongly encourage minors to discuss their pregnancy with their parents" and to "explain how parental involvement can be helpful and that parents are generally very understanding and supportive."[18]

THE SCOPE OF THE INTERSTATE PROBLEM CIANA ADDRESSES

There is no serious dispute regarding the fact that the transportation of minors across state lines in order to obtain abortions is both a widespread and frequent practice. Even groups opposed to this bill acknowledge that large numbers of minors are transported across state lines to obtain abortions, in many cases by adults other than their parents. In 1995, Kathryn Kolbert, then an attorney with the Center for Reproductive Law and Policy (a national legal defense organization that supports abortion), stated that thousands of adults are helping minors cross state lines to get abortions in states whose parental involvement requirements are less stringent or non-existent: "There are thousands of minors who cross state lines for an abortion every year and who need the assistance of adults to do that."[19] She asked, "How does a 14-year-old get to New Hampshire from Boston without getting a ride?"[20]

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[13] *See, e.g.,* CBS News/ NY Times Poll (released January 15, 1998) (78 percent 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 percent 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").

[14] Latino Opinions poll (October 5, 2004) (survey of 1,000 national adult Hispanics on the question "[D]o you support or oppose requiring underage teenage girls to get permission from their parents before they are allowed to get an abortion?" to which 58 percent reported "strongly support" and 11 percent reported "somewhat support").

[15] David Crary, "Passage of Teen Abortion Bill Called Likely," *The Associated Press* (January 31, 2005).

[16] NBC News, "Meet the Press" (January 30, 2005) (transcript).

[17] *See* Planned Parenthood Federation of America, Inc., *Fact Sheets: Teenagers, Abortion, and Government Intrusion Laws,* at *http://www.plannedparenthood.org/library/ABORTION/laws.html* (last visited February 2, 2005) ("Few would deny that most teenagers, especially younger ones, would benefit from adult guidance when faced with an unwanted pregnancy. Few would deny that such guidance ideally should come from the teenager's parents."); National Abortion and Reproductive Rights Action League, *Young Women: Reproductive Rights Issues,* at *http://www.naral.org/Issues/youngwomen/index.cfm* (last visited February 1, 2005) ("Responsible parents should be involved when their young daughters face a crisis pregnancy.").

[18] Council on Ethical and Judicial Affairs, American Medical Association, "Mandatory Parental Consent to Abortion," 269 *JAMA* 82, 83 (1993).

[19] "Labor of Love Is Deemed Criminal," *The National Law Journal* (November 11, 1996) at A8.

[20] *See* "Woman Charged in Secret Abortion," *Philadelphia Inquirer,* (September 16, 1995).

In 2001, New Jersey's *Star-Ledger* reported that Laurie Lowenstein, Executive Director of Right to Choose, an abortion rights advocacy group, stated that she would quit her job to shuttle pregnant young girls to states without parental notification laws if New Jersey enacted a parental notification law.[21] Only Congress, with its constitutional authority to regulate interstate commerce, can curb such flagrant disregard of state laws. The experience of a number of States illuminates the scope of this problem.

Pennsylvania

Since Pennsylvania's current parental consent law took effect in March, 1994, news reports have confirmed that many Pennsylvania teenagers are going out of state to New Jersey and New York to obtain abortions. In 1995, the *New York Times* reported that "Planned Parenthood in Philadelphia has a list of clinics, from New York to Baltimore, to which they will refer teenagers, according to the organization's executive director, Joan Coombs."[22] Moreover, the *New York Times* gave accounts of clinics that had seen an increase in patients from Pennsylvania.[23] One clinic, in Cherry Hill, New Jersey, reported seeing a threefold increase in Pennsylvania teenagers coming for abortions.[24] Likewise, a clinic in Queens, New York, reported that it was not unusual to see Pennsylvania teenagers as patients in 1995, though earlier it had been rare.[25]

In the period just prior to the Pennsylvania law taking effect, efforts were underway to make it easier for teenagers to go out of state for abortions. For instance, *Newsday* reported that "[c]ounselors and activists are meeting to plot strategy and printing maps with directions to clinics in New York, New Jersey, Delaware and Washington, D.C., where teenagers can still get abortions without parental consent . . . 'We will definitely be encouraging teenagers to go out of state,' said Shawn Towey, director of the Greater Philadelphia Woman's Medical Fund, a nonprofit organization that gives money to women who can't afford to pay for their abortions."[26]

Moreover, some abortion clinics in nearby states, such as New Jersey and Maryland, and others, use the lack of parental involvement requirements in their own states as a "selling point" in advertising directed at minors in Pennsylvania, stating "No Parental Consent Required."[27] A Rockville, Maryland, abortionist ran a similar advertisement in the May 1998-April 1999 Yellow Pages for Harrisburg, Pennsylvania. Such advertisements have appeared in telephone directories for Wilkes-Barre and Dallas, Scranton, Clarks Summit, and Carbondale, Bethlehem, Allentown, York, and Erie.

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[21] Jeff Whelan, "McGreevey Reveals Latest Abortion Stance," *The Star-Ledger* (August 30, 2001).

[22] "Teen-Agers Cross State Lines in Abortion Exodus," *The New York Times* (December 18, 1995) at B6.

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] Charles V. Zehren, "New Restrictive Abortion Law," *Newsday* (February 22, 1994).

[27] See attachment, page 11, for copies of such advertisements.

ATTACHMENT

ABORTION TO 24 WEEKS

Asleep or Awake

No Parental Consent Required

Abortion Pill/RU486

Free Pregnancy Testing • Birth Control

Female Practitioners

Public Aid Discounts • Insurance, HMOs

Visa, Mastercard, Discover/Novus

www.ipamg.net

1-800-221-1650

659 W Washington St Chicago IL. **312 707-8988**
5084 N Clifton Av Chicago IL..... **773 725-0200**

Yellow Pages Ad for IL Clinic - Indiana Yellow Pages 2004

A ABORTION APPOINTMENT SERVICE

"THE ABORTION PILL"
ABORTION TO 24 WEEKS
NO 24 HOUR WAIT
NO PARENTAL CONSENT
1-800-ABORTION

Call For Location Nearest You

Toll Free---------- **800 226-7846**

PA Yellow Pages Ad for Out-of-State Clinics - Harrisburg/Hershey Directory 2003-2004

PHILLIPSBURG WOMEN'S SERVICES

1 - VISIT ABORTION

NO 24 HOUR WAIT

NO PARENTAL CONSENT

VERY LOW FEES

157 S Main Phbg NJ---------- **908 213-1010**

PA Yellow Pages Ad for NJ Clinic – Bethlehem Directory 2004

Missouri

A study in the *American Journal of Public Health* reported that a leading abortion provider in Missouri refers minors out of state for abortions if the girls do not want to involve their parents. Reproductive Health Services, which performs over half of the abortions performed in Missouri, refers minors to the Hope Clinic for Women in Granite City, Illinois.[28] Research reveals that based on the available data the odds of a minor traveling out of state for an abortion increased by over 50 percent when Missouri's parental consent law went into effect. Furthermore, compared to older women, underage girls were significantly more likely to travel out of state to have their abortions.[29]

A *St. Louis Post-Dispatch* news report confirms that the Hope Clinic in Illinois attracted underage girls seeking abortions without parental involvement.[30] A clinic counselor estimates that she sees two girls each week seeking to avoid their home state's parental involvement law. One example was a 16-year-old girl from Missouri who had called abortion clinics in St. Louis and learned that parental consent was required before a minor could obtain an abortion. According to the report, the Hope Clinic performed 3,200 abortions on out-of-State women in 1998, and the clinic's executive director estimates that number is 45 percent of the total abortions performed at the clinic. The executive director also estimates that 13 percent of the clinic's clients are minors.

Massachusetts

Massachusetts has also seen an increase in out-of-State abortions performed on its teenage residents since the state's parental consent law went into effect in April 1981, according to a published study.[31] A study published in the *American Journal of Public Health* found that in the 4 months prior to implementation of the parental consent law, an average of 29 Massachusetts minors obtained out-of-State abortions each month in Rhode Island, New Hampshire, Connecticut, and New York (data for Maine was not available).[32] After the parental consent law was implemented, however, the average jumped to between 90 and 95 out-of-State abortions per month, using data from the five states of Rhode Island, New Hampshire, Connecticut, New York, and Maine, representing one-third of the abortions obtained by Massachusetts' minors.[33]

The study noted that due to what the authors described as "astute marketing," one abortion clinic in New Hampshire was able to nearly double the monthly average of abortions performed on Massachusetts minors (from 14 in 1981 to 27 in 1982). The abortionist "began advertising in the 1982 Yellow Pages of metropolitan areas

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[28] *See* Charlotte Ellertson, Ph.D., "Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana," *American Journal of Public Health* (August 1997).

[29] *See id.* at 1371.

[30] *See* Kevin McDermott and Mark Schauerte, "Illinois May Tighten Rules on Abortions For Teens; Parental Consent Is Not Required; Abortion Bill Targets Illinois as Teen Haven For Abortion," *St. Louis Post-Dispatch* (February 25, 1999).

[31] The Massachusetts law was changed in 1997 to require the consent of one parent (or judicial authorization), rather than both parents as previously required.

[32] *See* Virginia G. Cartoof & Lorraine V. Klerman, "Parental Consent for Abortion: Impact of the Massachusetts Law," *American Journal of Public Health* 397 (April 1986).

[33] *See id.* at 398.

along the northern Massachusetts border, stating 'consent for minors not required.'"[34]

In April 1991, the Planned Parenthood League of Massachusetts estimated that approximately 1,200 Massachusetts minor girls travel out of state for abortions each year, the majority of them to New Hampshire. Planned Parenthood said that surveys of New Hampshire clinics revealed an average of 100 appointments per month by Massachusetts minors.[35]

Mississippi

A study of the effect of Mississippi's parental consent law revealed that Mississippi has also experienced an increase in the number of minors traveling out of state for abortions. The study, published in *Family Planning Perspectives,* compared data for the 5 months before the parental consent law took effect in June 1993, with data for the 6 months after it took effect, and found that "[a]mong Mississippi residents having an abortion in the state, the ratio of minors to older women decreased by 13 percent . . . However, this decline was largely offset by a 32 percent increase in the ratio of minors to older women among Mississippi residents traveling to other states for abortion services."[36] Based on the available data, the study suggests that the Mississippi parental consent law appeared to have "little or no effect on the abortion rate among minors but a large increase in the proportion of minors who travel to other states to have abortions, along with a decrease in minors coming from other states to Mississippi."[37]

Virginia

Grace S. Sparks, executive director of the Virginia League of Planned Parenthood, predicted in February 1997 that if Virginia were to pass a parental notification law, teenagers would travel out of state for abortions: "In every state where they've passed parental notification, . . . there's been an increase in out-of-State abortions," she said, adding, "I suspect that that's what will happen in Virginia, that teen-agers who cannot tell their parents . . . will go out of state and have abortions . . ."[38]

Virginia's parental notification law took effect on July 1, 1997. Initial reports indicated that abortions performed on Virginia minors dropped 20 percent during the first 5 months that the law was in effect (from 903 abortions during the same time period in 1996 to approximately 700 abortions in 1997).[39] It appears, however, that Virginia teenagers are traveling to the District of Columbia in order to obtain an abortion without involving their parents. In fact, the National Abortion Federation ("NAF"), which runs a toll-free national abortion hotline, said that calls from Virginia teenagers seeking information on how to obtain an abortion out of state were the largest source of teenage callers seeking out-of-State abortions,

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[34] *Id.* at 399.

[35] *See* M.A.J. McKenna, "Mass. Abortion Laws Push Teens Over Border," *Boston Herald* (April 7, 1991) at A1.

[36] Stanley K. Henshaw, "The Impact of Requirements for Parental Consent on Minors' Abortions in Mississippi," Family Planning Perspectives (June, 1995) at 121.

[37] *Id.* at 122.

[38] Lisa A. Singh, "Those Are the People Who Are Being Hurt," *Style Weekly* (February 11, 1997).

[39] Ellen Nakashima, "Fewer Teens Receiving Abortions In Virginia," *The Washington Post* (March 3, 1998).

at seven to ten calls per day.[40] NAF hotline operator Amy Schriefer has gone so far as to talk a Richmond area teenage girl through the route (involving a Greyhound bus and the Metro's Red Line) to obtain an abortion in the District of Columbia.[41]

CONGRESSIONAL TESTIMONIALS HIGHLIGHT THE NEED FOR IMMEDIATE ACTION

At hearings during the 105th, 106th, 107th, and 108th Congresses, the Subcommittee on the Constitution heard testimony from two mothers whose daughters were secretly taken for abortions, with devastating consequences. Joyce Farley, the mother of a minor girl, recounted how her 12-year-old daughter was provided alcohol, raped, and then taken out of state by the rapist's mother for an abortion.[42] In the words of Joyce Farley, the abortion was arranged to destroy evidence—evidence that her 12-year-old daughter had been raped.[43] On August 31, 1995, her daughter, who had just turned 13, underwent a dangerous medical procedure without anyone present who knew her past medical history (as shown by the false medical history that was given to the abortionist).[44] Following the abortion, the mother of the rapist dropped off the child in another town 30 miles from the child's home.[45] The child returned to her home with severe pain and bleeding which revealed complications from an incomplete abortion.[46] When Joyce Farley contacted the original clinic that performed the abortion, the clinic told her that the bleeding was normal and to increase her daughter's Naprosyn, a medication given to her for pain, every hour if needed.[47] Fortunately, Ms. Farley, being a nurse, knew this advice was wrong and could be harmful, but her daughter would not have known this.[48] Because of her mother's intervention, Ms. Farley's daughter ultimately received further medical care and a second procedure to complete the abortion.[49]

As Ms. Farley testified before the House Constitution Subcommittee last year:

> [I]n 1995, my then 12-year-old daughter, Crystal, was intoxicated and raped by a 19-year-old male . . . 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 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 1 day. The mother of this 19-year-old male had taken Crystal for an abortion in the State

[40] *See id.*
[41] *See id.*
[42] *See Child Custody Protection Act: Hearings on H.R. 3682 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Cong., (May 21, 1998) (statement of Joyce Farley).
[43] *See id.*
[44] *See id.*
[45] *See id.*
[46] *See id.*
[47] *See id.*
[48] *See id.*
[49] *See id.*

> 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 [H.R. 1755 in the 108th Congress, which included provisions that are also in CIANA] 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 . . . 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.[50]

This year, Marcia Carroll testified before the Constitution Subcommittee and described the following terrifying story that CIANA, had it been enacted into law, would have prevented:

> On Christmas Eve 2004, my daughter informed me she was pregnant. I assured her I would seek out all resources and help that was available. As her parents, her father and I would stand beside her and support any decision she made. We scheduled appointments with her pediatrician, her private counselor, and her school nurse. I followed all of their advice and recommendations. They referred us to Healthy Beginnings Plus, Lancaster Family Services, and the WIC program. They discussed all her options with her. I purposefully allowed my daughter to speak alone with professionals so that she would speak her mind and not just say what she thought I wanted to hear. My daughter *chose* to have the baby and raise it. My family fully supported my daughter's decision to keep her baby and offered her our love and support.
>
> Subsequently, her boyfriend's family began to harass my daughter and my family. They started showing up at our house to express their desire for my daughter to have an abortion. When that did not work, his grandmother started calling my daughter without my knowledge. They would tell her that if she kept the baby, she couldn't see her boyfriend again. They threatened to move out of state.

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[50] *Child Custody Protection Act: Hearings on H.R. 1755 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 108th Cong., 6-7 (July 20, 2004) (statement of Joyce Farley).

I told his family that my daughter had our full support in her decision to keep the baby. She also had the best doctors, counselors, and professionals to help her through the pregnancy. We all had her best interests in mind.

The behavior of the boy's family began to concern me to the point where I called my local police department for advice. Additionally, I called the number for an abortion center to see how old you have to be to have an abortion in our state.

I felt safe when they told me my minor daughter had to be 16 years of age in the state of Pennsylvania to have an abortion without parental consent. I found out later that the Pennsylvania Abortion Control Act actually says that parental consent is needed for a minor under 18 years of age. It never occurred to me that I would need to check the laws of other states around me. I thought as a resident of the state of Pennsylvania that she was protected by Pennsylvania state laws. Boy, was I ever wrong.

On Feb. 16, I sent my daughter to her bus stop with two dollars of lunch money. I thought she was safe at school. She and her boyfriend even had a prenatal class scheduled after school.

However, what really happened was that her boyfriend and his family met with her down the road from her bus stop and called a taxi. The adults put the children in the taxi to take them to the train station. His stepfather met the children at the train station, where he had to purchase my daughter's ticket since she was only fourteen. They put the children on the train from Lancaster to Philadelphia. From there, they took two subways to New Jersey. That is where his family met the children and took them to the abortion clinic, where one of the adults had made the appointment.

When my daughter started to cry and have second thoughts, they told her they would leave her in New Jersey. They planned, paid for, coerced, harassed, and threatened her into having the abortion. They left her alone during the abortion and went to eat lunch.

After the abortion, his stepfather and grandmother drove my daughter home from New Jersey and dropped her off down the road from our house. My daughter told me that on the way home she started to cry, they got angry at her and told her there was nothing to cry about.

Anything could have happened to my daughter at the abortion facility or on the ride back home. These people did not know my daughter's medical history, yet they took her across state lines to have a medical procedure without my knowledge or consent. Our family will be responsible for the medical and psychological consequences for my daughter as a result of this procedure that was completed unbeknownst to me. I was so devastated that this could have been done that I called the local police department to see what could be done. They were just as shocked and surprised as I was that there was nothing that could be done in this horrible situation.

The state of Pennsylvania does have a parental consent law. Something has to be done to prevent this from happening to other families. This is just not acceptable to me and should not happen to families in this country. If your child goes to her

school clinic for a headache, a registered nurse can't give her a Tylenol or aspirin without a parent's written permission.

As a consequence of my daughter being taken out of our state for an abortion without parental knowledge, she is suffering intense grief. My daughter cries herself to sleep at night and lives with this everyday.

I think about what I could or should have done to keep her safe. Everybody tells me I did everything I could have and should have done. It doesn't make me feel any better, knowing everything I did was not enough to protect my daughter.

It does ease my mind to know with your help that we can make a difference and change the law to protect other girls and their families. I urge your support for *The Child Interstate Abortion Notification Act.* It is critical that this law passes in Congress. The right of parents to protect the health and welfare of their minor daughters needs to be protected. No one should be able to circumvent state laws by performing an abortion in another state on a minor daughter without parental consent.

The physician who performed an abortion on Marcia Carroll's daughter, Dr. Vikram Kaji, had a long history of sexually abusing his patients. Marcia Carroll should have been given an opportunity to learn about the history of her child's doctor. Apparently the people who coerced her daughter into having the abortion did not care who performed an abortion on her. Dr. Kaji was professionally disciplined by the State of New Jersey on November 1, 1993, and given a 12-month suspension for sexually abusing three patients and indiscriminately prescribing controlled dangerous substances.[51] He was disciplined for having sex with one patient in his office, and for performing "improper" rectal and breast exams on two other patients.[52] According to a consent order, Dr. Kaji knew the woman he had sex with suffered from severe depression, had been sexually abused as a child, and had once been hospitalized for psychiatric problems.[53] He was also disciplined by the Federal Drug Enforcement Agency on February 22, 1994, and made to surrender his controlled substance license.[54] He was also disciplined by the State of Pennsylvania on December 23, 1994, and his license was suspended for 36 months.[55]

When Marcia Carroll was asked why she came to testify on behalf of CIANA, she said, "[my daughter] does suffer. She has gone to counseling for this. I just know that she cries and she wished she could redo everything, relive that day over. It's just sad that it had to happen this way and this is what she had to go through. *But she did want me to come here today and speak on her behalf.*

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[51] *See* Sidney Wolfe, M.D., Mary Gabay, Phyllis McCarthy, Alana Bame, and Benita Marcus Adler, "Questionable Doctors: Disciplined by States or the Federal Government" (State Listing for New Jersey; A Public Citizen Health Research Group Report) (March 1996) at 68.

[52] *See* American Political Network, "State Reports Pennsylvania: PA Suspends Abortion Provider's License," (March 23, 1995) at 6.

[53] *See* Kathy Boccella, "Abortion Doctor Banned One Year," *The Philadelphia Inquirer* (October 29, 1993) at B1 ("A woman who had been a patient of Kaji's since 1976 said that 'numerous times (he) made sexual advances toward her and fondled her' in his office between 1980 and 1988, the consent order read . . . Kaji knew the woman suffered from severe depression, had been sexually abused as a child and had once been hospitalized for psychiatric problems, the order read.").

[54] *See id.* at 68.

[55] *See id.* at 68.

She said, 'Mom, just one phone call is all it would have taken to stop this from happening . . .' So she asked me to come here for her sake and for other girls' safety to speak and let you know what was happening." That is precisely what CIANA affirms: the right of parents to be given the chance to help their children through difficult times. The parents of this Nation want to be given the chance to make sure their children's doctors are not potential sexual abusers and controlled substance pushers, and CIANA would give them that chance.

Eileen Roberts also testified that her 13-year-old daughter was encouraged by a boyfriend, with the assistance of his adult friend, to obtain a secret abortion.[56] The adult friend drove Ms. Roberts' daughter to an abortion clinic 45 miles from her home and paid for her daughter to receive the abortion.[57] After 2 weeks of observing their daughter's depression, Ms. Roberts and her husband learned that the young girl had an abortion from a questionnaire they found under her pillow, which their daughter had failed to return to the abortion clinic.[58]

Ms. Roberts' daughter was then hospitalized as a result of the depression, and a physical examination revealed that the abortion had been incompletely performed and required surgery to repair the damage done by the abortionist.[59] The hospital called Ms. Roberts and told her that they could not do reparative surgery without a signed consent form.[60] The following year, Ms. Roberts' daughter developed an infection and was diagnosed with having pelvic inflammatory disease, which again required a 2-day hospitalization for antibiotic therapy and a signed consent form.[61] Ms. Roberts and her family were responsible for over $27,000 in medical costs, all of which resulted from this one secret abortion.[62]

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[56] *See Child Custody Protection Act: Hearings on H.R. 476 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 107th Cong. (Sept. 6, 2001) (statement of Eileen Roberts).

[57] *See id.* While Ms. Roberts' daughter was not taken to another state, her story is illustrative of the harms involved when a child is secretly taken away from her parents for an abortion. After this experience, Ms. Roberts formed an organization called Mothers Against Minor Abortions (MAMA). Ms. Roberts testified: "I speak today for those parents I know around the country, whose daughters have been taken out of State for their abortions." *Id.*

[58] *See id.*

[59] *See id.*

[60] *See id.*

[61] *See id.*

[62] *See id.*

STATE LAW AND CIANA'S PROTECTION OF STATE LAW

There are currently 44 states with parental involvement statutes on the books.[63] Of these 44 statutes, 34 are in effect today.[64] Although 11 of these thirty-four statutes reflect a legislative intention to simply encourage the pregnant minor to consult with her parents, another relative, or a trusted friend before she decides to undergo an abortion,[65] the laws on the books in the remaining 23 states require a parent to either be notified of their minor daughter's intention to undergo an abortion or to consent to the performance of an abortion on their minor daughter. Despite widespread

[63] *See* Ala. Code §§ 26-21-1 to -8 (2003); Alaska Stat. §§ 18.16.010-030 (Michie 2003); Ariz. Rev. Stat. § 36-2152 (2004); Ark. Code Ann. §§ 20-16-801 to -808 (Michie 2003); Cal. Health & Safety Code § 123450 (West 2004); Colo. Rev. Stat. Ann. §§ 12-37.5-101 to -108 (West 2004); Conn. Gen. Stat. Ann. § 19a-601 (West 2003); Del. Code Ann. tit. 24, §§ 1780-1789B (2003); Fla. Stat. Ann. ch. 390.01115 (Harrison 2004); Ga. Code Ann. §§ 15-11-110 to -118 (Harrison 2003); Idaho Code § 18-609A (2003); 750 Ill. Comp. Stat. Ann. 70/1-99 (West 2004); Ind. Code Ann. §§ 16-18-2-267, 16-34-2-4 (West 2004); Iowa Code Ann. §§ 135L.1-.8 (West 2003); Kan. Stat. Ann. § 65-6705 (2003); Ky. Rev. Stat. Ann. § 311.732 (Michie 2003); La. Rev. Stat. Ann. § 40:1299.35.5 (West 2004); Me. Rev. Stat. Ann. tit. 22, § 1597-A (West 2003); Md. Code Ann., Health-Gen. I § 20-103 (2004); Mass. Gen. Laws Ann. ch. 112, § 12S (West 2004); Mich. Comp. Laws Ann. §§ 722.901-.908 (West 2004); Minn. Stat. Ann. § 144.343 (West 2004); Miss. Code Ann. §§ 41-41-51 to -63 (2003); Mo. Ann. Stat. §§ 188.015, 188.028 (West 2004); Mont. Code Ann. §§ 50-20-201 to -215 (2003); Neb. Rev. Stat. §§ 71-6901 to - 6909 (2003); Nev. Rev. Stat. §§ 442.255-.257 (2003); N.H. Rev. Stat. Ann. §§ 132:24-28 (2003); N.J. Stat. Ann. §§ 9:17A-1 to -1.12 (West 2004); N.M. Stat. Ann. §§ 30-5-1 to -3 (Michie 2003); N.C. Gen. Stat. §§ 90-21.6 to .10 (2003); N.D. Cent. Code §§ 14-02.1-03.1 (2003); Ohio Rev. Code Ann. §§ 2919.12, 2919.121-.122 (West 2004); 18 Pa. Cons. Stat. Ann. § 3206 (West 2004); R.I. Gen. Laws § 23-4.7-6 (2003); S.C. Code Ann. §§ 44-41-30 to -37 (Law. Co-op. 2003); S.D. Codified Laws § 34-23A-7 (Michie 2004); Tenn. Code Ann. § 37-10-301 to -304 (2004); Tex. Fam. Code Ann. §§ 33.001-.004 (Vernon 2004); Utah Code Ann. § 76-7-304 (2003); Va. Code Ann. § 16.1-241 (Michie 2004); W. Va. Code §§ 16-2F-1 to -8 (2004); Wis. Stat. Ann. § 48.375 (West 2003); Wyo. Stat. Ann. § 35-6-118 (Michie 2003).

[64] *See Planned Parenthood v. Heed,* 390 F.3d 53 (1st Cir. 2004) (unconstitutional for lack of health exception); *Planned Parenthood of Idaho, Inc. v. Wasden,* 376 F.3d 908 (9th Cir. 2004) (concluding that the Idaho statute's definition of a medical emergency is unconstitutionally narrow and that, without an adequate medical exception, the parental consent statute is invalid); *Glick v. McKay,* 937 F.2d 434 (9th Cir. 1991) (judicial bypass procedure rendered statute unconstitutional); *Zbaraz v. Ryan,* No. 84 CV771, 1996 WL 33293423 (N.D. Ill. Feb. 8, 1996) (the Illinois Supreme Ct. refused to issue rules implementing the Illinois statute); *Planned Parenthood of Alaska, Inc. v. State,* No. 3AN-97-6014 CI (Alaska Super. Ct. Oct. 13, 2003) (decision on remand from *State v. Planned Parenthood of Alaska,* 35 P.3d 30 (Alaska 2001)) (parental consent law with judicial waiver violates state constitution); *American Acad. of Pediatrics v. Lungren,* 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); *N. Fla. Women's Health and Counseling Services, Inc. v. State,* 866 So. 2d 612 (Fla. 2003) (state supreme court held that law violated state right to privacy; however, the state constitution was amended in November 2004 to allow parental notification); *Wicklund v. State,* No. ADV-97-671 (Mont. Dist. Ct. Feb. 11, 1999) available at http://www.mtbizlaw.com/1stjd99/WICKLUND—2—11.htm (parental notification law violated state constitution); *Planned Parenthood of Central New Jersey v. Farmer,* 762 A.2d 620 (N.J. 2000) (parental notification law with judicial waiver violates state constitution); N.M. A.G. Op. No. 90-19 (Oct. 3 1990) (State attorney general holds law unenforceable due to lack of judicial bypass procedure). In addition, Ohio's parental notification law is in effect because a subsequently enacted parental consent statute was enjoined. *See Cincinnati Women's Services v. Voinovich,* No. C-1-98-289 (S.D. Ohio Apr. 29, 1998) (preliminary injunction preventing enforcement of the law).

[65] *See* Colo. Rev. Stat. Ann. §§ 12-37.5-101 to -108 (West 2004) (if a minor is living with a relative and not a parent, she may notify that relative instead of her parent); Conn. Gen. Stat. Ann. § 19a-601 (West 2003) (stating that the abortion provider need only discuss the possibility of parental involvement); Del. Code Ann. tit. 24, §§ 1780-1789B (2003) (allowing notice to a grandparent or a licensed mental health professional not associated with an abortion provider); Iowa Code Ann. §§ 135L.1-.8 (West 2003) (allowing notice to a grandparent); Me. Rev. Stat. Ann. tit. 22, § 1597-A (West 2003) (allowing notice to an adult family member and allowing a minor to give informed consent after counseling by the abortion provider); Md. Code Ann., Health-Gen. I § 20-103 (2004) (providing that notice does not have to be given if the minor does not live with a parent or guardian or if a physician determines that parental notice is not in the minor's best interest); N.C. Gen. Stat. §§ 90-21.6 to .10 (2003) (allowing notice to a grandparent with whom the minor has been living for at least 6 months); Ohio Rev. Code Ann. §§ 2919.12, 2919.121-.122 (West 2004) (allowing notice to a brother, sister, step-parent, or grandparent if certain qualifications are met); S.C. Code Ann. §§ 44-41-30 to -37 (Law. Co-op. 2003) (allowing notice to a grandparent or any person who has been standing in loco parentis to the minor for a period not less than sixty days); W. Va. Code §§ 16-2F-1 to -8 (2004) (stating that a physician not affiliated with an abortion provider may waive the notice requirement); Wis. Stat. Ann. § 48.375 (West 2003) (allowing notice to any adult family member). The Illinois parental involvement law allows notice to be given to an adult family member; however, it is not in effect.

support for parental involvement laws and clear public policy considerations justifying such laws, there exists substantial evidence, outlined above, that they are frequently circumvented by adults who transport minors to abortion providers in states that do not have parental notification or consent laws. One purpose of CIANA is to curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors.

Parental involvement laws have been in force for decades, and there is no case where it has been established that these laws led to parental abuse or to self-inflicted injury.[66] Similarly, there is no evidence that these laws have led to an increase in illegal abortions.[67]

Despite these critical benefits of better-informed selection of abortion providers, improved medical histories, appropriate post-operative care, and the affirmation of parental rights, opponents of CIANA argue that mandatory parental involvement results in girls' delaying their decisions to obtain abortions, thus increasing the risks attendant to the procedure.[68] There is no evidence, however, that parental involvement laws result in medically significant delays in obtaining abortions. A study of Minnesota's parental notification law found that, "Regardless [of the reason], the claim that the law caused more minors to obtain late abortions is unsubstantiated. In fact, the reverse is true. For ages 15-17, the number of late abortions per 1,000 women decreased following the enactment of the law. Therefore, an increased medical hazard due to a rising number of late abortions was not realized." [69]

OTHER PARENTAL NOTICE STATUTES

CIANA will strengthen the effectiveness of state laws designed to protect children from the health and safety risks associated with abortion.[70] Across the country, officials must obtain parental consent before performing even routine medical services such as providing aspirin and before including children in certain activities

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[66] A 1989 memo prepared by the Minnesota Attorney General regarding Minnesota's experience with its parental involvement law states that "after some 5 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 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).

[67] *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, testifying that there had been no increase in the number of illegal abortions in Massachusetts since the enactment of the statute in 1981).

[68] *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Judiciary,* 2001-2002 Legis. (Vt. 2001) (Lori Burris, representative of Vermont Academy of Pediatrics).

[69] Rogers, James L., Boruch, Robert F., Stoms, George B. & DeMoya, Dorothy, "Impact of the Minnesota Parental Notification Law on Abortion and Birth," 81 *Amer. J. Pub. Health* 294, 297 (Mar. 1991). *Cf.* Ellertson, Charlotte, "Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana," 87 *Am. J. Pub. Health* 1367, 1372 (August 1997) ("Evidence concerning delay is mixed."). *See also id.* at 1374 ("During periods of the laws' enforcement in Minnesota and Indiana, the two states with gestational age at abortion, in-state abortions for minors were probably delayed into the second month of pregnancy, although probably not into the second trimester.").

[70] In 2001, 853,485 legal induced abortions were reported to CDC. *See* Lilo T. Strauss, M.A., Joy Herndon, M.S., Jeani Chang, M.P.H., Wilda Y. Parker Sonya, V. Bowens, M.S., Suzanne B. Zane, D.V.M., Cynthia J. Berg, M.D., "Abortion Surveillance—United States, 2001," Centers for Disease Control, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion (November 26, 2004).

such as field trips and contact sports.[71] Regarding body piercing, states require written parental consent,[72] a parent to be present when a minor is pierced,[73] and written permission or a parent's physical presence.[74] As of April, 2004, 35 states have laws prohibiting adolescents from getting tattoos without parental consent, 27 states have laws against body piercing without parental consent, and 26 states have laws that prohibit both without parental consent.[75] Also, in Maryland, for example, as *The Washington Post* re-

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[71] *See, e.g.,* William D. Valente, 2 Education Law: Public and Private § 19.23 at 212 (acknowledging "[t]he common school practice of obtaining written parental consents or waivers . . . for designated [school field trip] activities"); Cal. Educ Code Ann § 49302 (requiring parental consent before pupils can be transported).

[72] *See, e.g.,* Ala. Code § 22-17A2; Alaska Stat. § 08.13.217; Del. Code Ann. tit. 11, § 1114; 720 Ill. Comp. Stat. Ann. 5/12-10.1; Kan. Stat. Ann. § 65-1953; Me. Rev. Stat. Ann. tit. 32, § 4323; Mich. Comp. Laws Ann. § 333.13102; Mo. Ann. Stat. § 324.520; N.C. Gen. Stat. § 14-400; Okla. Stat. Ann. tit. 21, § 842.1; Tenn. Code Ann. § 62-38-302; Tex. Health & Safety Code Ann. § 146.012.

[73] *See, e.g.,* Ariz. Rev. Stat. Ann. § 13-3721; La. Rev. Stat. Ann. § 14:93.2; R.I. Gen. Laws § 23-1-39; Utah Code Ann. § 76-10-2201; Va. Code Ann. § 18.2-371.3.

[74] *See, e.g.,* Cal. Penal Code § 652; Fla. Stat. Ann. § 381.0075(7); Ind. Code Ann. § 35-42-2-7; S.C. Code Ann. § 44-32-120.

[75] Ala. Code 22-17A-2 (prohibits anyone from performing a tattoo, brand or body piercing on a minor unless prior written informed consent is obtained from the minor's parent or legal guardian); Ariz. Rev. Stat. Ann. § 13-3721 (establishes that it is unlawful to either tattoo or body pierce anyone under age 18 without the physical presence of the parent or legal guardian; violators are guilty of a Class 6 felony; allows anyone to avoid prosecution if he or she requested the ID and relied on the accuracy of the information contained in the ID); Ark. Stat. Ann. § 5-27-228 (prohibits anyone from tattooing, body piercing or branding a minor without the written consent of one of the minor's parents, a guardian or a custodian; violators are guilty of a misdemeanor and, upon conviction, will be fined between $20 and $200); Cal. Penal Code § 652 (establishes that it is unlawful to tattoo or offer to tattoo anyone under age 18; violators are guilty of a misdemeanor; prohibits anyone from performing or offering to perform body piercing upon anyone under age 18 unless the piercing is performed in the presence of a parent or guardian or as directed by and notarized by the minor's parent or guardian; does not apply to emancipated minors and does not include pierces of the ear); Col. Rev. Stat. Ann. § 25-4-2103 (prohibits anyone from performing a body art procedure on a minor unless the artist has received express consent from the minor's parent or guardian; failure to obtain permission before performing the procedures on a minor shall constitute a petty offense punishable by a fine of $250); Conn. Gen. Stat. § 19a-92g (establishes that it is illegal to tattoo an unemancipated minor under age 18 without the written consent of the minor's parent or guardian; requires written consent of the minor's parent in order to perform body piercing on an unemancipated minor under age 18); Del. Code Ann. Title 11, Ch 5 § 1114(a) (it is illegal for a person to either knowingly or negligently tattoo or body pierce a minor without the prior written consent of the parent or legal guardian who must be over age 18); Fla. Stat. § 381.0075 (requires written, notarized consent of a minor's parent or legal guardian in order to tattoo a minor; prohibits body piercing of a minor without the written, notarized consent of the parent or legal guardian or if he or she is accompanied by a parent or legal guardian); Ga. Code § 16-5-71.1 (prohibits the tattooing of anyone under age 18 by anyone other than a licensed osteopath or technician acting under the direct supervision of a licensed physician or osteopath; violators are guilty of a misdemeanor; prohibits anyone from body piercing anyone under age 18 without prior written consent of the custodial parent or guardian; violators are guilty of a misdemeanor); Idaho Chapter No. 127 2004 (effective July 1, 2004) (prohibits the tattooing, branding or body piercing of minors under the age of 14; prohibits the tattooing, branding or body piercing on anyone between the ages of 14 and 18 without the written informed consent of the minor's parent or legal guardian; written informed consent must be executed in the presence of the person performing the act or an employee or agent of that person; violators are guilty of a misdemeanor and will be fined up to $500 and subsequent violations within 1 year will be fined between $500 and $1,000; piercing of the ear lobes and piercing for medical purposes are exempted from this legislation) Ill. Compiled Stat. 5/12-10.1 (it is a Class C misdemeanor for anyone, other than a person licensed to practice medicine in all branches, to tattoo or offer to tattoo a person under age 21; establishes that anyone who pierces the body of a minor under age 18 without written consent of the parent or legal guardian commits a Class C misdemeanor; does not apply to emancipated or married minors; Ind. Code Ann. § 35-42-2-7 (requires a minor's parent or legal guardian to be present on order to either tattoo or perform body piercing on a minor under age 18; requires the parent or guardian to also provide written permission for the minor to receive the tattoo or body piercing); Iowa Code § 135.37 (prohibits anyone from tattooing an unmarried minor under age 18; upon conviction, violators are guilty of a serious misdemeanor); Ky. Rev. Stat. § 211.760 (prohibits anyone from tattooing or body piercing minors without the written, notarized consent of a parent or guardian); La. Rev. Stat. Ann. § 14:93.2 (it is unlawful for anyone to tattoo or body pierce a minor under age 18 without the consent of the minor's accompanying parent or legal custodian; upon conviction, violators shall be fined between $100 and $500 or imprisoned between 30 and 100 days, or both); Me. Rev. Stat. Ann. Title 32, Ch. 64 § 4323 (establishes that it is illegal to tattoo anyone under age 18; requires prior written consent of a minor's parent or legal guardian to perform body piercing on anyone under age 18); Mich. Comp. Laws Ann.

§ 333.13102 (prohibits anyone from either tattooing or performing body piercing on a minor without prior written, informed consent of the minor's parent or legal guardian; requires the parent or legal guardian to execute the consent in the presence of either the person performing the body piercing or tattooing on the minor or in the presence of an employee or agent of the individual; does not include emancipated minors); Minn. Stat. § 609.2246 (it is unlawful for anyone under age 18 to receive a tattoo without written parental consent); Miss. Laws § 73-61-3 (prohibits anyone from tattooing or body piercing a minor under age 18; violators are guilty of a misdemeanor and will be fined a maximum of $500); Mo. Rev. Stat. § 324.520 (prohibits anyone from knowingly tattooing or body piercing a minor without prior written, informed consent of the minor's parent or legal guardian; requires the parent or legal guardian to execute the written consent in the presence of either the person performing the tattooing or body piercing or an employee or agent of that person; violators are guilty of a misdemeanor and will be fined a maximum of $500; subsequent violations within 1 year of the initial violation will be subject to a fine of between $500 and $1,000); Mont. Code Ann. § 45-5-623 (prohibits anyone from knowingly tattooing a child under the age of majority without the explicit in-person consent of the child's parent or guardian; upon conviction, violators will be either fined a maximum of $500, imprisoned for up to 6 months, or both; those convicted of a second offense will either be fined a maximum of $1,000, imprisoned for up to 6 months, or both); N.C. Gen. Stat. § 14-400 (prohibits anyone from tattooing a minor under age 18; violators are guilty of a Class 2 misdemeanor; prohibits anyone from piercing any part of a minor under age 18 other than the ears without the prior consent of the custodial parent; violators are guilty of a Class 2 misdemeanor); Ohio Rev. Code Ann. § 3730.06 (it is illegal to tattoo, body pierce or pierce the ears of anyone under age 18 without the consent of the minor's parent, guardian or custodian; requires the consenting individual to appear in person at the business at the time the procedure is performed and sign a document that provides informed consent); Okla. Stat. Title 21 §§ 841 and 842.1 (prohibits anyone other than a licensed practitioner of the healing arts in the course of their practice from tattooing or offering to tattoo anyone; it is unlawful for anyone to perform, or offer to perform, body piercing on a child under age 18 unless the parent or legal guardian gives written consent for and is present during the procedure; penalties for violations include imprisonment for up to 90 days and a fine of up to $500, or both); Pa. Cons. Stat. Title 18 § 6311 (it is unlawful to provide tattoo services to anyone under age 18 without the consent of the parent or guardian; violators are guilty of a misdemeanor of the third degree and, upon conviction, will be sentenced to either pay a maximum fine of $100 or be imprisoned a maximum of 3 years, or both); R.I. General Laws §§ 11-9-15; 23-1-39 (prohibits tattooing or body piercing a minor who is unaccompanied by his or her consenting parent or guardian; violators are guilty of a misdemeanor and, upon conviction, will either be imprisoned a maximum of 1 year or fined a maximum of $300); S.D. Codified Laws Ann. § 26-10-19 (requires anyone who is tattooing a minor under age 18 to obtain a signed consent form from the minor's parents authorizing a tattoo; violators are guilty of a Class 2 misdemeanor); Tenn. Code Ann. §§ 62-38-207; 62-38-305 and 306 (establishes that a minor age 16 or older may be tattooed with the written consent of the parent or legal guardian to cover up an existing tattoo and requires the parent or legal guardian to be present during the procedure; it is a Class C misdemeanor for anyone to tattoo a person under age 18; allows a minor age 18 or younger to undergo body piercing with the written consent of the parent, legal guardian or legal custodian and requires them to be present during the procedure; they must sign a document that explains the procedure and methods for proper care, present proof of age and attest in writing that they are the minor's parent, legal guardian or legal custodian; violators will be charged with a Class C misdemeanor and will be imprisoned for up to 30 days or pay a fine of up to $50); Texas Health and Safety Code Ann. §§ 146.012; 146.0125 (prohibits anyone from performing a tattoo on anyone under age 18 without the consent of a parent or guardian who believes it is in the best interest of the minor to cover an obscene of offensive tattoo; required consent may be the physical presence of the individual's parent or guardian or the provision of evidence that he or she is the parent or guardian of the person who is getting the tattoo; prohibits anyone from performing body piercing on an individual under age 18 without the consent of the individual's parent, managing conservator or guardian; consent must specify the part of the body to be pierced. Required consent is the physical presence of the individual's parent or guardian and the provision of evidence stating their parental or guardian status); Utah Code Ann. § 76-10-2201 (prohibits anyone from performing or offering to perform a tattoo or body piercing upon a minor without receiving the consent of the minor's parent or legal guardian; establishes that a person is not guilty of a violation if he or she (a) had no actual knowledge of the minor's age and (b) reviewed, recorded and maintained a personal identification number for the minor prior to performing the body piercing or tattoo; violators are guilty of a Class C misdemeanor and the owner or operator of the establishment where the act takes place is subject to a civil penalty of $750 for each violation); Vt. Stat. Ann. Title 26 § 4102 (prohibits anyone from tattooing a minor without the written consent of his or her parent or guardian); Va. Code § 18.2-371.3 (prohibits anyone from tattooing or performing body piercing on a person under age 18, knowing or having reason to believe that the person is under 18 except (a) in the presence of the person's parent or guardian or (b) when done by or under the supervision of a medical doctor, registered nurse, or other medical services personnel in the performance of their duties; violators are guilty of a Class 2 misdemeanor. A second or subsequent violation shall be punished as a Class 1 misdemeanor; excludes ear piercing as a form of body piercing); Wash. Rev. Code § 26.28.085 (applying a tattoo to a minor under age 18 is illegal and violators are guilty of a misdemeanor; prohibits anyone from stating that he or she did not know the minor's age as a defense to prosecution, unless he or she establishes that by a preponderance of evidence he or she made a reasonable attempt to determine the true age of the minor by requiring a driver's license or other picture ID card and did nor rely solely on oral allegations); W. Va. Code § 16-38-3 (requires prior written consent from a parent or guardian for the tattooing of a minor);

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ports, eleven school systems require a parent's note before sunscreen can be applied to a minor student.[76] Notwithstanding the extensive body of State law requiring parental consent before minor children can engage in a range of less consequential activity, people other than parents can secretly take children across state lines without the consent of their parents for abortions.

STATE JUDICIAL BYPASS PROCEDURES

In *Bellotti v. Baird,*[77] a plurality of the United States Supreme Court set forth the basic test by which judicial bypass proceedings pursuant to a parental consent statute, if judicial bypass provisions are enacted at all, must be reviewed. Bypass procedures must allow the minor to show that she possesses maturity and information to make the abortion decision, in consultation with her physician, without regard to her parents' wishes; allow the minor to show that, even if she cannot make the decision by herself, the "desired abortion would be in her best interests"[78]; be confidential; and be conducted "with expedition to allow the minor an effective opportunity to obtain the abortion."[79]

Critics of CIANA claim that the measure endangers the health of young girls who are forced to travel out of state to obtain abortions because the judges in their home states either refuse to hear judicial bypass petitions or deny them arbitrarily. In support of this argument, the critics cite cases like that of Ms. Billie Lominick, who testified before the Constitution Subcommittee regarding her experience with South Carolina's judicial bypass procedures. According to Ms. Lominick, who assisted her grandson's girlfriend in obtaining an out-of-State abortion, only two judges in the state of South Carolina would hear a judicial bypass petition, and one of those judges, according to Ms. Lominick, would hear petitions only from girls residing in his county.[80]

Such examples ignore the fact that CIANA provides assistance only in the enforcement of constitutional state parental notice and consent laws. If there are only two judges in an entire state willing to hear judicial bypass proceedings, that state's parental involvement laws are likely unconstitutional under Supreme Court precedent, which requires the state to provide a minor the opportunity

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Wis. Stat. §948.70 (prohibits anyone other than a physician in the course of his or her professional practice from tattooing or offering to tattoo a child; violators are subject to a Class D forfeiture); Wyo. Stat. §14-3-107 Chapter 47 2004 (Effective July 1, 2004) (prohibits anyone from tattooing a person under the age of majority, except with the consent of the person's parent or legal guardian who is present at the time the procedure is performed; violators are guilty of a misdemeanor and punishable by imprisonment for a maximum of 6 months, a fine of a maximum of $750, or both; prohibits performing body art on anyone who had not reached the age of majority without the consent of the parent or legal guardian and who is present at the time of the procedure; violators are guilty of a misdemeanor and punishable by imprisonment for a maximum of 6 months, a fine of a maximum of $750, or both; body art is defined as the practice of body piercing, branding scarification, sculpting or tattooing).

[76] *See* Daniel de Vise, "Bill Would Legislate Maryland Students' Use of Sunscreen," *The Washington Post* (March 29, 2005).

[77] 443 U.S. 622 (1979) *(Bellotti II).*

[78] *Id.* at 644.

[79] *Id.* Factors that may be considered in determining "immaturity" include work and personal experience, appreciation of the gravity of the procedure, and judgment. *See Hodgson v. Minnesota,* 497 U.S. 417 (1990). Under the "best interests" analysis, judges often consider medical risks to the minor as a result of the time, place, or type of procedure to be performed, medical risks particular to the girl, evidence of physical, sexual, or emotional abuse by parents or guardians, and abortion alternatives such as marriage, adoption, and single motherhood.

[80] *See Child Custody Protection Act: Hearings on H.R. 1218 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 106th Cong. (May 27, 1999) (statement of Billie Lominick).

to seek a judicial bypass with "sufficient expedition to provide an effective opportunity for an abortion to be obtained."[81]

This fact is illustrated by the First Circuit's decision in *Planned Parenthood League v. Bellotti ("Bellotti II").*[82] In that case, the court held that the plaintiffs could successfully challenge the state's judicial bypass procedures if they could present "proof of 'a systemic failure to provide a judicial bypass option in the most expeditious, practical manner.'"[83] The court of appeals remanded the case to the lower court so that the plaintiffs could present evidence that, among other things, judges were "'defacto unavailable' to hear minors' abortion petitions,"[84] and many judges were avoided "for reasons of hostility."[85] The Sixth Circuit has also recognized that a constitutional challenge may be brought for a state's systemic failure to provide an expeditious judicial bypass.[86]

Not only must states provide access to judges who are willing to hear judicial bypass petitions, states must also ensure that the judges who do hear bypass petitions render their decisions in an expedited fashion. For example, in *Planned Parenthood v. Lawall,*[87] the Court of Appeals for the Ninth Circuit struck down an Arizona parental consent statute on the grounds that its judicial bypass provision lacked specific time limits and was therefore in violation of the *Bellotti II* expediency requirement. The court reached this conclusion even though the Arizona statute stated that such proceedings were to be given priority and required that "the court shall reach the decision [on a bypass request] promptly and without delay to serve the best interests of a pregnant minor."[88] The court's rationale in adopting a strict interpretation of the Supreme Court's timeliness requirement was that "[o]pen-ended bypass provisions engender substantial possibilities of delay for minors seeking abortions."[89]

The Fifth Circuit employed essentially identical reasoning in striking down a Louisiana judicial bypass procedure having indefinite time limits.[90] The court found that "not only do [the bypass procedures] fail to provide any specific time within which a minor's application will be decided, but they give no assurances (assurances required by *Bellotti II*) that the proceedings will conclude expeditiously."[91]

As these cases illustrate, judicial bypass procedures must be readily accessible and efficient in order to pass constitutional muster. CIANA will assist in the enforcement of only those State parental involvement laws that meet the relevant constitutional criteria.

In any case, the minority's own witness at a hearing on H.R. 1755, the "Child Custody Protection Act," which contained the same provision in CIANA regarding judicial bypass laws, admitted that "I am personally not aware of cases where [a judicial bypass

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[81] *Bellotti v. Baird,* 443 U.S. 622, 644 (1979) (plurality opinion).
[82] 868 F.2d 459 (1st Cir. 1989).
[83] *Id.* at 469 (quoting *Hodgson v. Minnesota,* 648 F. Supp. 756, 777 (D. Minn. 1986)).
[84] *Id.* at 463.
[85] *Id.* at 461 n.6.
[86] *See Cleveland Surgi-Center, Inc. v. Jones,* 2 F.3d 686, 690 (6th Cir. 1993).
[87] *Planned Parenthood v. Lawall,* 180 F.3d 1022 (9th Cir. 1999).
[88] *Id.* at 1027.
[89] *Id.* at 1030.
[90] *See Causeway Medical Suite v. Ieyoub,* 109 F.3d 1096 (5th Cir. 1997).
[91] *Id.* at 1110-11.

procedure] hasn't worked."[92] Furthermore, testimony received by the Constitution Subcommittee indicates that, where judicial bypass procedures are in place, they are not needed in the overwhelming number of cases because a parent's involvement is obtained. In 2002, 852 girls received abortions in Alabama with a parent's approval and 12 with a judge's approval, according to state health department records. Idaho similarly reported less than 5 percent of minors using judicial bypass to avoid that state's parental consent law (64 minors with parental consent, 3 with judicial bypass) in 2002. South Dakota reported 14 of 76 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 10 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).[93]

And far from being too complicated or too intrusive, the judicial bypass procedure has been described as "remarkably simple" by the Nebraska Supreme Court in *Orr v. Knowles.*[94] In fact, the average judicial bypass hearing lasts only 12 minutes, and "more than 92 percent of the hearings [were] less than or equal to 20 minutes."[95] The young girl is not subjected to an adversarial process. She is not "on trial." A young girl must merely present evidence only about her maturity level, not intimate details of her personal life, to the court. Then the judge will make his decision.

Indeed, judicial bypass procedures are overwhelmingly granted by the courts. Judicial bypasses provide a safe and effective means of insuring the well-being of young girls seeking to abort their pregnancies. A survey of Massachusetts cases found that every minor who sought judicial authorization to bypass parental consent received it.[96] Another Massachusetts study found that only 1 of 477 girls was refused judicial authorization.[97] A Minnesota study cited that a Federal trial court determined that of the 3,573 bypass petitions filed, six were withdrawn, nine were denied, and 3,558 were granted.[98] A survey of the Virginia statute requiring parental noti-

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[92] *Child Custody Protection Act: Hearings on H.R. 1755 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 108th Cong., 41 (2004) (testimony of Rev. Lois M. Powell).

[93] *Id.* at 37 (statement of Teresa Collett).

[94] *See Orr v. Knowles,* 337 N.W.2d 699, 706 (Neb. 1983) ("This statute does not provide that the state or anyone else will contest the minor's claim that she is mature enough to make the abortion decision herself. Rather, she will present evidence, and the judge will then make the decision as to her maturity. Since there is no adversarial aspect to these proceedings, we find that no petitioning minor, indigent or otherwise, is entitled to free court-appointed counsel as a matter of right in proceedings under § 28-347(2)."). *Accord* Joseph W. Moylan, "No Law Can Give Me the Right to Do What Is Wrong," in LIFE AND LEARNING V: PROCEEDINGS OF THE FIFTH UNIVERSITY FACULTY FOR LIFE CONFERENCE at 234, 235 (1995) (explaining Judge Moylan's decision to resign from a bench in the juvenile court he had occupied for more than twenty years) ("When the bill, taken from a Minnesota law, did get passed, it stated that at the hearing the pregnant minor is entitled to have an attorney appointed for her and even a guardian *ad litem.* There is nobody on the other side, unless a judge takes it on himself. Now I know of no other case that is like that, where it is truly one-sided. If after that one-sided hearing, the judge finds that the girl is mature and can give an informed consent, then the judge is required to authorize the abortion physician to perform the abortion.").

[95] *Id.* at 648.

[96] Robert H. Mnookin, *"Bellotti v. Baird, A Hard Case"* in IN THE INTEREST OF CHILDREN: ADVOCACY, LAW REFORM, AND PUBLIC POLICY 149, 239 (Robert H. Mnookin ed., 1985).

[97] Susanne Yates & Anita J. Pliner, "Judging Maturity in the Courts: the Massachusetts Consent Statute," 78 *Am. J. Pub. Health* 646, 647 (1988).

[98] *Hodgson v. Minnesota,* 648 F.Supp. 756, 765 (D. Minn. 1986).

fication found that out of 18 requests for judicial bypass, "all but one of the requests were granted eventually."[99]

CIANA IS BASED ON THE PROPOSITION THAT PARENTS SHOULD BE GIVEN A CHANCE TO PLAY A ROLE IN THE LIVES OF THEIR MINOR CHILDREN

Children's feelings should not trump parental authority. Parents are not simply placeholders in a child's life. They are the foundational pillars of civilization. The family unit has provided the comfort, stability, and safety necessary to sustain civilization, and it has done so for millennia. Parents must be given a chance to work with their own children through difficult situations. There is no guarantee that parents will be successful in that endeavor, and unfortunately there will, no doubt, be a few parents who will be indifferent when they are made aware of their daughter's pregnancy. But that is surely the rare case, and even in that rare case nothing in this legislation will bar an abortion. What this legislation affirms is the proposition that parents deserve a chance. Opponents of CIANA must rest their objections on the notion that most parents do not deserve that simple chance. But parents do deserve that chance, and CIANA would give that chance to parents who have not abused or neglected their child. Even famously liberal Justice Stevens wrote in his concurring opinion in *H.L. v. Matheson* that "[t]he possibility that some parents will not react with compassion and understanding upon being informed of their daughter's predicament or that, even if they are receptive, they will incorrectly advise her, does not undercut the legitimacy of the State's attempt to establish a procedure that will enhance the probability that a pregnant young woman exercise as wisely as possible her right to make the abortion decision."[100]

Nothing in this bill requires a minor who was abused by her parents to notify an abusive parent before having an abortion. And all state judicial bypass provisions that are protected by this bill are both the product of state law and required to conform to the Supreme Court's own standards for judicial bypass provisions. Furthermore, all the various additional exceptions opponents have proposed be added to CIANA are simply legislative excuses to deny parents that chance. Those who oppose giving parents a chance claim life is hopelessly confusing and therefore Congress should not act to protect parental rights. But a sister or a brother, or a minister, or some other third party, is not a parent. Sisters and brothers, and ministers, can of course provide their own counseling if a minor girl seeks it. But parents are special, and parents deserve unique protections when it comes to their ability to protect the health and safety of their children. That much is clear.

Anyone who is truly interested in the best interests of a pregnant girl—be they a minister, a sibling, a friend, or anyone else—will encourage her to inform her parents and give them the chance of helping her address her situation appropriately. It is beyond dispute that it is not in a pregnant girl's best interests to allow any-

[99] *See* Ellen Nakashima, "Fewer Teens Receiving Abortions in Virginia: Notification Law to Get Court Test," *The Washington Post* (March 3, 1998) at A1 ("In Virginia, since the law took effect, 18 teenagers have gone to a judge, who determines whether the girl is mature enough to make her own decision about abortion. All but one of the requests were granted eventually.").

[100] 450 U.S. 398, 424 (1981) (Stevens, J., concurring).

one to assist her in circumventing state laws providing for parental involvement or to allow anyone to give a pregnant girl who has crossed state lines a secret abortion that could have serious medical consequences without notifying a parent.

Unfortunately, during consideration of this legislation, some opponents of this legislation have equated parents with slave owners.[101] Parental rights are not those of a slave owner. They are the rights of caring people who deserve a chance to work with their children through difficult times and should be provided a chance to express their love to their children in their children's moments of greatest need. Some opponents of this bill think parents do not deserve to be involved in assisting their children as they confront difficult times because they believe parents are no better than slave owners. CIANA rejects that view of America's parents.

THE FUNDAMENTAL NATURE OF PARENTAL RIGHTS

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."[102] In addressing the right of parents to direct the medical care of their children, the Supreme 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.*[103]

The parents of a minor child have a fundamental right to direct the upbringing and education of that child. The Supreme Court first recognized the right to "establish a home and bring up children" as a "privilege[] long recognized at common law as essential to the orderly pursuit of happiness by free men" in the 1923 case of *Meyer v. Nebraska* in which it struck down as unconstitutional a Nebraska law forbidding all schools within its boundaries from teaching pupils in any language other than English.[104] Two years later, striking down an Oregon statute requiring all children, under compulsory education laws, to attend public schools, the Court affirmed this principle stating, "The child is not the mere creature of the state; those who nurture him and direct his destiny have the

[101] *See, e.g.,* H.R. Rep. No. 107-397 (2002) at 56 ("It seems to me what this bill is, is really akin to the Fugitive Slave Act of the 1850's where you're enabling one State in the South, which had slavery, to reach over into another State . . . and say, 'We want our slave back.'") (remarks of Mr. Nadler D-NY).

[102] *Troxel v. Granville,* 530 U.S. 57, 65 (2000) (overturning Washington visitation statute which unduly interfered with parental rights).

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

[104] 262 U.S. 390, 399 (1923).

right, coupled with the high duty, to recognize and prepare him for additional obligations." [105]

Coupled with this right, however, is the duty of parents to provide for the care and safety of their children, including their physical and medical well-being. A parent's duty to provide medical care to his or her child is a duty arising from the relationship of parent and child. Indeed, the Court has described the "care and nurture" of a child as being a "primary function" of parents.[106] Ignoring or violating a parent's legal right to direct the upbringing of their children, including the right to direct the medical care received by those children, can result in liability.[107] In *Meyer,* the Court stated, "Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life [.]" [108] Certainly this duty to educate includes instructing one's children on how to best make decisions concerning their health.

Holding that the State of Georgia's commitment procedures for minor children did not violate the due process rights of minors, the Court recognized "the traditional presumption that the parents act in the best interests of their child" and warned against discarding "wholesale those pages of human experience that teach that parents generally do act in the child's best interests." [109] The Court added, "Surely, this includes a 'high duty' to recognize symptoms of illness and to seek and follow medical advice." [110]

The Supreme Court has consistently recognized that parents have a legal right to be involved in their minor daughter's decision to seek medical care, which includes the abortion procedure. Therefore, the Court has consistently affirmed a state's right to restrict the circumstances under which a minor may obtain an abortion in ways in which adult women seeking abortions may not be restricted. Holding that a state may not grant to a third party an absolute, and possibly arbitrary, veto over a minor's decision to have an abortion in *Planned Parenthood v. Danforth,* the Court added "the State has somewhat broader authority to regulate the activities of children than of adults." [111] Indeed, "the status of minors under the law is unique in many respects" and the "unique role in our society of the family, the institution by which 'we inculcate and pass down many of our most cherished values, moral and cultural,' requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children." [112]

SUPREME COURT PRECEDENT SUPPORTS GIVING PARENTS A CHANCE TO PLAY A ROLE IN THEIR CHILDREN'S ABORTION DECISIONS

Supreme Court precedents support CIANA. The Supreme Court has observed that "[t]he medical, emotional, and psychological con-

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[105] *Pierce v. Society of the Sisters,* 268 U.S. 510, 535 (1925).

[106] *See Prince v. Massachusetts,* 321 U.S. 158, 166 (1944).

[107] Unauthorized medical examinations of minors have resulted in liability. *See van Emrik v. Chemung County Dep't of Soc. Servs.,* 911 F.2d 863, 867 (2d Cir. 1990) (parental consent required for x-ray); *Tenebaum v. Williams,* 193 F.3d 581, 597-99 (2d Cir. 1999)(parental consent required for gynecological exam).

[108] *Meyer,* 262 U.S. at 400.

[109] *Parham,* 442 U.S. at 602-04. *See also Hodgson v. Minnesota,* 497 U.S. 417 (1990) (a parent is "presumed to act in the minor's best interest and thereby assures that the minor's decision to terminate her pregnancy is knowing, intelligent, and deliberate").

[110] *Parharm,* 442 U.S. at 602.

[111] 428 U.S. 52, 74 (1976).

[112] *Bellotti v. Baird,* 443 U.S. 622, 633-34 (1979) *(Bellotti II).*

sequences of an abortion are serious and can be lasting,"[113] and that "[i]t seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place."[114] Parental involvement in such a decision will lead to improved medical care for minors seeking abortions and provide increased protection for young girls against sexual exploitation by adult men.

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 the Supreme Court, including Justices O'Connor, Kennedy, and Souter, observed in *Planned Parenthood v. Casey,*[115] 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."

In *Planned Parenthood of Central Missouri v. Danforth,*[116] noted liberal 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 whether or not to bear a child."[117] Three years later, in *Bellotti v. Baird,*[118] a plurality of 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. The *Bellotti* plurality also observed that parental consultation is particularly desirable regarding the abortion decision since, for some, the situation raises profound moral and religious concerns.[119]

Significantly, the Supreme Court has already concluded that notice statutes do not give parents any "veto power"[120] over the minor's abortion decision. As the Court reiterated in *Akron II,* "notice statutes are not equivalent to consent statutes because they do not give anyone a veto power over a minor's abortion decision."[121] A one-parent notification law such as one containing CIANA's abuse and life-endangerment exception does not require a judicial bypass. As the Fourth Circuit Court of Appeals recognized in *Planned Parenthood of the Blue Ridge v. Camblos,* "In contrast to its assessment of parental consent statutes, the [Supreme] Court has consistently recognized that the same potential for absolute veto over the abortion decision that inheres in a parental consent statute does not inhere in a parental notice statute, and therefore that notice statutes are fundamentally different from—and less burdensome than—consent statutes."[122]

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[113] *H.L. v. Matheson,* 450 U.S. 398, 411 (1981).
[114] *Planned Parenthood v. Danforth,* 428 U.S. 52, 91 (1976).
[115] 505 U.S. 833, 895 (1992).
[116] 428 U.S. 52 (1976).
[117] *Planned Parenthood v. Danforth,* 428 U.S. 52, 91 (1976) (Stewart, J., concurring).
[118] 443 U.S. 622, 640 (1979) *(Bellotti II)* (plurality opinion).
[119] *Id.* at 635.
[120] *See H.L. v. Matheson,* 450 U.S. 398, 411 (1981) ("The Utah Statute gives neither parents nor judges a veto power over the minor's abortion decision.").
[121] *Ohio v. Akron Center for Reproductive Health,* 497 U.S. 502, 511 (1992).
[122] *Planned Parenthood of the Blue Ridge v. Camblos,* 155 F.3d 352, 363 (4th Cir. 1998).

Parental involvement in a pregnant minor girl's abortion decision is supported by the common-sense realization that minors often lack the maturity to fully comprehend the significance and consequences of their actions. In 1976, when it first addressed Massachusetts' parental consent statute, the Supreme Court recognized that with minors, "there are unquestionably greater risks of inability to give an informed consent."[123] During its second review of Massachusetts' parental consent law, the Court stated, "Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for concern, . . . sympathy, and . . . paternal attention."[124] The Court continued to describe its previous rulings to allow states to "limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences" as being "grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."[125]

The Supreme Court has pointed to the "guiding role of parents in the upbringing of their children" as the basis for its rulings preserving for parents a unique legal authority over the conduct of their children.[126] The Court has reasoned that "parents naturally take an interest in the welfare of their children[.]"[127] This, in the Court's view, creates "an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision."[128] In *H.L. v. Matheson,*[129] the Court upheld a Utah statute requiring a physician to notify, if possible, parents of a minor upon whom an abortion is to be performed and stated:

> 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 whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.[130]

In *Planned Parenthood v. Casey,* the Court upheld the parental consent provisions of Pennsylvania's Abortion Control Act of 1982, stating that they "provide the parent or parents of a pregnant young woman the opportunity to consult with her in private, and to discuss the consequences of her decision in the context of the values and moral or religious principles of their family."[131] It con-

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[123] *Bellotti v. Baird,* 428 U.S. 132, 147 (1976) *(Bellotti I).*
[124] *Bellotti II,* 443 U.S. at 635 (quotations and citations omitted).
[125] *Id.* at 635.
[126] *See id.* at 637.
[127] *Id.* at 648.
[128] *Id.*
[129] 450 U.S. 398 (1981).
[130] *Id.* at 409-10.
[131] 505 U.S. 833, 899-900 (1992).

tinued, "The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors."[132]

It is instructive that the Court has always held that this important duty to ensure and provide for the care and nurture of minor children lies only with parents—a conclusion that arises from the traditional legal recognition "that natural bonds of affection lead parents to act in the best interests of their children."[133]

Significantly for CIANA, the Court recently struck down a Washington State visitation law under which grandparents were granted visitation to their grandchildren over the objection of the children's mother precisely because it failed to provide special protection for the fundamental right of parents to control with whom their children associate.[134] The Court concluded that the lower court "gave no special weight at all" to a mother's conclusion that excessive grandparent visitation was not in her minor children's best interests, and continued, "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."[135] This failure, the Court stated, "directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child."[136]

CIANA PROTECTS THE HEALTH OF MINOR GIRLS

Young girls face serious risks to their health and well-being when they are secretly taken for abortions without their parents' knowledge. When an abortion is performed on a girl without the physician having full knowledge of her medical history—which is usually available only from a parent—the risks greatly increase. Moreover, minor girls who do not involve their parents usually do not return for follow-up treatment, which can lead to dangerous complications. In many cases, only a girl's parents know of her prior psychological and medical history, including allergies to medication and anesthesia. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or the release of pertinent data from family physicians. None of these precautions can be taken when a pregnant girl is taken to have an abortion without her parents' knowledge. Consequently, when parents are not involved, the risks to the minor girl's health significantly increase. CIANA is designed to safeguard minor girls' physical and emotional health by helping to ensure parental involvement in their interstate abortion decisions.

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[132] *Bellotti,* 443 U.S. at 637.

[133] *Parham v. J.R.,* 442 U.S. 584, 602 (1979)(emphasis added). *See also Prince v. Commonwealth of Massachusetts,* 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Wisconsin v. Yoder,* 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.").

[134] *Troxel v. Granville,* 530 U.S. 57 (2000).

[135] *Id.* at 68-69.

[136] *Id.* at 69.

The medical care that minors seeking abortions receive is improved when their parents are involved in three ways.

First, parental involvement allows parents to assist their daughter in the selection of a competent abortion provider. With all medical procedures, one of the most reliable means of guaranteeing patient safety is the professional competence of the physician performing the procedure. In *Bellotti v. Baird,* the United States Supreme Court acknowledged that parents possess a much greater ability to evaluate and select competent healthcare providers than their minor children often do:

> In this case . . . we are concerned only with minors who, according to the record, range in age from children of 12 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.[137]

The Supreme Court's concern for that ability of minors to distinguish competent and ethical abortion providers is particularly justified in states where non-physicians are allowed, by statute, to perform abortions. The National Abortion and Reproductive Rights Action League recommends that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the state Board of Medical Examiners, and that he or she have admitting privileges at a local hospital not more than 20 minutes away from the location where the abortion is to occur.[138] A well-informed parent seeking to guide her child is more likely to inquire into the qualifications of the person performing the abortion, and the availability of a physician with local admitting privileges, than an emotionally vulnerable young girl faced with pregnancy.

Second, parental involvement will ensure that parents have the opportunity to provide additional medical history and information to abortion providers prior to performance of the abortion. As the Supreme Court has stated:

> The medical, emotional, and psychological consequences of an abortion are serious and can be lasting . . . 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.[139]

Take, for example, the story of Sandra, a fourteen-year-old girl who committed suicide shortly after obtaining an abortion.[140] Sandra's mother, who learned of her daughter's abortion only after her suicide, sued the abortion provider at which Sandra's abortion

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[137] *Bellotti v. Baird,* 443 U.S. 622, 641 n.21 (1979) *(Bellotti II).*

[138] *See* National Abortion and Reproductive Rights Action League, *Minors' Issues: Reproductive Choice Issues,* at http://www.naral.org/issues/issues—minors.html (last visited Aug. 30, 2001).

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

[140] *See Edison v. Reproductive Health Services,* 863 S.W.2d 621 (Mo. App. E.D. 1993).

was performed, asserting that her daughter's death was due to the failure of the abortion provider to obtain a psychiatric history or monitor Sandra's mental health.[141] The court concluded that Sandra was not insane at the time she committed suicide and, therefore, her actions broke the chain of causation required for recovery.[142] Yet evidence was presented that Sandra had a history of psychological illness and that her behavior was noticeably different after the abortion.[143] If Sandra's mother had been aware of her daughter's abortion, she would have had the opportunity to notify the abortion provider of Sandra's psychological history, and steps could have been taken to minimize the psychological effect of the abortion on Sandra's already fragile mental state.

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 a pregnant minor. Parental involvement provides adults with the opportunity to advise and assist the girl in giving her informed consent to the procedure.

Third, parental involvement will 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.[144] The rate of many of the complications associated with abortion are unknown. As a clinician's guide states, "The abortion reporting systems of some counties 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 the procedure was performed."[145] Furthermore, women typically have no pre-existing relationship with an abortion provider,[146] which likely accounts for the fact that only about one-third return to the provider for their post-operative exam.[147] Teenagers are even less likely to return for follow-up appointments.[148] This failure to return for post-operative exams precludes discovery of post-abortion complications by abortion providers and subsequent reporting of these complications. Other healthcare providers may be reluctant to report any complications for fear of compromising the secrecy that often surrounds abortions.

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[141] *See id.* at 624.

[142] *See id.* at 628.

[143] *Edison v. Reproductive Health Services,* 863 S.W.2d 621 (Mo. App. E.D. 1993).

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

[145] Stanley K. Henshaw, "Unintended Pregnancy and Abortion: A Public Health Perspective," in *A Clinician's Guide to Medical and Surgical Abortions* 20 (Maureen Paul et al., eds. 1999).

[146] *See Florida Dep't of Health v. North Florida Women's Health and Counseling Service,* 852 So.2d 254, 264 n.3 (Fla. App. 1 Dist., 2001):

> [E]vidence at trial showed, the physician-patient relationship is often attenuated in the abortion context, almost to the point of non-existence. *Cf. Planned Parenthood v. Danforth,* 428 U.S. 52, 91, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) ("It seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place. "). Abortion patients ordinarily see their physicians only once or twice, very briefly. Most of their interaction is with the clinic's staff. Physicians performing abortions often perform several in the space of a single hour. *Id.*

[147] Stanley K. Henshaw, "Unintended Pregnancy and Abortion: A Public Health Perspective," in *A Clinician's Guide to Medical and Surgical Abortions* 20 (Maureen Paul et al., eds. 1999). *Cf.* Richard S. Moon, *Why I Don't Do Abortions Anymore,* Medical Economics 61 (Mar. 4, 1985).

[148] *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Health and Welfare,* 2001-2002 Legis. (Vt. 2001) (Nancy Mosher, President and CEO of Planned Parenthood of Northern New England on April 16, 2001) (estimating that two-thirds of Vermont women keep their follow up appointments, although "teenagers are notorious for 'no-showing'").

At least one American court has held that a perforated uterus is a "normal risk" associated with abortion.[149] Untreated, a perforated uterus may result in an infection, complicated by fever, endometritis, and parametritis. According to one study, "[t]he risk of death from post-abortion sepsis [infection] is highest for young women, those who are unmarried, and those who undergo procedures that do not directly evacuate the contents of the uterus . . . A delay in treatment allows the infection to progress to bacteremia, pelvic abscess, septic pelvic thrombophlebitis, disseminated intravascular coagulophy, septic shock, renal failure, and death."[150] Evidence about these dangers presented at trial persuaded a Florida appellate court to uphold that State's parental notification law:

> The State proved that appropriate aftercare is critical in avoiding or responding to post-abortion complications. Abortion is ordinarily an invasive surgical procedure attended by many of the risks accompanying surgical procedures generally. If post-abortion nausea, tenderness, swelling, bleeding, or cramping persists or suddenly worsens, a minor (like an adult) may need medical attention. A guardian unaware that her ward or a parent unaware that his minor daughter has undergone an abortion will be at a serious disadvantage in caring for her if complications develop. An adult who has been kept in the dark cannot, moreover, assist the minor in following the abortion provider's instructions for post-surgical care. Failure to follow such instructions can increase the risk of complications. As the plaintiffs' medical experts conceded, the risks are significant in the best of circumstances. While abortion is less risky than some surgical procedures, abortion complications can result in serious injury, infertility, and even death.[151]

Young adolescent girls are particularly at risk of certain adverse medical consequences from an abortion. For instance, there is a greater risk of cervical injury associated with suction-curettage abortions (at 12 weeks' gestation or earlier) performed on girls 17 years-old or younger.[152] Cervical injury is of serious concern be-

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[149] *Reynier v. Delta Women's Clinic,* 359 So.2d 733, 738 (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."). Frequent injuries from incomplete abortions are discussed in *Swate v. Schiffers,* 975 S.W.2d 70 (Tex. App.-San Antonio 1998) (abortionist's 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 had failed to repair lacerations which occurred during abortion procedures). *Cf. Sherman v. District of Columbia Bd. of Medicine,* 557 A.2d 943, 944 (D.C. 1989) ("Dr. Sherman placed his patients' lives at risk by using unsterile instruments in surgical procedures and by intentionally doing incomplete abortions (using septic instruments) to increase his fees by making later surgical procedures necessary. His practices made very serious infections (and perhaps death) virtually certain to occur. Dr. Sherman does not challenge our findings that his misconduct was willful nor that he risked serious infections in his patients for money.").

[150] Phillip G. Stubblefield and David A. Grimes, "Current Concepts: Septic Abortions," New Eng. J. Med. 310 (August 4, 1994).

[151] *Florida Dep't of Health v. North Florida Women's Health and Counseling Service,* 852 So.2d 254, 262-63 (Fla. App. 1 Dist. 2001), quashed by *North Florida Women's Health and Counseling Services, Inc. v. State,* 866 So.2d 612 (Fla. 2003) (striking down state law under state constitution's "right to privacy"). The Florida Constitution was subsequently amended to state "Notwithstanding a minor's right to privacy . . . the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy." Fla. Stat. Ann. Const. Art. 10 § 22.

[152] *See* Willard Cates, Jr., M.D., M.P.H., Kenneth F. Schulz, M.B.A. & David A. Grimes, M.D., The Risks Associated With Teenage Abortion, New Eng. J. of Med., Sept. 15, 1983, at 621-24.

cause it may predispose the young girl to adverse outcomes in future pregnancies. Girls 17 years-old or younger also face a two and a half times greater risk of acquiring endometriosis following an abortion than do women 20-29 years-old.[153]

The particular risks faced by minors upon whom abortions are performed were articulated by Dr. Bruce A. Lucero. Dr. Lucero, who supported the Child Custody Protection Act (federal legislation similar to CIANA) in 1998, wrote in *The New York Times* about his own experience with minor girls seeking abortions. "In almost all cases," Dr. Lucero wrote, "the only reason that a teen-age girl doesn't want to tell her parents about her pregnancy is that she feels ashamed and doesn't want to let her parents down."[154] However, according to Dr. Lucero, "parents are usually the ones who can best help their teen-ager consider her options. And whatever the girl's decision, parents can provide the necessary emotional support and financial assistance."[155] Moreover, Dr. Lucero explained that "patients who receive abortions at out-of-State clinics frequently do not return for follow-up care, which can lead to dangerous complications. And a teen-ager who has an abortion across state lines without her parents' knowledge is even more unlikely to tell them that she is having complications."[156]

Opponents also argue that the bill needs a broader "health exception." It does not. CIANA specifically provides that its notification requirements would not apply if "the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself." If the concern is about health risks of a non life-threatening nature, then the best course of action, of course, is involving the parents. Finally, the Supreme Court has upheld as constitutional a state parental notification statute that did not contain a health exception. That state statute provided only for a "judicial bypass" exception, which would of course take some time for a minor to utilize, and an exception for cases in which emergency treatment prior to notice "is necessary to prevent the woman's death."[157]

Without the knowledge that their daughters have had abortions, parents are incapable of ensuring that their children obtain routine post-operative care or of providing an adequate medical history to physicians called upon to treat any complications that may arise. The first omission may allow complications such as infection, perforation, or depression, to continue untreated. The second omission may be lethal. When parents do not know that their daughter had an abortion, ignorance prevents swift and appropriate intervention by emergency room professionals responding to a life-threatening condition.

In short, the physical and psychological risks of abortions to minors are great, and laws requiring parental involvement in such abortions reduce that risk. The widespread practice of evading such

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[153] *See* Burkman *et al., Morbidity Risk Among Young Adolescents Undergoing Elective Abortion,* Contraception, vol. 30 (1984), at 99-105.

[154] Bruce A. Lucero, M.D., "Parental Guidance Needed," *The New York Times* (July 12, 1998), section 4, at 1.

[155] *Id.*

[156] *Id.*

[157] *Hodsgon v. Minnesota,* 497 U.S. 417, 426 n.7 (1990) (citing Minnesota statute § 144.343, subd. 4(a)).

laws by transporting minors across State lines through interstate commerce may be prevented only through Federal legislation.

CIANA PROTECTS MINOR GIRLS FROM SEXUAL ASSAULT

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental involvement will provide increased protection against sexual exploitation of minors by adult men. National studies reveal that "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[158] In a study of over 46,000 pregnancies by school-age girls in California, researchers found that "71 percent, 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.*"[159] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[160]

A 1989 study of coercive sexual experiences among teenage mothers found that of the pregnant teens who had unwanted sexual experiences, only 18 percent of the perpetrators were within the victim's age group. Another 18 percent were three to 5 years older than the victim. Seventeen percent were six to 10 years older, and 40 percent were more than 10 years older than their victims.[161] Another study reports that when a minor's parents have not been told about her pregnancy, 58 percent of the time it is the girl's boyfriend who accompanies her for an abortion, and the minor's boyfriend helped pay for the abortion 76 percent of the time.[162]

As Professor Teresa Stanton Collett testified before the House Constitution Subcommittee:

> [A]s 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.[163] 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 ar-

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[158] American Academy of Pediatrics Committee on Adolescence, "Adolescent Pregnancy—Current Trends and Issues: 1998," 103 Pediatrics 516, 519 (1999).

[159] Mike A. Males, "Adult Involvement in Teenage Childbearing and STD," 346 Lancet 64 (July 8, 1995) (emphasis added).

[160] *See id.* (citing HP Boyer and D. Fine, "Sexual Abuse as a Factor in Adolescent Pregnancy and Child Maltreatment," 24 Fam. Plan. Perspectives 4 (1992)); *See also* HP Gershenson, et al. "The Prevalence of Coercive Experience Among Teenage Mothers," 24 J. Interpersonal Violence 4 (1989); American Academy of Pediatrics Committee on Adolescence, "Adolescent Pregnancy—Current Trends and Issues: 1998," 103 Pediatrics 516, 516 (1999) ("Younger teenagers are especially vulnerable to coercive and nonconsensual sex. Involuntary sexual activity has been reported in 74 percent of sexually active girls younger than 14 years and 60 percent of those younger than 15 years.").

[161] *See* Gershenson, *et al.* "The Prevalence of Coercive Experience Among Teenage Mothers," 24 J. Interpersonal Violence 4 (1989).

[162] *See* Stanley Henshaw & Kathryn Post, *Parental Involvement in Minors' Abortion Decisions,* Family Planning Perspectives, Sept./Oct. 1992, at 206.

[163] *See* Department of Health and Human Services, "Report to Congress on Out-of-Wedlock Childbearing" (September 1995) at x ("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.").

ranging the abortion, and 93 percent of those 15 and under said that the boyfriend was involved.[164]

Experience suggests that sexual predators recognize the advantage of their victims' obtaining an abortion.[165] Not only does an abortion eliminate a critical piece of evidence of the criminal conduct,[166] but it also allows the abuse to continue undetected.[167] As a recent presentation given at a U.S. Department of Health and Human Services Conference on the Sexual Exploitation of Teens showed, of minor girls' first sexual experiences, 13percent constitute statutory rape.[168] Further, the younger a sexually experienced teen is, the more likely they are to experience statutory rape. Of sexually experienced teens age 13 or younger, 65 percent experienced statutory rape. Of those age 14, 53 percent experienced statutory rape. And of those age 15, 41 percent experienced statutory rape.[169] And young girls who are younger at their first sexual experience are more likely to say their first sexual experience was nonvoluntary.[170] Also, blacks and Hispanics are more likely to experience statutory rape.[171] Parental involvement laws help ensure that parents have the opportunity to protect their daughters from those who would victimize them further. Secret abortions protect and perpetuate the illegal conduct of these adult male predators.

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[164] *Child Custody Protection Act: Hearings on H.R. 1755 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 108th Cong., 22 (July 20, 2004) (statement of Teresa Collett).

[165] On June 14, 2000, a 36-year-old Omaha man who impersonated the father of his teen-age victim in order to assist her in obtaining an abortion was sentenced to 1½-2 years in prison for felony child abuse. *See* Angie Brunkow, "Man Who Said He Was Girl's Dad Sentenced," *Omaha World-Herald* (June 14, 2000) at 20. A similar attempt to hide the consequences of statutory rape is reflected in the testimony of Joyce Farley before the United States House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution. *See, e.g., Child Custody Protection Act: Hearings on H.R. 3682 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Congress, May 21, 1998 (statement of Joyce Farley).

[166] *See Commonwealth v. Sasville,* 616 N.E.2d 476 (Mass. 1993) (destruction of aborted fetus precluded prosecution for forcible rape of a child under the age of sixteen). *Compare Smith v. Commonwealth,* 432 S.E.2d 2 (Va. App. 1993) (prosecution for rape of 14-year-old girl), *with Hampton v. State,* 1987 WL. 28223 (Ark. App. 1987) (prosecution for incest), and *State v. Khong,* 502 N.E.2d 682 (Ohio App. 1985) (prosecutor subject to contempt order for failure to comply with discovery orders).

[167] Dee Dee Alonzo testified before the Texas Senate Human Services Committee in support of Senate Bill 30, the bill enacting the Texas Parental Notification Act. At age sixteen, she was seduced by her high school teacher. When she became pregnant, he persuaded her to have a secret abortion. She went to the clinic alone, obtained the abortion her abuser had paid for, and returned to continue the abusive relationship for another year. Ms. Alonzo testified "No matter what their reaction would have been, they were my parents and they were adults, and they did love me, it would not have been a secret and the man would have been exposed." Testimony of Dee Dee Alonzo, *Hearing on Tex. S.B. 30 Before the Senate Human Servs. Comm.,* 76th Leg., R.S. 4-5 (Mar. 10, 1999) (tapes available from the Senate Staff Servs. Office and content is from private transcripts of those tapes). A similar incident involved another high school student impregnated by her teacher. This is revealed in the settlement related to injuries she suffered during the abortion of her pregnancy. *See Clement v. Riston,* No.B-131,033, settlement reported in Jury Verdict Research, Research, LRP Pub. No. 65904 available on Lexis-Nexis; cf. *Patterson v. Planned Parenthood,* 971 S.W.2d 439, 447 (Tex. 1998) (Gonzales, J., concurring) (describing the sexual abuse of a young girl that resulted in two pregnancies and two secret abortions).

[168] Kristin Moore, Ph.D. and Jennifer Manlove, Ph.D., "A Demographic Portrait of Statutory Rape," Presentation given at the United States Department of Health and Human Services' Conference on the Sexual Exploitation of Teens (March 23-24, 2005) (defining statutory rape as occurring when teens aged 15 or younger have sex with a partner 3 or more years older).

[169] *Id.*

[170] *Id.* (of those younger than 14, 18 percent; of those age 15-16, 10 percent; and of those age 17-19, 5 percent).

[171] *Id.* (Hispanic, 17 percent, black, 16percent, white, 11 percent).

CONGRESS HAS CLEAR CONSTITUTIONAL AUTHORITY TO ENACT CIANA

CIANA is a regulation of commerce among the several states.[172] Commerce, as that term is used in the Constitution, includes travel whether or not that travel is for reasons of business.[173] To transport another person across state lines is to engage in commerce among the states.[174] Under current Supreme Court precedents, Congress can enact legislation concerning interstate commerce, such as CIANA, for reasons related primarily to local activity rather than commerce itself.[175]

The interstate transportation of minors for the purpose of securing an abortion is clearly a form of interstate commerce which the Constitution expressly empowers Congress to regulate.[176] CIANA regulates only conduct which involves interstate movement, activity which the national government alone is expressly authorized by the Constitution to address.

The Federal Government has long exercised its interstate commerce authority to prohibit interstate activity harmful to minors and their families. In 1910, Congress used its Commerce Clause power to enact the Mann Act,[177] which, before its amendment in 1986, prohibited the interstate transportation of women or minors for purposes of "prostitution or debauchery, or for any other immoral purpose." The Supreme Court upheld the enactment of this law as a constitutional exercise of Congress' power over transportation among the several states. The Court reasoned that if men and women employ interstate transportation to facilitate a wrong, then their right to interstate travel can be restricted.[178] That statute was upheld as applied to the transportation of a person to Nevada for purposes of engaging in prostitution, even though prostitution was legal in Nevada.[179] The Mann Act flatly prohibited the interstate transportation of women for "prostitution" or for "any other immoral purpose." In upholding the law as a valid exercise of Congress' commerce power, the Court stated:

> 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, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.[180]

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[172] *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).

[173] *See, e.g., Caminetti v. United States,* 242 U.S. 470 (1917).

[174] There is therefore 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).

[175] *See United States v. Darby,* 312 U.S. 100 (1941).

[176] U.S. Const., art. I, § 8, cl. 3.

[177] 18 U.S.C. § 2421 (1970). As amended, the statute prohibits the knowing transportation of any individual across state lines "with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so . . ." 18 U.S.C. § 2421 (1999).

[178] *See Hoke v. United States,* 227 U.S. 308, 323 (1913) (noting, in upholding the constitutionality of the Mann Act, "that Congress has power over transportation 'among the several states;' that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations.").

[179] *See United States v. Pelton,* 578 F.2d 701 (8th Cir. 1978).

[180] *Caminetti,* 242 U.S. at 491.

Just as it was appropriate for Congress to use its constitutional authority to keep the channels of interstate commerce free from "immoral" conduct, so it is also appropriate for Congress to exercise that authority to keep the channels of interstate commerce free from those who transport minors across state lines in order to circumvent state parental involvement laws, or from physicians who might not otherwise notify a minor's parents.

The Mann Act is not the only example of a Federal law that prohibits interstate activities that might be legal in the state to which the activity is directed. Indeed, as long ago as 1876, Congress "made it a crime to deposit in the mails any letters or circulars concerning lotteries, whether illegal or chartered by state legislatures."[181] A statute to this effect is still in force.[182] Congress later prohibited the transportation of lottery tickets in interstate commerce, whether or not lotteries are legal in the state to which the tickets are transported.[183] That provision was upheld by the Supreme Court in *Champion v. Ames*[184] and is still in effect.

CIANA does not supercede, override, or alter existing state laws regarding minors' abortions. Rather, CIANA is predicated on Congress' authority to regulate interstate activity. The bill does nothing to regulate purely local activity, and it does not impose any new rules regarding conduct that occurs solely within one state. CIANA embodies rules to regulate interstate activities that involve two or more states, as is entirely appropriate under the Commerce Clause. In short, CIANA does not encroach on state powers.

CIANA IS CONSISTENT WITH SUPREME COURT PRECEDENT

In *Roe v. Wade,*[185] a majority of the Supreme Court found that the Fourteenth Amendment's Due Process Clause, which provides that no state shall deprive any person of "life, liberty, or property" without due process of law, includes within it a "substantive" component that bars a state from prohibiting abortions under some circumstances. This substantive component of the Due Process Clause, also described in that case as including a "right to privacy," was construed to forbid virtually all state prohibitions on abortion during the first trimester of pregnancy.[186] In *Planned Parenthood v. Casey,*[187] the scope of permissible state regulation of abortion and the standards to be applied in evaluating the constitutionality of the regulation were significantly changed. Instead of declaring that the right to seek an abortion was a "fundamental right" requiring a "compelling state interest" in order to be regulated, the new holding was that state regulation of abortion was permissible so long as such regulation did not place an "undue burden" on a woman's exercise of her constitutional rights with regard to abortion.[188]

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[181] *United States v. Edge Broadcasting Co.,* 509 U.S. 418, 421 (1993).

[182] *See* 18 U.S.C.A. § 1302 (prohibiting the mailing of lottery tickets or letters, circulars, and other materials regarding a lottery).

[183] *See* 18 U.S.C. § 1301.

[184] 188 U.S. 321 (1903).

[185] 410 U.S. 113 (1973).

[186] *See Planned Parenthood v. Casey,* 505 U.S. 833, 985 (1992) (Scalia, J., dissenting).

[187] 505 U.S. 833 (1992).

[188] For the articulation of the "undue burden" standard in Casey, *see id.* at 874-80. While the "undue burden" standard as expressed in Casey appeared only to be the views of the three-person plurality, Justice Scalia predicted that "undue burden" would henceforward be the relevant standard, *see id.* at 984-95 (Scalia, J., dissenting). It now appears that the lower Federal courts understand that the "undue burden" standard is the correct one to be applied in abortion cases

CIANA does not place an undue burden upon a woman's right to an abortion. To the extent that a state rule is inconsistent with the Court's doctrine, that rule is ineffective and CIANA would not make it effective. Regarding the bill's provisions that govern interstate abortions conducted in States without parental involvement laws, a requirement that a parent simply be notified is not an undue burden.

Following the Court's decision in *Roe v. Wade,*[189] many states enacted parental notice or consent statutes requiring minors to notify or seek the consent of their parents before undergoing an abortion. Parental consent laws generally require one or both parents to give actual consent to the minor's decision to have an abortion. Parental notification laws typically require the physician, or in some statutes another health care provider, to notify one or both of the parents of the minor female at some time prior to the abortion.

The Court first considered parental involvement in a minor daughter's abortion in *Planned Parenthood of Central Missouri v. Danforth.*[190] The Missouri statute gave a minor girl's parent an absolute veto over her decision to have an abortion. The majority, led by Justice Blackmun, concluded that such a veto power was unconstitutional.[191] The majority noted, however, that the Court "long has recognized that the State has somewhat broader authority to regulate the activities of children than of adults" and "emphasized" that its holding in the case "does not suggest that every minor, regardless of age . . . may give effective consent for termination of her pregnancy."[192]

The Court next addressed state parental involvement laws in *Bellotti v. Baird,*[193] remanding a parental consent statute that was unclear as to whether the parents had authority to veto the abortion and as to the availability of a judicial bypass procedure.[194] The statute returned to the Supreme Court in *Bellotti v. Baird (Bellotti II).*[195] The statute in *Bellotti II* required a minor to obtain the consent of her parents or circumvent this requirement through a judicial bypass proceeding that did not take into account whether the minor was sufficiently mature to make an informed decision regarding the abortion. The Supreme Court invalidated the statute without a majority opinion.

Justice Powell stated in his plurality opinion, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society" and that "[p]roperly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter."[196] This has become the *de facto* constitutional standard for parental consent and notification laws. In upholding parental involvement laws, the plu-

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involving babies that are not viable. *See, e.g., Manning v. Hunt,* 119 F.3d 254, 260 (4th Cir. 1997) ("The trend does appear to be a move away from the strict scrutiny standard toward the so-called 'undue burden' standard of review.").

[189] 410 U.S. 113 (1973).

[190] 428 U.S. 52 (1976).

[191] *Id.* at 74.

[192] *Id.* at 74, 75.

[193] 428 U.S. 132 (1976).

[194] In doing so the Court recognized minors bear "unquestionably greater risks of inability to give an informed consent." *Id.* at 147.

[195] 443 U.S. 622 (1979).

[196] *Id.* at 638.

rality found three reasons why the constitutional rights of minors were not identical to the constitutional rights of adults: "[t]he peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." [197] Thus, the plurality sought to design guidelines for a judicial bypass proceeding that allowed states to address these interests in a parental consent statute.

In *H.L. v. Matheson,*[198] a minor girl challenged the constitutional validity of a state statute that required a physician to give notice to the parents of a minor girl whenever possible before performing an abortion on her. By a vote of six to three, the statute was held constitutional. The Court held that a state could require notification of the parents of a minor girl because the notification "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 whether or not to bear a child." [199]

In *Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft,*[200] the Court upheld the constitutionality of a State law that required a minor to obtain the consent of one of her parents before obtaining an abortion or, in the alternative, to obtain the consent of a juvenile court judge. While there was no majority opinion, this case marked the first time the Court directly upheld a parental consent requirement.

In *Ohio v. Akron Center for Reproductive Health,*[201] the Supreme Court upheld a statute that required a physician to give notice to one of the minor's parents or, under some circumstances, another relative, before performing an abortion on the minor. The statute permitted the physician and the minor to avoid the requirement by a judicial bypass. Justice Kennedy, writing for the majority, held that the bypass proceeding did not unconstitutionally impair a minor's rights by the creation of unnecessary delay.[202] The Court established in this case that it will not invalidate state procedures so long as they seem to be reasonably designed to provide the minor with an expedited process.

In *Hodgson v. Minnesota,*[203] the Court invalidated a state statute that required notification of both parents prior to a minor girl's abortion without the option of a judicial bypass. The Court, however, upheld statutory requirements that both parents be notified of the abortion and a 48 hour waiting period between notification and the performance of the abortion, if such requirements were accompanied by a judicial bypass procedure that met constitutional standards.

CIANA, consistent with these Supreme Court precedents, requires—in cases in which a minor from one state seeks to obtain an abortion in another state without a parental involvement law—that before an abortion can be obtained, either (1) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's state of residence has waived any parental notification required by the laws of that state, or has

[197] *Id.* at 634.
[198] 450 U.S. 398 (1981).
[199] *Id.* at 409-10.
[200] 462 U.S. 476 (1983).
[201] 497 U.S. 502 (1990).
[202] *See id.* at 514-15.
[203] 497 U.S. 417 (1990).

otherwise authorized that the minor be allowed to procure an abortion; (2) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; or (3) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

In *Planned Parenthood of Central Missouri v. Danforth,*[204] the first of a series of Supreme Court cases dealing with parental consent or notification laws, noted liberal 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 or not to bear a child."[205]

While the Supreme Court has, to date, "declined to decide whether a parental notification statute must include some sort of bypass provision to be constitutional,"[206] it is of note that even famously liberal Justice Stevens wrote in his concurring opinion in *H.L. v. Matheson,* that "[t]he fact that certain members of the class of unmarried minor women who are suffering unwanted pregnancies and desire to terminate the pregnancies may actually be emancipated or sufficiently mature to make a well-reasoned abortion decision does not, in my view, undercut the validity of the [state] statute [in question] . . . [A] state legislature has constitutional power to utilize, for purposes of implementing a parental-notice requirement, a yardstick based upon the chronological age of unmarried pregnant women. That this yardstick will be imprecise or even unjust in particular cases does not render its use by a state legislature impermissible under the Federal Constitution."[207]

Furthermore, the Court in *Hodgson v. Minnesota,*[208] wrote that:

> We think it is clear that a requirement that a minor wait 48 hours after notifying a single parent of her intention to get an abortion would reasonably further the legitimate state interest in ensuring that the minor's decision is knowing and intelligent . . . The brief waiting period provides the parent the opportunity to consult with his or her spouse and a family physician, and it permits the parent to inquire into the competency of the doctor performing the abortion, discuss the religious or moral implications of the abortion decision, and provide the daughter needed guidance and counsel in evaluating the impact of the decision on her future."[209]

The Supreme Court has clearly indicated that a parental notification requirement does not impose an undue burden on a minor's ability to obtain an abortion, finding that "[a] 48-hour delay im-

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[204] 428 U.S. 52 (1976).
[205] *Planned Parenthood v. Danforth,* 428 U.S. 52, 91 (1976) (Stewart, J., concurring).
[206] *Lambert v. Wicklund,* 520 U.S. 292, 295 (1997).
[207] *H.L. v. Matheson,* 450 U.S. 398, 424-25 (1981) (Stevens, J., concurring) (citations and quotations omitted).
[208] 497 U.S. 417 (1990).
[209] *Hodgson v. Minnesota,* 497 U.S. 417, 448-49 (1990).

poses only a minimal burden on the right of the minor to decide whether or not to terminate her pregnancy."[210]

The Court then stated in *Planned Parenthood v. Casey* that:

> Numerous forms of state regulation might have the incidental effect of increasing the cost or decreasing the availability of medical care, whether for abortion or any other medical procedure. The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it. Only where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.[211]

The Court continued that "[a] finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a *substantial obstacle* in the path of a woman seeking an abortion of a nonviable fetus."[212] A parental notice requirement, which the Supreme Court has described as a "*minimal* burden"[213] is clearly not a "substantial obstacle"[214] to receiving an abortion.

The Supreme Court continued: "We reject the rigid trimester framework of *Roe v. Wade.* To promote the State's profound interest in potential life, throughout pregnancy the State may take measures to ensure that the woman's choice is informed, and measures designed to advance this interest will not be invalidated as long as their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right . . . As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion . . . [P]arental notification or consent requirements . . . and our judgment that they are constitutional, 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."[215]

Even famously liberal Justice Stevens wrote in his concurring opinion in *H.L. v. Matheson,*[216] that:

> In my opinion, the special importance of a young woman's abortion decision . . . provides a special justification for reasonable state efforts intended to ensure that the decision be wisely made. Such reasonable efforts surely may include a requirement that an abortion be procured only after consultation with a licensed physician. And, because the most significant consequences of the [abortion] decision are not medical in char-

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[210] *Id.* at 449 (emphasis added).
[211] *Planned Parenthood v. Casey,* 505 U.S. 833, 874 (1992).
[212] *Id.* at 877 (1992) (emphasis added).
[213] *Hodgson v. Minnesota,* 497 U.S. 417, 449 (1990) (emphasis added).
[214] The Supreme Court elaborated that "Some guiding principles should emerge. What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." *Planned Parenthood v. Casey,* 505 U.S. 833, 877 (1992).
[215] *Planned Parenthood v. Casey,* 505 U.S. 833, 878, 895 (1992).
[216] 450 U.S. 398 (1981).

> acter, the State unquestionably has an interest in ensuring that a young woman receive other appropriate consultation as well. In my opinion, the quality of that interest is plainly sufficient to support a state legislature's determination that such appropriate consultation should include parental advice . . . [T]he State may legitimately decide that such consultation should be made more probable by ensuring that parents are informed of their daughter's decision: If there is no parental-[notice] requirement, many minors will submit to the abortion procedure without ever informing their parents. An assumption that the parental reaction will be hostile, disparaging, or violent no doubt persuades many children simply to bypass parental counsel which would in fact be loving, supportive, and, indeed, for some indispensable. It is unrealistic, in my judgment, to assume that every parent-child relationship is either (a) so perfect that communication and accord will take place routinely or (b) so imperfect that the absence of communication reflects the child's correct prediction that the parent will . . . [act] arbitrarily to further a selfish interest rather than the child's interest. A state legislature may conclude that most parents will be primarily interested in the welfare of their children, and further, that the imposition of a parental-[notice] requirement is an appropriate method of giving the parents an opportunity to foster that welfare by helping a pregnant distressed child to make and to implement a correct decision.[217]

Even earlier, the Court stated in *H.L. v. Matheson* that "[t]he Constitution does not compel a state to fine-tune its statutes so as to encourage or facilitate abortions. To the contrary, state action encouraging childbirth except in the most urgent circumstances is rationally related to the legitimate governmental objective of protecting potential life."[218]

THE RIGHT TO TRAVEL IS PRESERVED UNDER CIANA

Opponents also argue that CIANA violates the rights of 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. Those opposed to CIANA on these grounds argue that the legislation will hold a pregnant minor "hostage" to the laws of her home state.

As an initial matter, it does not appear that the Supreme Court has *ever* held that Congress' power to regulate interstate commerce is ever limited by the "right to travel." Even assuming, however, that Congress' authority under the Commerce Clause is limited by the right to travel doctrine,[219] the Supreme Court has recognized that the right to travel is "not absolute," and is not violated so long as there is a "substantial reason for the discrimination beyond the

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[217] *H.L. v. Matheson,* 450 U.S. 398, 422-24 (1981) (Stevens, J., concurring) (citations and quotations omitted).

[218] *Id.* at 413 (citations and quotations omitted).

[219] Contrary to claims by some opponents of CIANA, *Saenz v. Roe,* 526 U.S. 489 (1999) does not in any way impugn the constitutionality of CIANA. In *Saenz,* the Supreme Court addressed "the citizen's right to be treated equally in her new State of residence." *Id.* at 505 (emphasis added). A minor who is a resident of one state and who crosses state lines to obtain an abortion in another state is by definition not a resident of the state in which such abortion is performed. Both operative sections of CIANA specifically restrict its applications to situations in which a minor resides in one state and seeks an abortion in another state.

mere fact that they are citizens of other States."[220] Congress obviously has a substantial interest in protecting the health and well-being of minor girls and in protecting the rights of parents to raise their children.

However, the notion that CIANA 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 citizen's 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."[221] CIANA does not even implicate this limitation, for it does not preclude the minor from traveling. The minor's right to travel to another state is wholly unimpeded by CIANA.

In addition, 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.[222] Protecting the health and well-being of minor girls and the rights of parents to raise their children are substantial, indeed compelling, reasons for restricting minors from obtaining an abortion without parental involvement. First, young adolescent girls who undergo abortions face a heightened risk of suffering from long-term physical and psychological complications. Second, "[c]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society," and that "[p]roperly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter."[223] Thus, "[u]nder the Constitution, the State can properly conclude that parents . . . who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility."[224] Third, the fundamental rights of minors, including the right to travel, are not equal to those of adults. Although the Court has previously concluded that the fundamental rights of a child are "virtually coextensive with that of an adult,"[225] it also has recognized that "[t]hese rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults."[226] Thus, "the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'"[227]

Based upon this reasoning, the Court has allowed States to enact laws that "account for children's vulnerability" and that protect the unique role of parents:

> [T]he Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious con-

[220] *Saenz v. Roe,* 526 U.S. 489, 502 (1999).
[221] *See id.* at 500.
[222] *United States v. Guest,* 383 U.S. 745, 759 n.17 (1966).
[223] *Bellotti v. Baird,* 443 U.S. 622, 638 (1979) *(Bellotti II).*
[224] *Id.* at 639.
[225] *Id.* at 634.
[226] *Id.* at 635.
[227] *Id.*

> sequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.[228]

Therefore, "[l]egal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding."[229] Consequently, a State may properly subject minors to more stringent limitations than are permissible with respect to adults. Examples include laws that prohibit the sale of cigarettes and alcoholic beverages to minors, laws that prohibit the sale of firearms and deadly weapons to minors without parental consent, and laws that prohibit third parties from exposing minors to certain types of literature. Similarly, Congress may restrict the right of minors to travel across state lines to a greater extent than it may adults.

CIANA's opponents sometimes also argue that CIANA violates the rights of states to enact and enforce their own laws governing conduct within their territorial boundaries. This contention is clearly specious because CIANA does not attempt to regulate conduct occurring solely within the territorial boundaries of a state. Rather, CIANA regulates interstate commerce, and Congress has the exclusive authority to regulate such activity.

HEARINGS

The Committee's Subcommittee on the Constitution held a hearing on H.R. 748 on March 3, 2005. Testimony was received from the following witnesses: Marcia Carroll, Lancaster, Pennsylvania; Richard Myers, Professor of Law, Ave Maria School of Law; Warren Seigel, Director of Adolescent Medicine, Chairman of Pediatrics, Coney Island Hospital; Teresa S. Collett, Professor of Law, University of St. Thomas School of Law. Additional material was submitted by individuals and organizations.

COMMITTEE CONSIDERATION

On March 17, 2005, the Subcommittee on the Constitution met in open session and ordered favorably reported the bill H.R. 748, as amended, by a vote of 7 to 2, a quorum being present. On April 13, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 748 with an amendment by a recorded vote of 20 yeas to 13 nays, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the committee's consideration of H.R. 748.

1. Mr. Nadler offered an amendment that would have created an additional layer of Federal court review that could be used by sex-

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[228] *Id.*
[229] *Id.* at 638-39.

ual predators to escape conviction under the bill. By a rollcall vote of 11 yeas to 16 nays, the amendment was defeated.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa			
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney			
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Smith (Washington)			
Mr. Van Hollen	X		
Mr. Sensenbrenner, Chairman		X	
Total	11	16	

2. Mr. Nadler offered an amendment that would have exempted sexual predators from prosecution under the bill if they were grandparents or adult siblings of a minor. By a rollcall vote of 12 yeas to 19 nays, the amendment was defeated.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King			
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Smith (Washington)			
Mr. Van Hollen	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	19	

3. Mr. Scott offered an amendment that would have exempted sexual predators from prosecution if they are taxicab drivers, bus drivers, or others in the business of professional transport. By a rollcall vote of 13 yeas to 17 nays, the amendment was defeated.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake			
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner			
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Smith (Washington)	X		
Mr. Van Hollen	X		
Mr. Sensenbrenner, Chairman		X	
Total	13	17	

4. Mr. Scott offered an amendment that would have exempted from prosecution under the bill those who aid and abet criminals who could be prosecuted under the bill. By a rollcall vote of 12 yeas to 18 nays, the amendment was defeated.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)			
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Delahunt			
Mr. Wexler			
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez	X		
Mr. Smith (Washington)	X		
Mr. Van Hollen			
Mr. Sensenbrenner, Chairman		X	
Total	12	18	

5. Ms. Jackson-Lee offered an amendment that would have exempted sexual predators from prosecution under the bill if they were clergy, godparents, aunts, uncles, or first cousins of a minor, and would require a study by the Government Accounting Office. By a rollcall vote of 13 yeas to 20 nays, the amendment was defeated.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Chabot		X	
Mr. Lungren		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Bachus		X	
Mr. Inglis		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Mr. Flake		X	
Mr. Pence		X	
Mr. Forbes		X	
Mr. King		X	
Mr. Feeney			
Mr. Franks		X	
Mr. Gohmert			
Mr. Conyers	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler	X		
Mr. Weiner	X		
Mr. Schiff	X		
Ms. Sánchez			
Mr. Smith (Washington)	X		
Mr. Van Hollen	X		
Mr. Sensenbrenner, Chairman		X	

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Total	13	20	

6. Motion to Report H.R. 748 with an amendment in the nature of a substitute was agreed to by a rollcall vote of 20 yeas to 13 nays.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Hyde			
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Bachus	X		
Mr. Inglis	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney			
Mr. Franks	X		
Mr. Gohmert			
Mr. Conyers		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee		X	
Ms. Waters		X	
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler		X	
Mr. Weiner		X	
Mr. Schiff		X	
Ms. Sánchez		X	
Mr. Smith (Washington)		X	
Mr. Van Hollen			
Mr. Sensenbrenner, Chairman	X		
Total	20	13	

Committee Oversight Findings

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 748, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

APRIL 21, 2005.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 748, the Child Interstate Abortion Notification Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

H.R. 748—Child Interstate Abortion Notification Act

CBO estimates that implementing H.R. 748 would not result in any significant cost to the federal government. Enacting H.R. 748 could affect direct spending and revenues; however, CBO estimates that any such impact would not be significant. H.R. 748 contains both an intergovernmental and a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring doctors, in certain cases, to provide parental notification before preforming an abortion on a minor. CBO estimates the costs for public and private doctors to comply with those mandates would be minimal and well below the annual thresholds established in UMRA ($62 million for intergovernmental mandates and $123 million for private-sector mandates in 2005, adjusted for inflation).

H.R. 748 would make it a federal crime to transport a minor across state lines, under certain circumstances, to obtain an abortion without parental notification; in addition, the bill would make it a crime for a physician to perform such an abortion. Violators would be subject to imprisonment and fines. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 748 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as revenues, which are deposited in the Crime

Victims Fund and later spent. CBO expects that any additional revenues and direct spending would be negligible.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 748 would protect the health and safety of young girls by preventing valid and constitutional state parental involvement laws from being circumvented, and it would protect the health and safety of young girls by protecting the rights of parents to be involved in the medical decisions of their minor daughters when such decisions involve interstate abortions.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title.

Section 1 provides this Act may be cited as the "Child Interstate Abortion Notification Act."

Sec. 2. Transportation of Minors in Circumvention of Certain Laws Relating to Abortion.

Subsection (a) of Section 2 provides that, unless one of the exceptions listed below is met, whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby abridges the right of a parent under a law (in force in the minors state of residence) requiring parental involvement in a minor's abortion decision, shall be fined or imprisoned not more than 1 year, or both. An abridgement of a parent's right occurs if an abortion is performed or induced on the minor, in a State other than the State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides.

Subsection (b) of Section 2 provides for the following exceptions to prosecuting or suing someone under this section: (1) the prohibition does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself; (2) the bill exempts from prosecution or suit the minor herself (the girl being transported) and any parent of that minor.

Subsection (c) of Section 2 provides that a defendant can present an affirmative defense to a prosecution for an offense, or to a lawsuit, based on a violation of this section if the defendant: (1) rea-

sonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that was required under State law had the abortion been performed in the State where the minor resides; or (2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to obtain an abortion.

Subsection (d) of Section 2 provides that any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

Subsection (e) of Section 2 provides, among other, the following definitions. The term a "law requiring parental involvement in a minor's abortion decision" means a law requiring, before an abortion is performed on a minor, either: (1) notification to, or consent of, a parent of that minor; or (2) proceedings in a State court. A "law requiring parental involvement in a minor's abortion decision" does not include a law that allows notification or consent to be given by anyone other than a "parent" as defined in the bill. The term "minor" means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the State law requiring parental involvement in a minor's abortion decision. The term "parent" means: (1) a parent or guardian; (2) a legal custodian; or (3) a person with the requisite legal status to have care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required.

Sec. 3. Child Interstate Abortion Notification.

Subsection (a) of Section 3 provides that a physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than 1 year, or both. Subsection (a) further provides that, unless one of the exceptions described below is met, a physician who knowingly performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.

Subsection (b) of Section 3 provides that subsection (a) does not apply if: (1) the abortion is performed or induced in a State that has a law in force requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law; (2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion; (3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abor-

tion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; or (4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

Subsection (c) of Section 3 provides that any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

Subsection (d) of Section 3 defines the following terms, among others. The term "actual notice" means the giving of written notice directly, in person. The term "constructive notice" means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded. The term a "law requiring parental involvement in a minor's abortion decision" is given the same meaning as in Section 2. The term "minor" means an individual who is not older than 18 years and who is not emancipated under State law. The term "parent" means a parent or guardian; a legal custodian; or a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, as determined by State law. The term "physician" means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion.

Sec. 4. Severability and Effective Date.

Subsection (a) of Section 4 provides that if any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

Subsection (b) of Section 4 provides that the provisions of this Act shall take effect upon enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

* * * * * * *

CHAP.		Sec.
1.	**General provisions**	1
*	* * * * * *	
117A.	***Transportation of minors in circumvention of certain laws relating to abortion***	*2431*
117B.	***Child interstate abortion notification***	*2432*
*	* * * * * *	

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

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

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

(a) OFFENSE.—

(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

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

(b) EXCEPTIONS.—

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

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

(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant—

(1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or

(2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws

of that State, or otherwise authorized that the minor be allowed to procure an abortion.

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

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

(1) the term "abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;

(2) the term a "law requiring parental involvement in a minor's abortion decision" means a law—

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

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

(ii) proceedings in a State court; and

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

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

(4) the term "parent" means—

(A) a parent or guardian;

(B) a legal custodian; or

(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required; and

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

CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION

Sec.
2432. Child interstate abortion notification.

§ 2432. Child interstate abortion notification

(a) OFFENSE.—

(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than one year, or both.

(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must

provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.

(b) EXCEPTIONS.—The notification requirement of subsection (a)(2) does not apply if—

(1) the abortion is performed or induced in a State that has a law in force requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;

(2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;

(3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; or

(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

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

(d) DEFINITIONS.—For the purposes of this section—

(1) the term "abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

(2) the term "actual notice" means the giving of written notice directly, in person;

(3) the term "constructive notice" means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

(4) the term a "law requiring parental involvement in a minor's abortion decision" means a law—

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

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

(ii) proceedings in a State court;

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

(5) the term "minor" means an individual who is not older than 18 years and who is not emancipated under State law;

(6) the term "parent" means—

(A) a parent or guardian;

(B) a legal custodian; or

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

as determined by State law;

(7) the term "physician" means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and

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

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, APRIL 13, 2005

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

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. We will now go to H.R. 748, the "Child Interstate Abortion Notification Act of 2005." The Chair recognizes the gentleman from Ohio, Mr. Chabot, the Chairman of the Subcommittee on the Constitution, for a motion.

Mr. CHABOT. Mr. Chairman, the Subcommittee on the Constitution reports favorably the bill H.R. 748 and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 748, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 748

To amend title 18, United States Code, to prevent the transportation of minors in circumvention of certain laws relating to abortion, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2005

Ms. ROS-LEHTINEN (for herself, Mr. PITTS, Mr. SHIMKUS, Mr. MCCAUL of Texas, Mrs. JO ANN DAVIS of Virginia, Mr. ROGERS of Michigan, Mr. MCCOTTER, Mr. TERRY, Mr. WICKER, Mr. BAKER, Mr. WAMP, Mr. HAYES, Mr. TANCREDO, Mr. CHABOT, Mr. KING of Iowa, Mr. AKIN, Mr. PICKERING, Mr. LEWIS of Kentucky, Mr. LATOURETTE, Ms. HART, Mr. HAYWORTH, Mr. OBERSTAR, Mr. TAYLOR of North Carolina, Mr. PLATTS, Mrs. BLACKBURN, Mr. CANTOR, Mr. SMITH of New Jersey, Mr. BERRY, Mrs. NORTHUP, Mr. WILSON of South Carolina, Mr. MARIO DIAZ-BALART of Florida, Mr. GARRETT of New Jersey, Mrs. CUBIN, Mr. BUYER, Mr. MANZULLO, Mr. BLUNT, Mr. LINCOLN DIAZ-BALART of Florida, Mr. HYDE, Mr. MCHENRY, Mr. ROGERS of Alabama, Mr. RYUN of Kansas, Mr. STEARNS, Mr. DAVIS of Tennessee, Mr. TIAHRT, Mr. FERGUSON, Mr. EHLERS, Mr. JONES of North Carolina, Mr. FRANKS of Arizona, Mr. SOUDER, Ms. FOXX, Mr. WELDON of Florida, Mr. SESSIONS, Mr. STUPAK, Mr. BOEHNER, Mr. HUNTER, Mr. CHOCOLA, Mr. HOSTETTLER, Mrs. DRAKE, Mr. ALEXANDER, Mr. HOEKSTRA, Mr. BRADY of Texas, Mr. DAVIS of Kentucky, Mr. SAM JOHNSON of Texas, Mr. MARSHALL, Mr. ADERHOLT, Mr. KENNEDY of Minnesota, Mr. FORBES, Mr. PETERSON of Pennsylvania, Mr. KING of New York, Mr. BURTON of Indiana, Mr. DELAY, Mr. GREEN of Wisconsin, Mr. LATHAM, Mr. PETERSON of Minnesota, Mr. RENZI, Mr. CUNNINGHAM, Mr. NEUGEBAUER, Mr. SMITH of Texas, Mrs. MUSGRAVE, Mr. MCCRERY, Mr. ROGERS of Kentucky, Mr. PENCE, Mr. BACHUS, Mr. COSTELLO, Mrs. MYRICK, Mr. BOOZMAN, Mr. BARRETT of South Carolina, Mr. GOODLATTE, Mr. PORTMAN, Mr. BARTLETT of Maryland, Mr. PUTNAM, Mr. SULLIVAN, Mrs. MILLER of Michigan, Mr. WESTMORELAND, Miss MCMORRIS, Mr. SHUSTER, Mr. DOOLITTLE, Mrs. EMERSON, Mr. INGLIS of South Carolina, Mr. GOODE, Mr. NEY, Mr. MCINTYRE, Mr. FOSSELLA, Mr. TIBERI, Mr. GUTKNECHT, and Mr. LAHOOD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prevent the transportation of minors in circumvention of certain laws relating to abortion, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Interstate Abortion Notification Act''.

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

Title 18, United States Code, is amended by inserting after chapter 117 the following:

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

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

''(a) OFFENSE.—

''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in

the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

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

"(b) EXCEPTIONS.—

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

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

1 "(c) AFFIRMATIVE DEFENSE.—It is an affirmative
2 defense to a prosecution for an offense, or to a civil action,
3 based on a violation of this section that the defendant rea-
4 sonably believed, based on information the defendant ob-
5 tained directly from a parent of the minor or other compel-
6 ling facts, that before the minor obtained the abortion, the
7 parental consent or notification, or judicial authorization,
8 took place that would have been required by the law re-
9 quiring parental involvement in a minor's abortion deci-
10 sion, had the abortion been performed in the State where
11 the minor resides.

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

15 "(e) DEFINITIONS.—For the purposes of this
16 section—

17 "(1) the term 'abortion' means the use or pre-
18 scription of any instrument, medicine, drug, or any
19 other substance or device intentionally to terminate
20 the pregnancy of a female known to be pregnant
21 with an intention other than to increase the prob-
22 ability of a live birth, to preserve the life or health
23 of the child after live birth, or to remove a dead un-
24 born child who died as the result of a spontaneous

abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;

"(2) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

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

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

"(ii) proceedings in a State court; and

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

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

"(4) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

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

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

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

SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.

Title 18, United States Code, is amended by inserting after chapter 117A the following:

"CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION

"§ 2432. Child interstate abortion notification

"(a) OFFENSE.—

"(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than one year, or both.

"(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to

1 such parent is not possible after a reasonable effort
2 has been made, 24 hours constructive notice must be
3 given to a parent.
4 "(b) EXCEPTIONS.—The notification requirement of
5 subsection (a)(2) does not apply if—
6 "(1) the abortion is performed or induced in a
7 State that has a law in force requiring parental in-
8 volvement in a minor's abortion decision and the
9 physician complies with the requirements of that
10 law;
11 "(2) the physician is presented with documenta-
12 tion showing with a reasonable degree of certainty
13 that a court in the minor's State of residence has
14 waived any parental notification required by the laws
15 of that State, or has otherwise authorized that the
16 minor be allowed to procure an abortion;
17 "(3) the minor declares in a signed written
18 statement that she is the victim of sexual abuse, ne-
19 glect, or physical abuse by a parent, and, before an
20 abortion is performed on the minor, the physician
21 notifies the authorities specified to receive reports of
22 child abuse or neglect by the law of the State in
23 which the minor resides of the known or suspected
24 abuse or neglect; or

"(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

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

"(d) DEFINITIONS.—For the purposes of this section—

"(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

"(2) the term 'actual notice' means the giving of written notice directly, in person;

"(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known ad-

dress of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

"(4) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

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

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

"(ii) proceedings in a State court;

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

"(5) the term 'minor' means an individual who is not older than 18 years and who is not emancipated under State law;

"(6) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

1 ''(C) a person standing in loco parentis
2 who has care and control of the minor, and
3 with whom the minor regularly resides;
4 as determined by State law;
5 ''(7) the term 'physician' means a doctor of
6 medicine legally authorized to practice medicine by
7 the State in which such doctor practices medicine, or
8 any other person legally empowered under State law
9 to perform an abortion; and
10 ''(8) the term 'State' includes the District of
11 Columbia and any commonwealth, possession, or
12 other territory of the United States.''.

13 **SEC. 4. SEVERABILITY AND EFFECTIVE DATE.**

14 (a) The provisions of this Act shall be severable. If
15 any provision of this Act, or any application thereof, is
16 found unconstitutional, that finding shall not affect any
17 provision or application of the Act not so adjudicated.
18 (b) The provisions of this Act shall take effect upon
19 enactment.

○

Chairman SENSENBRENNER. The Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read, considered as the original text for purposes of amendment, and open for amendment at any point.

[The amendment in the nature of a substitute follows:]

SUBCOMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 748

[As ordered reported by the Subcommittee on the Constitution on March 17, 2005]

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Interstate Abortion Notification Act''.

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

Title 18, United States Code, is amended by inserting after chapter 117 the following:

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

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

''(a) OFFENSE.—

''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the

right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

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

"(b) EXCEPTIONS.—

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

"(2) A minor transported in violation of this section, and any parent of that minor, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense

under section 2 or 3 based on a violation of this section.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant—

"(1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or

"(2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to procure an abortion.

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

"(e) DEFINITIONS.—For the purposes of this section—

"(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;

"(2) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

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

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

"(ii) proceedings in a State court; and

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

"(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State

court, under the law requiring parental involvement in a minor's abortion decision;

"(4) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

"(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required; and

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

SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.

Title 18, United States Code, is amended by inserting after chapter 117A the following:

"CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION

"§ 2432. Child interstate abortion notification

"(a) OFFENSE.—

"(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined

under this title or imprisoned not more than one year, or both.

"(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.

"(b) EXCEPTIONS.—The notification requirement of subsection (a)(2) does not apply if—

"(1) the abortion is performed or induced in a State that has a law in force requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;

"(2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;

"(3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; or

"(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

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

"(d) DEFINITIONS.—For the purposes of this section—

"(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead un-

born child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

"(2) the term 'actual notice' means the giving of written notice directly, in person;

"(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

"(4) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

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

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

"(ii) proceedings in a State court;

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

"(5) the term 'minor' means an individual who is not older than 18 years and who is not emancipated under State law;

"(6) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

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

as determined by State law;

"(7) the term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and

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

SEC. 4. SEVERABILITY AND EFFECTIVE DATE.

(a) The provisions of this Act shall be severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) The provisions of this Act shall take effect upon enactment.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Ohio, Mr. Chabot, to strike the last word.

Mr. CHABOT. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

The Constitution Subcommittee held a legislative hearing on the Child Interstate Abortion Notification Act, referred to as CIANA, on March 3, 2005. The bill was marked up in the Subcommittee on March 17, where it was favorably reported with an amendment clarifying the criteria that defines the affirmative defense in Section 2 of the bill by a vote of 7 to 2.

CIANA contains two sections, each of which creates a new Federal crime subject to a $100,000 fine or 1 year in jail, or both.

The first section of CIANA makes it a Federal crime to transport a minor across State lines to obtain an abortion in another State in order to avoid a State law requiring parental involvement in a minor's abortion decision. Twenty-three States currently have such parental involvement laws. The primary purpose of the first section of CIANA is to prevent people, including abusive boyfriends and older men who may have committed rape, from pressuring young girls into circumventing their State's parental involvement laws by receiving secret, out-of-State abortions unknown to their parents.

The second section of CIANA applies when a minor from one State crosses State lines to have an abortion in another State that does not have a State law requiring parental involvement in a minor's abortion decision. In such a case, CIANA makes it a Federal crime for the abortion provider to fail to give one of the minor's parents, or a legal guardian if necessary, 24 hours' notice, or notice by mail if needed, of the minor's decision to have an abortion before the abortion is performed. The purpose of this section is to protect fundamental rights of parents to be involved in their children's life by giving parents a chance to help their young daughters through difficult circumstances as best they can, including by giving a health care provider their daughter's complete and accurate medical history to ensure that she receives safe medical care and any necessary follow-up treatment.

CIANA does not give parents any veto power over a minor's abortion decision. CIANA simply stands for the proposition that parents should be given the chance to help their minor daughters in what may be the most important and life-altering decision she will make in her life.

CIANA includes carefully crafted exceptions. These exceptions include instances in which a life-threatening emergency may require that an abortion be provided immediately or the abortion provider is presented with court papers showing that the parental involvement law in effect in the minor's State of residence has been complied with and where the minor states that she has been the victim of abuse by a parent and the abortion provider informs the appropriate State authorities of such abuse so further abuse can be prevented.

A vivid and heart-rending example of why this legislation is so important comes from Marcia Carroll, who testified on behalf of CIANA during a Constitution Subcommittee hearing last month. In her testimony, she described how her daughter, without her knowl-

edge, was pressured by her boyfriend's stepfather to cross State lines and have an abortion she did not want, and she now regrets it very deeply. Mrs. Carroll said, "My daughter does suffer. She has gone to counseling for this. I just know that she cries and she wishes she could redo everything, relive that day over. It's just sad that it had to happen this way and this is what she had to go through. But she did want me to come here today and speak on her behalf. She said, 'Mom, just one phone call is all it would have taken to stop this from happening.' So she asked me to come here for her sake and for others girls' safety to speak and let you know what was happening."

The parents of this country, such as Mrs. Carroll, should be given the chance to be involved in the decisions that their daughters make. CIANA would give them that chance.

The House of Representatives has passed similar legislation by over 100-vote margins in recent Congresses, and parental notification laws are overwhelmingly supported by Americans. As recently as last month, 75 percent of over 1,500 registered voters surveyed favored requiring parental notification before a minor could get an abortion, with only 18 percent opposing parental notification.

The provisions and notification requirements of CIANA are constitutional and constitute—and are consistent with Supreme Court precedent. The Supreme Court has described a parents' right to control the care of their children as "perhaps the oldest of the fundamental liberty interests recognized by this Court." Further, the Court has upheld as constitutional a State parental notification statute that did not contain a broad health exception. That State statute—that State statute provided only for a judicial bypass exception, which is in this particular bill.

I would urge my colleagues to join in supporting this much needed legislation that is overwhelmingly supported by the American people to protect both the health and safety of our minor children and parental rights.

I yield back the balance of my time.

[Intervening business.]

Chairman SENSENBRENNER. Consideration will now resume on H.R. 748, and the Chair recognizes the gentleman from New York, Mr. Nadler, for an opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

Today we consider legislation that is at once another flagrant violation of the Constitution and an assault on the health and well-being of young women and their health care providers. Some States have chosen to enact parental notification or consent laws. Some, like mine, have considered this issue and decided it is not good for the welfare of young women and have declined to do so. And they have done this for various reasons.

In some cases, the young woman may not be able to go to her parents and can turn only to a grandparent, a sibling, or a member of the clergy. Indeed, sometimes the parents may pose a threat to the life and health of the young woman. That's what happened to Spring Adams, a 13-year-old from Idaho. She was shot to death by her father after he found out that she planned to terminate a pregnancy—a pregnancy caused by his act of incest.

This bill also—and, by the way, in the case that Mr. Chabot mentioned, forgetting this law, that was a clear case of kidnapping—

kidnapping, coercion, violation of about half a dozen existing criminal laws. It is hardly a justification for this bill.

This bill also uses a narrow definition of "medical emergency" that applies only where "an abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself." That clearly falls far short of the Supreme Court's requirement that any restriction on the right to choose must have an explicit exception to protect the life or health of the woman.

There are many things far short of death that threaten the health of a young woman. She deserves prompt and professional medical care, and the Constitution still protects her right to receive that care. Whether or not the majority cares about the Constitution, this bill clearly violates that. Congress should not be tempted to play doctor. It is always bad medicine for women.

In an ideal world, loving, supportive, and understanding families would join together to face these challenges. That's what happens in the majority of cases, law or no law. But we do not live in a perfect world. Some parents are violent, some are rapists, some young people can turn only to their clergy, to a grandparent, a sibling, or some other trusted adult. We should not turn these people into criminals simply because they are trying to help a young woman in a dire situation.

This bill is the wrong way to deal with a very real problem. It does not provide exceptions to protect a young woman's health. It does not provide exceptions where a parent has raped a young woman. It even allows the rapist to sue a clergyperson or doctor who tries to help the daughter deal with the effects of that crime.

This bill would also substitute the judgment of Congress for the judgment of people who live in States like New York which have chosen not to enact parental involvement laws. In fact, even where the young woman's State of residence and the State in which the doctor is located have both decided not to enact such laws, this bill would impose a new Federal parental notification law that is more draconian and more unconstitutional than the laws of most States. Perhaps we should just disband our State legislatures and let the people in Washington decide these important family issues for us. Perhaps the same mind-set that had Congress pass a special law for Terry Schiavo when the Florida Legislature declined to do so is operating again.

In some cases, young women—I'm sorry. I will urge my colleagues to reject this legislation on both constitutional and policy grounds. If only for the sake of humanity, I would urge you to join in providing the needed flexibility for the most difficult real-world cases involving the lives of real young women. We owe them at least that much. And we also owe our States the respect to let them have their own laws.

This bill is the only situation I can think of since the Fugitive Slave Act of the 1850's that would have a young person carry the law of one State on his back like a cross to another State, to enforce the law of the first State in the second State where it is not the law. I doubt the constitutionality of that, but there is also no good policy reason to impose on one State the law of another State.

I hope we will not enact this bill, though I know we will, and I know that the Supreme Court will throw it out as unconstitutional. So let the politics reign and never mind the policy.

Thank you. I yield back.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point.

Are there amendments? The gentlewoman from California, Ms. Waters, for what purpose do you seek recognition?

Ms. WATERS. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. WATERS. I have two amendments. I suppose this—I don't know what the number would be, the first amendment.

The CLERK. Mr. Chairman, I don't have the amendments at the desk.

Ms. WATERS. Those amendments should be at the desk, 748—here they are. We will take them to the desk right now. Just hold those. Take the two sets.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. WATERS. We have two amendments.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 748, offered by Ms. Waters. Page 3, after line 2, insert the following: "(3) The prohibition of subsection (a) does not apply if the pregnancy is the result of sexual contact with a parent or any other person who has permanent or temporary care or custody or responsibility for supervision of the minor, or by any health or family member."

[The amendment follows:]

AMENDMENT TO H.R. 748
OFFERED BY MS. WATERS

Page 3, after line 2, insert the following:

1 "(3) The prohibition of subsection (a) does not
2 apply if the pregnancy is the result of sexual contact
3 with a parent or any other person who has perma-
4 nent or temporary care or custody or responsibility
5 for supervision of the minor, or by any household or
6 family member.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. This amendment is being offered because I anticipated that another amendment that I had would not—may not be taken up. So this amendment—this is a Child Interstate Abortion Notification Act amendment. Just one moment, Mr. Chairman. I think we have a little problem here.

This amendment, Mr. Chairman, is an amendment that simply recognizes that a young girl may become pregnant as a result of sexual contact with a parent or some other person who has permanent or temporary care or custody or responsibility for supervision of the minor or by any household family member.

Unfortunately, the bill as it is drafted does not take into consideration that when we are talking about parent notification, we're asking—we're asking a woman, a young girl in particular, to go to the very person who may be responsible for the pregnancy to—and somehow give consent or at least be notified they're giving information to someone who may have been a party to the pregnancy.

I think it was just mentioned by my colleague that in the case of Spring Adams, a 13-year-old sixth grader from Ohio, who was actually shot to death by her father after he learned that she was planning to terminate a pregnancy caused by his acts of incest.

My amendment provides that the person should not have to go to perhaps the party that's responsible for the pregnancy, and so I would ask for an aye vote on this amendment.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. WATERS. I will yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Thank you, Mr. Chairman. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you. I rise in opposition to the amendment. I believe it should be defeated because it would trump the judicial bypass provision in place in States that allow judges to make case-by-case determinations on these issues and allow for alerting the appropriate authorities so abusers can be brought to justice. This amendment would allow abusers potentially to get off scot free and doom the victims of sexual abuse to even more abuse. If the girl is afraid to tell her parents of the abortion for fear of past or future sexual abuse, she may utilize the judicial bypass process which is available in her State. The offense of transporting a minor across a State line does not apply if the girl has been granted a judicial bypass and the transporter obtained information beforehand that the judicial authorization took place.

This amendment would actually enable potentially a live-in foster brother or uncle or grandfather who has been sexually abusing the minor girl to transport her across a State line for the purpose of abridging a parent's right to know. So we think the judicial bypass procedure that's in effect in most States should be permitted to rule and, therefore, I would strongly oppose this amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York.

Mr. NADLER. Would the distinguished Chairman of the Subcommittee yield for a question?

Chairman SENSENBRENNER. Does the gentleman move to strike the last word? Because——

Mr. NADLER. I do indeed.

Chairman SENSENBRENNER. The gentleman——

Mr. NADLER. I hate that last word. I move to strike it.

Chairman SENSENBRENNER. Okay. Well, the last word is "member." The gentleman is recognized for 5 minutes.

Mr. NADLER. Would the gentleman yield for a question, Mr. Chabot?

Mr. CHABOT. I will yield.

Mr. NADLER. I was listening to your objection to this amendment, and you said that any other—that this would allow a household member to take—to get around this bill, essentially. That was your objection to the amendment.

Mr. CHABOT. Among others. The bypass procedure is already in effect to protect the girl's rights, and this I think just muddies up the waters.

Mr. NADLER. Would you still object to the amendment if the last phrase was struck from the amendment and it simply said, "The prohibition of subsection (a) does not apply if the pregnancy is the result of sexual contact with a parent or any other person who has permanent or temporary care or custody of responsibility..."? In other words, you don't have to notify the parent who committed the—who created the pregnancy. That's all it applies to.

Mr. CHABOT. Yes, it trumps back—it would trump the bypass procedure, which is already in process. I think the bill as currently written——

Mr. NADLER. But forgetting the bypass, I don't understand. If a stepfather, let's say, or a father committed incest, and let's say the mother wasn't alive, so the stepfather committed incest—or the father committed incest, he's the only person who could give parental consent notification, he's the person you don't want to go to, what's the point of the judicial bypass?

Mr. CHABOT. Taking back my time——

Mr. NADLER. It's my time. You can—I yield.

Mr. CHABOT. Oh, did you yield?

Mr. NADLER. I yield, yes.

Mr. CHABOT. Okay. The bypass procedure I think protects the young girl in that particular circumstance, and I think it's appropriate.

Mr. NADLER. But I still don't understand. Let's assume it does. I mean, there are a lot of problems with the bypass procedure. But even if it did, why waste the court's time when the only person you're bypassing is the person who committed incest?

Mr. CHABOT. I'm not sure I understand your point.

Mr. NADLER. If the father committed incest and caused the pregnancy, if the mother is not alive, then the only person you're bypassing is the father who committed the incest and caused the

pregnancy. Why bother with that? Why waste the court's time? Why not just—I mean, under no circumstances——

Mr. CHABOT. Would the gentleman yield?

Mr. NADLER. Let me just say, under no circumstances presumably should you require parental notification or involvement if the parent committed a crime. Yes, I yield.

Mr. CHABOT. Would the gentleman yield?

Mr. NADLER. Sure.

Mr. CHABOT. We want the State bypass procedure to be able to work. The court makes that decision, and we think that the court is the appropriate place for that decision to be made.

Mr. NADLER. Reclaiming my time, I just think this illustrates how rigid this bill is, even if that amendment would not be accepted under those circumstances.

I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further——

Ms. WATERS. I have another amendment, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 748, offered by Ms. Waters. Page 3, after line 2, insert the following: "(3) The prohibitions of this section do not apply with respect to an abortion where the pregnancy resulted from incest."

[The amendment follows:]

AMENDMENT TO H.R. 748
OFFERED BY MS. WATERS

Page 3, after line 2, insert the following:

1 "(3) The prohibitions of this section do not
2 apply with respect to an abortion where the preg-
3 nancy resulted from incest.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much.

Mr. Chairman and Members, the first amendment really related to a pregnancy as a result of maybe a parent or other household members, not necessarily a relative. This one is specific to incest, and certainly as we take a look, no matter what side of the issue you're on relative to notification, certainly we would not want to place a young person, a young woman in the position of having to talk with a relative or a parent who's responsible for the pregnancy. So I would hope that the focus this time would be on a father in particular who we have seen involved in these kind of cases and not to have to ask a young lady to share this information, to seek support just to know what is happening, when, in fact, they're planning on terminating the pregnancy. I would ask for an aye vote.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I won't take the 5 minutes. I'll be very brief.

Essentially, the response would be the same. In essence, it has the same substance as the amendment that we just discussed. The judicial bypass procedure that's available in the States to protect the young girl in one of these situations is what the protection is. There's no reason to adopt this amendment; therefore, I'd oppose it.

I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye? Opposed, no?

The noes appear to have it. The noes have it. The amendment is not agreed to.

Are there further amendments? The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I have two amendments. The first is Nadler 008. I don't have eight. I only have two, but 008.

Chairman SENSENBRENNER. The clerk will report Nadler 008.

The CLERK. Amendment to H.R. 748, offered by Mr. Nadler. Page 3, after line 2, insert the following: "(3) Any adult who would be subject to prosecution under this Act"——

Mr. NADLER. Mr. Chairman?

The CLERK.—"who can demonstrate, by a preponderance of the evidence, that he or she has a reasonable belief that compliance with the judicial bypass procedure of the minor's State of resident would either—(A) compromise the minor's intent to maintain confidentiality with respect to her choice to terminate a pregnancy; or (B) be futile because the judicial bypass procedure of the minor's State of residence is unavailable"——

Mr. NADLER. Mr. Chairman?

The CLERK.—"or ineffective, may apply to a judge of the United States District Court in the district in which the minor resides for a waiver of the application"——

Mr. NADLER. Mr. Chairman, I ask unanimous consent to waive the reading of the amendment.

Chairman SENSENBRENNER. Without objection.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, I also ask unanimous consent to amend the amendment by removing in line 3 the words "he or she has a reasonable belief that..."

Chairman SENSENBRENNER. Without objection, the reading of the amendment—further reading of the amendment is waived. Is there any objection to deleting the language referred to by the gentleman from New York?

[No response.]

Chairman SENSENBRENNER. Without objection, the language is deleted, and the gentleman from New York is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO H.R. 748
OFFERED BY M__. Nadler

Page 3, after line 2, insert the following:

1 "(3) Any adult who would be subject to prosecution
2 under this Act, who can demonstrate, by a preponderance
3 of the evidence, that ~~he or she has~~ a reasonable belief that
4 compliance with the judicial bypass procedure of the mi-
5 nor's State of residence would either—
6 "(A) compromise the minor's intent to maintain
7 confidentiality with respect to her choice to termi-
8 nate a pregnancy; or
9 "(B) be futile because the judicial bypass proce-
10 dure of the minor's State of residence is unavailable
11 or ineffective, may apply to a judge of the United
12 States District Court in the district in which the
13 minor resides for a waiver of the application of this
14 Act.
15 The judges of the United States District Court shall hear
16 such confidential petitions within 48 hours of the time
17 when they are filed and shall render a decision within 48
18 hours from so hearing. Any adult who applies for a waiver
19 of this Act shall be entitled to counsel appointed by the
20 Court.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would try to make the bill begin to conform to real-world situations. It would allow an adult who, by a preponderance of the evidence, can show that a judicial bypass procedure in the minor's State is unavailable. As the testimony we received on this bill indicates is sometimes the case, or where a judicial bypass procedure in the minor's home State might compromise her privacy, the minor would be allowed to go to the Federal district court to seek the required waiver.

In other words, if you could show by a preponderance of the evidence that going for a judicial district waiver in the State court would compromise the privacy or that that is an illusory remedy because the remedy is not really available in the State court, you could go and apply to the Federal district court for the waiver based on the same grounds that you would seek in the State court.

It does not eliminate—this bill does not—this amendment, rather, does not eliminate the waiver requirement. It simply allows the minor to avoid the kinds of real-world problems that exist out there in the real world, where local judges, some local judges have made clear they will never grant a bypass, or where the local judge is so cozy with the young woman's parents that confidentiality would be a joke, sometimes with catastrophic results.

I know that my colleagues won't mind removing a small number of these cases from State court to Federal court. We seem to make a habit of doing that in this Committee. Indeed, the Republican leadership dragged us all back from Washington to yank a case out of State court into Federal court a few weeks ago. So I hope this amendment should not be a problem.

I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I rise in opposition to this amendment. The amendment, I believe, should be defeated because it would undermine State judicial bypass proceedings, once again. If the State's judicial bypass procedure, in fact, fails to effectively maintain a pregnant minor's confidentiality or is unavailable or ineffective, under the terms of the amendment, then that State's judicial bypass system would be held unconstitutional under current case law and not enforced under CIANA. CIANA merely reinforces constitutional State parental involvement laws. If a State's parental involvement law is held unconstitutional, CIANA will not have any effect on the operation of that State's laws.

Mr. NADLER. Would the gentleman yield for a question?

Mr. CHABOT. Not at this time. For example, if there are only two judges in an entire State willing to hear judicial bypass proceedings, that State's parental involvement law would be found unconstitutional under current Supreme Court precedent, which requires the State to provide a minor the opportunity to seek a judicial bypass with "sufficient expedition to provide an effective opportunity for an abortion to be obtained." That's existing law. This fact is illustrated by the First Circuit's decision in *Planned Parenthood League v. Bellotti.* In that case, the court held that the plaintiffs

could successfully challenge the State's judicial bypass procedures if they could present "proof of a systematic failure to provide a judicial bypass option in the most expeditious, practical manner."

The Court of Appeals remanded the case to the lower court so that the plaintiffs could present evidence that, among other things, judges were de facto unavailable to hear minors' abortion petitions or were avoided for reasons of hostility, as the gentleman mentioned before.

The Sixth Circuit has also recognized that a constitutional challenge may be brought for a State's systematic failure to provide an expeditious judicial bypass. Opponents of this legislation can't have it both ways by arguing on the one hand that the State law must always govern within its State boundaries, regardless of interstate effects, and on the other hand that States can't be trusted to enact sufficient judicial bypass laws.

So for those reasons, I would strongly oppose this amendment, and if the gentleman would like me to yield, I'll yield.

Mr. NADLER. Thank you. The fact is it's hard to see how a constitutional challenge to a situation, which may, in fact, only exist in the given case where the local judge is a friend of the parents, may not be a totally unconstitutional situation Statewide. But, in any event, it's hard to see how a constitutional challenge could be taken without getting into the second and third trimester of pregnancy. I mean, the fact is why not let a Federal court judge whether, in fact, the judicial bypass is real on an expeditious basis, which is all this amendment says.

Mr. CHABOT. Reclaiming my time, I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Nadler. Those in favor will say aye? Opposed, no?

The noes appear to have it.

Mr. NADLER. A rollcall vote.

Chairman SENSENBRENNER. A rollcall is requested. Those in favor of the Nadler amendment will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH OF TEXAS. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
[No response.]
The CLERK. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Smith?

[No response.]

The CLERK. Mr. Van Hollen?

Mr. VAN HOLLEN. Aye.

The CLERK. Mr. Van Hollen, aye. Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their votes? The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman?

Mr. BERMAN. Aye.

The CLERK. Mr. Berman, aye.

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan?

Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan, aye.

Chairman SENSENBRENNER. Are there further Members who wish to either cast or change their votes? If not, the clerk will report—the gentleman from Florida, Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Aye.

The CLERK. Mr. Watt, aye.

Chairman SENSENBRENNER. Anybody else who wishes to cast or change their votes? If not, the clerk will try again to report.

The CLERK. Mr. Chairman, there are 11 ayes and 16 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I have an amendment at the desk, number 001.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 748, offered by Mr. Nadler. Page 3, after line 2, insert the following: "(3) The prohibition of subsection (a) does not apply with respect to conduct by a grandparent or adult sibling of the minor."

[The amendment follows:]

AMENDMENT TO H.R. 748
OFFERED BY MR. NADLER

Page 3, after line 2, insert the following:

1 "(3) The prohibition of subsection (a) does not
2 apply with respect to conduct by a grandparent or
3 adult sibling of the minor.

Chairman SENSENBRENNER. The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you.

Mr. Chairman, this amendment would simply exempt a grandparent or adult sibling from the criminal and civil penalties in this bill. These cases do not involve kidnapping, not when it's involved with a grandparent or brother or sister of the young woman having the abortion. These cases do not involve someone from outside the family intruding into basic family decisions. They do allow a responsible adult member of the family to intervene in cases involving serious family crises, such as rape, incest, family violence, or some other terrible problem that will sometimes arise.

I realize the bill does not have—does have a mandatory reporting requirement for crimes. This does not deal with dangers that are not crimes of the kind described in the bill. It does not deal with threats. It does not deal with the prospect of violence. The bill does not deal with a young person who is away at school and seeks the support of the nearest relative, perhaps a grandparent.

The bill is really an assault on families and the ability of families to deal with their problems to the best of their ability. It presumes that Congress knows best just how each difficult family situation must be resolved, even within the family.

I do not think Congress possesses that kind of wisdom, although it may indeed possess that kind of arrogance. Let us at least not turn caring grandparents or siblings into criminals. Let us not allow an abusive father to sue his own mother if she tries to intervene and help. We should try to show just a little humanity and perhaps a little humility. And, therefore, I urge the adoption of this amendment.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

This amendment would codify the circumvention of parental involvement, and the overwhelming majority of Americans support parental involvement. In-laws and aunts and uncles and cousins and siblings or even priests don't have the authority now to authorize a medical procedure for a minor child or even ear piercing or the dispensing of aspirin at school. So why should a fundamental parental right be thrown aside for the abortion procedure alone? Anyone supporting this amendment must have a fundamental problem with underlying State laws that allow only parents to grant consent for this medical procedure.

This amendment would sever the essential parental-child relationship. Grandparents and adult siblings are not parents. It's that simple. It's instructive that the Supreme Court has always held that this important duty to ensure and provide for the care and nurture of minor children lies only with parents, a conclusion which arises from the traditional legal recognition that natural bonds of affection lead parents to act in the best interests of their own children.

As Justices O'Connor and Kennedy and Souter observed in *Planned Parenthood v. Casey,* parental consent and notification

laws related to abortion are based on a 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. Parents, not anyone else, know and can provide their dependent minor children's complete and accurate medical histories, for example. Before children undergo medical procedures, parents are required to provide the critical information. Without that medical history, an abortion could be a devastating event in a child's health.

As the Supreme Court has made clear, the medical, emotional, and psychological consequences of an abortion are serious and can be lasting. That 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 a family physician, and authorizes family physicians to give relevant data. That's what the Supreme Court stated.

So I would strongly urge my colleagues to oppose this amendment and yield back the balance of my time.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

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

Mr. Chairman, the child can go across the State lines with assistance or without assistance. This just says if they've got the assistance of the grandparent or adult sibling that you're not—that that not be a crime. And even if the prosecutor won't prosecute, you don't want civil suits involving family members resulting from a violation of this section.

I would hope that these—these family decisions are bad enough. I know the majority in Congress don't mind involving themselves in family decisions and encouraging parents and in-laws to sue each other. But we ought not—I think the poll suggested that 80 percent of the public didn't appreciate what we did a couple of weeks ago, and having civil suits against family members shouldn't be encouraged in this bill. So I would hope that we would adopt this amendment, and I will yield to the gentleman from New York.

Mr. NADLER. Thank you. I thank the gentleman for yielding, and I obviously agree with him. And I would want to comment on what the distinguished Chairman of the Subcommittee said when he said most Americans or a majority, something to that effect, approve of parental notification and consent laws. That may be. But I don't think most Americans approve of criminalizing the brother or sister or grandparent who helps someone get an abortion if that abortion resulted from incest. And that's what we're talking about in this amendment.

The rhetoric used for this bill basically says that there is—that these evil abortion promoters or abortion clinic owners are making an industry of spiriting young women across State lines for the purpose of evading the parental notification requirement. Well, I don't think that's true. But even if it were, what this amendment is talking about is not anybody connected with an abortion clinic or anybody else. It's a grandparent or a brother or a sister—not a cousin, not an uncle or an aunt, but a grandparent or a brother or a sister who's motivated presumably by concern for the welfare of

the minor and who agrees with the minor that in this particular case—not in most cases perhaps, but in this particular case, because of incest, because of parental hostility, because of parental drunkenness, for whatever reason, you can't tell or involve the parent. And maybe that judgment is correct, and maybe they haven't the sophistication to go for judicial bypass.

All this would say is you don't make the sibling, the brother or the sister, or the grandparent a criminal in this situation where they may very well be right about the welfare of the minor. And, therefore, it's very different from the rest of the bill. Even if you agree with the rest of the bill, even if you agree with the underlying reasoning of parental involvement, you shouldn't make a criminal out of a sibling or a grandparent who helps the minor.

That's all this amendment says, and anyone who respects the family and family values will support this amendment, because although we do accord primacy to the parents, not 100 percent of the time, not if the parent is drunk and hostile and violent, not if the parent committed incest, not in a number of other cases. And we can't know those situations, but the sibling or the grandparent can.

I yield——

Mr. CONYERS. Would the gentleman from Virginia yield?

Mr. SCOTT. I yield.

Mr. CONYERS. I wanted to take this time to put my opening statement in the record, and I wanted to commend the gentleman from New York, the gentleman from Virginia, and the gentlelady from California, who are offering opportunities for us to correct legislation that seems unconstitutional in at least three aspects. It's hard for me to imagine that the other body is going to go very far with a measure that offers nine different scenarios of parental notice that will be imposed on doctors and women across this Nation.

This is a terrible problem that we're dealing with here, dysfunctional families, child abuse, teen pregnancies, and I think we need to be far more careful in telling women, young women facing this situation, who they must confide in and that the Constitution probably won't apply to them.

I ask unanimous consent to have my statement offered into the record.

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. Thank you.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Nadler. Those in favor will say aye? Opposed, no?

The noes appear to have it. The——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York?

Mr. NADLER. I ask the ayes and nays.

Chairman SENSENBRENNER. A rollcall will be ordered. The question is on agreeing to the Nadler amendment. Those in favor will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH OF TEXAS. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
[No response.]
The CLERK. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Smith?
[No response.]
The CLERK. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their votes? The gentleman from California, Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 12 ayes and 19 noes.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? The gentleman from Virginia, Mr. Scott?
Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 748, offered by Mr. Scott of Virginia. Page 3, after line 2, insert the following: "(3) The prohibitions of this section do not apply with respect to conduct by taxi drivers, bus drivers, or others in the business of professional transport."
[The amendment follows:]

Amendment to H.R. 748, As Reported
Offered by Mr. Scott of Virginia

Page 3, after line 2, insert the following:

"(3) The prohibitions of this section do not apply with respect to conduct by taxicab drivers, bus drivers or others in the business of professional transport.

Redesignate succeeding subsections accordingly.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. This is a very simple amendment. It will just immunize taxicab drivers and others who transport minors under this Act. The bill as written—the bill as written would make the taxicab driver a criminal if they do the simple task of responding to a call and even if they are not aware that the minor is evading a State's consent laws. If the minor hops in the cab and says, "Take me to the abortion clinic," that would make—then the cab driver complies with that direction and accepts the fee for the job, that taxicab driver would be in violation of this section.

If you read the language of the bill, page 1 of the Subcommittee amendment in the nature of a substitute, it says that "whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion," and then it clearly says—you don't have to know whether you're evading parental consent laws or not because it says, "and thereby in fact abridges the right of a parent under a law requiring parental involvement...shall be fined under this title or imprisoned not more than 1 year, or both."

Now, even if the prosecutor uses intelligent prosecutorial discretion and decides not to prosecute the taxicab driver, the fact is that the bill allows civil liability so that the parents can sue the taxicab driver for civil damages.

I would hope, Mr. Chairman, that—I don't think that's the intent of the bill. I would hope that we would exclude taxicab drivers, bus drivers, and others who might take someone across a State line and technically violate this section. I would hope that we would not rope them in and allow parents to sue them to get money if they violate—if they violate this section. And I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr> Chabot?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I move in—I rise in opposition to this amendment.

First, taxicab drivers are not generally liable under this bill, which allows for the conviction of an individual who knowingly transports a minor across a State line with the intent that such individual obtain an abortion. So that's the point: with the intent that they obtain the abortion. Although a taxicab driver may have

the knowledge that the minor that he or she is transporting will obtain an abortion as soon as she arrives at her destination, his or her intent is not that the minor obtain an abortion; rather, it's to transport the minor to the destination of her choice, whether it's an abortion clinic or a shopping mall. In other words, the taxicab driver's reason for transporting the minor is to receive the fare, not to ensure that she obtains an abortion. So a taxicab driver will not generally have the requisite intent necessary for prosecution under the bill.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. So the amendment is, in my view, unnecessary.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Mr. SCOTT. If the young lady asks the cab driver to "Take me to the abortion clinic," wouldn't he then know what the deal is?

Mr. CHABOT. Reclaiming my time, that's not his purpose for transporting her there for the purpose of her getting an abortion. It's to get his fare.

Now, if—and I know that the gentleman——

Mr. SCOTT. I'm reading the bill.

Mr. CHABOT. Excuse me?

Mr. SCOTT. I'm reading the bill.

Mr. CHABOT. That's fine. But it's the purpose of—now, if the taxicab driver had impregnated the girl and, therefore, he was taking her there with the intent that she obtain an abortion, then he may be prosecutable under this particular bill. But if he is taking her there for the purpose of obtaining a fare and transporting her wherever she wants to go, I cannot imagine that he would be prosecuted under this bill. So I think your amendment is just unnecessary.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Mr. SCOTT. It says "with the intent that such minor obtain an abortion." The minor announces that she's going to the abortion clinic, and it doesn't say anything about purpose.

Mr. CHABOT. Sure, it does. It says "with the"—reclaiming my time, it says for the purpose of obtaining an abortion. If he transports her there with the intention that she obtain an abortion, then he may be prosecutable. But that's not his intention. His intention is to obtain a fare. He would take her to the movie theater or the mall to get her nails done or anything else. He's not going to be prosecutable because of the place that she intends to go. And so I think your amendment is just unnecessary, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler?

Mr. NADLER. Well, Mr. Chairman, first of all, just continuing this little dialogue with Mr. Chabot, it doesn't say anything about purpose. It says "with the intent that such minor obtain an abortion." The gentleman may be correct. The gentleman may be correct that a court might read that as saying, well, he would have taken her, you know, for any purpose and he didn't have the intent.

On the other hand, a court might read it as saying, well, since she said, "Take me to the ABC Abortion Clinic," he knew damn well why she was going there, and that was his intent. So my——

Mr. CHABOT. Would the gentleman——

Mr. NADLER. So my question is: If it's unnecessary, why not make it explicit? What's the harm of the amendment? Make it clear, and then we don't have to guess.

Mr. CHABOT. Would the gentleman yield?

Mr. NADLER. Sure.

Mr. CHABOT. Before it even gets to the court or the judge, the prosecutor would have to look at this case, read the law, and believe——

Mr. NADLER. Well, reclaiming my time, there's a civil lawsuit, too. You don't need a prosecutor. This bill provides for a civil lawsuit. So my question, which I will yield again to you, is: I understand your intent in the way the bill is written. I think our intent is the same. We don't like the bill, but the intent for this purpose is the same. So why not take this amendment and make it clear. Nobody has to guess. I yield.

Mr. CHABOT. Again, the cab driver wouldn't have the requisite criminal intent under the law, and relative to a civil case—I mean, that's what the courts are for in this country. Hopefully, in most cases, the courts exercise——

Mr. NADLER. But, again, I'll ask: Why not make it clear that that's what you mean?

Mr. CHABOT. I think it's unnecessary. I think the bill——

Mr. NADLER. But is it harmful? Why not make it clear?

Mr. CHABOT. All your amendments that are offered on your side could make the bill better, arguably on your side.

Mr. NADLER. No, no, no. My question—but I'm going to ask you this again, Steve. Most of the amendments we offer change the bill substantively. You're saying this amendment doesn't change the bill substantively. I'm saying that, well, it makes clear what you say is the intent. So why not take it?

Mr. CHABOT. Would the gentleman yield?

Mr. NADLER. Yes.

Mr. CHABOT. I've already said my principal argument, but I'll just give you another one.

You could potentially immunize guilty cab drivers if there were those out there that were involved in some sort of racket to—maybe they were some sort of agent for the abortion clinic. Or, again, as I said before, maybe the cab driver impregnated the girl to begin with.

Mr. NADLER. Reclaiming——

Mr. CHABOT. There are many instances, and we wouldn't want to immunize——

Mr. NADLER. Reclaiming my time, I yield to the gentleman from Virginia.

Mr. SCOTT. Thank you, and I thank the gentleman for yielding. It says, "whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion," the minor has already announced where she's going and, in fact, could announce what she's going to do when she gets there. They could get involved—they can get involved in a conversation.

When the parents find out, the parents are going to be mad and are going to be looking for somebody to sue. And when they find out it was a taxicab driver with deep pockets, that's who they're going to sue. And that's what this bill allows, and I don't think

that's right. Maybe that's the intent that you're going to make sure that no taxicab driver, no bus driver, nobody else is going to take the minor across State lines. On the way, if the minor is with somebody, the taxicab driver may hear the conversation and learn what the purpose of the trip is, and when the parents find out, they're going to get sued, and deep pockets. And those trial lawyers that some Members of this Committee don't like are going to get a fee for suing them.

Mr. BACHUS. Would the gentleman yield?

Mr. SCOTT. It's the gentleman from New York's time. I yield back.

Mr. BACHUS. Did you say a taxicab driver——

Chairman SENSENBRENNER. The gentleman is yielding——

Mr. BACHUS.—with deep pockets? [Laughter.]

Mr. NADLER. I think he meant that under the doctrine of agency, the taxicab driving company.

Chairman SENSENBRENNER. Okay. Well, the time still belongs to the gentleman from Virginia, if he wishes to—the question is on——

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The noes appear to have it

Mr. SCOTT. Recorded vote.

Chairman SENSENBRENNER. A recorded vote is requested and will be ordered. Those in favor of the Scott amendment will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Smith?
Mr. SMITH OF WASHINGTON. Aye.
The CLERK. Mr. Smith, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their votes? The gentleman from California, Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report.

The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Aye.

The CLERK. Mr. Watt, aye.

Chairman SENSENBRENNER. The clerk will try again.

The CLERK. Mr. Chairman, there are 13 ayes and 17 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk. It's marked number 3.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Page 3, after line 2, insert the following: "(3) Limitation on Prosecution—No prosecution can be brought with respect to a violation of this section other than against the person committing the offense in the first degree."

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 748
OFFERED BY MR. SCOTT

Page 3, after line 2, insert the following:

''(3) LIMITATION ON PROSECUTION.—No prosecution can be brought with respect to a violation of this section other than against the person committing the offense in the first degree.

Redesignate succeeding subsections accordingly.

Page 6, after line 11, insert the following:

''(3) LIMITATION ON PROSECUTION.—No prosecution can be brought with respect to a violation of this section other than against the person committing the offense in the first degree.

Redesignate succeeding subsections accordingly.

Chairman SENSENBRENNER. The gentleman from Virginia will be recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this amendment would prohibit prosecutions under Section 2 and 3 of the criminal code. It would require the person actually committing the offense—the criminal code Sections 2 and 3 say that if you're a—after the fact, aiding and abetting, conspiracy, all get prosecuted similar to the person actually committing the crime. This could be a grandmother, sister, or friend who offers care and comfort after the fact, someone arranging for transportation back to the—back home, all of this, even ministers and relatives who want to ensure that the minor undergoes a safe procedure and comes home unharmed would be considered criminals and subject to civil liability.

So, Mr. Chairman, I would hope that we would not expand this bill to accessories after the fact, those who may be involved as technically conspirators, aiding and abetting, as principals in the first degree, not only subject to criminal liability but also to civil liability. I would hope we would adopt the amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. I yield back. I'm sorry.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be brief. I rise in opposition to this amendment.

The amendment should be defeated because it would, for example, exempt from prosecution a sexual predator who pays another to transport a young girl across State lines in order to circumvent

parental involvement laws and destroy evidence of his sexual crimes. CIANA contains an exception for the transported minor and her parents so that they cannot be prosecuted or sued.

As to other people, this amendment would excuse—it would create an abortion exception to exclude them from general Federal criminal laws and such an exemption is entirely unwarranted. The amendment would violate fundamental rules that hold aiders and abettors equally responsible for their crimes, and that is wrong and that is why I oppose this amendment.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Mr. SCOTT. If someone offers aid and comfort after the fact, would they be subject to civil liability under the bill?

Mr. CHABOT. Reclaiming my time——

Mr. BACHUS. Would the gentleman yield?

Mr. CHABOT. I'll yield, yes.

Mr. BACHUS. They would not be responsible because they would not be transporting the child for the purpose of gaining an abortion. She would have already had an abortion.

Mr. SCOTT. If you'll yield. The civil liability occurs—attaches when you've violated the law. This is a criminal statute. You've violated the law——

Mr. BACHUS. Well, you'd have to violate the law by transporting her across a State line to obtain an abortion.

Mr. CHABOT. Yes, reclaiming——

Mr. BACHUS. Not after the fact——

Mr. CHABOT.—my time——

Mr. SCOTT. Aiding and abetting is a crime.

Mr. CHABOT. Reclaiming my time——

Mr. BACHUS. Aiding and abetting——

Chairman SENSENBRENNER. The time belongs to the gentleman from Ohio, who wants it back.

Mr. CHABOT. Yes, reclaiming my time, the gentleman's amendment refers to a criminal prosecution, and, therefore, that's what you're talking about. So it would depend upon whether you had the necessary criminal intent to have violated this statute, this law.

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I'll yield.

Mr. SCOTT. And if you cannot be criminally prosecuted, you can't be exposed to civil liability. That's the whole point of the amendment, to get people from—if you're providing aid and comfort after the fact, the criminal code allows you to be prosecuted. And if you can be prosecuted, you're civilly liable. If you can't be prosecuted, you're not civilly liable under the bill. What I'm trying to do is get those who may be offering aid and comfort after the fact——

Mr. BACHUS. Mr. Chairman?

Mr. SCOTT.—from under the provisions of the bill.

Chairman SENSENBRENNER. The time belongs——

Mr. CHABOT. Reclaiming my time, I'll yield to the gentleman from——

Mr. BACHUS. Mr. Chairman, that analogy doesn't fly under this bill. You have to—to be guilty, you have to aid and abet someone to cross State lines for the purpose of getting a divorce—I mean getting an abortion.

Mr. SCOTT. Would the gentleman yield?

Mr. BACHUS. After the fact, you're not aid—when you're helping them return home, you're not in any way aiding and abetting them in gaining——

Mr. SCOTT. Would the gentleman yield?

Mr. CHABOT. I'll reclaim my time, and I'll yield to the gentleman from Virginia.

Mr. SCOTT. Well, what about accessory after the fact?

Mr. BACHUS. How could you be an accessory after the fact when you——

Mr. CHABOT. Reclaiming my time, I don't think it's relevant to this, the bill, and I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The noes appear to have it. The gentleman—a rollcall will be ordered. Those in favor of the Scott of Virginia amendment will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Lungren?

Mr. LUNGREN. No.

The CLERK. Mr. Lungren, no. Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Inglis?

Mr. INGLIS. No.

The CLERK. Mr. Inglis, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

[No response.]

The CLERK. Mr. Keller?

[No response.]

The CLERK. Mr. Issa?

[No response.]

The CLERK. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

Mr. PENCE. No.

The CLERK. Mr. Pence, no. Mr. Forbes?

Mr. FORBES. No.

The CLERK. Mr. Forbes, no. Mr. King?

Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Smith?
Mr. SMITH OF WASHINGTON. Aye.
The CLERK. Mr. Smith, aye. Mr. Van Hollen?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The gentleman from Florida, Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake?
Mr. FLAKE. No.

The CLERK. Mr. Flake, no.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt?

Mr. WATT. Aye.

The CLERK. Mr. Watt, aye.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their vote? If not, the clerk will report?

The CLERK. Mr. Chairman, there are 12 ayes and 18 noes.

Chairman SENSENBRENNER. And the amendment is not agreed to.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments? The gentlewoman from Texas?

Ms. JACKSON LEE. Mr. Chairman, I have two amendments that I'd like to take en bloc, please, 005 and 006.

Chairman SENSENBRENNER. The clerk will report the amendments.

The CLERK. Amendments to H.R. 748, offered by Ms. Jackson Lee. Page 3, after line 2, insert the following——

Ms. JACKSON LEE. Mr. Chairman, I ask unanimous consent——

Chairman SENSENBRENNER. Let's take a look at them first.

The CLERK. "(3) The prohibitions of this section do not apply with respect to conduct by clergy, godparents, aunts, uncles, or first cousins."

Chairman SENSENBRENNER. Without objection, the amendments are considered as read. And without objection, the amendments are considered en bloc.

[The amendments follow:]

AMENDMENT TO H.R. 748

OFFERED BY MS. JACKSON LEE

Page 3, after line 2, insert the following:

1 "(3) The prohibitions of this section do not
2 apply with respect to conduct by clergy, godparents,
3 aunts, uncles, or first cousins.

AMENDMENT TO H.R. 748

OFFERED BY MS. JACKSON LEE

Add at the end the following:

1 **SEC. 4. STUDY BY THE GENERAL ACCOUNTING OFFICE.**

2 The General Accounting Office shall conduct a study
3 detailing the impact of the number of unsafe and illegal
4 abortions performed on minors who would be affected by
5 this law, and report to Congress the results of that study
6 within 1 year of the enactment of this Act.

Chairman SENSENBRENNER. And the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much. I'm hoping that we can find some collegiate spirit and recognize the importance of a young woman receiving counsel when she makes this significant decision. Frankly, I believe that we would honor the integrity of the Constitution if we would allow a young woman her relationship with her God and her counsel to help her make these decisions.

My amendment, the first amendment in the en bloc, allows for the young woman to consult with clergy, godparents, aunts, uncles, or first cousins, and that conduct by those individuals would not be criminalized. It's a very simple amendment but necessary because it helps to eliminate the excessive punitive nature of this legislation. A young woman should not lose her right to seek counsel and guidance from a member of the clergy, her godparent, or the family member enumerated in the text of the amendment.

Twenty-three States follow all provisions of the Child Custody Protection Act which make it a Federal crime for an adult to accompany a minor across State lines. Ten States have a provision that requires some parental notice, but other adults may be notified. And 17 States have no law restricting a woman's access to abortion in this case. The law, of course, is confused, and I think it's inappropriate for the Federal law to intrude on States who do not have any prohibition whatsoever. This allows for an expanded list of individuals not to be criminalized, and I ask my colleagues to support it.

A second amendment deals with asking for a GAO study detailing the impact of the number of unsafe and illegal abortions performed on minors who would be affected by this law and report to Congress the results of that study within a year of the enactment of this law. This law is suggested to be corrective. I would argue that it's going to increase the number of unsafe abortions because young women are going to be forced into the back alleys again because they cannot find a way in an open way to counsel with individuals, to seek clergy support, and, frankly, it is going to take us back as opposed to take us further.

I'd ask my colleagues to support these amendments, and I yield my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. Let me address the study first. I would oppose both. The amendment I believe should be defeated because there is no evidence that these laws have led to an increase in illegal abortions. During the Committee testimony, we had one of our witnesses, Professor Teresa Stanton Collett. She testified that—and I will quote—"Parental involvement laws are on the books in over two-thirds of the States, some for over 20 years, and there's almost no case where it's been established that these laws led to parental abuse or to self-inflicted injury, and there's no evidence that these laws have led to an increase in illegal abortions." I don't think the study is necessary.

Now, relative to the grandparents and aunts and uncles and the rest, I already stated previously so I'm not going to go into as much detail, but the folks mentioned in the amendment, they don't have the authority now to authorize any medical procedure for a minor child. I mean, even ear piercings or anything else, disbursing of aspirin, any of those types of things, has to be the parents who do this. So there's no reason that we can make something that can be so significant to this child's life or teenager's life as having an abortion that the parents shouldn't be involved. The parents have the best interest of the children involved. We've got the bypass procedure if you have a bad parent, as has been argued time and again on the other side. So there's really no reason for this amendment. I oppose it.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Ms. JACKSON LEE. I thank the gentleman very much, and I really appreciate how you have sought to engage.

Let me just say with respect to the first amendment, we should expand rights, not deny rights. It's interesting in the most recent case we're willing—even though it was by law that Terry Schiavo had the guardianship of her spouse, we denied parental rights. Obviously, she was an adult.

In this instance, however, you have three different—three different positions that States have taken: strict rules, less strict, and no rules. This is a Federal law that you are impacting on these States, and there should be flexibility. Clergy should not be denied.

On the study, the reason for the study is that this is a new Federal law that will impact more greatly and more severely, and, therefore, I believe it's important to determine how many illegal abortions will occur because of this law. We want to do right, I would assume, and I'd hope my colleagues with support both amendments.

Mr. CHABOT. Well, reclaiming my time, as I stated before, during the hearing we had experts who indicated that it was not felt that there would be an increase in illegal abortions. And, secondly, again, I just want to reiterate that we believe that parents are the people that are best in a position to make these types of decisions for their minor children, not the aunts or uncles or grandparents or taxidrivers or anybody else. And I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendments offered by the gentlewoman from Texas, Ms. Jackson Lee, en bloc. Those in favor will say aye? Opposed, no?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The noes appear to have it.

Ms. JACKSON LEE. Mr. Chairman, a rollcall.

Chairman SENSENBRENNER. A rollcall is ordered. Those in favor of the Jackson Lee amendments en bloc will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no. Mr. Smith?

Mr. SMITH OF TEXAS. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. No.
The CLERK. Mr. Lungren, no. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
[No response.]
The CLERK. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Ms. Sanchez?
[No response.]
The CLERK. Mr. Smith?
Mr. SMITH OF WASHINGTON. Aye.
The CLERK. Mr. Smith, aye. Mr. Van Hollen?
Mr. VAN HOLLEN. Aye.
The CLERK. Mr. Van Hollen, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members in the chamber who wish to cast or change their votes? The gentleman from Florida, Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. Further Members who wish to cast—Mr. Watt of North Carolina?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Chairman SENSENBRENNER. The clerk will report.
The CLERK. Mr. Chairman, there are 13 ayes and 20 noes.
Chairman SENSENBRENNER. And the amendments are not agreed to.
Are there further amendments? If there are no further amendments, a reporting quorum is present. Without objection, the Subcommittee amendment in the nature of a substitute laid down as the base text is adopted. The question occurs on the motion to report the bill H.R. 748 favorably as amended. All in favor will say aye? Opposed, no?
The ayes appear to have it—a recorded vote is requested and will be ordered. Those in favor of reporting H.R. 748 favorably as

amended will as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH OF TEXAS. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye. Mr. Lungren?

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye. Mr. Inglis?

Mr. INGLIS. Aye.

The CLERK. Mr. Inglis, aye. Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye. Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye. Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye. Mr. Issa?

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye. Mr. Flake?

[No response.]

The CLERK. Mr. Pence?

Mr. PENCE. Aye.

The CLERK. Mr. Pence, aye. Mr. Forbes?

Mr. FORBES. Aye.

The CLERK. Mr. Forbes, aye. Mr. King?

Mr. KING. Aye.

The CLERK. Mr. King, aye. Mr. Feeney?

[No response.]

The CLERK. Mr. Franks?

Mr. FRANKS. Aye.

The CLERK. Mr. Franks, aye. Mr. Gohmert?

[No response.]

The CLERK. Mr. Conyers?

Mr. CONYERS. No.

The CLERK. Mr. Conyers, no. Mr. Berman?

[No response.]

The CLERK. Mr. Boucher?

[No response.]

The CLERK. Mr. Nadler?

[No response.]

The CLERK. Mr. Scott?

[No response.]

The CLERK. Mr. Scott—Mr. Watt?

[No response.]

Chairman SENSENBRENNER. The clerk will continue to call the roll.

The CLERK. Mr. Scott?

Mr. SCOTT. No.

The CLERK. Mr. Scott, no. Mr. Watt?

Mr. WATT. No.

The CLERK. Mr. Watt, no. Ms. Lofgren?

Ms. LOFGREN. No.

The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?

Ms. JACKSON LEE. No.

The CLERK. Ms. Jackson Lee, no. Ms. Waters?

Ms. WATERS. No.

The CLERK. Ms. Waters, no. Mr. Meehan?

Mr. MEEHAN. No.

The CLERK. Mr. Meehan, no. Mr. Delahunt?

[No response.]

The CLERK. Mr. Wexler?

Mr. WEXLER. No.

The CLERK. Mr. Wexler, no. Mr. Weiner?

Mr. WEINER. No.

The CLERK. Mr. Weiner, no. Mr. Schiff?

Mr. SCHIFF. No.

The CLERK. Mr. Schiff, no. Ms. Sanchez?

Ms. SANCHEZ. No.

The CLERK. Ms. Sanchez, no. Mr. Smith?

Mr. SMITH OF WASHINGTON. No.

The CLERK. Mr. Smith, no. Mr. Van Hollen?

[No response.]

The CLERK. Mr. Chairman?

Chairman SENSENBRENNER. Aye.

The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Members who wish to cast or change their votes? The gentleman from Arizona, Mr. Flake?

Mr. FLAKE. Aye.

The CLERK. Mr. Flake, aye.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler?

Mr. NADLER. No.

The CLERK. Mr. Nadler, no.

Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from——

Mr. SCOTT. Could I ascertain how I'm recorded?

Chairman SENSENBRENNER. How is the gentleman from Virginia recorded?

The CLERK. Mr. Chairman, Mr. Scott is recorded as a no.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will report.

The CLERK. Mr. Chairman, there are 20 ayes and 13 noes.

Chairman SENSENBRENNER. And the amendment to report the bill favorably as amended is agreed to. Without objection, the staff will be directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional, dissenting, supplemental, or minority views.

[Intervening business.]

Chairman SENSENBRENNER. The Committee stands adjourned.

[Whereupon, at 4:02 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly dissent from H.R. 748. This legislation will increase health risks to young women who choose to have an abortion, is anti-family, anti-physician, and is clearly unconstitutional.

H.R. 748 consists of two dangerous and objectionable new criminal laws—proposed new 18 U.S.C. sections 2431 and 2432. The proposed new section 2431—the Travel Provision—contains the provisions of the bill previously known as the "Child Custody Protection Act," which would impose criminal (including up to 1 year in prison) and civil penalties upon a person other than a parent—including a grandmother, aunt, sibling, or clergy member—who helps a teen cross certain state lines for an abortion unless the teen had already fulfilled the requirements of her home state's law restricting teens' abortions.[1]

The proposed new section 2432—the Federal Notification Provision—would create a sweeping new parental notification requirement on young women who need abortion services in a state where they do not reside, by imposing criminal (up to 1 year in prison) and civil penalties on physicians that do not provide at least a 24 hours notice to the parent, even where the parent brings his or her child to the physician.[2] Significantly, neither the Travel Provision (section 2431) nor the Federal Notification Provision (section 2432) contain any exception for when an abortion may be necessary to protect a teen's health, in violation of Supreme Court precedent.

In effect, H.R. 748 will make those state laws that the Majority prefers (those requiring involvement of a parent or guardian) controlling in states with laws that it does not like (those allowing other adults to receive notice or provide consent or with no parental involvement requirements). This is an unprecedented Congressional intrusion into what has traditionally been an arena in which each state regulates its own citizens.

It is important to note that twenty-seven states and the District of Columbia either have no parental involvement laws or a law more lenient than the bill's definition of a "parental involvement law." Thus, within those states, representing approximately 57% of

[1] The proposed law would not require that the defendant know that the state's parental involvement law has not been satisfied, or that the defendant intend to aid in its circumvention. At the subcommittee markup, Representative Chabot offered an amendment that eliminated a possible affirmative defense in the original bill that the physicians could use any information or "compelling facts" from the minor herself in order to not comply with this bill. The amendment changed the bill to only allow for actual evidence from the parents or reasonable documentation from a court as affirmative defenses.

[2] If the physician is in a state where no parental consent or notification law or where a more reasonable parental consent or notification law is in force, this section requires that a doctor or a member of his staff provide "actual notice" to the parents of a patient in person at least 24 hours before the doctor provides the abortion. If the doctor is unable to provide actual notice after making a reasonable effort, then the doctor must provide 48 hours "constructive notice" instead.

the United States population, H.R. 748 will impose the laws of the other twenty-three states, representing just 43% of the population.[3]

The legislation is opposed by a wide variety of groups that are committed to reducing teenage pregnancy and protecting a woman's right to choose, such as Planned Parenthood, NARAL Pro-Choice America, the American Civil Liberties Union, and the Center for Reproductive Rights.[4] In addition, major medical associations, including the American Medical Association, the American College of Obstetricians and Gynecologists, the American College of Physicians, and the American Public Health Association—have longstanding policies opposing mandatory parental-involvement laws, such as H.R. 748, because of the dangers they pose to young women and the need for confidential access to physicians. The American Academy of Pediatrics and Society for Adolescent Medicine oppose the legislation because it increases the risk of harm to adolescents by delaying or denying access to appropriate medical care.

We believe the bill denies young women facing unintended pregnancies the assistance of trusted adults, endangers their health, and violates their constitutional rights. For these reasons, and the reasons set forth below, we dissent from H.R. 748.

I. LEGISLATION ENDANGERS YOUNG WOMEN

Both the Travel Provision (section 2431) and the Federal Notification Provision (section 2432) will operate to endanger the lives and health of young women.

With regard to the Travel Provision, we would note that although an abortion is generally very safe, it is still far preferable and safer to permit a trusted friend or family member to drive a

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[3] Fewer than half of the states enforce a requirement for notification or consent of a parent:

- Twenty-three states have laws that appear to match the Teen Endangerment Act's restrictive definition of a "parental involvement law:" Alabama, Arizona, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.
- Ten states have parental involvement laws that do not limit the notification or consent requirement to a parent exclusively, but allow involvement of some other adult, such as a grandparent or other relative, or allow a physician to waive the parental involvement requirement in certain situations: Colorado, Delaware, Iowa, Maine, Maryland, North Carolina, Ohio, South Carolina, West Virginia, and Wisconsin.
- Eleven states have enacted parental involvement laws that are not enforced within the state because the laws are legally defective, as established by court rulings or Attorney General opinions: Alaska, California, Florida, Idaho, Illinois, Montana, Nevada, New Hampshire, New Jersey, New Mexico, and Oklahoma.
- The District of Columbia and the other six states—Connecticut, Hawaii, New York, Oregon, Vermont, and Washington—have not enacted forced parental involvement laws.

[4] Memorandum from the American Civil Liberties Union, to Members of the House Committee on the Judiciary (Mar. 2, 2005) (on file with the minority staff of the House Judiciary Committee); Memorandum from Planned Parenthood, to Members of the House Committee on the Judiciary (Apr. 12, 2005) (on file with minority staff of the House Judiciary Committee); Memorandum from National Abortion and Reproductive Rights Action League, to Members of the House Committee on the Judiciary (Apr. 12, 2005) (on file with the minority staff of the House Judiciary Committee); American Medical Association, Ethics Op. 2.015 (1994) (discussing mandatory parental consent for minors seeking an abortion); National Abortion Federation, Teen Endangerment Act Repackaged: A Menacing Maze for Young Woman, Their Families, and Their Doctors (2005) *available at* http://www.prochoice.org/policy/national/teen—endangerment.html; Center for Reproductive Rights, The Teen Endangerment Act: Harming Young Women Who Seek Abortions, (April 2005) *available at* http://www.reproductiverights.org/pdf/pub—bp—tea.pdf. For organizations opposed to nearly identical Federal parental consent legislation, see also Letter from American Academy of Pediatrics, American College of Obstetricians and Gynecologists; American Medical Women's Association, Society for Adolescent Medicine, to Members of the House of Representatives (Apr. 2, 2001).

woman home from this surgical procedure.[5] Moreover, responsible health care providers do not provide these services unless they are confident the patient has someone who will accompany them and assist them following the procedure. Unfortunately, under the Travel Provision, teenagers who are unable to satisfy a state parental involvement law—either because they cannot tell one parent (or in some states, both parents) about their pregnancy or because they have no fair chance of obtaining a judicial bypass—will be forced to travel alone across state lines to obtain an abortion.

As much as we would prefer the active and supportive involvement of parents in young people's major decisions, it is not always realistic to expect them to seek parental involvement willingly in the sensitive area of abortion. Where a child is unwilling or unable to seek parental consent, the results can be tragic. The testimony of Bill and Mary Bell before the Constitution Subcommittee during consideration of predecessor legislation in the 105th Congress is telling in this regard.[6]

The Bells were the parents of a daughter who died after an illegal, unsafe abortion that she sought instead of telling her parents about her pregnancy, notwithstanding Indiana's parental notice law. A Planned Parenthood counselor in Indiana informed Becky that she would have to notify her parents or petition a judge in order to obtain an abortion. Becky responded that she did not want to inform her parents because she did not want to hurt them. She also replied that if she could not tell her parents, with whom she was very close, she would not feel comfortable asking a judge she did not even know. Instead of traveling 110 miles away to Kentucky, Becky opted to undergo an illegal abortion close to her home. Tragically, Becky developed serious complications from her illegal abortion that caused her death. It is unlikely that H.R. 748 could have changed this outcome or would have convinced Becky to confide in her parents about her pregnancy. In fact, the new restrictions and liabilities imposed on health care providers under this bill would undoubtedly make such situations even worse.

Some young women justifiably fear that they would be physically abused if forced to disclose their pregnancy to their parents. Nearly one-third of minors who choose not to consult with their parents have experienced violence in their family, feared violence, or feared being forced to leave home.[7] Enacting this legislation and forcing young women in these circumstances to notify their parents of their

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[5] Many teenagers seeking an abortion must travel out-of-state to obtain the procedure, either because the closest facility is located in a neighboring state or because there is no in-state provider available. In fact, currently 86% of counties—home to 32% of women of childbearing age—lack an physician. *See* Stanley K. Henshaw, *Abortion Services in the United States, 1995 and 1996,* 30 FAM. PLAN. PERSP. 262, 266 (1998).

[6] *See Hearing on H.R. 3682: The Child Custody Protection Act before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Cong. 17 (May 28, 1998) (statement of Bill and Mary Bell, submitted for the record); *See also* THE NATIONAL ABORTION FEDERATION, THE TRUE VICTIMS OF S. 1645/H.R. 3682 THE TEEN ENDANGERMENT ACT (1998) (describing the case of Keishawn, an eleven year old from Maryland, who was impregnated by her step-father, and sought an abortion with the assistance of her aunt, Vicky Simpson, who was awaiting an order granting her custody of Keishawn. Upon learning of the pregnancy, Keishawn's doctors in Maryland recommended that Keishawn have anesthesia during the abortion procedure, but none of the hospitals in Maryland would allow the abortion to be provided at their facility. As a result, Keishawn's aunt sought the attention of a specialist practicing in a neighboring state, who agreed to provide the abortion. Under H.R. 748, Vicki could have been federally prosecuted for helping her young niece cope with this pregnancy resulting from incest).

[7] *See* Henshaw, *supra* note 10, at 196.

pregnancies will only exacerbate the dangerous cycle of violence in dysfunctional families. This is the lesson of Spring Adams, an Idaho teenager who was shot to death by her father after he learned she was planning to terminate a pregnancy caused by his acts of incest.[8] It is clear that when a young woman believes that she cannot involve her parents in her decision to terminate a pregnancy, the law cannot mandate healthy, open family communication.

We are well aware of proponents' claims that the travel provision would protect the rights of minors who cannot obtain parental consent because they have the option to appear before judges and obtain a judicial bypass for any parental involvement laws. While bypasses may have some theoretical benefits, in many cases it is difficult if not impossible for troubled young women to obtain them. Some teenagers live in regions where the local judges consistently refuse to grant bypasses, regardless of the facts involved. For example, one study found that a number of judges in Massachusetts either refuse to handle abortion petitions or focus inappropriately on the morality of abortion.[9] Other young women may live in small communities where the judge may be a friend of the parents, a family member, or even the parent of a friend. Still others may live in regions where the relevant courts are not open in the evenings or on weekends, when minors could seek a bypass without missing school or arousing suspicion.[10]

The difficulties in obtaining a judicial bypass were clearly illustrated by Ms. Billie Lominick during her testimony before the Subcommittee on the Constitution. Ms. Lominick was a 63-year-old grandmother who helped a pregnant minor from a physically and sexually abusive household cross state lines to obtain an abortion.[11] Ms. Lominick testified that her assistance was essential because the minor was unable to find any judge in her home state of South Carolina who would hear her judicial bypass petition.[12]

Moreover, reliance on the judicial bypass system as an effective alternative to parental consent understates the intimidating effect of seeking a court-sanctioned abortion. Many minors fear that the judicial bypass procedure lacks the necessary confidentiality. The American Medical Association has noted that "because the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. . . . The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since . . . 1973."[13]

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[8] *See* Maggie Boule, *An American Tragedy,* SUNDAY OREGONIAN, Aug. 27, 1989.

[9] *See* Patricia Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions,* 15 FAM. PLAN. PERSP. 259 (1983); *see also Hodgson v. Minnesota,* 487 U.S. 417, 476 (1990) (finding that in Minnesota, many judges refuse even to hear bypass proceedings); *In re T.W.,* 551 So. 2d 1186, 1190 (Fla. 1989) (describing how a judge in Florida, after denying a bypass petition to a teenage girl who was in high school, participated in extracurricular activities, worked 20 hours a week, and baby-sat regularly for her mother, suggested that he, as a representative of the court, had standing to represent the state's interest when the minor appealed the denial).

[10] The courts in Massachusetts, Minnesota, and Rhode Island are not open in the evenings or on weekends. *See* Donovan, *supra,* at 259.

[11] *See Hearing on H.R. 1218 'The Child Custody Protection Act' before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 106th Cong. 23 (May 27, 1999) (statement of Billie Lominick).

[12] *Id.*

[13] *See* Council on Ethical and Judicial Affairs, American Medical Association, *Mandatory Parental Consent to Abortion,* JAMA, Jan. 6, 1993, at 83.

Many young women, faced with the violation of confidentiality or the prospect of embarrassment and social stigma would resort to drastic measures rather than undergo the humiliation of revealing intimate details of their lives to a series of strangers in a formal, legal process. Young women's concerns about confidentiality are especially acute in rural areas. For example, in one case a minor discovered that her bypass hearing would be conducted by her former Sunday school teacher.[14]

With respect to the Federal Notification Provision, the section requires a 24-hour or more waiting period and written notification, with no medical emergency exception, even if a parent accompanies his or her daughter to an out-of-state physician and consents to the abortion services. In such cases, this requirement acts as a built-in mandatory delay, imposing logistical and financial hardships on functional families who are trying to support their daughters. Even in a health emergency, this bill robs a parent of his or her ability to authorize immediate care. For example, if a parent and daughter were vacationing together in California and the parent brought her daughter to a hospital for emergency abortion services, this provision would needlessly require a doctor to wait 24 hours before providing that care.

We would also observe that the Federal Notification Provision's very limited exceptions provide no safety net for the most vulnerable teens. For example, the section's "exception" for teen victims of certain forms of abuse only applies if the young woman "declares in a signed written statement that she is the victim of abuse." This "exception" ignores the painful reality that most abused teens are too afraid to tell anyone that they are being abused. Moreover, because the bill requires the doctor to notify the authorities of the abuse before the abortion is performed, many teens will not report the abuse for fear that their parents will discover the abuse report. As Justice O'Connor aptly stated in *Hodgson v. Minnesota,* an "exception to notification for minors who are victims of neglect or abuse is, in reality, a means of notifying the parents."[15] Morever, "[t]he combination of the abused minor's reluctance to report sexual or physical abuse . . . with the likelihood that invoking the abuse exception for the purpose of avoiding notice will result in notice, makes the abuse exception less than effectual."[16]

II. LEGISLATION IS ANTI-FAMILY

H.R. 748 is also overtly hostile to families. Despite the proponents' belief that the bill would enforce parents' right to counsel their daughters, the reality is that it is impossible to legislate complex family relationships. Studies reveal that more than half of all young women who do not involve a parent in a decision to termi-

[14] *See Memphis Planned Parenthood v. Sundquist,* No. 3:89–0520, slip op. at 13 (M.D. Tenn. Aug. 26, 1997); *See also* Tamar Lewin, *Parental Consent to Abortion: How Enforcement Can Vary,* N.Y. TIMES, May 29, 1992, at A1 (describing how a judge in Toledo, Ohio denied permission to a 17½-year-old woman, an "A" student who planned to attend college and who testified she was not financially or emotionally prepared for college and motherhood at the same time, stating that the girl had "not had enough hard knocks in her life").

[15] 497 U.S. 417, 460 (1990) (O'Connor, J. concurring) (noting that an abuse report "requires the welfare agency to immediately 'conduct an assessment;'" if the "agency interviews the victim, it must notify the parent of the fact of the interview" and the parent has the right to access te investigation record).

[16] *Id.*

nate a pregnancy choose to involve another trusted adult, who is very often a relative.[17]

Although the Travel Provision (section 2431) exempts parents from criminal and civil liability, non-parent adults who are raising a child will be swept in by the bill's prohibitions. This is because the exception is excessively narrow and refers only to a parent or guardian; a legal custodian; or a person designated by a state's parental involvement law as a person to whom notification, or from whom consent, is required.[18] Several amendments were offered during the markup to ameliorate these harsher consequences of section 2431. Representative Nadler offered an amendment that would have exempted the minor's grandparent or adult sibling.[19] Similarly, Representative Jackson Lee offered an amendment exempting clergy, godparents, aunts, uncles, or first cousins that was rejected by a vote of 13 to 20.[20]

The bill also illogically sanctions the criminal activity of a parent by authorizing lawsuits to be brought by parents suffering "legal harm" against any person assisting a minor in obtaining an abortion across state lines.[21] The private civil remedy aspect of both the Travel and Federal Notification Provisions are so broad that even a father who committed rape or incest against his own daughter would be empowered to bring a lawsuit seeking compensation under the legislation. If the pregnancy of the minor is a result of incest with her father, the minor must still comply with any parental consent or notification law in the state of her residence under this bill unless she signs a written statement and agrees to allow the physician to notify the authorities about the sexual abuse.[22] If the minor decides not to sign a written statement or notify the authorities and is accompanied by her grandmother across state lines to a doctor in another state for abortion services, the father who committed the incest can bring a civil action against the grandmother and the doctor, effectively profiting from his own criminal wrongdoing.[23]

Representative Waters offered an amendment at markup that would have provided an exception to this civil liability if the pregnancy was the result of sexual contact with the parent or any other person that had permanent or temporary custody of the minor.[24] Representative Waters also offered an additional amendment that would only provide an exception if the pregnancy resulted directly from acts of incest.[25] Both amendments were defeated.

III. LEGISLATION IS DANGEROUSLY OVER BROAD

Supporters of this bill claim the Travel Provision merely targets predatory individuals who force and coerce a minor into obtaining an abortion. However, the net cast by this section is far broader

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[17] *See* Henshaw, *supra,* at 207.
[18] H.R. 748, § 2 (proposed 18 U.S.C. § 2431(e)(2)).
[19] *Child Interstate Abortion Notification Act: Markup of H.R. 748 Before the House Comm. on the Judiciary,* 109th Cong. 37–38 (2005) (statement of Rep. Nadler).
[20] *Id.* at 76, 81 (2005) (statement of Rep. Jackson Lee).
[21] H.R. 748, § 2 (proposed 18 U.S.C. § 2431(d)).
[22] *Id.* § 3 (proposed 18 U.S.C. § 2432(b)(3)).
[23] *Id.* (proposed 18 U.S.C. § 2432(c)).
[24] *Child Interstate Abortion Notification Act: Markup of H.R. 748 Before the House Comm. on the Judiciary,* 109th Cong. 17–18 (2005) (statement of Rep. Waters).
[25] *Id.* at 24–25.

and more problematic. The Travel Provision includes a criminal penalty against persons who "knowingly transport an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion."[26] In other words, this provision would make it a *federal crime* to assist a pregnant minor to obtain an abortion that would be lawful in the state in which it was provided. The bill does not require proof of any intent to avoid state parental consent laws. Anyone simply transporting a minor—a bus driver, taxi driver, family member or friend—could be jailed for up to a year or fined or both. The same applies to emergency medical personnel who may be aware they are taking a minor across state lines to obtain an abortion but would have no choice if a medical emergency were occurring.

Similarly, a nurse at a clinic providing directions to a minor or her driver could be convicted as an accessory under this legislation. A doctor who procures a ride home for a minor and the person accompanying her because of car troubles coupled with the minor's expressed fear of calling her parents for assistance could be convicted as an accessory after the fact. A sibling of the minor who merely agrees to transport a minor across state lines without any knowledge of any intent to evade the resident state's parental consent or notification laws could be thrown in jail and convicted of a conspiracy to violate this statute.

The supporters of this bill inaccurately compare it to the Mann Act, which prohibits the transport of "any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the U.S., with intent that such individual engage in prostitution, or in a sexual activity for which any person can be charged with a criminal offense. . . ."[27]

The Mann Act, like most other criminal laws, contains a specific *mens rea* component, that requires that criminally liable individuals have an intention to break the law.[28] A person convicted of possessing stolen property, for example, must know or have reason to know that the property they possess is stolen. The Travel Provision has no such specific intent requirement and, therefore, imposes strict criminal liability for anyone in violation.[29] Where the Mann Act purports to guard against corruption of minors, a laudable but not constitutionally-protected purpose, the Travel Provision imposes significant restrictions on a constitutionally-protected right to an abortion. Moreover, the Mann Act requires that the minor be transported across state lines for the purpose of engaging in an act that is illegal, while this legislation would impose civil and criminal liability for the act of taking a minor across state lines to engage in an activity which is legal in that second state, and constitutionally protected.[30]

In an attempt to clarify who would face criminal or civil liability, Representative Scott offered two amendments to the Travel Provision. The first would have exempted taxicab drivers, bus drivers, and others in the business transportation profession from the

[26] H.R. 748, § 2 (proposed 18 U.S.C. § 2431(a)(1)).
[27] 18 U.S.C. § 2421 (2000).
[28] *Id.*
[29] The affirmative defense available in H.R. 748 does not address this problem.
[30] *Id.*

criminal provisions of this statute.[31] This amendment was defeated by a vote of 13 to 17.[32] Representative Scott also offered an amendment that would have limited criminal liability to persons who had committed the crimes in the first degree, excluding potential defendants who had helped the minor after the fact, or individuals with a tangential role in the act.[33] The amendment was defeated by a vote of 12 to 18.

IV. LEGISLATION IMPOSES CONVOLUTED AND COMPLEX LEGAL REQUIREMENTS.

Both the Travel and Federal Notification Provisions operating separately and in conjunction, serve to impose an impossibly complex patchwork of legal requirements, on both young women and physicians. In essence, the legislation creates a Byzantine system of parental notification mandates that would impose extra hurdles on some teens and leave others with no options and expose physicians to new and unprecedented legal liability.

For example, under the Travel Provision, many young women would have to comply with two states' teen abortion laws. Thus, a minor who travels with assistance from Missouri to Kansas for an abortion must comply with both Missouri's law and Kansas' law. A young woman who is unable to involve her parents in her abortion decision, and thus pursues a court waiver, must therefore obtain a judicial bypass in *both* her home state and the provider's state before she can obtain an abortion.

Likewise, the Federal Notification Provision also imposes complex and absurd requirements for physicianss and their patients. As noted above, section 2432 would require that the physician give 24 hours "actual notice" to a parent before performing an abortion on a minor from out-of-state. This provision would apply even if the minor came from a state that did not have a parental consent or notification law, and even if the parent went to the other state fully intending and approving of his or her child's abortion. The section defines "actual notice" as "the giving of a written notice directly, in person." This section would seem to require that the physician or a member of her staff travel out-of-state to visit the parents of the patient in person. The section would allow for the physician to give "constructive notice" to the patient's parents if it is not possible to provide them with "actual notice" after the physician has made a "reasonable effort" to do so. The section defines "constructive notice" as notice that is given by certified mail, to the last known address of the person being notified with delivery deemed to have occurred 48 hours following noon—on the day after the mailing occurred. The section does not define "reasonable effort."

Consider the incredible new burdens this provision imposes on physicians. Under the threat of civil and criminal penalties, the Federal Notification Provision requires doctors to make "reasonable" efforts to provide *in-person,* written notice of an out-of-state teen's parents. It provides no guidance to help a physician know

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[31] *Child Interstate Abortion Notification Act: Markup of H.R. 748 Before the House Comm. on the Judiciary, 109th Cong. 49–51 (2005) (statement of Rep. Scott).*

[32] *Id.* at 61.

[33] *Child Interstate Abortion Notification Act: Markup of H.R. 748 Before the House Comm. on the Judiciary,* 109th Cong. 63 (2005) (statement of Rep. Scott).

what efforts suffice as "reasonable" to track down a parent in another state to provide this in-person written notice. This requirement places extremely burdensome, if not impossible, demands on doctors. Because many communities do not have physicians, women often have to travel to a neighboring state to obtain an abortion; thus, doctors could routinely be forced to travel hundreds of miles out-of-state in order to comply with the bill's in-person notification mandate. This Federal in-person notification requirement is more onerous than even the most stringent state laws. Moreover, because the bill operates differently depending on a teen's state of origin, it requires health care providers to be familiar with the legal regimes of all 50 states and to understand the interaction between these varying legal regimes and the local state laws of the provider.

The requirements on physicians if a young woman informs him or her that she is a victim of abuse are equally convoluted. Under Section 2432 such a conversation then triggers a new mandate on the doctor to not only notify the "authorities" of the parents' abuse, but to provide such notification in another state. Each state has its own legal requirements in this area, and its own agencies to which the behavior must be reported—and in some cases the reports must be filed in the county. Additionally, the Federal Notification Provision establishes no mechanism for this new type of cross-state reporting, and does not specify in what manner or with what level of detail the reporting must occur. This is far from being a mere bureaucratic headache; the legislation gives doctors no guidance about to whom or what detail the report must be made, and therefore they cannot be sure that even their most thorough and good-faith attempts to comply with the law will keep them from risking fines or a prison sentence.

It is important to note that these requirements will quite frequently come into play when young women are forced to cross state lines to obtain an abortion, not because of differing laws, but because of sheer availability. As of 2000, there were no known physicians in 87 percent of the counties in the United States.[34] For many young women, the closest available physician is located in another state, and others may be unable to obtain an abortion anywhere in their home state.

V. CONSTITUTIONAL CONCERNS

By imposing substantial new obstacles and dangers in the path of a minor seeking an abortion, the Travel and Federal Notification Provisions raise at least three serious constitutional concerns.

First, the legislation raises numerous federalism and equal protection problems. It is impermissible to pass a law which has the effect of imposing one state's legal requirements on another state, as both section 2431 and 2432 do. In essence the bill imposes on states and physicians the laws of the states that have the most stringent requirements on abortion. Federalism dictates that one has the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in another state as delin-

[34] Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Services in the United States in 2000,* 35 Perspectives on Sexual and Reproductive Health 6 (2003).

eated by the Privileges and Immunities Clause of the Fourteenth Amendment.[35]

The Court held in Saenz that a state cannot discriminate against the citizen of another state when there is no substantial reason for the discrimination except for the fact that they are citizens of another state.[36] The Court has found that certain rights are protected by the Privileges and Immunities Clause of the Fourteenth Amendment if they bear "upon the vitality of the Nation as a single entity" or those rights that are deemed "fundamental."[37] The Court in *Saenz* specifically referred to *Doe v. Bolton* where it held that a state could not limit access to its medical care facilities for abortions to in-state residents.[38] A state must treat all that are seeking medical care within that state in an equal manner.[39] This protection would extend to minors since the Court held in *Danforth* that minors have a constitutional right to choose whether to terminate a pregnancy or not.[40] The Court further held that Congress also does not have the power to validate a law that violates the rights guaranteed by the Fourteenth Amendment.[41]

In the present case, both the Travel and Federal Notification Provisions cause young women to carry their own state laws with them, "strapped on their backs"[42] when they travel to other states. For example, this bill treats a young woman who travels to a state, or who resides in a state temporarily (such as a college student), differently than a minor living in that state. Thus, because New York does not have a law restricting teen abortions, a minor living in New York need not notify her parents in order to obtain an abortion. However, a minor who travels into New York, or who temporarily resides in New York, is saddled with an entirely different legal scheme: she must either obtain a court bypass from her home state or, if no bypass is available, be subject to the bill's mandatory notice requirements. The bill thus would discriminate against teenagers within the same state on the basis of their state or origin and would deprive teens of their right to travel to engage in conduct legal in another state in violation of constitutionally protected rights to equal protection and interstate travel.

Second, both the Travel and Federal Notification Provisions have an unconstitutionally narrow life exception for the woman and no health exception. These exceptions are especially important in light of the tremendous uncertainty and onerous civil and criminal penalties responsible adults and health care providers would face. In particular, the delay that the bill's notice requirements would im-

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[35] *Saenz v. Roe,* 526 U.S. 489, 500–01 (1999).

[36] *Id.* at 502.

[37] *Baldwin v. Fish & Game Comm'n of Mont.,* 436 U.S. 371, 382–83 (1978).

[38] *Doe v. Bolton,* 410 U.S. 179, 200 (1973).

[39] *Id.*

[40] *Planned Parenthood of Cent. Mo. v. Danforth,* 428 U.S. 52, 74–75 (1976).

[41] *Id.* at 508. One may argue that this means that Congress itself cannot pass laws that treat non-residents visiting a particular state differently than residents of that particular state.

[42] As Professors Laurence Tribe of Harvard Law School and Peter Rubin of Georgetown University Law Center explained that the predecessor version of this legislation "amounts to a statutory attempt to force this most vulnerable class of young women to carry the restrictive laws of their home states strapped to their backs, bearing the great weight of those laws like the bars of a prison that follows them wherever they go (unless they are willing to go alone)." Memorandum from Laurence H. Tribe & Ralph S. Tyler Professor of Constitutional Law, Harvard University and Peter J. Rubin, Visiting Associate Professor of Law, Georgetown University, to the House Comm. on the Judiciary, at 2 (September 2, 2001).

pose under section 2432 could prove fatal or dangerous to a young woman's health and future fertility.

The narrowness of the "life" exception in both sections—applying only "if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself" would also place health care providers in an impossible position. Just how severe must a physical threat to a woman's health be before a physician feels confident that a life exception may be invoked? How much would a court second-guess a medical decision of this type in a future court proceeding? What would be the cost of defending such a case even if a physician ultimately prevails in a civil or criminal case, or both? As the Supreme Court has recognized, laws containing life exceptions cannot pick and choose among life-threatening circumstances.[43]

The lack of any health exception is also constitutionally problematic. In *Stenberg v Carhart,* the Court held that a statute must provide a pre-viability and post-viability health exception in order to be constitutional.[44] The majority held that the Partial Birth Ban Act lacked a health exception required under *Roe* when the procedure is necessary in the doctor's judgment for the preservation of the health or life of the woman.[45] Any restriction on abortion must have an exception "where it is necessary, in appropriate medical judgment, for the preservation of the life or the health of the mother."[46] Yet the legislation contains no health exception whatsoever, in clear violation of Supreme Court precedent.[47]

Third, both the Federal Notification and Travel Provisions are in conflict with the courts holding that any restriction that has the purpose or effect of placing an "undue burden" on a woman's right to choose to have an abortion up until pre-viability is unconstitutional.[48] The Federal Notification Provision does this in two ways. As an initial matter, it denies many young women the option of obtaining a court waiver at all. This is because the bill takes away the option of going to court for those teens who live in a state with-

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[43] *Planned Parenthood of Southeastern Pa. v Casey,* 505 U.S. 833, 879 (1992).

[44] *Stenberg v. Carhart,* 530 U.S. 914, 930 (2000). Courts have held that the recently enacted Partial-Birth Abortion Act is unconstitutional because of concerns similar to those in *Stenberg, see Hope Clinic v. Ryan,* 249 F.3d 603, 604–05 (7th Cir. 2001); *Richmond Med. Ctr. for Women v. Gilmore,* 224 F.3d 337, 339 (4th Cir. 2000); *Planned Parenthood of Cent. N.J. v. Farmer,* 220 F.3d 127, 142 (3rd Cir. 2000). Additionally, courts have also struck down these statutes because they were overbroad. *See Little Rock Family Planning Servs. v. Jegley,* 192 F.3d 794, 797–98 (8th Cir. 1999).

[45] *Stenberg,* 530 U.S. at 938. The Court further stated that "where substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women's health" a health exception is needed. *Id.*

[46] *Id.* at 930 (quoting *Casey,* 505 U.S. at 879).

[47] *Stenberg v. Carhart,* 530 U.S. 914, 930 (2000) (determining that the partial-birth ban act did need a health exception when the procedure is necessary in the doctor's judgment for the preservation of the health or life of the woman); *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 879–80 (1992) (upholding a Pennsylvania statute that defined a medical emergency as a condition that requires an abortion of the fetus or a condition that would "create serious risk of substantial and irreversible impairment of a major bodily function" because it would not impose an undue burden on a woman's right to choose); *Roe v. Wade,* 410 U.S. 113, 164–65 (1973) (finding that a state may regulate or proscribe post-viability abortions with the exception where it is necessary for the preservation of the life or health of the woman).

[48] *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 874 (1992).

out an enforceable teen abortion restriction[49] and who seek an abortion in another state that either does not have an enforceable teen abortion law or has a law that does not meet the bill's standards for such a law.[50] In these situations, the minor's home state has no waiver system in place and the bill does not permit use of another state's waiver system. Accordingly, the teen will not be able to obtain an abortion until the doctor provides notice of the abortion to one of her parents. The Federal Notification Provision thus makes parental involvement mandatory for these teens with absolutely no option for a court bypass. The U.S. Supreme Court has stated that, in order to be constitutional, a statute requiring parental involvement must offer an alternative such as a judicial bypass.[51]

Moreover, the provision in the Federal Notification Provision requiring that the doctor must provide 24 hours actual notice or at least 48 hours more constructive notice to the parents of the minor before providing the abortion care would also appear to impose an undue burden on a woman's right to choose.[52] The Court in *Casey* found the reason the 24-hour delay was constitutional was because there was a health exception for the preservation of the life and health of the woman.[53] Without this exception present, the Federal Notification Provision would likely be held unconstitutional because these delays will put an "undue burden" on a woman's right to choose.

With respect to the Travel Provision, a young woman who determined that she could not involve her parents may have to go through a judicial bypass in two states, also constituting an undue burden. For instance, if the young woman lived in a state with a consent law, but the closest health care provider was in a state that also had a consent law, the minor would have to go through the judicial bypass in each state if she felt that she could not obtain either parent's consent. Requiring two judicial proceedings necessarily results in delays, thereby further compounding the medical risk of the procedure. In addition, the judicial bypass process often does not provide a real alternative for minors who need to obtain abortions. Many states have judicial bypass procedures that are applied inconsistently by local judges making them an unreliable alternative for minors residing in those states.[54]

CONCLUSION

While promoting the involvement of parents in decisions concerning the pregnancy of a minor is a laudable and desirable goal, the heavy-handed approach in this legislation that ignores the real circumstances affecting real people attempting to grapple with some of life's most difficult decisions is neither sound, nor is it hu-

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[49] The following states do not have enforceable parental involvement laws: AK, CA, CT, FL, HI, ID, IL, MT, NV, NH, NJ, NM, NY, OK, OR, VT, WA, and D.C.

[50] H.R. 748, § 2 (proposed 18 U.S.C. § 2432 (d)(4)).

[51] *Hodgson v. Minnesota,* 497 U.S. 417, 420 (1990); *Ohio v. Akron Center for Reproductive Health,* 497 U.S. 502, 510 (1990).

[52] *Id.*

[53] *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 886 (1992).

[54] Dr. Michele Wilson, Associate Professor, University of Alabama-Birmingham, Statement (Sept. 1, 2001) (on file with author); Beverly Howard, Court-appointed Advocate and Attorney, Montgomery, Alabama (June 10, 1998) (on file with author); Bernadette McNabb, Executive Director, Knoxville Center for Reproductive Health (on file with author).

mane. The rights of parents are important, but the right of young people to seek out the protection of responsible adults in difficult and sometimes dangerous situations is a value Congress must respect. This bill violates these basic principles of humanity and regard for human dimension of these problems. It is reckless in its disregard for the welfare of young people in difficult situations.

JOHN CONYERS, Jr.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON LEE.
MAXINE WATERS.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
ANTHONY D. WEINER.
LINDA T. SÁNCHEZ.
ADAM SMITH.

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