June 28, 1999

(House)

H.R. 1218 - Child Custody Protection Act

(Rep. Ros-Lehtinen (R) FL and 129 cosponsors)

The Administration strongly opposes enactment of H.R. 1218 in its current form. If a bill is presented to the President that fails to address the concerns that are described below, the President's senior advisers will recommend that he veto it.

During Congressional consideration of almost identical bills during the 105th Congress, the Administration, in Statements of Administration Policy and in letters from former White House Chief of Staff Erskine Bowles to the House and Senate Committees on the Judiciary, stated that it would support properly crafted legislation that would make it illegal to transport minors across State lines for the purpose of avoiding parental involvement requirements. Unfortunately, H.R. 1218, as reported by the House Committee on the Judiciary, also fails to address a number of the critical concerns raised by the Administration. Specifically, the bill must be amended to:

-- Exclude close family members from criminal and civil liability. Under the legislation, grandmothers, aunts, and minor and adult siblings could face criminal prosecution for coming to the aid of a relative in distress.

-- Ensure that persons who only provide information, counseling, referral, or medical services to the minor cannot be subject to liability.

-- Address constitutional and other legal infirmities that the Department of Justice has identified in particular provisions of the legislation. These concerns were transmitted to the House Committee on the Judiciary on June 24, 1998, and again on June 15, 1999.

The Administration continues to be concerned that H.R. 1218 raises important federalism issues, including the rights of States to regulate matters within their own boundaries. The Administration believes, however, that legislation that addresses the concerns noted above, and that is carefully targeted at punishing non-relatives who transport minors across State lines for the purpose of avoiding parental involvement requirements, would mitigate the federalism concerns and the Administration's other concerns.

Pay-As-You-Go Scoring

H.R. 1218 could affect both direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of this bill is that it would have a net effect of less than $500,000.

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Child Custody Protection Act Guidance
July 1, 1999

Q: What is the Administration's response to the Child Custody Protection Act that passed the House of Representatives yesterday?

A: This Administration strongly opposes the Child Custody Protection Act, which passed the House of Representatives yesterday. If a bill is presented to the President that fails to address our concerns, the President's senior advisors will recommend that he veto it.

During Congressional consideration of nearly identical bills in the last Congress, the Administration, in Statements of Administration Policy and in letters from the former Chief of Staff, stated that it would support properly crafted legislation that would make it illegal to transport minors across State lines for the purpose of avoiding parental involvement requirements. Unfortunately, the bill that passed the House yesterday failed to address our concerns. Specifically, the bill must be amended to:

- Exclude close family members from criminal and civil liability. Under the legislation, grandmothers, aunts, and minor adult siblings could face criminal prosecution for coming to the aid of a relative in distress.
- Ensure that persons who only provide information, counseling, referral, or medical services to the minor cannot be subject to liability.
- Address constitutional and other legal problems in the bill.

We look forward to working with the Senate to address these critical issues.

Child Custody Protection Act S.661

Susanna Barnes
Peter Rubin - Georgetown Law
Elaine Holland - American Academy of Pediatrics

may come up in Senate this week

Senate — Fall - 1998 - leadership didn't get cloture so no vote
Some Senators are preparing amendments

House — approved 270-159
Rules comte did not allow substitute; no real amendments

WH has said it will veto

Criminal offense to help pregnant minor obtain lawful abortion
if she evades parental notice & consent laws of her state

states may not impose blanket consent / notice requirements —
need judicial bypass mechanism or else undue burden

Constitutional issues

(1) Federalism - violates Federalism by imposing
legal regime of one state on a P in another state
e.g. gambling, hunting
(SC) Sands v. Roe - Cal. can't limit welfare benefits to long-time residents
Doe v. Bolton - abortion

nothing like this since Fugitive Slave act

CCPA ②

violates right to interstate travel

imposes restriction only on minors
- but they have right to cross state lines
even if that right could be burdened
only imposes home state law when its more onerous
- it doesn't go both ways

② violates DP Clause - reasonableness test
This is unreasonable means -
attempt to deter minors from engaging in conduct by making
it more dangerous (Casey v. US Population Services)
is unconstitutional
here - they are making it more dangerous

③ violates Casey's 1992 undue burden test

Pediatricians

importance of confidential health care
role of parents + other adults
implementation + monitoring

Sharon: message

① violates fundamental const. principles — esp. Federalism
- undermines state authority of desthletion state
- impossible to administer if you apply principle to other criminal laws

② undermines individual rights - right to travel
Amendment - bind prohibitions on handgun purchases to highlight
(Sen. Toricelli (not this)

③ anti-family - can't legislate these relationships

CCPA ②

amendments considered last time

Feinstein amendment — create exceptions for other adults — other family members, clergy people

Boxer - allow parents to consent after the fact
proof they're not interested in family relationships

(4) endangers health — may force G to wait

(5) minors go to other states for reasons other than avoiding consent
- may be closest H is in neighboring state; 86 counties have no providers

(6) no health, rape or incest exception
limited life exception
Becky Bell

(7) This is not a vote on consent —
Senators may support consent requirements —
but don't interfere w/ state control

Leahy substitute — focus on abusing young G by older M

(8) medical providers in destination state could be guilty - criminal liability
they would have to know laws of other states
some providers may refuse to treat teens
EMT's etc. - fear under criminal aiding + abetting, accomplice

Sum → unconst. infringement on rights of States

CCPA ©

Andrea LaRue – Sen. Daschle

not clear what amendments will be offered

amendments they may expect:

Leahy – Substitute – targetting force + coercion in transporting minors

Feinstein – except adult family members

Toricelli – gun & parity – (gambling, guns, hunting) – focuses on gun control

Kennedy – requires AG to certify that state is reporting

Boxer – parents consent after the fact

Harkin – rape, incest

Murray – rape pregnancy, other d's have crimes

Durbin –

look to House debate – see what was offered there

Cheney p.2k – ~~adopt~~ ~~laws travel~~

laws travel only if they're more stringent

so only certain laws travel

NARAL
Reproductive Freedom & Choice

MYTHS AND FACTS
ABOUT THE "CHILD CUSTODY PROTECTION ACT"

- **Myth: Enactment of the "Child Custody Protection Act" (CCPA) would promote healthy family communication and family values.**

  - **Fact:** *Even in states that do not enforce mandatory parental involvement laws, 61 percent of parents know of their daughters' pregnancy. For the minority of young women who do not involve a parent, the law cannot mandate healthy family communication where it does not already exist. Laws do not provide answers for every social problem, such as poor family communication.*

    For women who cannot speak with their parents about having an abortion, this bill may, in fact, endanger both them and their family relationships. Many young women who feel they cannot seek the counsel of their parents turn to other trusted family members when they face a crisis pregnancy. Indeed, one study found that 93 percent of minors who did not involve a parent were accompanied by someone else to the reproductive health facility. This bill would ***criminalize*** *the conduct of a grandmother who helps her granddaughter in time of need. Aunts and other trusted family members would face* ***imprisonment*** *if they take a young relative across state lines without complying with her home state's parental involvement law. In sum, this bill would isolate young women from supportive and protective family members rather than uniting families.*

- **Myth: Parents will always be helpful in assisting teenagers facing a crisis pregnancy.**

  - **Fact:** *As the Supreme Court has recognized, there are circumstances that act as obstacles to parental involvement in teens' crisis pregnancies. For some teenagers, the pregnancy may be a result of incest, as in the case of thirteen-year-old Spring Adams, who was murdered by her father the night before she was scheduled to terminate the pregnancy that had resulted from his criminal acts of incest. Other teenagers may correctly suspect that telling a parent*

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would trigger verbal and/or physical abuse. And some young women, like Becky Bell, have good relations with their parents, but desire so much to avoid hurting them or losing their esteem that they will take drastic measures to avoid parental involvement. Becky Bell sought an illegal abortion and died because she could not obtain a safe and legal abortion in her state of residence without parental involvement. Under this bill, she would not be able to travel to a state without a parental involvement law, either, leaving minors with even fewer choices, and forcing them into even more dangerous options.

Myth: Minors travel out of state for abortions for the purpose of avoiding parental involvement laws applicable in their state of residence, but not in the state of destination.

- **Fact:** *Young women may have no alternative but to travel to another state to obtain an abortion. Access to abortion providers in the United States is limited. Eighty-six percent of counties do not have an abortion provider. Thus, for some women, a reproductive health facility in another state may be the closest to their home. Yet, under this legislation, a grandmother could be criminally prosecuted for accompanying her granddaughter to an out-of-state facility, even if the out-of-state facility was the closest one to the young woman's home.*

Myth: The bill protects minors who cannot tell their parents because minors can appear before judges and bypass any parental involvement law.

- **Fact:** *It is unclear, as a legal and practical matter, that this bill would permit a teenager to use a bypass order from her home state in another state, or that it would permit a doctor to rely on a bypass order from another jurisdiction without further resort to judicial proceedings. This uncertainty places any adult who accompanies a minor across state lines to obtain an abortion in a precarious position, not knowing whether criminal charges can result.*

  Moreover, judicial bypass procedures often pose formidable obstacles to young women facing crisis pregnancies. Some anti-choice judges routinely deny minors' petitions. For example, a judge in Toledo, Ohio denied permission to a 17 ½-year-old woman -- an "A" student who planned to attend college and who testified that she was not financially or emotionally prepared for motherhood at the same time. The judge stated that the young woman had "not had enough hard knocks in her life."

  Further, bypass procedures and appeals often delay abortions, increasing the risk and sometimes the cost of the procedure. The risk of abortion increases based

upon gestational stage, so delay increases the medical risk of abortion.

Moreover, the most vulnerable teenagers may be too intimidated by the bypass procedure; they might rather resort to traveling alone or obtaining an illegal abortion than appear before a judge to discuss intimate matters. Young women's concern about the confidentiality of bypass proceedings is particularly acute in rural areas. For example, one young woman discovered that her bypass hearing would be conducted by her former Sunday school teacher.

- **Myth: This bill would promote the health of minors because parents know their teenager's medical history and need to know if they have an abortion.**

  - **Fact:** *On the contrary, this bill is detrimental to young women's health. First, legal abortions, particularly early in pregnancy, are very safe -- safer than carrying a pregnancy to term. Second, studies demonstrate that minors are capable of making competent medical decisions without parental involvement. Further, states that do not permit minors to consent to abortion do permit them to consent to childbirth. If the true purpose of this bill and related state laws were to protect children rather than to impose another obstacle on young women's right to choose, the bill's sponsors would attempt to resolve this anomalous result.*

    Although abortion is very safe, it still is advisable to have someone else drive a woman home from a surgical abortion. Thus, this bill would ***jeopardize*** *the health of young women, who would obtain abortions without help from trusted adults or friends. More minors might attempt to drive themselves to clinics, or in desperation, some might resort to illegal abortions.*

- **Myth: Federal intervention into matters traditionally regulated by the states is warranted here because young women are being coerced into having abortions out of state.**

  - **Fact:** *No one should be coerced when making reproductive health decisions. However, safeguards against coercion already exist. One such safeguard is a bedrock principle of medical ethics and medical malpractice law: informed consent. Medical personnel* ***must*** *obtain a woman's informed consent before performing an abortion.*

    Not only is federal intervention not warranted by the facts, it is precluded by the Constitution. Fundamental principles of federalism, embodied in the constitutional right to travel, prohibit states from denying interstate travelers the "privileges and immunities" of the states that they visit. Enacting this law would be akin to telling citizens in a dry state that if they traveled over state lines for a

beer, they could be prosecuted. It would resemble federal criminalization of gambling vacations to Las Vegas or Atlantic City for citizens of states that prohibit gambling. Enacting the CCPA is as unimaginable and un-American as telling citizens of states that prohibit the discharge of firearms that they cannot go on hunting trips or go target practicing in states that allow such activities.

Congress would take a dramatic and perhaps unprecedented step if it criminalized interstate travel for a lawful -- even constitutionally protected -- purpose. Congress previously prohibited the interstate transport of fugitive felons and prostitutes. Transporting a vulnerable minor seeking an abortion who cannot involve her parents in her decision is dissimilar to previous exercises of Congressional authority.

- **Myth: Existing laws are inadequate in protecting young women from undue influence of adults, who coerce young women across state lines in an effort to evade parental involvement laws.**

  - **Fact:** *Laws protecting young women -- such as prohibitions against kidnaping and statutory rape -- already are on the books. The one case proponents of this measure cite, Commonwealth v. Rosa Marie Hartford, actually is being resolved under existing state criminal laws.*

    The scenarios described by proponents of this legislation, which focus on coercion and undue influence, describe few if any instances that the bill actually would prohibit. However, swept into the bill's prohibitions is the vital support provided by caring family members, friends, and religious counselors who assist, advise, and supervise young women seeking reproductive health care.

    As a factual matter, the CCPA contains no requirement that the minor or the person accompanying the minor have an intent to evade state law; it only requires the intent to transport a minor to obtain an abortion.

1/18/2000

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June 23, 1999

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AAP opposes Child Custody Protection Act and RLPA

The American Academy of Pediatrics (AAP) is opposed to the "The Child Custody Protection Act" (H.R. 1218/S. 661) and "Religious Liberty Protection Act of 1999" (H.R. 1691) due to concerns about the how these bills will affect the health and safety of children and adolescents.

Child Custody Protection Act: Denies Adolescents Access to Care

- **The Child Custody Protection Act could restrict a patient's access to care by making it a federal offense to transport a minor across state lines if this circumvents the state's parental involvement laws.**

Assuring adolescent access to health care, including reproductive health care, has been a long-standing objective of the AAP. The AAP firmly believes that parents should be involved in and responsible for assuring medical care for their children. While parental involvement is desirable and should be encouraged, it may not always be feasible, and the Academy believes it should not be legislated.

Our ultimate goal is to provide access to health care that is in the best interest of the adolescent. Pediatricians strongly encourage adolescents to communicate with and involve their parents or other trusted adults in important health care decisions affecting their lives. Studies show that a majority of adolescents voluntarily do so. However, studies also indicate that legislation mandating parental involvement does not achieve the intended benefit of promoting family communication. It may increase the risk of harm to the adolescent by delaying access to appropriate medical care.

Religious Liberty Protection Act: Possible Danger to Children

The "Religious Liberty Protection Act of 1999" would prohibit any local or state government program that receives federal funding from placing a "substantial burden" on a person's "religious exercise." A person could use RLPA as a defense in court against child abuse or neglect charges. Many state child protective service agencies and public health agencies receive some form of federal funding and would be affected by this law.

- **RLPA could jeopardize the health and safety of abused and neglected children.**

Lawsuits against state and local child protective service (CPS) agencies could hinder agency efforts to protect children whose parents claim a religious right to abuse or neglect them. This is especially applicable in cases where parents withhold needed medical care from their children due to the parents' religious beliefs. The AAP recommends that RLPA be amended to ensure that the health, safety and welfare of children are not jeopardized.

The American Academy of Pediatrics is an organization of 55,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical subspecialists dedicated to the health, safety and well-being of the nation's infants, children, adolescents and young adults.

American Academy of Pediatrics

SAM
THE SOCIETY FOR ADOLESCENT MEDICINE

June 14, 1999

The Honorable Henry J. Hyde
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Hyde:

On behalf of the American Academy of Pediatrics (AAP), representing 55,000 pediatricians nationally, and the Society for Adolescent Medicine (SAM), representing 1,400 adolescent health professionals, we are writing in opposition of H.R. 1218, the Child Custody Protection Act. Assuring adolescent access to health care, including reproductive health care, has been a long-standing objective of the Academy. The problematic nature of this bill is in it's potential to restrict a patient's access to care by making it a federal offense to transport a minor across state lines if this circumvents the state's parental involvement laws.

The AAP and SAM firmly believe that parents should be involved in and responsible for assuring medical care for their children. While parental involvement is desirable and should be encouraged, it may not always be feasible, and the Academy and SAM believe it should not be legislated. Adolescents who cannot rely on a parent to help them through the trauma of a pregnancy and who may need to go to an adjoining state for termination are precluded from receiving supportive care during a traumatic time in their lives. It is in these situations that adolescents would be limited in their options for receiving care.

Our ultimate goal is to provide access to health care that is in the best interest of the adolescent. Pediatricians hope and strongly encourage adolescents to communicate with and involve their parents or other trusted adults in important health care decisions affecting their lives, including those regarding pregnancy or pregnancy termination. Studies show that a majority of adolescents voluntarily do so. However, studies also indicate that legislation mandating parental involvement does not achieve the intended benefit of promoting family communication. It may increase the risk of harm to the adolescent by delaying access to appropriate medical care.

The American Academy of Pediatrics and the Society for Adolescent Medicine urge you to oppose the Child Custody Protection Act.

Sincerely,

Joel J. Alpert

Joel J. Alpert, MD, FAAP
President
American Academy of Pediatrics

Lawrence S. Neistein, MD

Lawrence S. Neistein, MD
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JJA:ch

American Academy of Pediatrics

Policy Statement

Pediatrics Volume 97, Number 5 May, 1996, pp. 746-751

The Adolescent's Right to Confidential Care When Considering Abortion (RE9614)

AMERICAN ACADEMY OF PEDIATRICS

Committee on Adolescence

ABSTRACT. In this statement, the American Academy of Pediatrics (AAP) reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. The AAP supports the recommendations presented in the report on mandatory parental consent to abortion by the Council on Ethical and Judicial Affairs of the American Medical Association. Adolescents should be strongly encouraged to involve their parents and other trusted adults in decisions regarding pregnancy termination, and the majority of them voluntarily do so. Legislation mandating parental involvement does not achieve the intended benefit of promoting family communication, but it does increase the risk of harm to the adolescent by delaying access to appropriate medical care. The statement presents a summary of pertinent current information related to the benefits and risks of legislation requiring mandatory parental involvement in an adolescent's decision to obtain an abortion. The AAP acknowledges and respects the diversity of beliefs about abortion and affirms the value of voluntary parental involvement in decision making by adolescents.

Assuring adolescent access to health care, including reproductive health care, has been a long-standing objective of the American Academy of Pediatrics (AAP). Assured access to timely medical care is especially important for pregnant adolescents because of the significant medical, personal, and social consequences of adolescent childbearing. The AAP strongly advocates for the prevention of unintended adolescent pregnancy by supporting comprehensive health and sexuality education, abstinence, and the use of contraception by sexually active youths. For two decades the AAP has been on record as supporting the access of minors to all options regarding undesired pregnancy, including the right to obtain an abortion. Membership surveys confirm this support.[1,2]

Under current federal constitutional law, minors have the right to obtain abortions without parental consent unless otherwise specified by state law. Legislation that mandates parental involvement (parental consent or notification) as a condition of service when a minor seeks an abortion has generated considerable controversy. Recent US Supreme Court rulings, although upholding the constitutional rights of minors to choose abortion, have held that it is not unconstitutional for states to impose requirements for parental involvement as long as "adequate provision for judicial bypass" is available for minors who think that this involvement would not be in their best interest.[3,4] Subsequently, there has been renewed activity to include mandatory parental consent or notification requirements in state and federal abortion-related legislation.

The American Medical Association, the Society for Adolescent Medicine, the American Public Health Association, the American College of Obstetricians and Gynecologists, the AAP, and other health professional organizations have reached a consensus that minors should not be compelled or required to involve their parents in their decisions to obtain abortions, although they should be encouraged to discuss their pregnancies with their parents and other responsible adults. These

conclusions result from objective analyses of current data, which indicate that legislation mandating parental involvement does not achieve the intended benefit of promoting family communication but does increase the risk of harm to the adolescent by delaying access to appropriate medical care.[5-9]

In this statement, the AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. The AAP supports the recommendations presented in the report on mandatory parental consent to abortion by the Council on Ethical and Judicial Affairs of the American Medical Association.[5] This statement does not duplicate the extensive analysis published in that report but presents a summary of pertinent current information related to the benefits and risks of legislation requiring mandatory parental involvement in an adolescent's decision to obtain an abortion. This statement does not discuss the philosophical or religious issues related to abortion. Beliefs about abortion are deeply personal and are shaped by class, culture, religion, and personal history, as well as the current social and political climate. The AAP acknowledges and respects the diversity of beliefs about abortion. This statement affirms the value of parental involvement in decision making by adolescents and the importance of productive family communication in general. The AAP is a foremost advocate of strong family relationships and holds that parents are generally supportive and act in the best interests of their children.

BACKGROUND

Statistical Trends

One million pregnancies occur annually among American teenagers. Of these, about 400 000 occur in minors younger than 18 years of age, of which 41% are terminated by elective abortion.[10] The percentage of pregnancies terminated by induced abortion in minors increased in the 1970s, plateaued in the early 1980s, and has decreased since 1985, particularly in younger girls. Whereas 46% of pregnant adolescents 15 years of age and younger obtained abortions in 1985, only 39% did so in 1988.[10] Postulated explanations for the decline include a shift in attitudes toward abortion among adolescents, increased legal and financial barriers to abortion, particularly for low-income adolescents, and increasing social acceptance of childbearing among unmarried adolescents. Birth rates among adolescents nationally are now the highest since the early 1970s. Approximately 80% of births to minors younger than 18 years of age are to unmarried adolescents.[11] Adoption ratios have declined during the last decade; approximately 2% to 4% of unmarried adolescents place their infants for adoption.[12]

Compared with those who choose childbirth, adolescents who choose abortion tend to come from higher socioeconomic backgrounds, have higher educational aspirations and achievements, have mothers with higher educational levels, have higher self-esteem, have greater feelings of control over life, have lower levels of anxiety, and are better able to conceptualize the future.[13-15]

State Laws

The status of legislation requiring mandatory parental involvement in a minor's abortion decision is currently in flux. As of 1992, 38 states had some form of specific legislation on record, highly variable among states in both content and degree of enforcement.[9,16] However, US Supreme Court rulings in 1992 on "undue burden" standards and requirements for judicial bypass procedures raise legal questions about the validity of many existing state statutes, while allowing new or revised clauses that could be held constitutional. Groups opposed to legal abortion view parental notification requirements for minors as politically feasible; thus, adolescent rights to confidential care have become part of a larger battle regarding access to abortion in general.[17] Continuing legislative activity can be anticipated. Of 308 abortion-related bills introduced in 41 states during 1992, 61 were related to parental consent or notification, confirming the need for health professionals to be prepared to protect the best interests of adolescents with objective data on this issue.

EFFECT OF LEGISLATION ON FAMILY COMMUNICATION

Basic principles of law and society hold that parents should be involved in and responsible for

assuring medical care for their children, that parents ordinarily act in the best interests of their children, and that minors benefit from the advice and emotional support of their parents. Legislation mandating parental involvement in abortion decisions is promoted on the basis of its theoretical benefits on strengthening family responsibility and communication. Some who support reproductive choice may be ambivalent about parental notification requirements. Adults may fear that minors contemplating abortion are immature, isolated, or at risk of being coerced into decisions without adequate counseling. Many parents vote for notification clauses because they hope these laws will increase communication that otherwise might not happen.[18] The 1990 AAP membership survey showed that although 85% of members thought that mandatory parental notification for abortion would cause some adolescents to delay seeking care, 49% said there should be such laws,[2] suggesting that many AAP members assume there is benefit from such legislation. Because outcome analysis, as supported by the evidence that follows, shows a minimal benefit compared with a significant risk, there is clearly a need for current data to be better understood.

Voluntary Parental Involvement

Research confirms that pregnant minors do not make abortion decisions in isolation; they actively involve adults to whom they feel close. Even when not required to, the majority of minors seeking abortions voluntarily involve at least one parent in their decisions. A survey of 1519 unmarried pregnant minors in states where parental involvement is not mandatory found that 61% told one or both parents about their intent to have abortions. The younger the minor, the more likely she was to do so (90% of those 14 years old or younger, 74% of those 16 years old).[19] Among minors who did not involve a parent, virtually all involved at least one responsible adult other than clinic staff (such as another relative, teacher, counselor, professional, or clergy). A study of inner-city, black, pregnant teenagers younger than 18 years of age confirmed that more than 91% voluntarily consulted a parent or "parent surrogate" about pregnancy decisions. The term parent surrogate refers to a close adult who is fulfilling a parental role. This person was often a grandmother, aunt, or other relative who had "raised them" or with whom they lived, even if that adult was not the legal guardian.[20]

The importance of parent surrogates and extended families is significant when assessing the impact of attempts to legislate family communication. Most notification clauses are restricted to traditional definitions of biological parents or legal guardians and fail to address the complexity and diversity of modern family structures and adult support systems relevant to adolescents. For minors who are willing to involve parents or parent surrogates in their abortion decisions, legislation adds no benefit and actually may impede appropriate family communication channels.

Involuntary Parental Notification

Minors who choose not to inform parents about their intention to have abortions are disproportionately older (16 and 17 years old), white, and employed.[19] Very young adolescents almost always agree to voluntary parental involvement. In the unusual instance of resistance, the possibility of incest or abuse should be carefully evaluated. The most frequent reasons minors cite for not telling parents include the belief that the knowledge would damage their relationship, the fear that it would escalate conflict or coercion, and the desire to protect a vulnerable parent from stress and disappointment.[19] Adolescents who are strongly opposed to informing parents tend to predict family reactions accurately.[21] Involuntary parental notification can precipitate a family crisis characterized by severe parental anger and rejection of the minor and her partner. One third of minors who do not inform parents already have experienced family violence and fear it will recur.[19] Research on abusive and dysfunctional families shows that violence is at its worst during a family member's pregnancy and during the adolescence of the family's children.[5] Although parental involvement in minors' abortion decisions may be helpful in many cases, in others it may be punitive, coercive, or abusive.[22]

Credible reviews of available data conclude that there is no evidence that mandatory parental involvement results in the benefits to the family intended by the legislation. No studies show that forced disclosure results in improved parent-child relationships, improved communication, or improved satisfaction with the decision about pregnancy outcome.[22-24]

The current data also indicate that such legislation does not increase the likelihood that parents will

be involved. The percentages of minors who inform parents about their intent to have abortions are essentially the same in states with and without notification laws.[25] In states with such laws, adolescents who are not willing to inform parents use judicial bypass mechanisms,[26] go out of state to obtain services,[27] obtain clandestine care,[28] or delay care.[29,30]

ADOLESCENT COMPETENCY TO MAKE HEALTH CARE DECISIONS

Adolescents who are willing to involve parents in their abortion decisions will likely benefit from adult experience, wisdom, and support. Legislation requiring mandatory parental consent or notification for abortion presupposes, however, that pregnant minors are not competent to make informed decisions and therefore require legal protection. The age of 18 years is a convenient legal dividing line, but it has no scientific validity as the point at which individuals become competent decision makers. Summaries of well-designed research conclude that most minors 14 to 17 years of age are as competent as adults to provide consent to abortion. They are able to understand the risks and benefits of options and to make voluntary, rational, independent decisions.[31-33] Once pregnant, an adolescent by most state laws is considered an "emancipated minor" and is held responsible and competent to consent to her own medical treatment during the pregnancy and to the medical decisions regarding her fetus or newborn (eg, amniocentesis, genetic testing, life-saving treatment, and circumcision). No state laws require the minor's parent to consent to the minor's decision to continue the pregnancy when the parent thinks that terminating the pregnancy is in the minor's best interest or, with few exceptions, to place the infant for adoption. It is inconsistent, then, to presume that the minor is not legally competent to make decisions regarding pregnancy termination.[24,31,34]

Legal Issues

The legal issues involved in a minor's right to confidential abortion care have been well covered in other reviews.[35-38] The vast majority of court opinions and legal analyses hold that the justifications presented for mandatory parental involvement in a minor's abortion decision are not sufficiently compelling to outweigh the minor's right to privacy in deciding whether to terminate a pregnancy.[39] Teenagers perceive no difference in legal requirements for consent versus notification. Both abridge confidentiality. All analyses confirm that confidential care for adolescents is critical to improving their health. There is a "remarkable degree of consensus that adolescents should have access to confidential health services and that parental involvement, consent, or notification should not be a barrier to care."[9] There is substantial legal consensus that parental consent and notification laws, whether or not ruled constitutional, run counter to fundamental principles of family law, which ideally seek to protect the privacy of family decision making from government interference and to protect the best interests of the minor in the circumstances when the government does intervene in family affairs.[39]

CONCERNS ABOUT PSYCHOLOGICAL OR PHYSICAL CONSEQUENCES OF ABORTION DECISIONS

Some adults support mandatory parent notification, thinking that it will protect the adolescent from making a decision she might regret later. Most adolescents, however, express satisfaction with their ultimate pregnancy decisions, providing they think that the decisions were their own. No significant differences in the levels of later satisfaction with their decisions have been found between adolescents who choose abortion and those who bear children or between those who parent as opposed to those who place their infants for adoption; almost all think that they made the right choices for themselves.[40-42] The key determinant of this expressed satisfaction is the sense of "ownership" over the pregnancy decisions and the belief that their choices were not the results of coercion.[42] In other research, pregnant adolescents who chose not to communicate with parents were as satisfied with their decisions as those who did consult with parents and received support for their decisions.[20] Adolescents who communicated with nonsupportive parents were the ones more likely to express dissatisfaction with pregnancy decisions.

Extensive reviews conclude that there are no documented negative psychological or medical

sequelae to elective, legal, first-trimester abortion among teenaged women.[43,44] No significant psychological sequelae have been substantiated, despite extensive searches of the scientific literature.[45-47] When facing an unwanted pregnancy, regardless of the ultimate outcome, most women experience a range of normal emotional reactions, including regret, mild depression, and anxiety. Adverse reactions after abortion are rare; most women experience relief and reduced depression and distress.[48] Some women may experience feelings of grief and guilt after termination of pregnancies, especially those who consider themselves deeply religious or who were ambivalent about their decisions, and they may benefit from appropriate therapeutic counseling.[49] The incidence of diagnosed psychiatric illness and hospitalization is considerably lower after abortion than after childbirth. Psychiatric disorders, when found, have been attributed to preexisting psychiatric illness, undergoing abortion under coercion or pressure, or concomitant highly stressful life circumstances, including abandonment.[46]

The medical risks of legal first-trimester abortion likewise are extremely low. Mortality risks seem to be five times greater for teenagers who continue their pregnancies than they are for teens who terminate them. Morbidity rates and medical complications from continuing a pregnancy are more adverse than those from abortion at all stages of gestation.[48,50] The scientific evidence indicates that legal abortion results in fewer deleterious sequelae for women compared with other possible outcomes of unwanted pregnancy. There is no rational basis for policies that put barriers in the way of an adolescent's selection of abortion because of concerns about physical or psychological consequences.

ADVERSE EFFECTS OF MANDATORY PARENTAL INVOLVEMENT LEGISLATION

Mandatory parental consent or notification laws do not protect the health of young women and, in fact, may do harm.

Adverse Health Impact

The most damaging impact of mandatory parental notification laws is that they can delay and obstruct the access of pregnant adolescents to timely professional advice and medical care.[5,48] Teenagers are twice as likely as adults to delay the diagnosis of first-trimester pregnancy. Adolescents are often confused about their right to confidential care, and even a perceived lack of confidentiality in health care regarding sexual issues deters them from seeking services.[51] Once the minor does present for pregnancy counseling, mandatory parental involvement laws can delay medical care further. After enactment of such statutes, court proceedings in Massachusetts delayed the termination of pregnancy by as much as 6 weeks; in Minnesota, the average delay was 1 to 3 weeks, and the proportion of second-trimester abortions in teens increased by 12%.[48] In Mississippi, a parental consent requirement increased by 19% the ratio of minors to adults who underwent their procedures after 12 weeks' gestation.[52] Later-trimester procedures (after 14 weeks) increase both the medical risks and financial costs to the patient, and a prolonged delay can eliminate abortion as an accessible option.[50]

It is likely that mandatory parental consent legislation decreases access to abortion by adolescents, although confounding variables make it difficult to ascertain causal effects on abortion rates. Both abortion rates and abortion ratios have decreased nationwide in states with and without parental consent statutes. In Minnesota, after parental consent laws were enacted in 1981, at first it seemed that abortion rates decreased disproportionately in 15- to 17-year-olds, but with no increase in birth rates, leading some to hypothesize that teenagers were more motivated to avoid pregnancy.[53] However, after the Supreme Court upheld Minnesota's consent laws in 1990,[3] abortion rates in minors fell to the lowest level in 10 years, and birth rates for the same age group rose to the highest level since 1980 (*St Paul Dispatch.* June 30, 1992).

Adverse Psychological and Social Impact

There is increasing evidence of the negative effects of delayed or denied abortion on both the emotional health of the mothers and the developmental status of the unwanted children. Later-stage abortions are associated with a greater risk of psychological sequelae for pregnant teenagers (compared

with first-trimester abortions, which are without significant negative sequelae).[54] American studies have recently confirmed European research that women who are denied abortions only rarely give up their unwanted infants for adoption and may harbor resentment and anger toward their children for years. Despite strong social pressure not to acknowledge that a child is unwanted, more than one third of the women confessed to having strong negative feelings toward their children. Compared with the offspring of willing parents, the children of women who did not obtain requested abortions were much more likely to be troubled and depressed, to drop out of school, to commit crimes, and to have serious illnesses.[55,56] Compared with peers who terminate their pregnancies, adolescents who bear children are at significantly higher risk of educational deficits, economic disadvantage, and marital instability.[41,48]

Adverse Family Impact

As discussed, parental involvement can have adverse effects on both minors and their families, particularly if it takes on a coercive character. The risks of violence, abuse, coercion, unresolved conflict, and rejection are significant in nonsupportive or dysfunctional families when parents are informed of a pregnancy against the adolescent's considered judgment.[1,30] In *Hodgson vs Minnesota,* the majority of the Supreme Court found that mandatory parental involvement can result in family upheaval and can be dangerous for minors in homes where physical, emotional, or sexual abuse is present.[1,39]

Judicial Bypass

The option of obtaining a judicial bypass (a court proceeding in which a judge determines whether the adolescent is mature enough to make the decision to have an abortion or whether it is in her best interest not to inform parents) is viewed by some as a reasonable compromise to protect a concerned adolescent from harm while permitting states to impose mandatory parental involvement statutes.[5] The US Supreme Court ruled in 1990 that judicial bypass mechanisms are constitutionally required if state legislation is enacted, and they are ethically essential for adolescents at risk of abuse. However, judges who preside over bypass rulings testify unequivocally that this procedure is of no benefit to minors.[57,58] It has no effect on the ultimate decision with respect to abortion or on the process by which that decision is made. Of 12 000 petitions in Massachusetts and Minnesota, only 21 were denied, and half of the denials were overturned on appeal.[24] The judicial bypass process itself poses risks of medical and psychological harm. It is detrimental to medical well-being, because it causes further delays in access to medical treatment (from 4 days to several weeks), which increase the risk of complications from delayed or second-trimester procedures.[22] It is detrimental to emotional well-being, because adolescents perceive the court proceedings as extremely burdensome, humiliating, and stressful.[24] The pregnant adolescent is required to divulge intimate details of her private life to dozens of strangers (clerks, bailiffs, court reporters, witnesses, and others) to obtain a brief (10-minute) hearing before a judge who has no firsthand knowledge of her case and typically no training in counseling adolescents or developmental issues.[39] Regardless of the Supreme Court ruling, many legal opinions hold that the judicial bypass process constitutes "undue burden" for adolescents seeking abortion care.[22,24,39]

CONCLUSIONS AND RECOMMENDATIONS

1. Adolescents should be strongly encouraged to involve their parents and other trusted adults in decisions regarding pregnancy termination, and the majority of them voluntarily do so. A minor's decision to involve parents is determined by the quality of the family relationship, not by laws. Family communication is inherently a family responsibility, and parents themselves create the emotional atmosphere that fosters productive dialogue. Adolescents who feel loved and supported by their parents normally will communicate with them in times of crisis. Studies show that adolescents are most likely to disclose their pregnancies if the family has a history of warmth, rapport, and involvement of parents in past problem solving.[25,26] As emphasized in previous AAP position statements, enhancing parental skills for listening, communicating, valuing, and nurturing throughout the childhood years is the most

effective means of ensuring family involvement in adolescent decisions.[1,59] The pediatrician's most valued role may be to strengthen these family communication skills and supportive behaviors.

2. Concerned professionals should make every effort to ensure that a pregnant teenager receives adult guidance and support when considering all the options available, so she can make the decision that is in her best interest. This is best achieved by adhering to existing professional ethics and standards for obtaining meaningful informed consent.[60] Physicians should ensure that the minor patient has full information and has given careful consideration to the issues involved. They should encourage minors to consult with parents, other family members, or other trusted adults if parental support is not possible. The very young adolescent is especially needy in this regard. Ultimately, the pregnant patient's right to decide should be respected regarding who should be involved and what the outcome of the pregnancy will be, which is the approach most consistent with ethical, legal, and health care principles.

3. The AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects. No evidence exists that legislation mandating parental involvement against the adolescent's wishes has any added benefit in improving productive family communication or affecting the outcome of the decision. There is evidence that such legislation may have an adverse impact on some families and that it increases the risk of medical and psychological harm to the adolescent. Judicial bypass provisions do not ameliorate the risk.

4. The AAP reaffirms its support of measures that increase access to health care for children and youths, regardless of age or financial status, and opposes unnecessary regulations that limit or delay access to care. The documented impact of parental consent laws is to reduce minors' access to early legal abortion. Public policies should encourage sexually active adolescents to seek timely, professional health care. The threat of compelled parental notification against the adolescent's wishes, even if judicial bypass is available, is a strong disincentive to seeking care. The AAP holds that public policies can and should encourage voluntary involvement of parents or other mature adults, but specific laws mandating notification of biological parents or legal guardians as a condition of service are counterproductive.[57]

REFERENCES

1. American Academy of Pediatrics, Committee on Adolescence. Counseling the adolescent about pregnancy options. Pediatrics. 1989;83:135-137
2. Fleming GV, O'Conner KG. Adolescent abortion: views of the membership of the American Academy of Pediatrics. Pediatrics. 1993;91:561-565
3. Hodgson v Minnesota, 110 S 2926 (Ct 1990)
4. Planned Parenthood of Southeastern Pennsylvania v Casey, 112 S 2791 (Ct 1992)
5. Council on Ethical and Judicial Affairs, American Medical Association. Mandatory parental consent to abortion. JAMA. 1993;269:82-86
6. Society for Adolescent Medicine. Position statements on reproductive health care for adolescents. J Adolesc Health. 1991;12:657-661
7. American Public Health Association. Resolution 9001: adolescent access to comprehensive, confidential reproductive health care. Am J Public Health. 1991;81:241
8. American College of Obstetricians and Gynecologists, American Academy of Family Physicians, American Academy of Pediatrics, Organization for Obstetric, Gynecologic, and Neonatal Nurses, National Medical Association. Confidentiality in adolescent health care. . 1989;5:9
9. American Medical Association National Coalition on Adolescent Health, Gans JE, ed. Policy Compendium on Confidential Health Services for Adolescents. Chicago, IL: American Medical Association; 1993
10. Henshaw SK. Abortion trends in 1987 and 1988: age and race. Fam Plann Perspect. 1992;24:85-86, 96
11. National Center for Health Statistics. Advance Report of Final Natality Statistics, 1990. Monthly Vital Statistics Report. Hyattsville, MD: Public Health Service; 1993;41(9). US Dept of Health and Human Services publication PHS 931120
12. Bachrach CA, Stolley KS, London KA. Relinquishment of premarital births: evidence from national survey data. Fam Plann Perspect. 1992;24:27-32
13. Blum RW, Resnick MD. Adolescent sexual decision-making: contraception, pregnancy, abortion, and motherhood. Pediatr Ann. 1982;11:797-805
14. Zabin LS, Hirsch MB, Boscia JA. Differential characteristics of adolescent pregnancy test patients: abortion, childbearing, and negative test groups. J Adolesc Health. 1990;11:107-113
15. Plotnick RD. The effects of attitudes on teenage premarital pregnancy and its resolution. Am Sociol Rev. 1992;57:800-811
16. Department of Government Relations, American College of Obstetricians and Gynecologists. State Legislative Fact Sheet. State Abortion Laws 1989-1992. Washington, DC: American College of Obstetricians and Gynecologists; 1993
17. Benshoof J. Planned Parenthood v Casey: the impact of the new undue burden standard on reproductive health care. JAMA. 1993;269:2249-2257
18. Worthington EL Jr, Larson DB, Lyons JS, et al. Mandatory parental involvement prior to adolescent abortion. J Adolesc Health. 1991;12:138-142
19. Henshaw SK, Kost K. Parental involvement in minors' abortion decisions. Fam Plann Perspect. 1992;24:196-207,213
20. Zabin LS, Hirsch MB, Emerson MR, Raymond E. To whom do inner-city minors talk about their pregnancies? Adolescents' communication with parents and parent surrogates. Fam Plann Perspect. 1992;24:148-154,173
21. Benshoof J, Pine RN, Paltrow LW, et al. Brief for petitioners in Hodgson v Minnesota and Minnesota v Hodgson, US Supreme Court, Oct 1989 term, cases 88-1125 and 88-1309:13-16
22. Donovan P. Judging teenagers: how minors fare when they seek court-authorized abortions. Fam Plann Perspect. 1983;15:259-267
23. Donovan PA. Our Daughters' Decisions: The Conflict in State Law on Abortion and Other Issues. New York, NY: Alan Guttmacher Institute; 1992
24. Crosby MC, English A. Mandatory parental involvement/judicial bypass laws: do they promote adolescents' health? J Adolesc Health. 1991;12:143-147
25. Blum RW, Resnick MD, Stark TA. The impact of parental notification law on adolescent abortion decision-making. Am J Public Health. 1987;77:619-620
26. Blum RW, Renick MD, Stark TA. Factors associated with the use of court bypass by minors to obtain abortions. Fam Plann Perspect. 1990;22:158-160
27. Cartoof VG, Klerman LV. Parental consent for abortion: impact of the Massachusetts law. Am J Public Health. 1986;76:397-400

28. Binkin N, Gold J, Cates W Jr. Illegal-abortion deaths in the United States: why are they still occurring? Fam Plann Perspect. 1982;14:163-167
29. Missouri Monthly Vital Statistics. Jefferson City, MO: Missouri Department of Health; 1990:23
30. Declaration of Lenore E. Walker, PhD, American Academy of Pediatrics v VandeKamp, 214 App 3d831 (Cal 1989), filed Nov 23, 1987
31. Moreno JD. Treating the adolescent patient: an ethical analysis. J Adolesc Health Care. 1989;10:454-459
32. Ambuel B, Rappaport J. Developmental trends in adolescents' psychological and legal competence to consent to abortion. Law Hum Behav. 1992;16:129-154
33. Weithorn LA, Campbell SB. The competency of children and adolescents to make informed treatment decisions. Child Dev. 1982;53:1589-1598
34. American College of Obstetricians and Gynecologists, Moore KG, ed. Public Health Policy Implications of Abortion. Washington, DC: American College of Obstetricians and Gynecologists; 1990
35. English A. Treating adolescents: legal and ethical considerations. Med Clin North Am. 1990;74:1097-1112
36. Holder AR. Legal Issues in Pediatrics and Adolescent Medicine. 2nd ed. New Haven, CT: Yale University Press; 1985
37. Holder AR. Minors' rights to consent to medical care. JAMA. 1987;257:3400-3402
38. Council on Scientific Affairs, American Medical Association. Confidential health services for adolescents. JAMA. 1993;269:1420-1424
39. Greenberger MD, Conner K. Parental notice and consent for abortion: out of step with family law principles and policies. Fam Plann Perspect. 1991;23:31-35
40. Resnick MD. Adolescent pregnancy options. J Sch Health. 1992;62:298-303
41. Zabin LS, Hirsch MB, Emerson MR. When urban adolescents choose abortion: effects on education, psychological status, and subsequent pregnancy. Fam Plann Perspect. 1989;21:248-255
42. Resnick MD, Blum RW, Bose J, Smith M, Toogood R. Characteristics of unmarried adolescent mothers: determinants of child rearing versus adoption. Am J Orthopsychiatry. 1990;60:577-584
43. Zabin LS, Sedivy V. Abortion among adolescents: research findings and the current debate. J Sch Health. 1992;62:319-324
44. Hardy JB, Zabin LS. Adolescent Pregnancy in an Urban Environment: Issues, Programs, and Evaluation. Washington, DC: Urban Institute Press; 1991
45. American Psychological Association. Psychological Sequelae of Abortion. Washington, DC: American Psychological Association; 1987
46. Stotland NL. The myth of the abortion trauma syndrome. JAMA. 1992;268:2078-2079
47. Blumenthal SJ. An overview of research findings. In: Stotland NL, ed. Psychiatric Aspects of Abortion. Washington, DC: American Psychiatric Press; 1991
48. Council on Scientific Affairs, American Medical Association. Induced terminations of pregnancy before and after Roe v Wade: trends in mortality and morbidity of women. JAMA. 1992;268:3231-3239
49. Tentoni SC. A therapeutic approach to reduce postabortion grief in university women. J Am Coll Health. 1995;44:35-37
50. Cates W Jr, Grimes DA. Morbidity and mortality of abortion in the United States. In: Hodgson JE, ed. Abortion and Sterilization: Medical and Social Aspects. New York, NY: Academic Press, Inc; 1981:155-180
51. Cheng TL, Savageau JA, Sattler AL, DeWitt TG. Confidentiality in health care: a survey of knowledge, perceptions, and attitudes among high school students. JAMA. 1993;269:1404-1407
52. Henshaw SK. The impact of requirements for parental consent on minors' abortions in Mississippi. Fam Plann Perspect. 1995;27:120-122
53. Rogers JL, Boruch RF, Stoms GB, DeMoya D. Impact of the Minnesota parental notification law on abortion and birth. Am J Public Health. 1991;81:294-298
54. Cates W Jr. Adolescent abortions in the United States. J Adolesc Health. 1980;1:18-25
55. Dagg PK. The psychological sequelae of therapeutic abortion--denied and completed. Am J Psychiatry. 1991;148:578-585
56. David HP, Dytrych Z, Matejek Z, Schuller V, eds. Born Unwanted: Developmental Effects of Denied Abortion. New York, NY: Springer Publishing Co; 1988
57. American Academy of Pediatrics v Lungren, San Francisco 884-574 (Cal 1992)
58. Teare C. California affirms minors' right to abortion. Youth Law News. 1994;15(4):1-3
59. American Academy of Pediatrics, Committee on School Health and Committee on Adolescence.

Education of the family. . 1986;11:14
60. American Academy of Pediatrics, Committee on Bioethics. Informed consent, parental permission, and assent in pediatric practice. Pediatrics. 1995;95:314-317

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The recommendations in this statement do not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

Return to Contents

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

February 18, 2000

Dear Senator:

On behalf of the National Women's Law Center, I urge you to oppose the so-called "Child Custody Protection Act" ("CCPA"). This bill puts the health and well-being of American young women at risk by making it a crime for any person other than a parent to accompany a minor across state lines to get an abortion when it would violate the home state's parental involvement law. If enacted, this legislation would close off an important avenue of support and assistance to already vulnerable young women at the precise time that they need it the most. In addition, this bill would both violate basic constitutional tenants and the sovereign authority of the states. Finally, this legislation will result in the creation of an unworkable legal quagmire.

Although the majority of young women facing an unplanned pregnancy do involve one or both parents (even in states without mandatory parental consent or notice requirements), not all young women are able to do so. Some live in households where they fear physical or emotional abuse. Worse yet, others fear telling their parents because the pregnancy is the result of a family member's sexual abuse. In these tragic circumstances, some young women are fortunate to have a trusted adult -- a grandparent, an older sibling, a religious counselor -- to whom they can turn for help.

Obviously, the personal involvement of a grandparent or a trusted friend in this difficult time in a young woman's life can make all the difference. Some have argued that this point is irrelevant because states have judicial bypass proceedings to address those cases where the young woman cannot go to her parents. However, the courtroom -- a strange and frightening place for a minor -- simply is not a proxy for the love and support of a grandmother.

In addition, the judicial bypass process is not a realistic option for many teens. Recent reports suggest that many teens do not make use of it. Some minors do not because they do not know how to navigate the legal system. Others do not make use of the courts because they are unable to attend hearings during school hours, or because they would need to travel to get to a court that would hear their case. Many are embarrassed and fear – too often correctly – that the confidentiality of the proceedings will be compromised. Despite Supreme Court mandates, hostile and unsympathetic judges may refuse to grant a waiver from parental involvement even when it is obviously necessary and appropriate. For these teens, a grandmother or an aunt may be the only people to whom they can go for help.

It is important to note that the CCPA does not prohibit a minor from avoiding her home state's parental notification and consent laws by going to a neighboring state to have an abortion. It only bans her from doing it with an adult who is not her parent. Thus, the real result of this legislation may very well may be that these already isolated young women are forced to act alone, instead of seeking guidance from a responsible and loving adult. Left alone, a desperate

teen may resort to dangerous measures. Some may travel alone to a strange city to get an abortion, without any adult accompaniment or assistance. Others may seek "back alley" abortions or may try to self-induce an abortion. Even in those cases where the young woman ultimately decides to involve a parent or to go to court, the time it takes for her to decide may delay the abortion procedure until later in the pregnancy. With the help of an adult, the teen may be able to come to safer and better decisions more quickly, rather than struggling through these difficult decisions on her own.

In addition, I urge you to oppose this bill because it has a myriad of constitutional and practical problems. For example, proponents of this bill suggest that it merely seeks to protect a state's authority to oversee the health care decisions of its young people. However, at heart this legislation is an "anti-states rights" bill, because it fails to respect the decision of the destination state regarding parental notification. What this bill really does is impose the laws of those states that have adopted policies with which the drafters of the CCPA happen to agree onto other states. By rendering a state's laws inapplicable within its own borders, this legislation violates the sovereignty of that state.

This legislation will also create a confusing legal quagmire that will be nearly impossible to enforce. As a general matter, if you are standing in South Dakota, law enforcement officials assume that the laws of South Dakota apply to you. Under the CCPA, an adult traveling with a minor into South Dakota may be subject to the laws of South Dakota, North Dakota, Minnesota, or any of the other 47 states in the Union, all depending on where she started. How are law enforcement officials to determine whether a crime has been committed if they do not know which state's laws are applicable? Further complicating an already complicated situation are the possible implications for doctors, who may not know the home state of the patient that she is treating, nor the rule of law in that state. Will doctors be forced to learn the parental consent laws in all 50 states just to be sure that they are not aiding and abetting in the violation of a federal statute?

In addition, this law contains no health exception, which makes it unconstitutional on its face, and which raises serious practical complications. For example, what if emergency medical personnel transport a seriously ill minor to the closest doctor, who happens to be in a different state, in order to obtain an abortion to protect her health? Would they be subject to federal prosecution? Another constitutional question is raised by the narrowly defined life exception, which also fails to pass constitutional muster and which could prove very confusing. How will a grandparent with no medical training know whether her very ill granddaughter has a life threatening condition such that it falls within this definition or not? A grandparent will be put in the impossible position of having to choose between risking her granddaughter's life and risking going to prison. In all of these scenarios, the only sure result is that the health care provided to pregnant minors will be compromised.

We urge you to oppose this dangerous and unprecedented legislation. For some teens, this legislation would shut the door on the one source of responsible adult intervention available to them. Rather than facilitating family communication and protecting women's health, this bill would actually result in making our young women more alone and more at risk.

Sincerely,

Marcia D. Greenberger
Co-President

NARAL
Reproductive Freedom & Choice

THE "CHILD CUSTODY PROTECTION ACT" THREATENS YOUNG WOMEN'S HEALTH

In 1999, legislation entitled the "Child Custody Protection Act"[1] was introduced in Congress to prohibit anyone other than a parent, including a grandparent, aunt, adult sibling, or religious counselor, from transporting a young woman across state lines for an abortion without complying with the home state's parental involvement law.

Adolescents should be encouraged to seek their parents' advice and counsel when facing difficult choices regarding abortion and other reproductive health issues. Indeed, most young women do involve one or both parents when considering abortion. Even in states that either have not enacted or do not enforce mandatory parental consent or notice requirements, 61 percent of parents knew of their daughter's pregnancy.[2] The government, however, cannot mandate healthy family communication where it does not already exist.

When a young woman cannot involve a parent -- whether in the most egregious case in which the pregnancy is the result of incest, or in more typical case in which the young woman fears her parents' reactions, perhaps often with good cause -- the law, public policy, and medical professionals should encourage her to involve a trusted adult, and should not punish the adult for providing physical and emotional support and assistance. Indeed, one study found that more than half of all young women who did not involve a parent in her decision regarding a pregnancy did involve an adult, including 15 percent who involved a step-parent or adult relative.[3]

If the "Child Custody Protection Act" were enacted, it could endanger young women's lives and health. Trusted and responsible adults would be faced with the threat of prosecution if they responded to a request for help from a young woman who believes she cannot involve her parent. This would isolate these minors, leaving them without adult assistance, supervision, or guidance. Rather than making abortion more difficult and dangerous for young women, Congress should do more to create the conditions that enable young women to make true choices by providing comprehensive sexuality education and ensuring that women have access to a range of effective contraceptives.

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This Legislation Would Further Isolate Those Young Women Who -- For Good Reasons -- Do Not Involve A Parent In Their Decision To Have An Abortion

Most young women find love, support, and safety in their homes. Many, however, justifiably fear that they would be physically or emotionally abused if forced to disclose their pregnancy. Often young women who do not involve a parent come from families in which government-mandated disclosure could have devastating effects.

> *In Idaho, a 13-year-old sixth grade student named Spring Adams was shot to death by her father after he learned she was to terminate a pregnancy caused by his acts of incest.*[4]

- Approximately 3.2 million cases of child abuse were reported in 1997. Young women considering abortion are particularly vulnerable because family violence often is at its worst during a family member's pregnancy.[5]

- Among minors who did not tell a parent of their abortion, 30 percent had experienced violence in their family or feared violence or being forced to leave home.[6]

- In addition to fear of violence, some minors do not involve a parent because they believe that the knowledge would damage their relationship with the parent, they fear that it would escalate conflict or coercion, or they want to protect a vulnerable parent from stress and disappointment.[7]

When a young woman rightly or wrongly believes that she cannot involve a parent, the law cannot solve the problem by mandating healthy, open family communication. Indeed, there is no evidence that laws like the "Child Custody Protection Act" will do anything but isolate and abandon young women who believe -- for valid reasons -- that they cannot involve a parent. Instead of encouraging young women to involve a trusted adult who may be able to offer much needed assistance, this law will cause some young women to face interstate travel for purposes of obtaining a surgical procedure alone, without adult assistance, guidance, and supervision. Even worse, it may force young women into obtaining illegal, back-alley abortions rather than travel without an adult companion. In either event, the young woman's situation is rendered increasingly dangerous because of the law, which creates an obstacle rather than a vehicle for obtaining safe, legal reproductive health care.

This Legislation Would Endanger Young Women's Health

Young women who determine that they cannot involve a parent often seek help and guidance from other trusted adults in their lives such as grandparents, aunts, adult siblings, or clergy. Such adults can provide a minor with valuable advice, counsel and assistance. However, this bill would discourage adults from providing young women with such help or assistance, further isolating minors in making and carrying out reproductive health care decisions. As a result, the

legislation could compel some young women to turn to illegal or self-induced abortion or to delay the procedure.

> *In Indiana, Rebecca Bell, a young woman who had a very close relationship with her parents, died from an illegal abortion because she did not want her parents to know about her pregnancy. Indiana law required parental consent before she could have a legal abortion.*[8]

- By discouraging -- in fact, criminalizing -- adults who help young women during crisis pregnancies, the law would expose young women to increased health risks. In one study, 93 percent of the minors who did not involve a parent in their decision to obtain an abortion nonetheless were accompanied by someone to the abortion clinic.[9] Such company is important to provide assistance to a minor before and after the abortion. However, this legislation will force some minors to have an unaccompanied abortion and potentially to drive themselves long distances, thereby exposing them to greater health risks.

- Young women may have no alternative but to travel to another state to obtain an abortion, or even to discuss the option of abortion. Access to abortion providers in the United States is limited. Eighty-six percent of counties do not have an abortion provider.[10] Thus, for some women, a reproductive health facility in another state may be the closest to their home. For instance, a reproductive health clinic in Duluth, Minnesota serves women from Minnesota, Wisconsin, Michigan and Ontario, Canada.[11] Under this legislation, a grandmother could be subject to criminal charges for accompanying her granddaughter to an out-of-state facility, even if the out-of-state facility was the closest to the young woman's home.

- When faced with parental involvement laws, young women who feel they cannot involve a parent take drastic steps. The American Medical Association has noted that "[b]ecause the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a 'back alley' abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since . . . 1973."[12]

- Obstacles such as parental involvement laws increase the health risks to women by increasing the gestational age at which young women obtain abortions. The American Medical Association concluded in a 1992 study that parental consent and notice laws "increase the gestational age at which the induced pregnancy termination occurs, thereby also increasing the risk associated with the procedure."[13] Although abortion is far safer than childbirth, the risk of death or major complications significantly increases for each week that elapses after eight weeks.[14] Legislation that delays young women seeking abortion causing them to obtain abortions later, increases the risk of the procedure. The

"Child Custody Protection Act" imposes yet another obstacle beyond that imposed by state parental involvement laws, creating additional logistical and legal difficulties that may well lead to further delays in obtaining the desired treatment.

Because A Judicial Bypass Is Not Always A Realistic Option, Some Young Women Obtain Abortions in Neighboring States That Do Not Have or Enforce Parental Involvement Laws

Twenty-eight of the 30 states that enforce parental consent or notice laws provide a judicial or other bypass provision through which a young woman can obtain an abortion without parental involvement.[15] For young women, it can be overwhelming and, at times, impossible to manage the judicial bypass procedures. Some young women simply are intimidated by the required legal procedures, or cannot attend hearings scheduled during school hours, especially while attempting to maintain confidentiality. Others do not seek, or delay in seeking, judicial review because they fear that the proceedings are not confidential or, even if they are, that they will be recognized by people at the courthouse. Many young women simply do not want to reveal intimate details of their personal lives to strangers.[16] The time required to schedule the court proceeding may result in a delay of a week or more, thereby increasing the health risks of the abortion.[17]

Some young women who manage to arrange a hearing face judges who are vehemently anti-choice and who routinely deny petitions, despite rulings by the U.S. Supreme Court that a minor must be granted a bypass if she is mature or if an abortion is in her best interests.[18] As a result, minors in states with parental involvement laws frequently go to a neighboring state to obtain an abortion instead of trying to obtain a judicial bypass.[19]

> *The Ohio Supreme Court upheld the denial of a petition of a 17-year-old girl who testified that her father beat her. At the time, she was a senior in high school with a 3.0 average who played team sports, worked 20-25 hours a week, and paid for her automobile expenses and medical care.*[20]

- In Indiana, lawyers and clinics routinely refer teenagers out of state because local judges either refuse to hold hearings or are widely known to be anti-choice.[21]

- Young women's concern about confidentiality is especially acute in rural areas. For instance, in one case a minor discovered that her bypass hearing would be conducted by her former Sunday school teacher.[22]

The Legislation Contains Legal Deficiencies

The legislation contains several legal defects that could render it unconstitutional.

- Pursuant to this legislation, a young woman who determined that she could not involve her parents may have to go through a judicial bypass in two states. For instance, if the young woman lived in a state with a one-parent consent law, but the closest clinic was in

a state that also had a one-parent consent law, the minor would have to go through the judicial bypass in her state of residence as well as in the state that she obtained the abortion if she felt that she could not obtain either parent's consent. Requiring a minor to juggle judicial bypasses in two different states could constitute an unconstitutional undue burden.[23] Moreover, requiring two judicial proceedings necessarily results in delays, thereby further compounding the medical risk of the procedure.

- The sponsors of the "Child Custody Protection Act" present it as an initiative that protects the rights of states to enforce their parental involvement laws. The legislation, however, violates fundamental principles of federalism in at least two ways:

  - Under the Constitution, each citizen has the right to move freely from one state to another and to enjoy the "privileges and immunities of a state he visits.[24] By saddling young women with the laws of her home state, the "Child Custody Protection Act" denies her the right to enjoy the laws of another state.

  - In addition, the "Child Custody Protection Act" violates the sovereignty of states that have chosen not to restrict minors' access to abortion. If enacted, this legislation would require such states to comply with the restrictive law of a minor's resident state.

- Also pursuant to this legislation, a person could be prosecuted for taking a minor to a neighboring state, even if that person does not intend, or even know, that the parental involvement law of the state of residence has not been followed. Such a result would violate the due process rights of a person who assists a minor facing a crisis pregnancy by creating a strict liability statute.[25]

- The "life" exception is unconstitutionally narrow. First, the "life" exception impermissibly limits the situations that would qualify under it by enumerating certain circumstances -- but not others. As the Supreme Court has recognized, life exceptions cannot pick and choose among life-threatening circumstances.[26] Second, the legislation contains no exception at all to protect a woman's health. As the Court noted in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, "the essential holding of *Roe* forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health."[27]

Making Abortion Less Necessary Among Teenagers Requires A Comprehensive Effort to Reduce Teen Pregnancy

Abortion among teenagers should be made less necessary, not more difficult and dangerous. A comprehensive approach to promoting adolescent reproductive health and reducing teen pregnancy will require an array of components, including: age-appropriate health and sexuality education; life options programs that offer teens practical life skills and the motivation to delay sexual activity; programs for pregnant and parenting teens that teach parenting skills and help ensure that teens finish school; increased information about emergency contraception pills; and access to confidential health services, including family planning and abortion.

1/10/2000

Notes:

1. H.R. 1218, 106th Cong. (1999) and S. 661, 106th Cong. (1999).

2. Stanley K. Henshaw and Kathryn Kost, "Parental Involvement in Minors' Abortion Decisions," *Family Planning Perspectives*, vol. 24, no. 5 (Sept./Oct. 1992): 197, 199-200.

3. Henshaw and Kost, "Parental Involvement," 207.

4. Margie Boule, "An American Tragedy," *Sunday Oregonian*, Aug. 27, 1989.

5. Ching-Tung Wang and Deborah Daro, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1997 Annual Fifty State Survey* (Chicago: National Committee to Prevent Child Abuse, 1998); H. Amaro, et al., "Violence During Pregnancy and Substance Abuse," *American Journal of Public Health*, vol. 80 (1990): 575-579.

6. Henshaw and Kost, "Parental Involvement," 207.

7. American Academy of Pediatrics, Committee on Adolescence, "The Adolescent's Right to Confidential Care When Considering Abortion," *Pediatrics*, vol. 97, no. 5 (May 1996): 748, *citing* Henshaw and Kost, "Parental Involvement."

8. Rochelle Sharpe, "Abortion Law: Fatal Effect?" Gannett News Service, Nov. 27, 1989; CBS, "60 Minutes," Feb. 24, 1991 (videotape on file with NARAL).

9. Henshaw and Kost, "Parental Involvement," 207.

10. Stanley K. Henshaw, "Abortion Incidence and Services in the United States, 1995-1996," *Family Planning Perspectives*, vol. 30, no. 6 (Nov./Dec. 1998): 263.

11. *Hodgson v. Minnesota*, 648 F. Supp. 756, 761 (D. Minn. 1986).

12. American Medical Association, Council on Ethical and Judicial Affairs, "Mandatory Parental Consent to Abortion," *Journal of the American Medical Association*, vol. 269, no. 1 (Jan. 6, 1993): 83.

13. American Medical Association, "Induced Termination of Pregnancy Before and After *Roe v. Wade*, Trends in the Mortality and Morbidity of Women," *JAMA*, vol. 268, no. 22 (Dec. 1992): 3238.

14. Willard Cates, Jr. and David Grimes, "Morbidity and Mortality of Abortion in the United States," *Abortion and Sterilization*, Jane Hodgson, ed. (New York: Grune and Stratton, 1981), 158; Rachel Benson Gold, *Abortion and Women's Health: A Turning Point for America?* (New York: Alan Guttmacher Institute, 1990), 28-30, *citing* additional sources.

15. This information is current as of December 1998. The NARAL Foundation/NARAL, *Who Decides? A State-By-State Review of Abortion and Reproductive Rights, 1999*, 8th Edition (Washington, D.C.: The NARAL Foundation/NARAL, 1999), xv, 252.

16. *Hodgson*, 648 F. Supp. at 763-64.

17. *Hodgson,* 648 F. Supp. at 763.

18. *Hodgson v. Minnesota*, 497 U.S. 417 (1990).

19. Charlotte Ellertson, "Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana," *American Journal of Public Health*, vol. 87, no. 8 (Aug. 1997): 1371-72; Virginia G. Cartoof and Lorraine V. Klerman, "Parental Consent for Abortion: Impact of the Massachusetts Law," *American Journal of Public Health*, vol. 76, no. 4 (April 1986): 397-400.

20. *In re Jane Doe 1*, 57 Ohio St.3d 135 (1991).

21. Tamar Lewin, "Parental Consent to Abortion: How Enforcement Can Vary," *New York Times*, May 28, 1992, A1.

22. *Memphis Planned Parenthood v. Sundquist*, No. 3:89-0520, slip op. at 13 (M.D. Tenn. Aug. 26, 1997).

23. Under *Planned Parenthood v. Casey*, a restriction that has the purpose or effect of placing a substantial obstacle in the path of a woman seeking a pre-viability abortion is an unconstitutional undue burden. 505 U.S. 833 (1992).

24. *Saenz v. Roe*, 119 S. Ct. 1518, 1525-26 (1999).

25. *Colautti v. Franklin*, 439 U.S. 379, 394-97 (1979); *Liparota v. United States*, 471 U.S. 419, 423-428 (1985).

26. *Casey*, 505 U.S. at 879.

27. *Casey*, 505 U.S. at 880 (citations omitted).

NARAL
Reproductive Freedom & Choice

THE PROPOSED CHILD CUSTODY PROTECTION ACT WOULD AFFECT PERSONS IN EVERY STATE IN THE COUNTRY

The proposed Child Custody Protection Act (CCPA) would expose persons across the country in all fifty states to liability, whether or not their home state had enacted a narrow parental involvement law. The CCPA on its face applies to states that have a parental involvement law that does not allow anyone other than a parent to be notified and that contains a judicial bypass. (Section (a)(2)). That is, if enacted, the bill would apply to (and violate the right to travel of)[1] minors and persons assisting them in obtaining an out-of-state abortion who live in the 22 states with narrow parental involvement laws that may fall within the bill's ambit (AL, AK,[2] GA, IN, KS, KY, LA, MA, MI, MN, MS, MO, NC,[3] NE, ND, PA, RI, SD, TN,[4] TX, VA, WY)[5]. (As noted in the footnotes, five of these states have very narrow exceptions for sexual abuse, and one state has a grandparent consent law. In each of these states, therefore, zealous prosecutors might lodge charges under CCPA, but the statute's ambiguity would certainly trigger motions to dismiss by defense counsel).

However, don't be fooled by these claims of narrow applicability. The CCPA would apply throughout the land to chill the lawful, constitutionally-protected conduct of persons in all fifty states. Health care providers and counselors in particular would have reason to fear prosecution if this law is enacted. ***Any***

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[1] *Saenz v. Roe*, 119 S. Ct. 1518 (1999).

[2] Arkansas, Kansas, Minnesota, Nebraska and Virginia have laws allowing a minor to sign an affidavit saying she has been sexually assaulted, in which case neither the parental involvement requirement nor the judicial bypass appears to be applicable. While there is doubt about the CCPA's applicability, therefore, in these five states, we believe at least some prosecutors would believe that the law applies.

[3] North Carolina does provide that a grandparent may consent, if the minor has been residing with the grandparent for at least six months. Under § (e)(2)(3) of the CCPA, a person stands in loco parentis (and thus within the bill) if he or she has "care and control of the minor, and with whom the minor regularly resides," so North Carolina might fall within the bill's narrow definition of states with parental involvement laws. However, the second requirement, that the person be "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" may place North Carolina's law outside the sweep of the CCPA.

[4] Tennessee's parental involvement law, which has been enjoined for several years, is scheduled to go into effect on February 28, 2000.

[5] The NARAL Foundation/NARAL, *Who Decides? A State-by-State Review of Abortion and Reproductive Rights*, 9th edition 240-241 (2000); The NARAL Foundation, *2000 Guide to Legislative Bills* (available at <www.naral.org>.

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suggestion that the CCPA merely provides federal backup for narrow state laws mandating parental involvement must be rejected.

If enacted, the CCPA would stand alongside other federal criminal in Title 18. These laws would be read in conjunction with the CCPA, and people in all fifty states could be charged with conspiracy, accomplice liability, accessory after the fact, or misprision of a felony. The breadth of these statutes is vast. Anyone familiar with the government's prosecuting authority is aware of the prosecutor's discretion in charging myriad offenses, including those prohibiting conspiracies to violate any of the laws of the United States (18 U.S.C. § 371)[6], accomplice liability (18 U.S.C. § 2)[7], accessory after the fact (18 U.S.C. § 3)[8], or misprision of a felony (18 U.S.C. § 4).[9] Congress clearly envisioned at least conspiracy prosecutions and charges under sections 2 and 3 of Title 18 in conjunction with the CCPA, as it immunized the transported minor and her parents from any charges under these sections.

Thus, if someone helped a minor to travel from Massachusetts to Vermont to obtain an abortion because the minor feared telling her abusive parents of her pregnancy or because a clinic in Vermont was actually closer and more convenient, anyone else who helped plan or carry out the trip to evade Massachusetts' laws could be charged as a conspirator. Anyone who assisted her could be charged as an accomplice. Anyone who knew that the transporter was acting in violation of law who helped and failed to report the violation could be charged with misprision of a felony.

The range of persons who could be indicted is sweeping: the receptionist who answered her query for directions from Massachusetts to the clinic could be charged and found guilty of a federal offense. Anyone performing an intake interview or counseling, who knew of her Massachusetts address would risk federal criminal liability. If she were spending the night before the abortion at a sympathetic aunt's

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[6] "If two or more persons conspire either to commit any offense against the United States. ... in any manner or for any purpose, and one or more of such persons do act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both . . .." 18 U.S.C. § 371.

[7] "Principals – (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. (b) however willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." 18 U.S.C. § 2 (West's 1999).

[8] "Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

"Except as otherwise provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both . . . " 18 U.S.C. § 3 (West's 1999).

[9] "Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both." 18 U.S.C. § 4 (West's 1999).

house in Vermont and the aunt knew of why her niece was in Vermont, the aunt would risk prosecution.

In sum, regardless of the number of states whose narrow parental consent definition would directly fall within the CCPA, if it is enacted, Congress will take a major step towards emboldening prosecutors across the land to intrude in the most intimate decisions regarding reproductive health care. It will also violate principles of federalism, as not one single state has attempted to enforce its parental involvement laws extraterritorially.

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October 18, 1999

To: United States Senate

From: Laurence H. Tribe, Tyler Professor of Constitutional Law, Harvard University
Peter J. Rubin, Visiting Associate Professor of Law, Georgetown University

Re: S. 661/H.R. 1218 and Constitutional Principles of Federalism

Introduction

We have been asked to submit our assessment of whether S. 661/H.R. 1218, now pending before the Senate, is consistent with constitutional principles of federalism. It is our considered view that the proposed statute violates those principles, principles that are fundamental to our constitutional order. That statute violates the rights of states to enact and enforce their own laws governing conduct within their territorial boundaries, and the rights of the residents of each of the United States and of the District of Columbia to travel to and from any state of the Union for lawful purposes, a right strongly reaffirmed by the Supreme Court in its recent landmark decision in *Saenz v. Roe*, 119 S.Ct. 1518 (May 17, 1999). We have therefore concluded that the proposed law would, if enacted, violate the Constitution of the United States.

S. 661/H.R. 1218 provides criminal and civil penalties, including imprisonment for up to one year, for any person who

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

S. 661/H.R. 1218, §2 (proposed 18 U.S.C. §2431(a) and (b)). In other words, this law makes it a *federal crime* to assist a pregnant minor to obtain a *lawful* abortion. The criminal penalties kick in if the abortion the young woman seeks would be performed in a state other than her state of residence, and in accord with the less restrictive laws of that state, unless she complies with the more

severe restrictions her home state imposes upon abortions performed upon minors within its territorial limits. The law contains no exceptions for situations where the young woman's home state purports to disclaim any such extraterritorial effect for its parental consultation rules, or where it is a pregnant young woman's close friend, or her aunt or grandmother, or a member of the clergy, who accompanies her "across a State line" on this frightening journey, even where she would have obtained the abortion anyway, whether lawfully in another state after a more perilous trip alone, or illegally (and less safely) in her home state because she is too frightened to seek a judicial bypass or too terrified of physical abuse to notify a parent or legal guardian who may, indeed, be the cause of her pregnancy.

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

Analysis

The essence of federalism is that the several states have not only different physical territories and different topographies but also different political and legal regimes. Crossing the border into another state, which every citizen has a right to do, may perhaps not permit the traveler to escape *all* tax or other fiscal or recordkeeping duties owed to the state as a condition of remaining a resident and thus a citizen of that state,[2] but necessarily permits the traveler temporarily to shed her home

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

[2]There are significant constitutional limits, of course, even upon a state's authority to tax its residents on transactions undertaken, or income earned, in other states, but so long as there is no taxation without representation (as there is not if the resident's eligibility to vote remains intact

state's regime of laws regulating primary conduct in favor of the legal regime of the state she has chosen to visit. Whether cast in terms of the destination state's authority to enact laws effective throughout its domain without having to make exceptions for travelers from other states, or cast in terms of the individual's right to travel – which would almost certainly be deterred and would in any event be rendered virtually meaningless if the traveler could not shake the conduct-constraining laws of her home state – the proposition that a state may not project its laws into other states by following its citizens there is bedrock in our federal system.

One need reflect only briefly on what rejecting that proposition would mean in order to understand how axiomatic it is to the structure of federalism. Suppose that your home state or Congress could lock you into the legal regime of your home state as you travel across the country. This would mean that the speed limits, marriage regulations, restrictions on adoption, rules about assisted suicide, firearms regulations, and all other controls over behavior enacted by the state you sought to leave behind, either temporarily or permanently, would in fact follow you into all 49 of the other states as you traveled the length and breadth of the nation in search of more hospitable "rules of the road." If your search was for a more favorable legal environment in which to make your home, you might as well just look up the laws of distant states on the internet rather than roaming about in a futile effort at sampling them, since you will not actually experience those laws by traveling there. And if your search was for a less hostile legal environment in which to attend college or spend a summer vacation or obtain a medical procedure, you might as well skip even the internet, since the theoretically less hostile laws of other jurisdictions will mean nothing to you so long as your state of residence remains unchanged. Unless the right to travel interstate means nothing more than the right to change the scenery, opting for the open fields of Kansas or the mountains of Colorado or the beaches of Florida but all the while living under the legal regime of whichever state you call home, telling you that the laws governing your behavior will remain constant as you cross from one state into another and then another is tantamount to telling you that you may in truth be compelled to remain at home — although you may, of course, engage in a simulacrum of interstate travel, with an experience much like that of the visitor to a virtual reality arcade who is strapped into special equipment that provides the look and feel of alternative physical environments — from sea to shining sea — but that does not alter the political and legal environment one iota. And, of course, if home-state legislation, or congressional legislation, may saddle the home state's citizens with that state's abortion regulation regime, then it may saddle them with their home state's adoption and marriage regimes as well, and with piece after piece of the home state's legal fabric until the home state's citizens are all safely and tightly wrapped in the straitjacket of the home state's entire legal regime. There are no constitutional scissors that can cut this process short, no principled metric that can supply a stopping point. The principle underlying S. 661/H.R. 1218 is nothing less, therefore, than the principle that individuals may indeed be tightly bound by the legal

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notwithstanding temporary absence from the state) and so long as the subject of the tax is not such as to incur a danger of multiple taxation, the absent resident's continuing eligibility for whatever benefits and services the state constitutionally extends to *all* its residents and *only* to its residents imposes a potential burden on state resources for which at least a minimal tax may in some circumstances be warranted.

regimes of their home states even as they traverse the nation by traveling to other states with very different regimes of law. It follows, therefore, that — unless the right to engage in interstate travel that is so central to our federal system is indeed only a right to change the surrounding scenery — S. 661 H.R. 1218 rests on a principle that obliterates that right completely.

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

The federalism principle we have described operates routinely in our national life. Indeed, it is so commonplace it is taken for granted. Thus, for example, neither Virginia nor Congress could prohibit residents of Virginia, where casino gambling is illegal, from traveling interstate to gamble in a casino in Nevada. (Indeed, the economy of Nevada essentially depends upon this aspect of federalism for its continued vitality!) People who like to hunt cannot be prohibited from traveling to states where hunting is legal in order to avail themselves of those pro-hunting laws just because such hunting may be illegal in their home state. And citizens of every state must be free, for example, to read and watch material, even constitutionally unprotected material, in New York City the distribution of which might be unlawful in their own states, but which New York has chosen not to forbid. To call interstate travel for such purposes an "evasion" or "circumvention" of one's home-state laws – as S. 661/H.R. 1218 purports to do, see S. 661/H.R. 1218 ("Transportation of minors in circumvention of certain laws relating to abortion") – is to misunderstand the basic premise of federalism: one is *entitled* to "avoid" those laws by traveling interstate. Doing so amounts to neither evasion nor circumvention.

Put simply, you may not be compelled to abandon your citizenship in your home state as a condition of voting with your feet for the legal and political regime of whatever other state you wish to visit. The fact that you intend to return home cannot undercut your right, while in another state, to be governed by *its* rules of primary conduct rather than by the rules of primary conduct of the state from which you came and to which you will return. When in Rome, perhaps you will not do as the Romans do, but you are entitled — if this figurative Rome is within the United States — to be governed as the Romans are. If something is lawful for one of them to do, it must be lawful for you as well. The fact that each state is free, notwithstanding Article IV, to make certain *benefits* available on a preferential basis to its own citizens does not mean that a state's *criminal laws* may

be replaced with stricter ones for the visiting citizen from another state, whether by that state's own choice or by virtue of the law of the visitor's state or by virtue of a congressional enactment. To be sure, a state need not treat the travels of its citizens to other states as suddenly lifting otherwise applicable restrictions when they return home. Thus, a state that bans the possession of gambling equipment, of specific kinds of weapons, of liquor, or of obscene material may certainly enforce such bans against anyone who would bring the contraband items into the jurisdiction, including its own residents returning from a gambling state, a hunting state, a drinking state, or a state that chooses not to outlaw obscenity. But that is a far cry from projecting one state's restrictive gambling, firearms, alcohol, or obscenity laws into another state whenever citizens of the first state venture there.

Thus states cannot prohibit the lawful out-of-state conduct of their citizens, nor may they impose criminal-law-backed burdens – as S. 661/H.R. 1218 would do – upon those lawfully engaged in business or other activity within their sister states. Indeed, this principle is so fundamental that it runs through the Supreme Court's jurisprudence in cases that are nominally about provisions and rights as diverse as the Commerce Clause, the Due Process Clause, and the right to travel, which is itself derived from several distinct constitutional sources.[3] See, e.g., *Healy v. Beer Institute*, 491 U.S. 324, 336 n. 13 (1989) (Commerce Clause decision quoting *Edgar v. Mite Corp.*, 457 U.S. 624, 643 (1982) (plurality opinion), which in turn quoted the Court's Due Process decision in *Shaffer v. Heitner*, 433 U.S. 186, 197 (1977)) ("The limits on a State's power to enact substantive legislation are similar to the limits on the jurisdiction of state courts. In either case, 'any attempt "directly" to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limit of the State's power.' ").

The Supreme Court recently reaffirmed this fundamental principle in its landmark right to travel decision, *Saenz v. Roe*, 119 S. Ct. 1518 (1999). There the Court held that, even with congressional approval, the State of California was powerless to carve out an exception to its otherwise-applicable legal regime by providing recently-arrived residents with only the welfare benefits that they would have been entitled to receive under the laws of their former states of residence. This attempt to saddle these interstate travelers with the laws of their former home states – even if only the welfare laws, laws that would operate far less directly and less powerfully than would a special criminal-law restriction on primary conduct – was held to impose an unconstitutional penalty upon their right to interstate travel, which, the Court held, is guaranteed them by the Privileges or Immunities Clause of the Fourteenth Amendment. See *Saenz*, 119 S. Ct. at 1526-1527.

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

> [B]y virtue of a person's state citizenship, a citizen of one State who travels in other States,

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[3] See *Saenz v. Roe*, 119 S. Ct. 1518, 1525-1527 (1999) (describing the various components of the right to travel and their constitutional derivation).

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

Saenz, 119 S. Ct. at 1525-1526 (footnotes and parenthetical omitted). *Doe v. Bolton*, 410 U.S. 179 (1973), which was decided over a quarter century ago, and to which the *Saenz* court referred, specifically held that, under Article IV of the Constitution, a state may not restrict the ability of visiting non-residents to obtain abortions on the same terms and conditions under which they are made available by law to state residents. "[T]he Privileges and Immunities Clause, Const. Art. IV, §2, protects persons . . . who enter [a state] seeking the medical services that are available there." Id. at 200.

Thus, in terms of protection from being hobbled by the laws of one's home state wherever one travels, nothing turns on whether the interstate traveler intends to remain permanently in her destination state, or to return to her state of origin. Combined with the Court's holding that, like the states, Congress may not contravene the principles of federalism that are sometimes described under the "right to travel" label, *Saenz* reinforces the conclusion, if it were not clear before, that even if enacted by Congress, a law like S. 661/H.R. 1218 that attempts by reference to a state's own laws to control that state's resident's out-of-state conduct on pains of criminal punishment, whether of that resident or of whoever might assist her to travel interstate, would violate the federal Constitution. See also *Shapiro v. Thompson*, 394 U.S. 618, 629-630 (1969) (invalidating an Act of Congress mandating a durational residency requirement for District of Columbia residents seeking to obtain welfare assistance).

Last month, this Committee heard testimony from Professor Lino Graglia of the University of Texas School of Law. An opponent of abortion rights, he candidly conceded that the proposed law would "make it . . . more dangerous for young women to exercise their constitutional right to obtain a safe and legal abortion." Testimony of Lino A. Graglia on H.R. 1218 before the Constitution Subcommittee of the Committee on the Judiciary, U.S. House of Representatives, May 27, 1999 at 1. He also concluded, however, that "the Act furthers the principle of federalism to the extent that it reinforces or makes effective the very small amount of policymaking authority on the abortion issue that the Supreme Court, an arm of the national government, has permitted to remain with the States." Id. at 2. He testified that he supported the bill because he would support "anything Congress can do to move control of the issue back into the hands of the States." Id. at 1.

Of course, as the description of S. 661/H.R. 1218 we have given above demonstrates, that proposed statute would do nothing to move "back" into the hands of the states any of the control over abortion that was precluded by *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny. The several states already have their own distinctive regimes for regulating the provision of abortion services to

pregnant minors, regimes that are permitted under the Supreme Court's abortion rulings. That, indeed, is the very premise of this proposed law. But, rather than respecting federalism by permitting each state's law to operate within its own sphere, the proposed federal statute would contravene that essential principle of federalism by saddling the abortion-seeking young woman with the restrictive law of her home state wherever she may travel within the United States unless she travels unaided. Indeed, it would add insult to this federalism injury by imposing its regime *regardless of the wishes of her home state*, whose legislature might recoil from the prospect of transforming its parental notification laws, enacted ostensibly to encourage the provision of loving support and advice to distraught young women, into an obstacle to the most desperate of these young women, compelling them in the moment of their greatest despair to choose between, on the one hand, telling someone close to them of their situation and perhaps exposing this loved one to criminal punishment, and, on the other, going to the back alleys or on an unaccompanied trip to another, possibly distant state. This federal statute would therefore violate rather than reinforce basic constitutional principles of federalism.[4]

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

No less than the right to end a pregnancy, the constitutional right to travel interstate and to take advantage of the laws of other states exists even for those citizens who are not yet eighteen. "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 74 (1976). Nonetheless, the Court has held that, in furtherance of the minors' best interests, government may in some circumstances have more leeway to regulate where minors are concerned. Thus, whereas a law that sought, for example, to burden *adult* women with their home state's constitutionally acceptable waiting periods for abortion (or with their home state's constitutionally permissible medical regulations that may make abortion more costly) even when they traveled out of state to avoid those waiting periods (or other regulations) would *obviously* be unconstitutional,

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[4]Although the failure of S. 661 H.R. 1218 to exempt states that would not opt to give their parental involvement laws extraterritorial effect certainly aggravates its violation of federalism, this proposed statute would, as we have shown, violate federalism principles even if it permitted states to opt out. Just as Congress may not license the state of destination of an interstate traveler to hobble the new resident, even temporarily, with the laws of her former state of residence (even with respect to mere benefits that the state of destination is free to limit to its own residents), see *Saenz v. Roe*, 119 S. Ct. at 1528-1529, so Congress may not license an interstate traveler's home state, during the time of that traveler's sojourn in other states, to hobble her with its laws.

it might be argued that a law like the proposed one, which seeks to force a young woman to comply with her home state's parental consent laws regardless of her circumstances, is, because of its focus on minors, somehow saved from constitutional invalidity.

It is not, for at least two reasons. First, the importance of the constitutional right in question for the pregnant minor too desperate even to seek judicial approval for abortion in her home state – either because of its futility there,[5] or because of her terror at a judicial proceeding held to discuss her pregnancy and personal circumstances[6] – means that government's power to burden that choice is severely restricted. As Justice Powell wrote over two decades ago:

> The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. . . . A pregnant adolescent . . . cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.
>
> Moreover, the potentially severe detriment facing a pregnant woman is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings

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[5]In this regard, the Subcommittee on the Constitution has heard the testimony of Billie Lominick, a 63-year old grandmother who helped a pregnant minor from a physically and sexually abusive household cross state lines to obtain an abortion after she was unable to find any judge in her home state of South Carolina who would hear her judicial bypass petition. There is also evidence that the rate at which some state judges grant these petitions is disproportionately low, something that appears to reflect their own personal views about abortion rather than the legal standards they are supposed to apply: For example, in 1992 the director of a woman's clinic in Indianapolis reported that in six years she had never known of any minor successfully obtaining a judicial bypass in that city. See Lewin, Parental Consent to Abortion: How Enforcement Can Vary, *The New York Times*, May 28, 1992 at A1. In Ohio, one 17 1/2 year old had a petition denied by a judge who concluded that she had "not had enough hard knocks in her life." *Id.*

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

> with it adult legal responsibility for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

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

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

To begin with, the proposed law, unlike one that evenhandedly defers to each state's determination of what will best protect the emotional health and physical safety of its pregnant minors who seek to terminate their pregnancies, simply defers to states with *strict* parental control laws and subordinates the interests of states that have decided that legally-mandated consent or notification is not a sound means of protecting pregnant minors. The law does *not* purport to impose a uniform nationwide requirement that all pregnant young women should be subject to the abortion laws of their home states and only those abortion laws wherever they may travel. Thus, under S. 661/H.R. 1218, a pregnant minor whose parents believe that it would be both destructive and profoundly disrespectful to their mature, sexually active daughter to require her by law to obtain their consent before having an abortion, and who live in a state whose laws reflect that view, would, despite the judgment expressed in the laws of her home state, *still* be required to obtain parental consent should she seek an abortion in a neighboring state with a stricter parental involvement law – something she might do, for example, because that is where the nearest abortion provider is located. This substantively slanted way in which S. 661/H.R. 1218 would operate fatally undermines any argument that might otherwise be available that principles of federalism must give way because this law seeks to ensure that the health and safety of pregnant minors are protected in the way their home states have decided would be best.[7]

In addition, the proposed law, again unlike one protecting parental involvement generally, selectively targets one form of control: control with respect to the constitutionally protected

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[7] Nor does this law even purport to be justified as a reflection of Congress's *own* vision of what would best protect the pregnant minor. This law does not impose a federal parental involvement standard either nationwide or, assuming it would be constitutionally permissible, upon all pregnant minors engaged in interstate travel for purposes of having an abortion. For Congress to decide to apply its parental involvement regime only when minors travel from more restrictive to less restrictive states, and for it to do so without itself determining what level of parental involvement is appropriate – as is the case with S. 661/H.R. 1218 – is incompatible with either a protection-of-minors purpose or a federalism-promoting purpose.

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

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

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

This "domestic relations exception" to principles of federalism described by Professor Harrison, however, does not exist, at least not in any context relevant to the constitutionality of S. 661/H.R. 1218. To be sure, acting pursuant to Article IV, § 1, Congress has prescribed special state obligations to accord full faith and credit to judgments in the domestic relations context — for

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[8]We have not raised any objection that S. 661/H.R. 1218 would exceed Congress's affirmative Commerce Clause authority under *Lopez v. United States*, 514 U.S. 549 (1995). We do not believe such an objection would be well-taken. Of course, to the extent an affirmatively authorized federal requirement of parental involvement in interstate surgical trips would unduly burden the abortion rights of minors, it would be unconstitutional.

example, to child custody determinations and child support orders. 28 U.S.C. §§ 1738A, 1738B. These provisions also establish choice of law principles governing modification of domestic relations orders. In addition, in a controversial provision whose constitutionality is open to question, Congress has said that states are *not* required to accord full faith and credit to same-sex marriages. *Id.* at § 1738C.

But the special measures adopted by Congress in the domestic relations context can provide no justification for S. 661/H.R. 1218. There is a world of difference between provisions like §§ 1738A and 1738B, which prescribe the full faith and credit to which state *judicial decrees and judgments* are entitled, and proposed S. 661/H.R. 1218, which in effect gives state *statutes* extraterritorial operation — by purporting to impose criminal liability for interstate travel undertaken to engage in conduct lawful within the territorial jurisdiction of the state in which the conduct is to occur, based solely upon the laws in effect in the state of residence of the individual who seeks to travel to a state where she can engage in that conduct lawfully.

The Supreme Court has always differentiated "the credit owed to laws (legislative measures and common law) and to judgments." *Baker v. General Motors Corp.*, 118 S. Ct. 657, 663 (1998). For example, while a state may not decline on public policy grounds to give full faith and credit to a judicial judgment from another state, *see, e.g., Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908), a forum state has always been free to consider its own public policies in declining to follow the legislative enactments of other states. *See Nevada v. Hall*, 440 U.S. 410, 421-24 (1979). In short, under the Full Faith and Credit Clause, a state has never been compelled "to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939). In fact, the Full Faith and Credit Clause was meant to prevent "parochial entrenchment on the interests of other States." *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 272 (1980) (plurality opinion). A state is under no obligation to enforce another state's statute with which it disagrees.

But S. 661/H.R. 1218 would run afoul of that principle. It imposes the restrictive laws of a woman's home state wherever she travels, in derogation of the usual rules regarding choice of law and full faith and credit.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

June 28, 1999
(House)

H.R. 1218 - Child Custody Protection Act
(Rep. Ros-Lehtinen (R) FL and 129 cosponsors)

The Administration strongly opposes enactment of H.R. 1218 in its current form. If a bill is presented to the President that fails to address the concerns that are described below, the President's senior advisers will recommend that he veto it.

During Congressional consideration of almost identical bills during the 105th Congress, the Administration, in Statements of Administration Policy and in letters from former White House Chief of Staff Erskine Bowles to the House and Senate Committees on the Judiciary, stated that it would support properly crafted legislation that would make it illegal to transport minors across State lines for the purpose of avoiding parental involvement requirements. Unfortunately, H.R. 1218, as reported by the House Committee on the Judiciary, also fails to address a number of the critical concerns raised by the Administration. Specifically, the bill must be amended to:

- Exclude close family members from criminal and civil liability. Under the legislation, grandmothers, aunts, and minor and adult siblings could face criminal prosecution for coming to the aid of a relative in distress.

- Ensure that persons who only provide information, counseling, referral, or medical services to the minor cannot be subject to liability.

- Address constitutional and other legal infirmities that the Department of Justice has identified in particular provisions of the legislation. These concerns were transmitted to the House Committee on the Judiciary on June 24, 1998, and again on June 15, 1999.

The Administration continues to be concerned that H.R. 1218 raises important federalism issues, including the rights of States to regulate matters within their own boundaries. The Administration believes, however, that legislation that addresses the concerns noted above, and that is carefully targeted at punishing non-relatives who transport minors across State lines for the purpose of avoiding parental involvement requirements, would mitigate the federalism concerns and the Administration's other concerns.

Pay-As-You-Go Scoring

H.R. 1218 could affect both direct spending and receipts; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary scoring estimate of this bill is that it would have a net effect of less than $500,000.

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H-5.984 Mandatory Parental Consent to Abortion

With respect to parental involvement when minors seek an abortion, the AMA believes th the following guidelines constitute good medical practice: (1) Physicians should ascertain law in their state on parental involvement to ensure that their actions are consistent with legal obligations. (2) Physicians should strongly encourage minors to discuss their pregnancy with their parents. Physicians should explain how parental involvement can b helpful and that parents are generally very understanding and supportive. If a minor expresses concerns about parental involvement, the physician should ensure that the minor's reluctance is not based upon any misperceptions about the likely consequences parental involvement. (3) Physicians should not feel or be compelled to require minors to obtain consent of their parents before deciding whether to undergo an abortion. The pati even an adolescent - generally must decide whether, on balance, parental involvement i advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate. Physicians should explain under what circumstances (e.g., lif threatening emergency) the minor's confidentiality will need to be abrogated. (4) Physicia should try to ensure that minor patients have made an informed decision after giving car consideration to the issues involved. They should encourage their minor patients to cons alternative sources if parents are not going to be involved in the abortion decision. Minor should be urged to seek the advice and counsel of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers, or the clergy. (CEJA Rep. H, A-92)

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The Child Custody Protection Act (CCPA)
A Chaotic and Cruel Prohibition of Abortion

The Center for Reproductive Law and Policy

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SEVEN REASONS WHY THE CHILD CUSTODY PROTECTION ACT IS BAD PUBLIC POLICY

Most young women already involve their parents in their abortion decision. Even in states that enforce no mandatory parental involvement, over 60 percent of parents knew of their daughters' pregnancy. And among minors who did not tell a parent about their abortion, 30 percent had experienced or feared violence in their family or feared being forced to leave home. The government cannot mandate healthy family communication where it does not already exist.

Young women who determine that they cannot involve a parent often seek help and guidance from other trusted adults in their lives such as grandparents, aunts, or ministers. Indeed, more than half of all young women who did not involve a parent in their decision did involve another adult, including 15 percent who turned to an adult relative. This bill would deter young women from seeking the aid of a trusted adult and would further isolate young women facing crisis pregnancies.

Under this legislation, grandparents, aunts, and uncles could be prosecuted and jailed for traveling across state lines to obtain needed reproductive health services for young women in crisis.

This legislation could force some young women to seek illegal or self-induced abortions. The American Medical Association noted that "[b]ecause the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a 'back alley' abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since . . . 1973."

Eighty-six percent of counties in the U.S. do not have an abortion provider. For some women, a reproductive health facility in another state may be the closest to their home.

The legislation is unconstitutional and tramples on some of the most basic principles of federalism. In the words of legal scholars Laurence Tribe of Harvard University and Peter J. Rubin of Georgetown University: "[The Child Custody Protection Act] violates the rights of states to enact and enforce their own laws governing conduct within their territorial boundaries, and the rights of the residents of each of the United States and of the District of Columbia to travel to and from any state of the Union for lawful purposes, a right strongly affirmed by the Supreme Court . . ."

The American Academy of Pediatrics opposes this legislation and says that it "may increase the risk of harm to the adolescents by delaying access to appropriate medical care."

NARAL 2/18/00

The Child Custody Protection Act (CCPA)
A Chaotic Cruel Prohibition of Abortion

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CCPA would make it a crime for any person, other than a parent, to knowingly transport a woman under the age of 18 across a state line to obtain an abortion if she has not met the requirements for parental notification or consent in her state of residence. An individual who assists a young woman in violation of this proposed measure faces both civil and criminal liability, including imprisonment for up to one year, fines of up to $100,000, or both. CCPA would also allow parents to bring civil suits against anyone assisting the young woman. Prosecution may be avoided only if the abortion is necessary to save the life of the minor because of a physical disorder, physical injury, or physical illness.

This proposed legislation is unconstitutional on at least six grounds. It would:

- unduly burden young women's access to abortion
- endanger young women by failing to provide a health exception
- violate principles of federalism
- violate the Equal Protection Clause of the Fifth Amendment
- hinder the right to travel recognized under the Privileges and Immunities Clause, and
- compromise the First Amendment right to associate

The bill does not prevent a young woman from obtaining an abortion in a state that allows abortion without parental consent or notice; it simply makes her travel by herself if she is coming from another state. If enacted, this law would be the first federal criminal anti-abortion restriction to go into effect in over a century. It would affect access to and provision of abortion in *every* state regardless of the existing state law.

During the 105th Congress, this measure passed the House of Representatives, but failed in the Senate on a cloture vote. In 1999, the House passed HR 1218, by a vote of 270-159. The companion bill (S. 661) awaits Senate consideration.

CCPA should be called: "A Chaotic, Cruel Prohibition of Abortion" because

- This bill would create **chaos** for the young woman, the legal system, and the medical profession.
- This bill is **cruel** because it would force young women to travel alone and could lead to back alley abortions, injury, and death.
- This bill is an extreme and intrusive attempt to **prohibit** young women access to safe and legal abortions.

(continued)

The Judicial Bypass is No Panacea

The judicial bypass—the Supreme Court mandated alternative to notifying or obtaining consent from a parent—is not a real option for many young women. Although CCPA proponents have recently abandoned their former opposition and embraced judicial bypass as an exclusive solution, their reliance on this remedy is misplaced. The bypass does not work at all in some states; in others, needless delays, breaches of confidentiality, and difficulties in navigating the courts force many teens to travel out of state to obtain an abortion.

For many minors, the prospect of going to court for a judicial bypass is intimidating or futile. For most adults, going to court is a very daunting experience; it is even more frightening for a minor to disclose intimate details of her life to strangers in a courtroom. In addition, some minors live in regions where the local judges never grant bypass petitions or the closest court that hears the petitions is located hundreds of miles away. The risk of medical complications rises at least 20% with every week of pregnancy beyond eight weeks. Bypass procedures, including their appeals, often delay abortions, thus increasing the risk and sometime the cost of the procedure.

Violating America's Constitution, Endangering American Citizens

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The Child Custody Protection Act would unconstitutionally:

- unduly burden young women's access to abortions
- endanger young women by failing to provide a health exception
- violate principles of federalism
- violate the Equal Protection Clause of the Fifth Amendment
- hinder the right to travel recognized under the Privileges and Immunities Clause, and
- compromise the First Amendment right to associate

Young women, caring adults, and medical providers would all be put at risk by this ill-considered attempt to eliminate the constitutionally protected right to abortion. This bill is a veiled attempt to eviscerate *Roe v. Wade* for a vulnerable group of people — young women who fear reprisal or who have no access to safe and legal abortion services in their home state.

CCPA Unconstitutionally Endangers Young American Women

CCPA Burdens Young Women's Access to Abortion Services

The Supreme Court has held that adults, as well as minors, have a constitutional right to choose whether or not to have an abortion and that restrictions on this right are invalid if they impose an "undue burden" (*Planned Parenthood of Missouri v. Danforth, Belloti v. Baird,* and *Planned Parenthood v. Casey*).

CCPA places a substantial obstacle in the path of many young women seeking abortions. In some instances, CCPA would require young women to go to court in **two states** in order to meet the requirements of both their own state of residence as well as the state in which they hope to obtain abortion services. CCPA also would make it more difficult for some young women — and impose criminal liabilities on those who help them — to obtain a safe and legal abortion from the closest provider. (As of 1996, 86% of counties did not have abortion providers.) Finally, CCPA is not designed to enhance communication; rather, it seeks to deter young women from seeking a safe and legal abortion and forces them to carry unwanted pregnancies to term.

CCPA Fails to Provide an Adequate Health Exception

The Supreme Court held in both *Roe v. Wade* and *Planned Parenthood v. Casey* that restrictions on abortion must contain exceptions for both the life or health of the pregnant woman. In another ruling, *Doe v. Bolton*, the Court held that factors including age, emotional, and psychological status could be considered in defining a woman's well-being and health.

CCPA Violates Fundamental Constitutional Principles

CCPA Turns the Constitutional Principle of Federalism on its Head

CCPA would force individuals who cross state lines to carry with them the laws of their state of residence, no matter where they travel. The core principle of American federalism is that the laws of each state apply only within that state. CCPA would violate this fundamental concept and create two different classes of states. Twenty states, representing less than 30% of the population, have laws that would be "enforced" by CCPA; the other 30 states, representing 70% of the population, do not. CCPA would require that these 30 states — **within their own borders** — abide by the laws of the 20 other states as to non-residents in their states. This is an unprecedented

(continued)

Congressional intrusion into what the Constitution clearly intends to be an arena of state prerogative.

CCPA Violates the Equal Protection Clause of the Fifth Amendment

The Fifth Amendment prohibits the federal government from depriving individuals of equal protection of the laws in the same manner in which the Fourteenth Amendment prohibits the states from violating equal protection of the laws. Embodied in this protection is a prohibition on the federal government creating a classification, without a compelling governmental interest, that penalizes the exercise of a constitutional right.

CCPA explicitly classifies among minors being transported across state lines as well as among those persons transporting them. CCPA classifies minors in an arbitrary manner by drawing distinctions based on the minor's state of residence. It further classifies among those persons aiding the minor by penalizing only non-parents who are assisting the minor in exercising their right to an abortion. CCPA thus imposes a criminal penalty that classifies based upon the exercise of a constitutional right — the right to choose and state residency. This same "rule" is not applied to those who accompany minors across state lines for other legal purposes — for example, marriage, major surgical procedures, and gambling.

CCPA Hinders the Right to Travel

The right freely to leave the state in which one resides is recognized by the Privileges and Immunities Clause of Article IV of the Constitution. The Supreme Court has ruled that the right to travel from state to state is a right of national citizenship. Indeed, the Court reiterated this principle last term in *Saenz v. Roe* by holding that states cannot condition the receipt of benefits on state citizenship. The right to travel encompasses the right of a citizen of one state to enter and leave another state and the duty of states to treat non-residents the same as residents.

CCPA does not simply regulate — in a broad sense — interstate travel. Rather, it regulates interstate travel between **certain** states for **certain** people and under certain conditions. It makes the legality of interstate travel dependent upon the traveler's state of residency and purpose. The hodgepodge of restrictions on interstate travel created by CCPA is inconsistent with the rights of national citizenship recognized by the Privileges and Immunities Clause.

CCPA Compromises the First Amendment Right to Associate

The First Amendment preserves the freedom of association through its explicit guarantee of the right of people to peaceably assemble. This freedom has been interpreted by the Court to include those who choose to "pool their resources" to engage in constitutionally protected conduct. CCPA denies this right by criminalizing the association between a minor and another person, including a friend, relative, or health care provider.

State Laws Before and After CCPA

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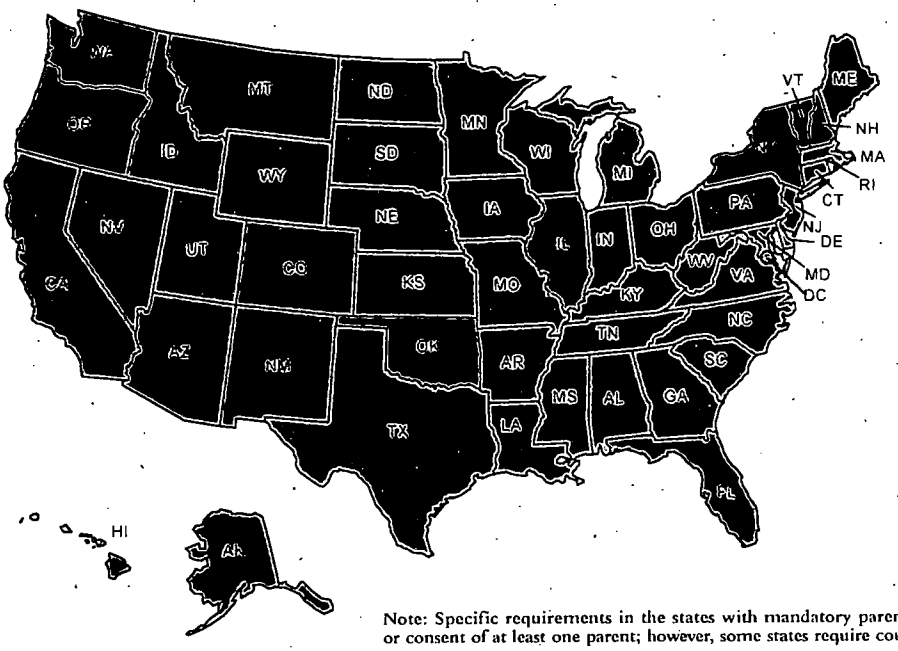
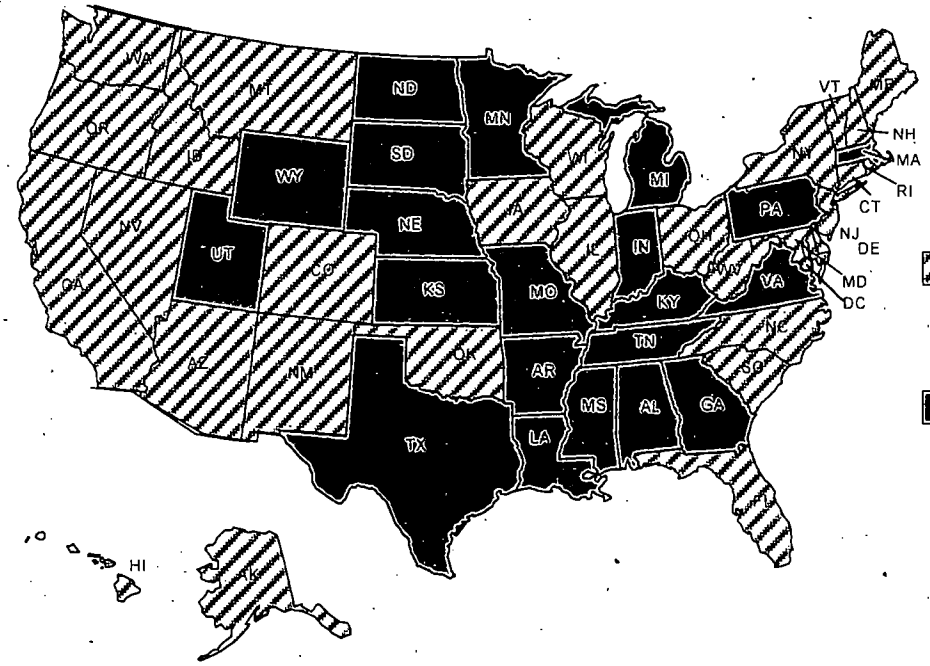
State Laws Before CCPA



- States with strict mandatory parental involvement laws as strict as CCPA
- States with mandatory parental involvement laws not as strict as CCPA
- States with no mandatory parental involvement laws
- States with mandatory parental involvement laws that are blocked by court rulings

Note: Specific requirements in the states with mandatory parental involvement laws vary widely. Most states require notice or consent of at least one parent; however, some states require counseling that must include a discussion of parental involvement.

State Laws After CCPA



- States adversely affected by passing CCPA State laws controlling 30% of the population will be imposed upon the other 70% of the population.
- States with strict mandatory parental involvement laws as strict as CCPA

February 2000

The American Medical Community Speaks Out Against CCPA

The Center for Reproductive Law and Policy

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The American medical community opposes laws like CCPA as dangerous to the health and well being of young women. CCPA would be ineffective in promoting family communication.

CCPA would delay access to abortion services and would also require young women to travel alone. CCPA would lead to a new generation of back alley abortions for those young women who are determined to end their pregnancies. For these and other reasons, the professional health care community strongly opposes laws like CCPA.

American Medical Association (AMA)

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

(Council on Ethical and Judicial Affairs; Report H; House of Delegates Meeting; June 1992)

The American Academy of Pediatrics(AAP)

"The AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects.... There is evidence that such legislation may have an adverse impact on some families and that it increases the risk of medical and psychological harm to the adolescent. Judicial bypass provisions do not ameliorate the risk."

(The Adolescent's Right to Confidential Care When Considering Abortion (RE9614); American Academy of Pediatrics, Policy Statement; Vol. 97, Number 5; May 1996, pp746-751)

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American Medical Women's Association(AMWA)

"We feel that abortion is a decision that should be reached between patients and physicians; and we believe that forced parental involvement will have a negative impact on the doctor-patient relationship."

(Letter from AMWA president Clarita E. Herrera to Congresswoman Ros-Lehtinen expressing opposition to H.R. 1218. April 22, 1999)

American Public Health Association(APHA)

"Confidential family planning and primary care services are necessary for adolescents and teenagers to receive immediate quality medical treatment. Fear of parental knowledge or abuse often deters adolescents from seeking family planning services and medical care."

(Fact Sheet: Parental Consent for Family Planning; http://www.apha.org/legislative/factsheets/fs10.htm)

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Editorials from across the country — both this year and last — recognize that CCPA is an attempt to block the exercise of constitutionally guaranteed abortion rights of young women who may be faced with unwanted pregnancies, abusive parents, and a hostile state system.

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

The New York Times

June 30, 1999

A Cruel Scheme to Curb Abortion

"Don't be misled by the label. The benignly titled "Child Custody Protection Act"...is in fact a cold-hearted piece of legislation that would jeopardize the health of desperate young women seeking abortions and potentially imprison adults who help them. The bill also flouts the Constitution. . . .

Apart from undermining the constitutional right to an abortion, the legislation violates the right of citizens to travel freely and to be treated as "a welcome visitor rather than an unfriendly alien" when entering another state -- a right recently upheld by the Supreme Court in a California welfare case....

In addition, the bill could result in legal chaos as Federal prosecutors try to figure out the interaction between this new Federal statute and a host of different parental notification laws in the states.

Lawmakers on both sides of the aisle and the abortion debate should join to defeat this misguided proposal. If not, President Clinton must stand ready to use his veto pen in the event election-year expediency prevails over principle in both chambers."

ST. LOUIS POST-DISPATCH

July 5, 1999

Locking Up Grandma

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

The bill would make it harder for young women with abusive parents to obtain a safe and legal abortion....

If, on the other hand, the purpose of the House was to make abortions even more difficult to obtain, then the bill makes perfect sense....

Most members of Congress are voting for these bills with one goal in mind — stopping abortion...."

The Courier-Journal

July 2, 1999

Punishing Helpers

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

This latest action by House Republicans has been touted as a protective Measure . . . . How unfortunate that the writers of the bill have chosen to hide behind a pro-family stance to cover their real intent, which is to make abortion for many young, vulnerable women nearly impossible.

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...(T)he horror stories of women unable to receive safe, legal abortions are not so far behind us that we should force today's young women back into those same life- threatening predicaments."

Pittsburgh Post-Gazette
ONE OF AMERICA'S GREAT NEWSPAPERS
August 1, 1998

Run For The Border; State Lines Mean Nothing In Congress' anti-Abortion Zeal

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

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

Star Tribune
July 13, 1998

Antiabortion Bill; Don't Make Adult Helpers Criminals

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

The Washington Post
July 20, 1998

The Abortion Legislation

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

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

Geography is Destiny

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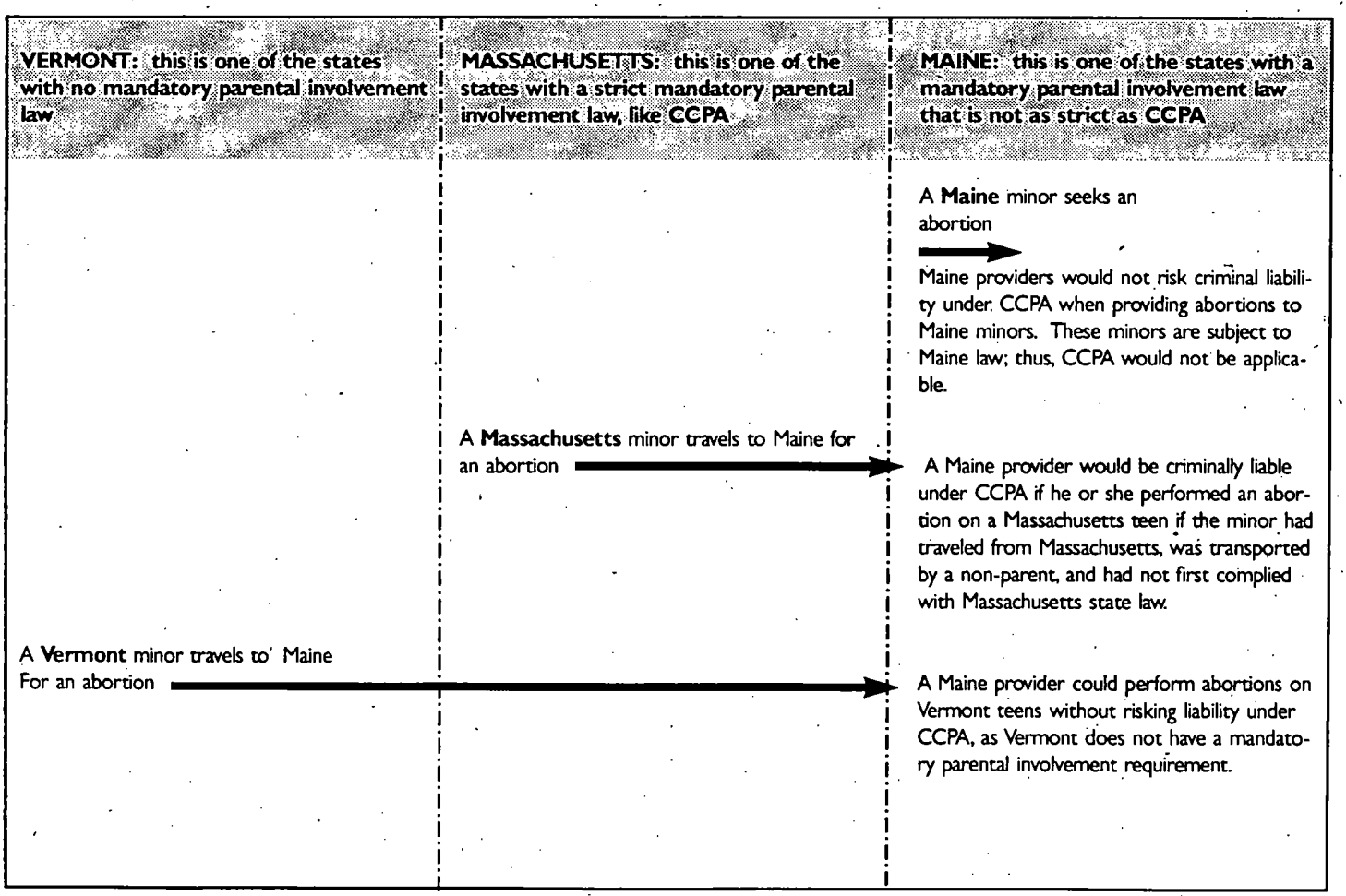
CCPA is a one-sided bill that enforces only the strictest state mandatory parental involvement laws. As a consequence, the proposed legislation would have important implications for all states.

First, it would create an untenable legal morass. A minor would have to take the law of her resident state with her when she seeks an abortion in another state if her state of residence's law is one of those enforced by CCPA's definition of "parental involvement." However, to add to the confusion, if the minor comes from a state that does not have a mandatory parental involvement law, or the law is more "liberal" and is thus not enforced by CCPA's definition, she would have to follow the law of the state in which she seeks an abortion. In sum, a minor's obligations and liability for those helping her will be dramatically different depending on the law that exists in her state of residence.

Second, it is exactly those states with more "liberal" laws, or no mandatory parental involvement laws at all, that are likely to be visited by minors in need of abortions. These states will bear the burden of having their medical personnel and clinic staff subject to potential liability from a number of statutory provisions regarding conspiracy, accomplice, and accessory liability. To avoid criminal liability, health care providers would have to be familiar with, and be ready to comply with, a variety of state laws before proceeding with an abortion.

As illustrated in the following examples, both minors and providers will be affected by this chaotic, cruel prohibition of abortion.

The Effect of CCPA on MAINE Abortion Providers



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The Effect of CCPA on Minors Traveling to MAINE for Abortions

VERMONT: this is one of the states with no mandatory parental involvement laws	**MASSACHUSETTS: this is one of the states with a strict mandatory parental involvement law, like CCPA**	**MAINE: this is one of the states with a mandatory mandatory parental involvement law that is not as strict as CCPA**
Melissa, a teen from **Vermont,** wishes to obtain an abortion. Her own state requires no adult involvement in a minor's abortion decision. However, much of Melissa's family is in Maine, and she would like to be close to them when she obtains an abortion.		Ann, a teen from **Maine,** wishes to obtain an abortion. She decides to stay in Maine to get the abortion. → Ann will either have to obtain the consent of one parent or adult family member or obtain a judicial bypass in Maine.
If she travels to Maine →		Melissa would be subject to Maine's law, and therefore must obtain either the consent of one parent or adult family member or a judicial bypass in Maine.
Melissa, the same teen from Vermont, decides to obtain an abortion at the offices of the closest provider. The closest abortion provider is located in Massachusetts.		
If she travels to Massachusetts →	Melissa would be subject to **Massachusetts** law, which requires that she obtain the written consent of one parent or a judicial bypass.	
	Julie wants to obtain an abortion, but her home state of Massachusetts requires that she obtain consent from one parent or that she obtain a judicial bypass. She does not feel that she can involve her parents in this decision nor is she comfortable with the idea of going before a court to explain her situation.	
	If she travels to Maine with another person →	CCPA would make Julie's home state law travel with her, forcing her to either obtain consent from one parent or a judicial bypass in Massachusetts. Failure to do so would make any non-parent adult who transported her across state lines, and the abortion provider, criminally liable under CCPA.

* A judicial bypass is a court order that would take the place of written consent of, or notice to, a parent.

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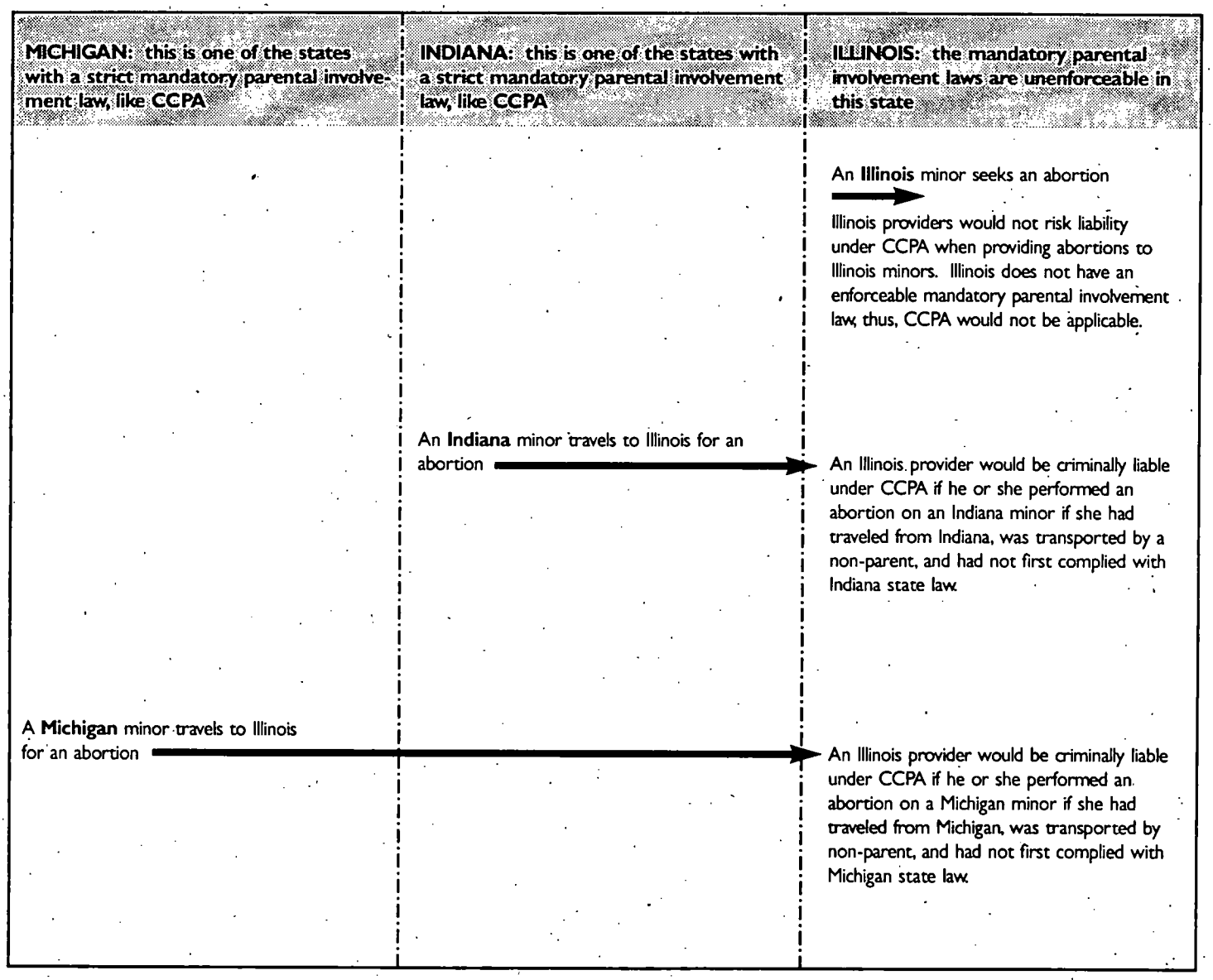
The Effect of CCPA on ILLINOIS Abortion Providers



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The Effect of CCPA on Minors Traveling to ILLINOIS for Abortions

MICHIGAN: this is one of the states with a strict mandatory parental involvement law, like CCPA	**INDIANA: this is one of the states with a strict mandatory parental involvement law, like CCPA**	**ILLINOIS: the mandatory parental involvement laws are unenforceable in this state**
		Ann, a teen from **Illinois** wishes to obtain an abortion. She decides to stay in Illinois to get the abortion.
		Ann will not have to obtain her parents' consent to get an abortion because her state does not require adult involvement in a minor's decision.
Melissa, a teen from **Michigan,** wishes to obtain an abortion. Her own state requires that she obtain either the written consent from one parent or a judicial bypass. However, much of Melissa's family is in Illinois, and she would like to be close to them when she obtains her abortion.		
If she travels to Illinois →		CCPA would make Melissa's home state law travel with her to Illinois. Melissa would have to obtain either the written consent from one parent or a judicial bypass in Michigan. Failure to do so would make any non-parent adult who transported her across state lines, and the abortion provider, criminally liable under CCPA.
Melissa, the same teen from Michigan, decides to obtain an abortion at the office of the closest provider. The closest provider is located in Indiana.		
If she travels to **Indiana** →	Melissa would have to comply with both states' mandatory parental involvement laws. If she chose to obtain a judicial bypass, she would have to go through court proceedings in both Michigan and Indiana. Failure to do so would make any non-parent adult who transported her across state lines, and the abortion provider, criminally liable under CCPA.	
	Julie wants to obtain an abortion, but her home state requires that she obtain either the written consent from one parent or a judicial bypass. She does not feel that she can involve her parents in this decision nor is she comfortable with the idea of going before a court to explain her situation.	
	If she travels to Illinois with another person →	CCPA would make Julies's home state law travel with her to Illinois. Julie would have to obtain either the written consent from one parent or a judicial bypass in Indiana. Failure to do so would make any non-parent adult who transported her across state lines, and the abortion provider, criminally liable under CCPA.

* A judicial bypass is a court order that would take the place of written consent of, or notice to, a parent.

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