112TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
112–671

CHILD INTERSTATE ABORTION NOTIFICATION ACT

SEPTEMBER 14, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2299]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2299) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

H.R. 2299, the "Child Interstate Abortion Notification Act" ("CIANA"), has two primary purposes. The first is to protect the health and safety of young girls by preventing valid and constitutional state parental involvement laws from being circumvented. The second is to protect the health and safety of young girls by protecting the rights of parents to be involved in the medical decisions of their minor daughters when such decisions involve interstate abortions.

To achieve these purposes, CIANA contains two sections, each of which creates a new Federal crime subject to up to a $100,000 fine, or 1 year in jail, or both.[1]

First, CIANA makes it a Federal crime to transport a minor across state lines to obtain an abortion in another state in order to avoid a state law requiring parental involvement in a minor's abortion decision. According to the Guttmacher Institute, 34 states have laws in effect that require parental involvement in minors' abortions.[2] But too often, such laws are circumvented. Indeed, according to "The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review," published by the Guttmacher Institute in 2009, "The clearest documented impact of parental involvement laws is an increase in the number of minors traveling outside their home states to obtain abortion services in states that do not mandate parental involvement or that have less restrictive laws."[3]

The purpose of the first section of CIANA is to prevent people—including abusive boyfriends and older men who may have committed rape—from pressuring young girls into circumventing their state's parental involvement laws by receiving a secret out-of-state abortion. This section of CIANA does not apply to minors themselves, or to their parents. It also does not apply in life-threatening emergencies that may require that an abortion be provided immediately.

Second, CIANA applies when a minor from one state crosses state lines to have an abortion in another state that does not have a state law requiring parental involvement in a minor's abortion decision, or when a minor from one state crosses state lines to have an abortion in another state that does have a state law requiring parental involvement in a minor's abortion decision, but the physician fails to comply with such law. In such a case, CIANA makes it a Federal crime for the abortion provider to fail to give one of the minor's parents, or a legal guardian if necessary, 24 hours' notice (or notice by mail if necessary) of the minor's abortion decision before the abortion is performed. The purpose of this section is to protect fundamental parental rights by giving parents a chance to

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[1] Under 18 U.S.C. § 3559(a)(6) ("An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is 1 year or less but more than 6 months, as a Class A misdemeanor."), CIANA would be classified as a Class A misdemeanor. Under the Federal fine statute, the sentence for a Class A misdemeanor that does not result in death is not more than $100,000, and for one that does result in death is not more than $250,000. *See* 18 U.S.C. § 3571(b)(4)-(5).

[2] Those states are Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

[3] Amanda Dennis, Stanley K. Henshaw, Theodore J. Joyce, Lawrence B. Finer, and Kelly Blanchard, "The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review" (Guttmacher Institute: March 2009) at 1.

help their young daughters through difficult circumstances as best they can, including by giving a health care provider their daughter's medical history to ensure she receives safe medical care and any necessary follow-up treatment.

Dr. Bruce A. Lucero, an abortion provider, has supported this legislation because "parents are usually the ones who can best help their teenager consider her options" and because "patients who receive abortions at out-of-state clinics frequently do not return for follow-up care, which can lead to dangerous complications."[4] Parental notification also allows parents to assist their daughter in the selection of a competent abortion provider. This section of CIANA does not apply in the following circumstances: where the abortion provider is presented with court papers showing that the parental involvement law in effect in the minor's state of residence has been complied with; where the minor states that she has been the victim of abuse by a parent and the abortion provider informs the appropriate state authorities of such abuse; or where a life-threatening emergency may require that an abortion be provided immediately.

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

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

The vast majority of States have enacted some form of a parental involvement law. Such laws reflect widespread agreement that it is the parents of a pregnant minor who are best suited to provide her counsel, guidance, and support as she decides whether to continue her pregnancy or to undergo an abortion. These laws not only help to ensure the health and safety of pregnant young girls, but also protect fundamental parental rights.

Despite widespread support for parental involvement laws and clear public policy considerations justifying them, substantial evidence exists that such laws are regularly evaded by adults who transport minors to abortion providers in States that do not have parental notification or consent laws. CIANA would curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors. CIANA ensures that State parental involvement laws are not evaded through interstate activity.

Parental involvement in the abortion decisions of minor girls will lead to improved medical care for minors seeking abortions and provide increased protection for young girls against sexual exploitation by adult men. When parents are not involved in the abortion decisions of a child, the risks to the child's health significantly increase. Parental involvement will ensure that parents have the op-

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

portunity to provide additional medical history and information to abortion providers prior to performance of an abortion. The medical, emotional and psychological consequences of an abortion are serious and lasting. An adequate medical and psychological case history is important to the physician, and parents can provide such information for their daughters as well as any pertinent family medical history, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.

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

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

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

Background and Need for the Legislation

H.R. 2299 is much-needed legislation, overwhelmingly supported by the American people, that will protect both the health and safety of our minor children and parental rights.

SUPPORT FOR CIANA

Polls show that the American people overwhelmingly support parental involvement laws by huge majorities. A July 2011 Gallup Poll asked "Do you favor or oppose each of the following proposals? . . . A law requiring women under 18 to get parental consent for any abortion." 71% responded in favor, 27% opposed.[5] An August 2009 Pew Research Center Survey asked "Do you strongly favor, favor, oppose, or strongly oppose? . . . requiring that women under the age of 18 get the consent of at least one parent before they are allowed to have an abortion." 76% responded in favor, (45% strong-

[5] http://www.gallup.com/poll/148631/Common-State-Abortion-Restrictions-Spark-Mixed-Reviews.aspx.

ly favor, 31% favor), 19% opposed.[6] An October 2008 Marist Poll National Survey asked "Except in a medical emergency, which do you think is more important: the privacy of a daughter under the age of 18 to have an abortion or the right of a parent to know their underage daughter is about to have this surgical procedure?" 77% of registered voters, and 78% of registered Catholic voters supported the parent's right to know.[7] A December 2008 Harris Interactive survey commissioned by the U.S. Conference of Cathlolic Bishops also found that "73 percent favor laws that require giving parents the chance to be involved in their minor daughter's abortion decision." [8]

Earlier polls reveal similar results. In March, 2005, 75% of over 1,500 registered voters surveyed favored "requiring parental notification before a minor could get an abortion," and only 18% were opposed.[9] According to another poll conducted in 2003, 73% of nonwhites and 82% of Hispanics support parental notification laws.[10] A Wirthlin Worldwide poll conducted in October, 2001, found that 83% of those surveyed support laws requiring notification to one parent before an abortion can be performed on a minor daughter.[11]

African Americans and Hispanics overwhelmingly support parental notification laws. A Public Opinion Strategies poll surveyed 1,000 African-American registered voters on the question: "Would you favor or oppose a law that would require a parent or guardian to be notified before a minor child, under the age of 18, undergoes an abortion procedure?" 84% favored such a law (74% "strongly favor" and 10% "somewhat favor").[12]

A Zogby poll of California voters showed that 71% of those surveyed in that state support laws requiring notification to one parent before an abortion can be performed on a minor daughter.[13]

Moreover, during the November, 2004, elections, Florida overwhelmingly passed an amendment to its state constitution that provides that "the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy." [14] Nearly 65 percent of Florida voters in November, 2004, approved this state constitutional amendment.[15]

Even more rigid requirements of parental consent are overwhelmingly supported by the American public. A Gallup poll conducted in January, 2003, showed that 78% of those surveyed favor laws requiring a 24-hour waiting period before an abortion can be obtained, and 73% favor laws requiring minors to get parental *con-*

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[6] The relevant question appears on page 5 of this document: http://www.pewforum.org/uploadedfiles/Topics/Issues/Abortion/abortion09topline.pdf. Also, on p.10 of this Pew report from October 2009 there is a comparison of the 2005 & 2009 results of the survey that may be helpful (support for parental consent was 73% in 2005, 76% in 2009). *See* http://www.pewforum.org/uploadedfiles/Topics/Issues/Abortion/abortion09.pdf.

[7] See page 38 of this appendix of topline data found on the Knights of Columbus website, available at http://www.kofc.org/un/en/resources/communications/documents/moralissues appendix.pdf.

[8] See USCCB press release, available at http://old.usccb.org/comm/archives/2008/08–206.shtml.

[9] Quinnipiac University Poll (conducted March 2–7, 2005, with 1,534 registered voters surveyed; margin of error: +/- 2.5%).

[10] Wirthlin Worldwide Poll (October 21–23, 2003).

[11] Wirthlin Worldwide National Poll (October 19–22, 2001).

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

[13] Zogby California Poll (June 2002).

[14] F.S.A. Const. Art. 10 § 22.

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

sent before an abortion can be obtained.[16] These numbers have been confirmed in other polls.[17] Similar results are found in polls that consistently reflect over 70% of the American public support parental consent or notification laws,[18] including 69% of the Hispanic population.[19]

As the Associated Press has reported, even "[o]pponents [of parental notice laws] agree that young women are better off telling parents about a pregnancy[.]"[20]

There is widespread agreement among abortion rights advocates and pro-life advocates that it is the parents of a pregnant minor who are best suited to provide her counsel, guidance, and support as she decides whether to continue her pregnancy or to undergo an abortion. Organizations such as Planned Parenthood and the National Abortion and Reproductive Rights Action League all advise pregnant minors to consult their parents before proceeding with an abortion.[21] In addition, the American Medical Association urges physicians to "strongly encourage minors to discuss their pregnancy with their parents" and to "explain how parental involvement can be helpful and that parents are generally very understanding and supportive."[22]

THE SCOPE OF THE INTERSTATE PROBLEM CIANA ADDRESSES

There is no serious dispute regarding the fact that the transportation of minors across state lines in order to obtain abortions is both a widespread and frequent practice. Even groups opposed to this bill acknowledge that large numbers of minors are transported across state lines to obtain abortions, in many cases by adults other than their parents. As Dr. Anne Foster Rosales, as Medical Director of Planned Parenthood Golden Gate in San Francisco, said "You may see an artificial decrease in the abortion rate in teens in [a] state [that adopts a parental involvement law], but when you look at neighboring states, and the origin of patients, you see that what's happening is those young women are just shifting themselves to another state."[23]

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

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

[18] *See, e.g.,* CBS News/NY Times Poll (released January 15, 1998) (78% of those polled favor requiring parental consent before a girl under 18 years of age could have an abortion); Americans United for Life, Abortion and Moral Beliefs, A Survey of American Opinion (1991); Wirthlin Group Survey, Public Opinion, May-June 1989; Life/Contemporary American Family (released December, 1981) (78% of those polled believed that "a girl who is under 18 years of age [should] have to notify her parents before she can have an abortion").

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

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

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

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

[23] Carolyn Johnson, "Abortion Parental Notification Back on Ballot," ABC 7 News (KGO) (November 1, 2006), available at http://abclocal.go.com/kgo/story?section=news/politics&id=4714527.

In 1995, Kathryn Kolbert, then an attorney with the Center for Reproductive Law and Policy (a national legal defense organization that supports abortion), stated that thousands of adults are helping minors cross state lines to get abortions in states whose parental involvement requirements are less stringent or non-existent: "There are thousands of minors who cross state lines for an abortion every year and who need the assistance of adults to do that."[24] She asked, "How does a 14-year-old get to New Hampshire from Boston without getting a ride?"[25] In 2001, New Jersey's *Star-Ledger* reported that Laurie Lowenstein, Executive Director of Right to Choose, an abortion rights advocacy group, stated that she would quit her job to shuttle pregnant young girls to states without parental notification laws if New Jersey enacted a parental notification law.[26] Only Congress, with its constitutional authority to regulate interstate commerce, can curb such flagrant disregard of state laws. The experience of a number of States illuminates the scope of this problem.

Pennsylvania

Since Pennsylvania's current parental consent law took effect in March, 1994, news reports have confirmed that many Pennsylvania teenagers are going out of state to New Jersey and New York to obtain abortions. In 1995, the *New York Times* reported that "Planned Parenthood in Philadelphia has a list of clinics, from New York to Baltimore, to which they will refer teenagers, according to the organization's executive director, Joan Coombs."[27] Moreover, the *New York Times* gave accounts of clinics that had seen an increase in patients from Pennsylvania.[28] One clinic, in Cherry Hill, New Jersey, reported seeing a threefold increase in Pennsylvania teenagers coming for abortions.[29] Likewise, a clinic in Queens, New York, reported that it was not unusual to see Pennsylvania teenagers as patients in 1995, though earlier it had been rare.[30]

In the period just prior to the Pennsylvania law taking effect, efforts were underway to make it easier for teenagers to go out of state for abortions. For instance, *Newsday* reported that "[c]ounselors and activists are meeting to plot strategy and printing maps with directions to clinics in New York, New Jersey, Delaware and Washington, D.C., where teenagers can still get abortions without parental consent . . . 'We will definitely be encouraging teenagers to go out of state,' said Shawn Towey, director of the Greater Philadelphia Woman's Medical Fund, a nonprofit organization that gives money to women who can't afford to pay for their abortions."[31]

Moreover, some abortion clinics in nearby states, such as New Jersey and Maryland, and others, use the lack of parental involvement requirements in their own states as a "selling point" in adver-

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[24] "Labor of Love Is Deemed Criminal," *The National Law Journal* (November 11, 1996) at A8.
[25] *See* "Woman Charged in Secret Abortion," *Philadelphia Inquirer*, (September 16, 1995).
[26] Jeff Whelan, "McGreevey Reveals Latest Abortion Stance," *The Star-Ledger* (August 30, 2001).
[27] "Teen-Agers Cross State Lines in Abortion Exodus," *The New York Times* (December 18, 1995) at B6.
[28] See id.
[29] See id.
[30] See id.
[31] Charles V. Zehren, "New Restrictive Abortion Law," *Newsday* (February 22, 1994).

tising directed at minors in Pennsylvania, stating "No Parental Consent Required."[32] A Rockville, Maryland, abortionist ran a similar advertisement in the May 1998–April 1999 Yellow Pages for Harrisburg, Pennsylvania. Such advertisements have appeared in telephone directories for Wilkes-Barre and Dallas, Scranton, Clarks Summit, and Carbondale, Bethlehem, Allentown, York, and Erie.

Missouri

A study in the *American Journal of Public Health* reported that a leading abortion provider in Missouri refers minors out of state for abortions if the girls do not want to involve their parents. Reproductive Health Services, which performs over half of the abortions performed in Missouri, refers minors to the Hope Clinic for Women in Granite City, Illinois.[33] Research reveals that based on the available data the odds of a minor traveling out of state for an abortion increased by over 50 percent when Missouri's parental consent law went into effect. Furthermore, compared to older women, underage girls were significantly more likely to travel out of state to have their abortions.[34]

A *St. Louis Post-Dispatch* news report confirms that the Hope Clinic in Illinois continues to attract underage girls seeking abortions without parental involvement.[35] A clinic counselor estimates that she sees two girls each week seeking to avoid their home state's parental involvement law. One example was a 16-year-old girl from Missouri who had called abortion clinics in St. Louis and learned that parental consent was required before a minor could obtain an abortion. According to the report, the Hope Clinic performed 3,200 abortions on out-of-state women in 1998, and the clinic's executive director estimates that number is 45% of the total abortions performed at the clinic. The executive director also estimates that 13% of the clinic's clients are minors.

Massachusetts

Massachusetts has also seen an increase in out-of-state abortions performed on its teenage residents since the state's parental consent law went into effect in April 1981, according to a published study.[36] A study published in the *American Journal of Public Health* found that in the 4 months prior to implementation of the parental consent law, an average of 29 Massachusetts minors obtained out-of-state abortions each month in Rhode Island, New Hampshire, Connecticut, and New York.[37] After the parental consent law was implemented, however, the average jumped to between 90 and 95 out-of-state abortions per month, using data from the five states of Rhode Island, New Hampshire, Connecticut, New

[32] Copies of such advertisements are attached at the end of this report.

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

[34] *See id.* at 1371.

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

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

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

York, and Maine, representing one-third of the abortions obtained by Massachusetts' minors.[38]

The study noted that due to what the authors described as "astute marketing," one abortion clinic in New Hampshire was able to nearly double the monthly average of abortions performed on Massachusetts minors (from 14 in 1981 to 27 in 1982). The abortionist "began advertising in the 1982 Yellow Pages of metropolitan areas along the northern Massachusetts border, stating 'consent for minors not required.'" [39]

In April 1991, the Planned Parenthood League of Massachusetts estimated that approximately 1,200 Massachusetts minor girls travel out of state for abortions each year, the majority of them to New Hampshire. Planned Parenthood said that surveys of New Hampshire clinics revealed an average of 100 appointments per month by Massachusetts minors.[40]

Mississippi

A study of the effect of Mississippi's parental consent law revealed that Mississippi has also experienced an increase in the number of minors traveling out of state for abortions. The study, published in *Family Planning Perspectives,* compared data for the 5 months before the parental consent law took effect in June 1993, with data for the 6 months after it took effect, and found that "[a]mong Mississippi residents having an abortion in the state, the ratio of minors to older women decreased by 13% . . . However, this decline was largely offset by a 32% increase in the ratio of minors to older women among Mississippi residents traveling to other states for abortion services." [41] Based on the available data, the study suggests that the Mississippi parental consent law appeared to have "little or no effect on the abortion rate among minors but a large increase in the proportion of minors who travel to other states to have abortions, along with a decrease in minors coming from other states to Mississippi." [42]

Virginia

Grace S. Sparks, executive director of the Virginia League of Planned Parenthood, predicted in February 1997 that if Virginia were to pass a parental notification law, teenagers would travel out of state for abortions: "In every state where they've passed parental notification, . . . there's been an increase in out-of-state abortions," she said, adding, "I suspect that that's what will happen in Virginia, that teen-agers who cannot tell their parents . . . will go out of state and have abortions . . ." [43]

Virginia's parental notification law took effect on July 1, 1997. Initial reports indicated that abortions performed on Virginia minors dropped 20 percent during the first 5 months that the law was in effect (from 903 abortions during the same time period in 1996

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[38] *See id.* at 398.
[39] *Id.* at 399.
[40] *See* M.A.J. McKenna, "Mass. Abortion Laws Push Teens Over Border," *Boston Herald* (April 7, 1991) at A1.
[41] Stanley K. Henshaw, "The Impact of Requirements for Parental Consent on Minors' Abortions in Mississippi," *Family Planning Perspectives* (June, 1995) at 121.
[42] *Id.* at 122.
[43] Lisa A. Singh, "Those Are the People Who Are Being Hurt," *Style Weekly* (February 11, 1997).

to approximately 700 abortions in 1997).[44] It appears, however, that Virginia teenagers are traveling to the District of Columbia in order to obtain an abortion without involving their parents. In fact, the National Abortion Federation ("NAF"), which runs a toll-free national abortion hotline, said that calls from Virginia teenagers seeking information on how to obtain an abortion out of state were the largest source of teenage callers seeking out-of-state abortions, at seven to ten calls per day.[45] NAF hotline operator Amy Schriefer has gone so far as to talk a Richmond area teenage girl through the route (involving a Greyhound bus and the Metro's Red Line) to obtain an abortion in the District of Columbia.[46]

CONGRESSIONAL TESTIMONIALS HIGHLIGHT THE NEED FOR IMMEDIATE ACTION

At hearings during the 105th, 106th, 107th, and 108th Congresses, the Subcommittee on the Constitution heard testimony from two mothers whose daughters were secretly taken for abortions, with devastating consequences.

Joyce Farley, the mother of a minor girl, recounted how her 12-year-old daughter was provided alcohol, raped, and then taken out of state by the rapist's mother for an abortion.[47] In the words of Joyce Farley, the abortion was arranged to destroy evidence—evidence that her 12-year-old daughter had been raped.[48] On August 31, 1995, her daughter, who had just turned 13, underwent a dangerous medical procedure without anyone present who knew her past medical history (as shown by the false medical history that was given to the abortionist).[49] Following the abortion, the mother of the rapist dropped off the child in another town 30 miles from the child's home.[50] The child returned to her home with severe pain and bleeding which revealed complications from an incomplete abortion.[51] When Joyce Farley contacted the original clinic that performed the abortion, the clinic told her that the bleeding was normal and to increase her daughter's Naprosyn, a medication given to her for pain, every hour if needed.[52] Fortunately, Ms. Farley, being a nurse, knew this advice was wrong and could be harmful, but her daughter would not have known this.[53] Because of her mother's intervention, Ms. Farley's daughter ultimately received further medical care and a second procedure to complete the abortion.[54]

As Ms. Farley testified before the House Constitution Subcommittee in 2004:

> [I]n 1995, my then 12-year-old daughter, Crystal, was intoxicated and raped by a 19-year-old male . . . On August 31, 1995, I discovered my 13-year-old daughter, Crystal,

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[44] Ellen Nakashima, "Fewer Teens Receiving Abortions In Virginia," *The Washington Post* (March 3, 1998).
[45] *See id.*
[46] *See id.*
[47] *See Child Custody Protection Act: Hearings on H.R. 3682 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Cong., (May 21, 1998) (statement of Joyce Farley).
[48] *See id.*
[49] *See id.*
[50] *See id.*
[51] *See id.*
[52] *See id.*
[53] *See id.*
[54] *See id.*

> was missing from home. An investigation by the police, school officials and myself revealed the possibility that Crystal had been transported out of State for an abortion. I can't begin to tell you the fear that enveloped me not knowing where my daughter was, who she was with, if she was in harm's way, and to learn in this manner that my young daughter was pregnant. By early afternoon Crystal was home safe with me, but so much had taken place in that 1 day. The mother of this 19-year-old male had taken Crystal for an abortion in the State of New York. Apparently, this woman decided this was the best solution for the situation caused by her son, with little regard for the welfare of my daughter. Situations such as this is what the Child Custody Act [H.R. 1755 in the 108th Congress, which included provisions that are also in CIANA] was designed to help prevent. I am a loving, responsible parent, whose parenting was interfered with by an adult unknown to me. My child was taken for a medical procedure to an unknown facility and physician without my permission. When Crystal developed complications from this medical procedure, this physician was not available. He refused to supply necessary medical records to a physician that was available to provide Crystal the medical care she needed. I ask you to please, in considering the Child Custody Protection Act, to put aside your personal opinions on abortion. Please just consider the safety of the minor children of our Nation whose lives are put at risk when taken out of their home State . . . Please allow loving, careful and responsible parents the freedom to provide the care their adolescent daughters need without interference from criminals or people who think they may be helping, but actually cause more harm than good. An abortion is a medical procedure with physical and emotional risks. An adolescent who's had an abortion needs the care and support of family. Crystal, unfortunately, developed both physical and emotional side effects. Some of the effects are still present today after 9 years have lapsed.[55]

In the 109th Congress, Marcia Carroll testified before the Constitution Subcommittee and described the following terrifying story that CIANA, had it been enacted into law, would have prevented:

> On Christmas Eve 2004, my daughter informed me she was pregnant. I assured her I would seek out all resources and help that was available. As her parents, her father and I would stand beside her and support any decision she made. We scheduled appointments with her pediatrician, her private counselor, and her school nurse. I followed all of their advice and recommendations. They referred us to Healthy Beginnings Plus, Lancaster Family Services, and the WIC program. They discussed all her options with her. I purposefully allowed my daughter to speak alone with professionals so that she would speak her mind and not

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

just say what she thought I wanted to hear. My daughter **chose** to have the baby and raise it. My family fully supported my daughter's decision to keep her baby and offered her our love and support.

Subsequently, her boyfriend's family began to harass my daughter and my family. They started showing up at our house to express their desire for my daughter to have an abortion. When that did not work, his grandmother started calling my daughter without my knowledge. They would tell her that if she kept the baby, she couldn't see her boyfriend again. They threatened to move out of state.

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

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

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

On Feb. 16th, I sent my daughter to her bus stop with $2.00 of lunch money. I thought she was safe at school. She and her boyfriend even had a prenatal class scheduled after school.

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

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

After the abortion, his stepfather and grandmother drove my daughter home from New Jersey and dropped her off down the road from our house.

My daughter told me that on the way home she started to cry, they got angry at her and told her there was nothing to cry about.

> Anything could have happened to my daughter at the abortion facility or on the ride back home. These people did not know my daughter's medical history, yet they took her across state lines to have a medical procedure without my knowledge or consent. Our family will be responsible for the medical and psychological consequences for my daughter as a result of this procedure that was completed unbeknownst to me.
>
> I was so devastated that this could have been done that I called the local police department to see what could be done. They were just as shocked and surprised as I was that there was nothing that could be done in this horrible situation.
>
> The state of Pennsylvania does have a parental consent law. Something has to be done to prevent this from happening to other families. This is just not acceptable to me and should not happen to families in this country. If your child goes to her school clinic for a headache, a registered nurse can't give her a Tylenol or aspirin without a parent's written permission.
>
> As a consequence of my daughter being taken out of our state for an abortion without parental knowledge, she is suffering intense grief. My daughter cries herself to sleep at night and lives with this everyday.
>
> I think about what I could or should have done to keep her safe. Everybody tells me I did everything I could have and should have done. It doesn't make me feel any better, knowing everything I did was not enough to protect my daughter.
>
> It does ease my mind to know with your help that we can make a difference and change the law to protect other girls and their families. I urge your support for *The Child Interstate Abortion Notification Act.* It is critical that this law passes in Congress. The right of parents to protect the health and welfare of their minor daughters needs to be protected. No one should be able to circumvent state laws by performing an abortion in another state on a minor daughter without parental consent.[56]

The physician who performed an abortion on Marcia Carroll's daughter, Dr. Vikram Kaji, had a long history of sexually abusing his patients. Marcia Carroll should have been given an opportunity to learn about the history of her child's doctor. Apparently the people who coerced her daughter into having the abortion did not care who performed an abortion on her. Dr. Kaji was professionally disciplined by the State of New Jersey on November 1, 1993, and given a 12-month suspension for sexually abusing three patients and indiscriminately prescribing controlled dangerous substances.[57] He was disciplined for having sex with one patient in his office, and for performing "improper" rectal and breast exams on two

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[56] *Child Interstate Abortion Notification Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary,* 109th Cong. 6–7 (2005) (statement of Marcia Carroll).

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

other patients.[58] According to a consent order, Dr. Kaji knew the woman he had sex with suffered from severe depression, had been sexually abused as a child, and had once been hospitalized for psychiatric problems.[59] He was also disciplined by the Federal Drug Enforcement Agency on February 22, 1994, and made to surrender his controlled substance license.[60] He was also disciplined by the State of Pennsylvania on December 23, 1994, and his license was suspended for 36 months.[61]

When Marcia Carroll was asked why she came to testify on behalf of CIANA, she said, "[my daughter] does suffer. She has gone to counseling for this. I just know that she cries and she wished she could redo everything, relive that day over. It's just sad that it had to happen this way and this is what she had to go through. *But she did want me to come here today and speak on her behalf. She said, 'Mom, just one phone call is all it would have taken to stop this from happening . . .'* So she asked me to come here for her sake and for other girls' safety to speak and let you know what was happening." That is precisely what CIANA affirms: the right of parents to be given the chance to help their children through difficult times. The parents of this Nation want to be given the chance to make sure their children's doctors are not potential sexual abusers and controlled substance pushers, and CIANA would give them that chance.

Eileen Roberts also testified that her 13-year-old daughter was encouraged by a boyfriend, with the assistance of his adult friend, to obtain a secret abortion.[62] The adult friend drove Ms. Roberts' daughter to an abortion clinic 45 miles from her home and paid for her daughter to receive the abortion.[63] After 2 weeks of observing their daughter's depression, Ms. Roberts and her husband learned that the young girl had an abortion from a questionnaire they found under her pillow, which their daughter had failed to return to the abortion clinic.[64]

Ms. Roberts' daughter was then hospitalized as a result of the depression, and a physical examination revealed that the abortion had been incompletely performed and required surgery to repair the damage done by the abortionist.[65] The hospital called Ms. Roberts and told her that they could not do reparative surgery without a signed consent form.[66] The following year, Ms. Robert's daughter developed an infection and was diagnosed with having pelvic in-

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

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

[60] *See id.* at 68.

[61] *See id.* at 68.

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

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

[64] *See id.*

[65] *See id.*

[66] *See id.*

flammatory disease, which again required a 2-day hospitalization for antibiotic therapy and a signed consent form.[67] Ms. Roberts and her family were responsible for over $27,000 in medical costs, all of which resulted from this one secret abortion.[68]

Other examples that illustrate the need for CIANA include the following. As reported in *LifeNews* (which refers to a mother and daughter as "Anna" and "Jane," respectively):

> Anna's daughter, who the Anchor has identified as "Jane" was like many teens. In the winter of 2008, she started hanging out with someone her parents didn't approve of. Anna and her husband tried to steer Jane away from the young man, but he had become part of her group of friends. Months later, Anna took Jane for a drive into the Mat-Su Valley in an effort to reach her increasingly distant daughter. Anna could tell something was weighing on Jane's mind. Finally, at lunch, Jane admitted, "There's something I need to tell you." Jane wrote a message on a napkin and slid it across the table. "I'm pregnant," it said . . .
>
> "I'm going to have this baby," said the resolute teen. "Well, good!" Anna responded happily. "She had our love and support," Anna said. Anna recalled that over the ensuing weeks, Jane was excited. She returned from an ultrasound appointment with images of her unborn daughter—one for every member of the family, each addressed to the new grandparents and aunts and uncles. Anna's read, "Hi, Grandma!" And the family went shopping for maternity clothes and baby gifts. But not everyone welcomed the new baby. Jane told Anna that the boyfriend's father had offered her $5,000 to abort. But Jane was adamant to give birth to the baby. When the offer rose to $10,000, Anna and her husband were again concerned for their impressionable daughter and reminded her, "We're here to support you. We're here to help you," Anna said. But soon, the boyfriend had convinced Jane to move out and in with him. Then came the boyfriend's "speech." It began with, "Don't tell your family," explained Anna, who with Jane, later found the boyfriend's highly crafted, typewritten draft. "Here is the need for parental notification," Anna stressed. "Manipulative boyfriend. 'Don't tell.'" "Isn't that what every abuser does to his victim—gets them into a 'Don't tell' situation?'" Anna observed . . . "I finally said, 'OK [to the abortion],'" Jane later explained to her mother. "I didn't say, 'Yes.'" The boyfriend flew Jane to Seattle, where Alaska abortion clinics often refer late-term pregnant mothers. As with Alaska, Washington does not require abortion practitioners to notify a minor girl's parent before performing an abortion on her. The day of the secret abortion, Jane was 17 years old. Her unborn baby daughter was heading into her sixth month. And because of the

[67] *See id.*
[68] *See id.*

abortionist's silence, Anna believes her own rights as a mother were sacrificed that day, too.[69]

Also, as reported by *LifeNews:*

> Hagerstown, MD—When the Senate approved a bill last week prohibiting taking a teenager to another state for an abortion without her parents' knowledge or consent, abortion advocates claimed the practice rarely occurs. However, the director of a Maryland abortion business says it routinely gets calls from teens wanting to avoid parental involvement laws. Teenagers in Pennsylvania's York County are apparently heading to the Hagerstown Reproductive Health Services abortion business in neighboring Maryland. They appear to be wanting to avoid a Pennsylvania state law that requires parental consent for a minor girl to have an abortion and requires all women to wait 24 hours to have an abortion after getting information on fetal development and abortion's medical risks and alternatives.
>
> The HRHS abortion facility sits just 8–10 miles away from the Pennsylvania-Maryland border and it regularly advertises in York County's Yellow Pages.
>
> "It's clear to us that we receive calls from young women in Pennsylvania who already called a clinic in Pennsylvania, and they want to circumvent the state laws," the HRHS abortion center administrator told the York Daily Record . . .
>
> Sheryl Wolf, spokeswoman for Hillcrest Clinic, another Maryland abortion business, said 70 young women came there from Pennsylvania . . . Missouri teens frequently are taken to the Hope Clinic abortion facility in Granite City, Illinois, which neighbors St. Louis, Missouri. Though Missouri requires parental involvement before an abortion, Illinois does not. Last year, Shawn Reagan told Missouri state lawmakers about her problems with the Illinois abortion center.
>
> Reagan said she wept as she talked with staff at Hope Clinic who refused to let her talk to her 14-year-old daughter who was inside the facility preparing for an abortion. She was eventually arrested trying to find her daughter in the abortion facility. The girl was reportedly taken to Hope Clinic by the mother of the man who allegedly impregnated the 14-year-old. The woman, posing as the girl's grandmother, had the girl called off from school. When the girl left the abortion facility after having an abortion, employees told her, "No one will ever know you were here, we'll bury your records."[70]

As reported in American Medical News, about "6% of the [Hope] clinic's patients are teens. Of those, 40% are from Missouri, com-

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[69] Steven Ertelt, "Alaska Mother Mourns Her Daughter's Secret Abortion," LifeNews.com (August 6, 2010), available at http://www.lifenews.com/2010/08/06/state-5320/.

[70] Steven Ertelt, "Abortion Center Director Admits Out-of-State Teens Go There to Avoid Parents," LifeNews.com (July 30, 2006), available at http://www.lifenews.com/2006/07/30/nat-2461/ .

pared with 50% from Illinois."[71] CIANA would require Hope Clinic to notify a parent of any minor girl who comes from Missouri for an abortion.

Congress must act to maintain the integrity of state parental involvement laws. In October, 2011, the Connecticut Catholic Public Affairs Conference prepared this report on the state of abortion in Connecticut, relying on data from the Connecticut Department of Public Health. Table 3 on page 2 of the report notes that "of the 863 abortions performed on minors from out-of-state between 2002 and 2010, 91% of those cases came from bordering states with parental consent laws [361 teens from Rhode Island and 422 from Massachusetts, 53 from New York]."[72]

Further, in 2005, the State of Missouri enacted a law creating a civil cause of action against any person who violates the statutory prohibition that "[n]o person shall intentionally cause, aid, or assist a minor to obtain an abortion" without the consent (or court order) required by Missouri law.[73] In 2007, the Missouri Supreme Court interpreted this statutory language so that it would not apply to out-of-state abortionists. The court held that the statute "applies to in-state conduct and not to wholly out-of-state conduct."[74] The court said that "it is beyond Missouri's authority to regulate conduct that occurs wholly outside of Missouri, and section 188.250 cannot constitutionally be read to apply to such wholly out-of-state conduct. Missouri simply does not have the authority to make lawful out-of-state conduct actionable here, for its laws do not have extraterritorial effect."[75] This is all the more reason why Congress needs to exercise its authority and enact CIANA. Congress has the constitutional authority to pass CIANA under the Commerce Clause of the Constitution, which expressly authorizes Congress to regulate interstate activity.

STATE LAW AND CIANA'S PROTECTION OF STATE LAW

There are currently over 43 states with parental involvement statutes on the books.[76] Of these statutes, the large majority are

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[71] Amy Lynn Sorrel, "State High Court Limits Reach of Missouri Abortion Consent Law," *American Medical News* (June 4, 2007), available at http://www.ama-assn.org/amednews/2007/06/04/gvsb0604.htm.

[72] Available at http://www.courant.com/media/acrobat/2011–10/65523671.pdf.

[73] Vernon's Annotated Missouri Statutes 188.250.

[74] *Planned Parenthood of Kansas v. Nixon,* 220 S.W.3d. 722, 743 (Mo. 2007).

[75] *Planned Parenthood of Kansas v. Nixon,* 220 S.W.3d. 722, 742 (Mo. 2007).

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

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in effect today.[77] Despite widespread support for parental involvement laws and clear public policy considerations justifying such laws, there exists substantial evidence, outlined above, that they are frequently circumvented by adults who transport minors to abortion providers in states that do not have parental notification or consent laws. One purpose of CIANA is to curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors.

Parental involvement laws have been in force for decades, and there is no case where it has been established that these laws led to parental abuse or to self-inflicted injury.[78] Similarly, there is no evidence that these laws have led to an increase in illegal abortions.[79]

Despite these critical benefits of better-informed selection of abortion providers, improved medical histories, appropriate post-operative care, and the affirmation of parental rights, opponents of CIANA argue that mandatory parental involvement results in girls' delaying their decisions to obtain abortions, thus increasing the risks attendant to the procedure.[80] There is no evidence, however, that parental involvement laws result in medically significant delays in obtaining abortions. A study of Minnesota's parental notification law found that, "Regardless [of the reason], the claim that the law caused more minors to obtain late abortions is unsubstantiated. In fact, the reverse is true. For ages 15–17, the number of late abortions per 1,000 women decreased following the enactment

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§§ 16–2F–1 to –8 (2004); Wis. Stat. Ann. § 48.375 (West 2003); Wyo. Stat. Ann. § 35–6–118 (Michie 2003).

[77] *See Planned Parenthood v. Heed,* 390 F.3d 53 (1st Cir. 2004) (unconstitutional for lack of health exception)*; Planned Parenthood of Idaho, Inc. v. Wasden,* 376 F.3d 908 (9th Cir. 2004) (concluding that the Idaho statute's definition of Amedical emergency@ is unconstitutionally narrow and that, without an adequate medical exception, the parental consent statute is invalid); *Glick v. McKay,* 937 F.2d 434 (9th Cir. 1991) (judicial bypass procedure rendered statute unconstitutional); *Zbaraz v. Ryan,* No. 84 CV771, 1996 WL 33293423 (N.D. Ill. Feb. 8, 1996) (the Illinois Supreme Ct. refused to issue rules implementing the Illinois statute); *Planned Parenthood of Alaska, Inc. v. State,* No. 3AN–97–6014 CI (Alaska Super. Ct. Oct. 13, 2003) (decision on remand from *State v. Planned Parenthood of Alaska,* 35 P.3d 30 (Alaska 2001)) (parental consent law with judicial waiver violates state constitution); *American Acad. of Pediatrics v. Lungren,* 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); *N. Fla. Women's Health and Counseling Services, Inc. v. State,* 866 So. 2d 612 (Fla. 2003) (state supreme court held that law violated state right to privacy; however, the state constitution was amended in November 2004 to allow parental notification); *Wicklund v. State,* No. ADV–97–671 (Mont. Dist. Ct. Feb. 11, 1999) available at http://www.mtbizlaw.com/1stjd99/WICKLUND__2__11.htm (parental notification law violated state constitution); *Planned Parenthood of Central New Jersey v. Farmer,* 762 A.2d 620 (N.J. 2000) (parental notification law with judicial waiver violates state constitution); N.M. A.G. Op. No. 90–19 (Oct. 3 1990) (State attorney general holds law unenforceable due to lack of judicial bypass procedure). In addition, Ohio's parental notification law is in effect because a subsequently enacted parental consent statute was enjoined. *See Cincinnati Women's Services v. Voinovich,* No. C–1–98–289 (S.D. Ohio Apr. 29, 1998) (preliminary injunction preventing enforcement of the law).

[78] A 1989 memo prepared by the Minnesota Attorney General regarding Minnesota's experience with its parental involvement law states that "after some 5 years of the statute's operation, the evidence does not disclose a single instance of abuse or forceful obstruction of abortion for any Minnesota minor." Testimony before the Texas House of Representatives on Massachusetts' experience with its parental consent law revealed a similar absence of unintended, but harmful, consequences. Ms. Jamie Sabino, chair of the Massachusetts Judicial Consent for Minors Lawyer Referral Panel, could identify no case of a Massachusetts' minor being abused or abandoned as a result of the law. *See Hearing on Tex. H.B. 1073 Before the House State Affairs Comm.,* 76th Leg., R.S. 21 (Apr. 19, 1999) (statement by Jamie Sabino).

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

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

of the law. Therefore, an increased medical hazard due to a rising number of late abortions was not realized."[81]

OTHER PARENTAL NOTICE STATUTES

CIANA will strengthen the effectiveness of state laws designed to protect children from the health and safety risks associated with abortion.[82] Across the country, officials must obtain parental consent before performing even routine medical services such as providing aspirin and before including children in certain activities such as field trips and contact sports.[83] Regarding body piercing, states require written parental consent,[84] a parent to be present when a minor is pierced,[85] and written permission or a parent's physical presence.[86] The large majority of states have laws prohibiting adolescents from getting tattoos without parental consent, and a majority of states have laws against body piercing without parental consent and laws that prohibit both without parental consent.[87] Also, in Maryland, for example, as the *Washington Post* re-

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

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

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

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

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

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

[87] Ala. Code 22–17A–2 (prohibits anyone from performing a tattoo, brand or body piercing on a minor unless prior written informed consent is obtained from the minor's parent or legal guardian); Ariz. Rev. Stat. Ann. § 13–3721 (establishes that it is unlawful to either tattoo or body pierce anyone under age 18 without the physical presence of the parent or legal guardian; violators are guilty of a Class 6 felony; allows anyone to avoid prosecution if he or she requested the ID and relied on the accuracy of the information contained in the ID); Ark. Stat. Ann. § 5–27–228 (prohibits anyone from tattooing, body piercing or branding a minor without the written consent of one of the minor's parents, a guardian or a custodian; violators are guilty of a misdemeanor and, upon conviction, will be fined between $20 and $200); Cal. Penal Code § 652 (establishes that it is unlawful to tattoo or offer to tattoo anyone under age 18; violators are guilty of a misdemeanor; prohibits anyone from performing or offering to perform body piercing upon anyone under age 18 unless the piercing is performed in the presence of a parent or guardian or as directed by and notarized by the minor's parent or guardian; does not apply to emancipated minors and does not include pierces of the ear); Col. Rev. Stat. Ann. § 25–4–2103 (prohibits anyone from performing a body art procedure on a minor unless the artist has received express consent from the minor's parent or guardian; failure to obtain permission before performing the procedures on a minor shall constitute a petty offense punishable by a fine of $250); Conn. Gen. Stat. § 19a-92g (establishes that it is illegal to tattoo an unemancipated minor under age 18 without the written consent of the minor's parent or guardian; requires written consent of the minor's parent in order to perform body piercing on an unemancipated minor under age 18); Del. Code Ann. Title 11, Ch 5 § 1114(a) (it is illegal for a person to either knowingly or negligently tattoo or body pierce a minor without the prior written consent of the parent or legal guardian who must be over age 18); Fla. Stat. § 381.0075 (requires written, notarized consent of a minor's parent or legal guardian in order to tattoo a minor; prohibits body piercing of a minor without the written, notarized consent of the parent or legal guardian or if he or she is

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accompanied by a parent or legal guardian); Ga. Code § 16–5–71.1 (prohibits the tattooing of anyone under age 18 by anyone other than a licensed osteopath or technician acting under the direct supervision of a licensed physician or osteopath; violators are guilty of a misdemeanor; prohibits anyone from body piercing anyone under age 18 without prior written consent of the custodial parent or guardian; violators are guilty of a misdemeanor); Idaho Chapter No. 127 2004 (effective July 1, 2004) (prohibits the tattooing, branding or body piercing of minors under the age of 14; prohibits the tattooing, branding or body piercing on anyone between the ages of 14 and 18 without the written informed consent of the minor's parent or legal guardian; written informed consent must be executed in the presence of the person performing the act or an employee or agent of that person; violators are guilty of a misdemeanor and will be fined up to $500 and subsequent violations within 1 year will be fined between $500 and $1,000; piercing of the ear lobes and piercing for medical purposes are exempted from this legislation) Ill. Compiled Stat. 5/12–10.1 (it is a Class C misdemeanor for anyone, other than a person licensed to practice medicine in all branches, to tattoo or offer to tattoo a person under age 21; establishes that anyone who pierces the body of a minor under age 18 without written consent of the parent or legal guardian commits a Class C misdemeanor; does not apply to emancipated or married minors; Ind. Code Ann. § 35–42–2–7 (requires a minor's parent or legal guardian to be present on order to either tattoo or perform body piercing on a minor under age 18; requires the parent or guardian to also provide written permission for the minor to receive the tattoo or body piercing); Iowa Code § 135.37 (prohibits anyone from tattooing an unmarried minor under age 18; upon conviction, violators are guilty of a serious misdemeanor); Ky. Rev. Stat. § 211.760 (prohibits anyone from tattooing or body piercing minors without the written, notarized consent of a parent or guardian); La. Rev. Stat. Ann. § 14:93.2 (it is unlawful for anyone to tattoo or body pierce a minor under age 18 without the consent of the minor's accompanying parent or legal custodian; upon conviction, violators shall be fined between $100 and $500 or imprisoned between 30 and 100 days, or both); Me. Rev. Stat. Ann. Title 32, Ch. 64 § 4323 (establishes that it is illegal to tattoo anyone under age 18; requires prior written consent of a minor's parent or legal guardian to perform body piercing on anyone under age 18); Mich. Comp. Laws Ann. § 333.13102 (prohibits anyone from either tattooing or performing body piercing on a minor without prior written, informed consent of the minor's parent or legal guardian; requires the parent or legal guardian to execute the consent in the presence of either the person performing the body piercing or tattooing on the minor or in the presence of an employee or agent of the individual; does not include emancipated minors); Minn. Stat. § 609.2246 (it is unlawful for anyone under age 18 to receive a tattoo without written parental consent); Miss. Laws § 73–61–3 (prohibits anyone from tattooing or body piercing a minor under age 18; violators are guilty of a misdemeanor and will be fined a maximum of $500); Mo. Rev. Stat. § 324.520 (prohibits anyone from knowingly tattooing or body piercing a minor without prior written, informed consent of the minor's parent or legal guardian; requires the parent or legal guardian to execute the written consent in the presence of either the person performing the tattooing or body piercing or an employee or agent of that person; violators are guilty of a misdemeanor and will be fined a maximum of $500; subsequent violations within 1 year of the initial violation will be subject to a fine of between $500 and $1,000); Mont. Code Ann. § 45–5–623 (prohibits anyone from knowingly tattooing a child under the age of majority without the explicit in-person consent of the child's parent or guardian; upon conviction, violators will be either fined a maximum of $500, imprisoned for up to 6 months, or both; those convicted of a second offense will either be fined a maximum of $1,000, imprisoned for up to 6 months, or both); N.C. Gen. Stat. § 14–400 (prohibits anyone from tattooing a minor under age 18; violators are guilty of a Class 2 misdemeanor; prohibits anyone from piercing any part of a minor under age 18 other than the ears without the prior consent of the custodial parent; violators are guilty of a Class 2 misdemeanor); Ohio Rev. Code Ann. § 3730.06 (it is illegal to tattoo, body pierce or pierce the ears of anyone under age 18 without the consent of the minor's parent, guardian or custodian; requires the consenting individual to appear in person at the business at the time the procedure is performed and sign a document that provides informed consent); Okla. Stat. Title 21 §§ 841 and 842.1 (prohibits anyone other than a licensed practitioner of the healing arts in the course of their practice from tattooing or offering to tattoo anyone; it is unlawful for anyone to perform, or offer to perform, body piercing on a child under age 18 unless the parent or legal guardian gives written consent for and is present during the procedure; penalties for violations include imprisonment for up to 90 days and a fine of up to $500, or both); Pa. Cons. Stat. Title 18 § 6311 (it is unlawful to provide tattoo services to anyone under age 18 without the consent of the parent or guardian; violators are guilty of a misdemeanor of the third degree and, upon conviction, will be sentenced to either pay a maximum fine of $100 or be imprisoned a maximum of 3 years, or both); R.I. General Laws §§ 11–9–15; 23–1–39 (prohibits tattooing or body piercing a minor who is unaccompanied by his or her consenting parent or guardian; violators are guilty of a misdemeanor and, upon conviction, will either be imprisoned a maximum of 1 year or fined a maximum of $300); S.D. Codified Laws Ann. § 26–10–19 (requires anyone who is tattooing a minor under age 18 to obtain a signed consent form from the minor's parents authorizing a tattoo; violators are guilty of a Class 2 misdemeanor); Tenn. Code Ann. §§ 62–38–207; 62–38–305 and 306 (establishes that a minor age 16 or older may be tattooed with the written consent of the parent or legal guardian to cover up an existing tattoo and requires the parent or legal guardian to be present during the procedure; it is a Class C misdemeanor for anyone to tattoo a person under age 18; allows a minor age 18 or younger to undergo body piercing with the written consent of the parent, legal guardian or legal custodian and requires them to be present during the procedure; they must sign a document that explains the procedure and methods for proper care, present proof of age and attest in writing that they are the minor's parent, legal guardian or legal custodian; violators will be charged with a Class C misdemeanor and will be imprisoned for up to 30 days or pay a fine of up to $50); Texas Health and Safety Code Ann. §§ 146.012; 146.0125 (prohibits anyone from performing a tattoo on anyone under age 18 without the con-

ports, eleven school systems require a parent's note before sunscreen can be applied to a minor student.[88] Notwithstanding the extensive body of State law requiring parental consent before minor children can engage in a range of less consequential activity, people other than parents can secretly take children across state lines without the consent of their parents for abortions.

STATE JUDICIAL BYPASS PROCEDURES

In *Bellotti v. Baird,*[89] a plurality of the United States Supreme Court set forth the basic test by which judicial bypass proceedings pursuant to a parental consent statute, if judicial bypass provisions are enacted at all, must be reviewed. Bypass procedures must allow the minor to show that she possesses maturity and information to make the abortion decision, in consultation with her physician, without regard to her parents' wishes; allow the minor to show that, even if she cannot make the decision by herself, the "desired abortion would be in her best interests"[90] ; be confidential; and be conducted "with expedition to allow the minor an effective opportunity to obtain the abortion."[91]

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sent of a parent or guardian who believes it is in the best interest of the minor to cover an obscene of offensive tattoo; required consent may be the physical presence of the individual's parent or guardian or the provision of evidence that he or she is the parent or guardian of the person who is getting the tattoo; prohibits anyone from performing body piercing on an individual under age 18 without the consent of the individual's parent, managing conservator or guardian; consent must specify the part of the body to be pierced. Required consent is the physical presence of the individual's parent or guardian and the provision of evidence stating their parental or guardian status); Utah Code Ann. § 76–10–2201 (prohibits anyone from performing or offering to perform a tattoo or body piercing upon a minor without receiving the consent of the minor's parent or legal guardian; establishes that a person is not guilty of a violation if he or she (a) had no actual knowledge of the minor's age and (b) reviewed, recorded and maintained a personal identification number for the minor prior to performing the body piercing or tattoo; violators are guilty of a Class C misdemeanor and the owner or operator of the establishment where the act takes place is subject to a civil penalty of $750 for each violation); Vt. Stat. Ann. Title 26 § 4102 (prohibits anyone from tattooing a minor without the written consent of his or her parent or guardian); Va. Code § 18.2–371.3 (prohibits anyone from tattooing or performing body piercing on a person under age 18, knowing or having reason to believe that the person is under 18 except (a) in the presence of the person's parent or guardian or (b) when done by or under the supervision of a medical doctor, registered nurse, or other medical services personnel in the performance of their duties; violators are guilty of a Class 2 misdemeanor. A second or subsequent violation shall be punished as a Class 1 misdemeanor; excludes ear piercing as a form of body piercing); Wash. Rev. Code § 26.28.085 (applying a tattoo to a minor under age 18 is illegal and violators are guilty of a misdemeanor; prohibits anyone from stating that he or she did not know the minor's age as a defense to prosecution, unless he or she establishes that by a preponderance of evidence he or she made a reasonable attempt to determine the true age of the minor by requiring a driver's license or other picture ID card and did nor rely solely on oral allegations); W. Va. Code § 16–38–3 (requires prior written consent from a parent or guardian for the tattooing of a minor); Wis. Stat. § 948.70 (prohibits anyone other than a physician in the course of his or her professional practice from tattooing or offering to tattoo a child; violators are subject to a Class D forfeiture); Wyo. Stat. § 14–3–107 Chapter 47 2004 (Effective July 1, 2004) (prohibits anyone from tattooing a person under the age of majority, except with the consent of the person's parent or legal guardian who is present at the time the procedure is performed; violators are guilty of a misdemeanor and punishable by imprisonment for a maximum of 6 months, a fine of a maximum of $750, or both; prohibits performing body art on anyone who had not reached the age of majority without the consent of the parent or legal guardian and who is present at the time of the procedure; violators are guilty of a misdemeanor and punishable by imprisonment for a maximum of 6 months, a fine of a maximum of $750, or both; body art is defined as the practice of body piercing, branding scarification, sculpting or tattooing).

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

[89] 443 U.S. 622 (1979) (*Bellotti II*).

[90] *Id.* at 644.

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

Critics of CIANA claim that the measure endangers the health of young girls who are forced to travel out of state to obtain abortions because the judges in their home states either refuse to hear judicial bypass petitions or deny them arbitrarily. In support of this argument, the critics cite cases like that of Ms. Billie Lominick, who testified before the Constitution Subcommittee regarding her experience with South Carolina's judicial bypass procedures. According to Ms. Lominick, who assisted her grandson's girlfriend in obtaining an out-of-state abortion, only two judges in the state of South Carolina would hear a judicial bypass petition, and one of those judges, according to Ms. Lominick, would hear petitions only from girls residing in his county.[92]

Such examples ignore the fact that CIANA provides assistance only in the enforcement of *constitutional* state parental notice and consent laws. If there are only two judges in an entire state willing to hear judicial bypass proceedings, that state's parental involvement laws are likely unconstitutional under Supreme Court precedent, which requires the state to provide a minor the opportunity to seek a judicial bypass with "sufficient expedition to provide an effective opportunity for an abortion to be obtained."[93]

This fact is illustrated by the First Circuit's decision in *Planned Parenthood League v. Bellotti ("Bellotti II").*[94] In that case, the court held that the plaintiffs could successfully challenge the state's judicial bypass procedures if they could present "proof of 'a systemic failure to provide a judicial bypass option in the most expeditious, practical manner.'"[95] The court of appeals remanded the case to the lower court so that the plaintiffs could present evidence that, among other things, judges were "'defacto unavailable' to hear minors' abortion petitions,"[96] and many judges were avoided "for reasons of hostility."[97] The Sixth Circuit has also recognized that a constitutional challenge may be brought for a state's systemic failure to provide an expeditious judicial bypass.[98]

Not only must states provide access to judges who are willing to hear judicial bypass petitions, states must also ensure that the judges who do hear bypass petitions render their decisions in an expedited fashion. For example, in *Planned Parenthood v. Lawall,*[99] the Court of Appeals for the Ninth Circuit struck down an Arizona parental consent statute on the grounds that its judicial bypass provision lacked specific time limits and was therefore in violation of the *Bellotti II* expediency requirement. The court reached this conclusion even though the Arizona statute stated that such proceedings were to be given priority and required that "the court shall reach the decision [on a bypass request] promptly and without delay to serve the best interests of a pregnant minor."[100] The court's rationale in adopting a strict interpretation of the Supreme Court's timeliness requirement was that "[o]pen-

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[92] *See Child Custody Protection Act: Hearings on H.R. 1218 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 106th Cong. (May 27, 1999) (statement of Billie Lominick).
[93] *Bellotti v. Baird,* 443 U.S. 622, 644 (1979) (plurality opinion).
[94] 868 F.2d 459 (1st Cir. 1989).
[95] *Id.* at 469 (quoting *Hodgson v. Minnesota,* 648 F. Supp. 756, 777 (D. Minn. 1986)).
[96] *Id.* at 463.
[97] *Id.* at 461 n.6.
[98] *See Cleveland Surgi-Center, Inc. v. Jones,* 2 F.3d 686, 690 (6th Cir. 1993).
[99] *Planned Parenthood v. Lawall,* 180 F.3d 1022 (9th Cir. 1999).
[100] *Id.* at 1027.

ended bypass provisions engender substantial possibilities of delay for minors seeking abortions." [101]

The Fifth Circuit employed essentially identical reasoning in striking down a Louisiana judicial bypass procedure having indefinite time limits.[102] The court found that "not only do [the bypass procedures] fail to provide any specific time within which a minor's application will be decided, but they give no assurances (assurances required by *Bellotti II*) that the proceedings will conclude expeditiously." [103]

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

In any case, the minority's own witness at a hearing on H.R. 1755, the "Child Custody Protection Act," which contained the same provision in CIANA regarding judicial bypass laws, admitted that "I am personally not aware of cases where [a judicial bypass procedure] hasn't worked." [104] Furthermore, testimony received by the Constitution Subcommittee indicates that, where judicial bypass procedures are in place, they are not needed in the overwhelming number of cases because a parent's involvement is obtained. In 2002, 852 girls received abortions in Alabama with a parent's approval and 12 with a judge's approval, according to state health department records. Idaho similarly reported less than 5 percent of minors using judicial bypass to avoid that state's parental consent law (64 minors with parental consent, 3 with judicial bypass) in 2002. South Dakota reported 14 of 76 minors obtained judicial bypasses, rather than parental consent. In Texas where 3,654 minors obtained abortions, the Texas Department of Health paid for assistance in 284 judicial bypass proceedings. In Wisconsin, less than 10% of the minors obtaining abortions did so with the use of an order obtained through judicial bypass (727 with parental involvement, 63 with judicial bypass).[105]

And far from being too complicated or too intrusive, the judicial bypass procedure has been described as "remarkably simple" by the Nebraska Supreme Court in *Orr v. Knowles.*[106] In fact, the average judicial bypass hearing lasts only 12 minutes, and "more than 92

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[101] *Id.* at 1030.

[102] *See Causeway Medical Suite v. Ieyoub,* 109 F.3d 1096 (5th Cir. 1997).

[103] *Id.* at 1110–11.

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

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

[106] *See Orr v. Knowles,* 337 N.W.2d 699, 706 (Neb. 1983) ("This statute does not provide that the state or anyone else will contest the minor's claim that she is mature enough to make the abortion decision herself. Rather, she will present evidence, and the judge will then make the decision as to her maturity. Since there is no adversarial aspect to these proceedings, we find that no petitioning minor, indigent or otherwise, is entitled to free court-appointed counsel as a matter of right in proceedings under §28–347(2)."). *Accord* Joseph W. Moylan, "No Law Can Give Me the Right to Do What Is Wrong," in LIFE AND LEARNING V: PROCEEDINGS OF THE FIFTH UNIVERSITY FACULTY FOR LIFE CONFERENCE at 234, 235 (1995) (explaining Judge Moylan's decision to resign from a bench in the juvenile court he had occupied for more than 20 years) ("When the bill, taken from a Minnesota law, did get passed, it stated that at the hearing the pregnant minor is entitled to have an attorney appointed for her and even a guardian *ad litem.* There is nobody on the other side, unless a judge takes it on himself. Now I know of no other case that is like that, where it is truly one-sided. If after that one-sided hearing, the judge finds that the girl is mature and can give an informed consent, then the judge is required to authorize the abortion physician to perform the abortion.").

percent of the hearings [were] less than or equal to 20 minutes." [107] The young girl is not subjected to an adversarial process. She is not "on trial." A young girl must merely present evidence only about her maturity level, *not* intimate details of her personal life, to the court. Then the judge will make his decision.

Indeed, judicial bypass procedures are overwhelmingly granted by the courts. Judicial bypasses provide a safe and effective means of insuring the well-being of young girls seeking to abort their pregnancies. A survey of Massachusetts cases found that every minor who sought judicial authorization to bypass parental consent received it.[108] Another Massachusetts study found that only 1 of 477 girls was refused judicial authorization.[109] A Minnesota study cited that a Federal trial court determined that of the 3,573 bypass petitions filed, six were withdrawn, nine were denied, and 3,558 were granted.[110] A survey of the Virginia statute requiring parental notification found that out of 18 requests for judicial bypass, "all but one of the requests were granted eventually." [111]

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

Children's feelings should not trump parental authority. Parents are not simply placeholders in a child's life. They are the foundational pillars of civilization. The family unit has provided the comfort, stability, and safety necessary to sustain civilization, and it has done so for millennia. Parents must be given a chance to work with their own children through difficult situations. There is no guarantee that parents will be successful in that endeavor, and unfortunately there will, no doubt, be a few parents who will be indifferent when they are made aware of their daughter's pregnancy. But that is surely the rare case, and even in that rare case nothing in this legislation will bar an abortion. What this legislation affirms is the proposition that parents deserve a chance. Opponents of CIANA must rest their objections on the notion that most parents do not deserve that simple chance. But parents do deserve that chance, and CIANA would give that chance to parents who have not abused or neglected their child. Even famously liberal Justice Stevens wrote in his concurring opinion in *H.L. v. Matheson* that "[t]he possibility that some parents will not react with compassion and understanding upon being informed of their daughter's predicament or that, even if they are receptive, they will incorrectly advise her, does not undercut the legitimacy of the State's attempt to establish a procedure that will enhance the probability that a pregnant young woman exercise as wisely as possible her right to make the abortion decision." [112]

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[107] *Id.* at 648.

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

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

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

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

[112] 450 U.S. 398, 424 (1981) (Stevens, J., concurring).

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

Anyone who is truly interested in the best interests of a pregnant girl—be they a minister, a sibling, a friend, or anyone else—will encourage her to inform her parents and give them the chance of helping her address her situation appropriately. It is beyond dispute that it is not in a pregnant girl's best interests to allow anyone to assist her in circumventing state laws providing for parental involvement or to allow anyone to give a pregnant girl who has crossed state lines a secret abortion that could have serious medical consequences without notifying a parent.

Unfortunately, during consideration of this legislation, some opponents of this legislation have equated parents with slave owners.[113] Parental rights are not those of a slave owner. They are the rights of caring people who deserve a chance to work with their children through difficult times and should be provided a chance to express their love to their children in their children's moments of greatest need.

THE FUNDAMENTAL NATURE OF PARENTAL RIGHTS

The United States Supreme Court has described parents' right to control the care of their children as "perhaps the oldest of the fundamental liberty interests recognized by this Court."[114] In addressing the right of parents to direct the medical care of their children, the Supreme Court has stated:

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

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

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

> that parents possess what a child lacks in maturity, experience, and capacity for judgment required for *making life's difficult decisions.*[115]

The parents of a minor child have a fundamental right to direct the upbringing and education of that child. The Supreme Court first recognized the right to "establish a home and bring up children" as a "privilege[] long recognized at common law as essential to the orderly pursuit of happiness by free men" in the 1923 case of *Meyer v. Nebraska* in which it struck down as unconstitutional a Nebraska law forbidding all schools within its boundaries from teaching pupils in any language other than English.[116] Two years later, striking down an Oregon statute requiring all children, under compulsory education laws, to attend public schools, the Court affirmed this principle stating, "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[117]

Coupled with this right, however, is the duty of parents to provide for the care and safety of their children, including their physical and medical well-being. A parent's duty to provide medical care to his or her child is a duty arising from the relationship of parent and child. Indeed, the Court has described the "care and nurture" of a child as being a "primary function" of parents.[118] Ignoring or violating a parent's legal right to direct the upbringing of their children, including the right to direct the medical care received by those children, can result in liability.[119] In *Meyer,* the Court stated, "Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life [.]"[120]Certainly this duty to educate includes instructing one's children on how to best make decisions concerning their health.

Holding that the State of Georgia's commitment procedures for minor children did not violate the due process rights of minors, the Court recognized "the traditional presumption that the parents act in the best interests of their child" and warned against discarding "wholesale those pages of human experience that teach that parents generally do act in the child's best interests."[121] The Court added, "Surely, this includes a 'high duty' to recognize symptoms of illness and to seek and follow medical advice."[122]

The Supreme Court has consistently recognized that parents have a legal right to be involved in their minor daughter's decision to seek medical care, which includes the abortion procedure. Therefore, the Court has consistently affirmed a state's right to restrict the circumstances under which a minor may obtain an abortion in

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

[116] 262 U.S. 390, 399 (1923).

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

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

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

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

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

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

ways in which adult women seeking abortions may not be restricted. Holding that a state may not grant to a third party an absolute, and possibly arbitrary, veto over a minor's decision to have an abortion in *Planned Parenthood v. Danforth,* the Court added "the State has somewhat broader authority to regulate the activities of children than of adults." [123] Indeed, "the status of minors under the law is unique in many respects" and the "unique role in our society of the family, the institution by which 'we inculcate and pass down many of our most cherished values, moral and cultural,' requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children." [124]

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

Supreme Court precedents support CIANA. The Supreme Court has observed that "[t]he medical, emotional, and psychological consequences of an abortion are serious and can be lasting," [125] and that "[i]t seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." [126] Parental involvement in such a decision will lead to improved medical care for minors seeking abortions and provide increased protection for young girls against sexual exploitation by adult men.

On an issue as contentious and divisive as abortion, it is both remarkable and instructive that there is such firm and long-standing support for laws requiring parental involvement. Various reasons underlie this broad and consistent support. As the Supreme Court, including Justices O'Connor, Kennedy, and Souter, observed in *Planned Parenthood v. Casey,* [127] parental consent and notification laws related to abortions "are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart."

In *Planned Parenthood of Central Missouri v. Danforth,* [128] noted liberal Justice Stewart wrote, "There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child." [129] Three years later, in *Bellotti v. Baird,* [130] a plurality of the Court acknowledged that parental consultation is critical for minors considering abortion because minors often lack the experience, perspective, and judgment to avoid choices that could be detrimental to them. The *Bellotti* plurality also observed that parental consultation is particularly desirable regarding the abortion deci-

[123] 428 U.S. 52, 74 (1976).
[124] *Bellotti v. Baird,* 443 U.S. 622, 633–34 (1979) (*Bellotti II*).
[125] *H.L. v. Matheson,* 450 U.S. 398, 411 (1981).
[126] *Planned Parenthood v. Danforth,* 428 U.S. 52, 91 (1976).
[127] 505 U.S. 833, 895 (1992).
[128] 428 U.S. 52 (1976).
[129] *Planned Parenthood v. Danforth,* 428 U.S. 52, 91 (1976) (Stewart, J., concurring).
[130] 443 U.S. 622, 640 (1979) (*Bellotti II*) (plurality opinion).

sion since, for some, the situation raises profound moral and religious concerns.[131]

Significantly, the Supreme Court has already concluded that notice statutes do not give parents any "veto power"[132] over the minor's abortion decision. As the Court reiterated in *Akron II,* "notice statutes are not equivalent to consent statutes because they do not give anyone a veto power over a minor's abortion decision."[133] A one-parent notification law such as one containing CIANA's abuse and life-endangerment exception does not require a judicial bypass. As the Fourth Circuit Court of Appeals recognized in *Planned Parenthood of the Blue Ridge v. Camblos,* "In contrast to its assessment of parental consent statutes, the [Supreme] Court has consistently recognized that the same potential for absolute veto over the abortion decision that inheres in a parental consent statute does not inhere in a parental notice statute, and therefore that notice statutes are fundamentally different from—and less burdensome than—consent statutes."[134]

Parental involvement in a pregnant minor girl's abortion decision is supported by the common-sense realization that minors often lack the maturity to fully comprehend the significance and consequences of their actions. In 1976, when it first addressed Massachusetts' parental consent statute, the Supreme Court recognized that with minors, "there are unquestionably greater risks of inability to give an informed consent."[135] During its second review of Massachusetts' parental consent law, the Court stated, "Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for concern, . . . sympathy, and . . . paternal attention."[136] The Court continued to describe its previous rulings to allow states to "limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences" as being "grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."[137]

The Supreme Court has pointed to the "guiding role of parents in the upbringing of their children" as the basis for its rulings preserving for parents a unique legal authority over the conduct of their children.[138] The Court has reasoned that "parents naturally take an interest in the welfare of their children[.]"[139] This, in the Court's view, creates "an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision."[140] In *H.L. v. Matheson,*[141] the Court upheld a Utah statute

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[131] *Id.* at 635.
[132] *See H.L. v. Matheson,* 450 U.S. 398, 411 (1981) ("The Utah Statute gives neither parents nor judges a veto power over the minor's abortion decision.").
[133] *Ohio v. Akron Center for Reproductive Health,* 497 U.S. 502, 511 (1992).
[134] *Planned Parenthood of the Blue Ridge v. Camblos,* 155 F.3d 352, 363 (4th Cir. 1998).
[135] *Bellotti v. Baird,* 428 U.S. 132, 147 (1976) *(Bellotti I).*
[136] *Bellotti II,* 443 U.S. at 635 (quotations and citations omitted).
[137] *Id.* at 635.
[138] *See id.* at 637.
[139] *Id.* at 648.
[140] *Id.*
[141] 450 U.S. 398 (1981).

requiring a physician to notify, if possible, parents of a minor upon whom an abortion is to be performed and stated:

> There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place.[142]

In *Planned Parenthood v. Casey,* the Court upheld the parental consent provisions of Pennsylvania's Abortion Control Act of 1982, stating that they "provide the parent or parents of a pregnant young woman the opportunity to consult with her in private, and to discuss the consequences of her decision in the context of the values and moral or religious principles of their family."[143] It continued, "The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors."[144]

It is instructive that the Court has always held that this important duty to ensure and provide for the care and nurture of minor children lies *only* with parents—a conclusion that arises from the traditional legal recognition "that natural bonds of affection lead parents to act in the best interests of their children."[145]

Significantly for CIANA, the Court recently struck down a Washington State visitation law under which grandparents were granted visitation to their grandchildren over the objection of the children's mother precisely because it failed to provide special protection for the fundamental right of parents to control with whom their children associate.[146] The Court concluded that the lower court "gave no special weight at all" to a mother's conclusion that excessive grandparent visitation was not in her minor children's best interests, and continued, "so long as a parent adequately cares for his or her children (*i.e.,* is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."[147] This failure, the Court stated, "directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child."[148]

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[142] *Id.* at 409–10.
[143] 505 U.S. 833, 899–900 (1992).
[144] *Bellotti,* 443 U.S. at 637.
[145] *Parham v. J.R.,* 442 U.S. 584, 602 (1979)(emphasis added). *See also Prince v. Commonwealth of Massachusetts,* 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Wisconsin v. Yoder,* 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.").
[146] *Troxel v. Granville,* 530 U.S. 57 (2000).
[147] *Id.* at 68–69.
[148] *Id.* at 69.

CIANA PROTECTS THE HEALTH OF MINOR GIRLS

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

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

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

> In this case . . . we are concerned only with minors who, according to the record, range in age from children of 12 years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.[149]

The Supreme Court's concern for that ability of minors to distinguish competent and ethical abortion providers is particularly justified in states where non-physicians are allowed, by statute, to perform abortions. The National Abortion and Reproductive Rights Action League recommends that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the state Board of Medical Examiners, and that he or she have admitting privileges at a local hospital not more than 20 minutes away from the location where the abortion is to occur.[150] A well-informed parent seeking to guide her child is more likely to inquire into the qualifications of the person performing the abortion, and the availability of a physician with local admitting

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

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

privileges, than an emotionally vulnerable young girl faced with pregnancy.

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

> The medical, emotional, and psychological consequences of an abortion are serious and can be lasting . . . An adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.[151]

Take, for example, the story of Sandra, a 14-year-old girl who committed suicide shortly after obtaining an abortion.[152] Sandra's mother, who learned of her daughter's abortion only after her suicide, sued the abortion provider at which Sandra's abortion was performed, asserting that her daughter's death was due to the failure of the abortion provider to obtain a psychiatric history or monitor Sandra's mental health.[153] The court concluded that Sandra was not insane at the time she committed suicide and, therefore, her actions broke the chain of causation required for recovery.[154] Yet evidence was presented that Sandra had a history of psychological illness and that her behavior was noticeably different after the abortion.[155] If Sandra's mother had been aware of her daughter's abortion, she would have had the opportunity to notify the abortion provider of Sandra's psychological history, and steps could have been taken to minimize the psychological effect of the abortion on Sandra's already fragile mental state.

A more complete and thus more accurate medical history of the patient will enable abortion providers to disclose not only medical risks that ordinarily accompany abortions but also those risks that may be specific to a pregnant minor. Parental involvement provides adults with the opportunity to advise and assist the girl in giving her informed consent to the procedure.

Third, parental involvement will improve medical treatment of pregnant minors by ensuring that parents have adequate knowledge to recognize and respond to any post-abortion complications that may develop.[156] The rate of many of the complications associated with abortion are unknown. As a clinician's guide states, "The abortion reporting systems of some counties and states in the United States include entries about complications, but these systems are generally considered to underreport infections and other problems that appear some time after the procedure was performed." [157] Furthermore, women typically have no pre-existing re-

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

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

[153] *See id.* at 624.

[154] *See id.* at 628.

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

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

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

lationship with an abortion provider,[158] which likely accounts for the fact that only about one-third return to the provider for their post-operative exam.[159] Teenagers are even less likely to return for follow-up appointments.[160] This failure to return for post-operative exams precludes discovery of post-abortion complications by abortion providers and subsequent reporting of these complications. Other healthcare providers may be reluctant to report any complications for fear of compromising the secrecy that often surrounds abortions.

At least one American court has held that a perforated uterus is a "normal risk" associated with abortion.[161] Untreated, a perforated uterus may result in an infection, complicated by fever, endometritis, and parametritis. According to one study, "[t]he risk of death from post-abortion sepsis [infection] is highest for young women, those who are unmarried, and those who undergo procedures that do not directly evacuate the contents of the uterus . . . A delay in treatment allows the infection to progress to bacteremia, pelvic abscess, septic pelvic thrombophlebitis, disseminated intravascular coagulophy, septic shock, renal failure, and death."[162] Evidence about these dangers presented at trial persuaded a Florida appellate court to uphold that State's parental notification law:

> The State proved that appropriate aftercare is critical in avoiding or responding to post-abortion complications. Abortion is ordinarily an invasive surgical procedure attended by many of the risks accompanying surgical procedures generally. If post-abortion nausea, tenderness, swelling, bleeding, or cramping persists or suddenly worsens, a minor (like an adult) may need medical attention. A guardian unaware that her ward or a parent unaware that his minor daughter has undergone an abortion will be at a se-

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[158] *See Florida Dep't of Health v. North Florida Women's Health and Counseling Service,* 852 So.2d 254, 264 n.3 (Fla. App. 1 Dist., 2001): [E]vidence at trial showed, the physician-patient relationship is often attenuated in the abortion context, almost to the point of non-existence. *Cf. Planned Parenthood v. Danforth,* 428 U.S. 52, 91, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) ("It seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place."). Abortion patients ordinarily see their physicians only once or twice, very briefly. Most of their interaction is with the clinic's staff. Physicians performing abortions often perform several in the space of a single hour. *Id.*

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

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

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

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

> rious disadvantage in caring for her if complications develop. An adult who has been kept in the dark cannot, moreover, assist the minor in following the abortion provider's instructions for post-surgical care. Failure to follow such instructions can increase the risk of complications. As the plaintiffs' medical experts conceded, the risks are significant in the best of circumstances. While abortion is less risky than some surgical procedures, abortion complications can result in serious injury, infertility, and even death.[163]

Young adolescent girls are particularly at risk of certain adverse medical consequences from an abortion. For instance, there is a greater risk of cervical injury associated with suction-curettage abortions (at 12 weeks' gestation or earlier) performed on girls 17 years old or younger.[164] Cervical injury is of serious concern because it may predispose the young girl to adverse outcomes in future pregnancies. Girls 17 years old or younger also face a two and a half times greater risk of acquiring endometriosis following an abortion than do women 20-29 years old.[165]

The particular risks faced by minors upon whom abortions are performed were articulated by Dr. Bruce A. Lucero. Dr. Lucero, who supported the Child Custody Protection Act (federal legislation similar to CIANA) in 1998, wrote in *The New York Times* about his own experience with minor girls seeking abortions. "In almost all cases," Dr. Lucero wrote, "the only reason that a teen-age girl doesn't want to tell her parents about her pregnancy is that she feels ashamed and doesn't want to let her parents down."[166] However, according to Dr. Lucero, "parents are usually the ones who can best help their teen-ager consider her options. And whatever the girl's decision, parents can provide the necessary emotional support and financial assistance."[167] Moreover, Dr. Lucero explained that "patients who receive abortions at out-of-state clinics frequently do not return for follow-up care, which can lead to dangerous complications. And a teen-ager who has an abortion across state lines without her parents' knowledge is even more unlikely to tell them that she is having complications."[168]

Opponents also argue that the bill needs a broader "health exception." It does not. CIANA specifically provides that its notification requirements would not apply if "the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself." If the concern is about health risks of a non life-threatening

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

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

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

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

[167] *Id.*

[168] *Id.*

nature, then the best course of action, of course, is involving the parents. Finally, the Supreme Court has upheld as constitutional a state parental notification statute that did not contain a health exception. That state statute provided only for a "judicial bypass" exception, which would of course take some time for a minor to utilize, and an exception for cases in which emergency treatment prior to notice "is necessary to prevent the woman's death."[169]

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

In short, the physical and psychological risks of abortions to minors are great, and laws requiring parental involvement in such abortions reduce that risk. The widespread practice of evading such laws by transporting minors across State lines through interstate commerce may be prevented only through Federal legislation.

CIANA PROTECTS MINOR GIRLS FROM SEXUAL ASSAULT

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental involvement will provide increased protection against sexual exploitation of minors by adult men. National studies reveal that "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[170] In a study of over 46,000 pregnancies by school-age girls in California, researchers found that "71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers . . . Even among junior high school mothers aged 15 or younger, most births are fathered by adult men 6-7 years their senior. *Men aged 25 or older father more births among California school-age girls than do boys under age 18."*[171] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[172]

A 1989 study of coercive sexual experiences among teenage mothers found that of the pregnant teens who had unwanted sexual experiences, only 18% of the perpetrators were within the victim's age group. Another 18% were three to 5 years older than the victim. Seventeen percent were six to 10 years older, and 40% were

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

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

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

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

more than 10 years older than their victims.[173] Another study reports that when a minor's parents have not been told about her pregnancy, 58 percent of the time it is the girl's boyfriend who accompanies her for an abortion, and the minor's boyfriend helped pay for the abortion 76 percent of the time.[174]

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

> [A]s this Congress learned through a congressional report from the Center for Disease Control, two-thirds of the fathers of teenage mothers are age 20 years or older, suggesting that there is in fact differences in power and status between the sexual partners.[175] In addition to that, a survey of 1,500 unmarried minors having abortions revealed that among the minors who reported that neither parent knew of the abortion, 89 percent said that a boyfriend was involved in deciding or arranging the abortion, and 93 percent of those 15 and under said that the boyfriend was involved.[176]

Experience suggests that sexual predators recognize the advantage of their victims' obtaining an abortion.[177] Not only does an abortion eliminate a critical piece of evidence of the criminal conduct,[178] but it also allows the abuse to continue undetected.[179] As a recent presentation given at a U.S. Department of Health and Human Services Conference on the Sexual Exploitation of Teens

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

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

[175] *See* Department of Health and Human Services, "Report to Congress on Out-of-Wedlock Childbearing" (September 1995) at x ("Evidence also indicates that among unmarried teenage mothers, two-thirds of the fathers are age 20 or older, suggesting that differences in power and status exist between many sexual partners.").

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

[177] On June 14, 2000, a 36-year-old Omaha man who impersonated the father of his teen-age victim in order to assist her in obtaining an abortion was sentenced to 1½-2 years in prison for felony child abuse. *See* Angie Brunkow, "Man Who Said He Was Girl's Dad Sentenced," *Omaha World-Herald* (June 14, 2000) at 20. A similar attempt to hide the consequences of statutory rape is reflected in the testimony of Joyce Farley before the United States House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution. *See, e.g., Child Custody Protection Act: Hearings on H.R. 3682 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Congress, May 21, 1998 (statement of Joyce Farley). http://www.house.gov/judiciary/222460.htm.

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

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

showed, of minor girls' first sexual experiences, 13% constitute statutory rape.[180] Further, the younger a sexually experienced teen is, the more likely they are to experience statutory rape. Of sexually experienced teens age 13 or younger, 65% experienced statutory rape. Of those age 14, 53% experienced statutory rape. And of those age 15, 41% experienced statutory rape.[181] And young girls who are younger at their first sexual experience are more likely to say their first sexual experience was non-voluntary.[182] Also, blacks and Hispanics are more likely to experience statutory rape.[183] Parental involvement laws help ensure that parents have the opportunity to protect their daughters from those who would victimize them further. Secret abortions protect and perpetuate the illegal conduct of these adult male predators.

CONGRESS HAS CLEAR CONSTITUTIONAL AUTHORITY TO ENACT CIANA

CIANA is a regulation of commerce among the several states.[184] Commerce, as that term is used in the Constitution, includes travel whether or not that travel is for reasons of business.[185] To transport another person across state lines is to engage in commerce among the states.[186] Under current Supreme Court precedents, Congress can enact legislation concerning interstate commerce, such as CIANA, for reasons related primarily to local activity rather than commerce itself.[187]

The interstate transportation of minors for the purpose of securing an abortion is clearly a form of interstate commerce which the Constitution expressly empowers Congress to regulate.[188] CIANA regulates only conduct which involves interstate movement, activity which the national government alone is expressly authorized by the Constitution to address.

The Federal Government has long exercised its interstate commerce authority to prohibit interstate activity harmful to minors and their families. In 1910, Congress used its Commerce Clause power to enact the Mann Act,[189] which, before its amendment in 1986, prohibited the interstate transportation of women or minors for purposes of "prostitution or debauchery, or for any other immoral purpose." The Supreme Court upheld the enactment of this law as a constitutional exercise of Congress' power over transportation among the several states. The Court reasoned that if men and women employ interstate transportation to facilitate a wrong,

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

[181] *Id.*

[182] *Id.* (of those younger than 14, 18%; of those age 15–16, 10%; and of those age 17–19, 5%).

[183] *Id.* (Hispanic, 17%, black, 16%, white, 11%).

[184] *See, e.g., Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241 (1964) (upholding enactment of Title II of the Civil Rights Act under Congress' commerce clause power).

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

[186] There is therefore no need to address the scope of Congress' power to regulate activity that is not, but that affects, commerce among the States. *See, e.g., A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495 (1935); *Wickard v. Filburn,* 317 U.S. 111 (1942); *Katzenbach v. McClung,* 379 U.S. 294 (1964); *United States v. Lopez,* 514 U.S. 549 (1995).

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

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

[189] 18 U.S.C. § 2421 (1970). As amended, the statute prohibits the knowing transportation of any individual across state lines "with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so . . ." 18 U.S.C. § 2421 (1999).

then their right to interstate travel can be restricted.[190] That statute was upheld as applied to the transportation of a person to Nevada for purposes of engaging in prostitution, even though prostitution was legal in Nevada.[191] The Mann Act flatly prohibited the interstate transportation of women for "prostitution" or for "any other immoral purpose." In upholding the law as a valid exercise of Congress' commerce power, the Court stated:

> The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.[192]

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

The Mann Act is not the only example of a Federal law that prohibit interstate activities that might be legal in the state to which the activity is directed. Indeed, as long ago as 1876, Congress "made it a crime to deposit in the mails any letters or circulars concerning lotteries, whether illegal or chartered by state legislatures."[193] A statute to this effect is still in force.[194] Congress later prohibited the transportation of lottery tickets in interstate commerce, whether or not lotteries are legal in the state to which the tickets are transported.[195] That provision was upheld by the Supreme Court in *Champion v. Ames*[196] and is still in effect.

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

CIANA IS CONSISTENT WITH SUPREME COURT PRECEDENT

In *Roe v. Wade,*[197] a majority of the Supreme Court found that the Fourteenth Amendment's Due Process Clause, which provides

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

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

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

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

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

[195] *See* 18 U.S.C. §1301.

[196] 188 U.S. 321 (1903).

[197] 410 U.S. 113 (1973).

that no state shall deprive any person of "life, liberty, or property" without due process of law, includes within it a "substantive" component that bars a state from prohibiting abortions under some circumstances. This substantive component of the Due Process Clause, also described in that case as including a "right to privacy," was construed to forbid virtually all state prohibitions on abortion during the first trimester of pregnancy.[198] In *Planned Parenthood v. Casey,* [199] the scope of permissible state regulation of abortion and the standards to be applied in evaluating the constitutionality of the regulation were significantly changed. Instead of declaring that the right to seek an abortion was a "fundamental right" requiring a "compelling state interest" in order to be regulated, the new holding was that state regulation of abortion was permissible so long as such regulation did not place an "undue burden" on a woman's exercise of her constitutional rights with regard to abortion.[200]

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

Following the Court's decision in *Roe v. Wade,* [201] many states enacted parental notice or consent statutes requiring minors to notify or seek the consent of their parents before undergoing an abortion. Parental consent laws generally require one or both parents to give actual consent to the minor's decision to have an abortion. Parental notification laws typically require the physician, or in some statutes another health care provider, to notify one or both of the parents of the minor female at some time prior to the abortion.

The Court first considered parental involvement in a minor daughter's abortion in *Planned Parenthood of Central Missouri v. Danforth.* [202] The Missouri statute gave a minor girl's parent an absolute veto over her decision to have an abortion. The majority, led by Justice Blackmun, concluded that such a veto power was unconstitutional.[203] The majority noted, however, that the Court "long has recognized that the State has somewhat broader authority to regulate the activities of children than of adults" and "emphasized" that its holding in the case "does not suggest that every minor, regardless of age . . . may give effective consent for termination of her pregnancy." [204]

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[198] *See Planned Parenthood v. Casey,* 505 U.S. 833, 985 (1992) (Scalia, J., dissenting).
[199] 505 U.S. 833 (1992).
[200] For the articulation of the "undue burden" standard in *Casey,* see *id.* at 874–80. While the "undue burden" standard as expressed in *Casey* appeared only to be the views of the three-person plurality, Justice Scalia predicted that "undue burden" would henceforward be the relevant standard, *see id.* at 984–95 (Scalia, J., dissenting). It now appears that the lower Federal courts understand that the "undue burden" standard is the correct one to be applied in abortion cases involving babies that are not viable. *See, e.g., Manning v. Hunt,* 119 F.3d 254, 260 (4th Cir. 1997) ("The trend does appear to be a move away from the strict scrutiny standard toward the so-called 'undue burden' standard of review.").
[201] 410 U.S. 113 (1973).
[202] 428 U.S. 52 (1976).
[203] *Id.* at 74.
[204] *Id.* at 74, 75.

The Court next addressed state parental involvement laws in *Bellotti v. Baird,* [205] remanding a parental consent statute that was unclear as to whether the parents had authority to veto the abortion and as to the availability of a judicial bypass procedure.[206] The statute returned to the Supreme Court in *Bellotti v. Baird* (*Bellotti II*).[207] The statute in *Bellotti II* required a minor to obtain the consent of her parents or circumvent this requirement through a judicial bypass proceeding that did not take into account whether the minor was sufficiently mature to make an informed decision regarding the abortion. The Supreme Court invalidated the statute without a majority opinion.

Justice Powell stated in his plurality opinion, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society" and that "[p]roperly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter." [208] This has become the *de facto* constitutional standard for parental consent and notification laws. In upholding parental involvement laws, the plurality found three reasons why the constitutional rights of minors were not identical to the constitutional rights of adults: "[t]he peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." [209] Thus, the plurality sought to design guidelines for a judicial bypass proceeding that allowed states to address these interests in a parental consent statute.

In *H.L. v. Matheson,* [210] a minor girl challenged the constitutional validity of a state statute that required a physician to give notice to the parents of a minor girl whenever possible before performing an abortion on her. By a vote of six to three, the statute was held constitutional. The Court held that a state could require notification of the parents of a minor girl because the notification "furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child." [211]

In *Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft,* [212] the Court upheld the constitutionality of a State law that required a minor to obtain the consent of one of her parents before obtaining an abortion or, in the alternative, to obtain the consent of a juvenile court judge. While there was no majority opinion, this case marked the first time the Court directly upheld a parental consent requirement.

In *Ohio v. Akron Center for Reproductive Health,* [213] the Supreme Court upheld a statute that required a physician to give notice to

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[205] 428 U.S. 132 (1976).
[206] In doing so the Court recognized minors bear "unquestionably greater risks of inability to give an informed consent." *Id.* at 147.
[207] 443 U.S. 622 (1979).
[208] *Id.* at 638.
[209] *Id.* at 634.
[210] 450 U.S. 398 (1981).
[211] *Id.* at 409–10.
[212] 462 U.S. 476 (1983).
[213] 497 U.S. 502 (1990).

one of the minor's parents or, under some circumstances, another relative, before performing an abortion on the minor. The statute permitted the physician and the minor to avoid the requirement by a judicial bypass. Justice Kennedy, writing for the majority, held that the bypass proceeding did not unconstitutionally impair a minor's rights by the creation of unnecessary delay.[214] The Court established in this case that it will not invalidate state procedures so long as they seem to be reasonably designed to provide the minor with an expedited process.

In *Hodgson v. Minnesota,* [215] the Court invalidated a state statute that required notification of *both* parents prior to a minor girl's abortion without the option of a judicial bypass. The Court, however, upheld statutory requirements that both parents be notified of the abortion and a 48 hour waiting period between notification and the performance of the abortion, if such requirements were accompanied by a judicial bypass procedure that met constitutional standards.

CIANA, consistent with these Supreme Court precedents, requires—in cases in which a minor from one state seeks to obtain an abortion in another state without a parental involvement law—that before an abortion can be obtained, either (1) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's state of residence has waived any parental notification required by the laws of that state, or has otherwise authorized that the minor be allowed to procure an abortion; (2) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; or (3) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

In *Planned Parenthood of Central Missouri v. Danforth,*[216] the first of a series of Supreme Court cases dealing with parental consent or notification laws, noted liberal Justice Stewart wrote, "There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision of whether or not to bear a child." [217]

While the Supreme Court has, to date, "declined to decide whether a parental notification statute must include some sort of bypass provision to be constitutional," [218] it is of note that even famously liberal Justice Stevens wrote in his concurring opinion in *H.L. v. Matheson,* that "[t]he fact that certain members of the class of unmarried minor women who are suffering unwanted pregnancies and desire to terminate the pregnancies may actually be emancipated or sufficiently mature to make a well-reasoned abortion deci-

[214] *See id.* at 514–15.
[215] 497 U.S. 417 (1990).
[216] 428 U.S. 52 (1976).
[217] *Planned Parenthood v. Danforth,* 428 U.S. 52, 91 (1976) (Stewart, J., concurring).
[218] *Lambert v. Wicklund,* 520 U.S. 292, 295 (1997).

sion does not, in my view, undercut the validity of the [state] statute [in question] . . . [A] state legislature has constitutional power to utilize, for purposes of implementing a parental-notice requirement, a yardstick based upon the chronological age of unmarried pregnant women. That this yardstick will be imprecise or even unjust in particular cases does not render its use by a state legislature impermissible under the Federal Constitution."[219]

Furthermore, the Court in *Hodgson v. Minnesota,*[220] wrote that:

> We think it is clear that a requirement that a minor wait 48 hours after notifying a single parent of her intention to get an abortion would reasonably further the legitimate state interest in ensuring that the minor's decision is knowing and intelligent . . . The brief waiting period provides the parent the opportunity to consult with his or her spouse and a family physician, and it permits the parent to inquire into the competency of the doctor performing the abortion, discuss the religious or moral implications of the abortion decision, and provide the daughter needed guidance and counsel in evaluating the impact of the decision on her future."[221]

The Supreme Court has clearly indicated that a parental notification requirement does not impose an undue burden on a minor's ability to obtain an abortion, finding that "[a] 48-hour delay imposes only a *minimal* burden on the right of the minor to decide whether or not to terminate her pregnancy."[222]

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

> Numerous forms of state regulation might have the incidental effect of increasing the cost or decreasing the availability of medical care, whether for abortion or any other medical procedure. The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it. Only where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.[223]

The Court continued that "[a] finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a *substantial obstacle* in the path of a woman seeking an abortion of a nonviable fetus."[224] A parental notice requirement, which the Supreme Court has described as a "*minimal* burden"[225] is clearly not a "substantial obstacle"[226] to receiving an abortion.

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[219] *H.L. v. Matheson,* 450 U.S. 398, 424–25 (1981) (Stevens, J., concurring) (citations and quotations omitted).

[220] 497 U.S. 417 (1990).

[221] *Hodgson v. Minnesota,* 497 U.S. 417, 448–49 (1990).

[222] *Id.* at 449 (emphasis added).

[223] *Planned Parenthood v. Casey,* 505 U.S. 833, 874 (1992).

[224] *Id.* at 877 (1992) (emphasis added).

[225] *Hodgson v. Minnesota,* 497 U.S. 417, 449 (1990) (emphasis added).

[226] The Supreme Court elaborated that "Some guiding principles should emerge. What is at stake is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which

Continued

The Supreme Court continued: "We reject the rigid trimester framework of *Roe v. Wade.* To promote the State's profound interest in potential life, throughout pregnancy the State may take measures to ensure that the woman's choice is informed, and measures designed to advance this interest will not be invalidated as long as their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right . . . As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion . . . [P]arental notification or consent requirements . . . and our judgment that they are constitutional, are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart."[227]

Even famously liberal Justice Stevens wrote in his concurring opinion in *H.L. v. Matheson,*[228] that:

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

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the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." *Planned Parenthood v. Casey,* 505 U.S. 833, 877 (1992).

[227] *Planned Parenthood v. Casey,* 505 U.S. 833, 878, 895 (1992).

[228] 450 U.S. 398 (1981).

distressed child to make and to implement a correct decision.[229]

Even earlier, the Court stated in *H.L. v. Matheson* that "[t]he Constitution does not compel a state to fine-tune its statutes so as to encourage or facilitate abortions. To the contrary, state action encouraging childbirth except in the most urgent circumstances is rationally related to the legitimate governmental objective of protecting potential life."[230]

THE RIGHT TO TRAVEL IS PRESERVED UNDER CIANA

Opponents also argue that CIANA violates the rights of residents of each of the United States and of the District of Columbia to travel to and from any state of the Union for lawful purposes. Those opposed to CIANA on these grounds argue that the legislation will hold a pregnant minor "hostage" to the laws of her home state.

As an initial matter, it does not appear that the Supreme Court has *ever* held that Congress' power to regulate interstate commerce is ever limited by the "right to travel." Even assuming, however, that Congress' authority under the Commerce Clause is limited by the right to travel doctrine,[231] the Supreme Court has recognized that the right to travel is "not absolute," and is not violated so long as there is a "substantial reason for the discrimination beyond the mere fact that they are citizens of other States."[232] Congress obviously has a substantial interest in protecting the health and well-being of minor girls and in protecting the rights of parents to raise their children.

However, the notion that CIANA is inconsistent with the constitutional right to travel is not supportable under the Supreme Court's jurisprudence. Neither a state nor the Federal Government can interfere with a citizen's ability to leave a state for the purpose of visiting another State or prevent its citizens from returning; either would violate "the right of a citizen of one State to enter and to leave another State."[233] CIANA does not even implicate this limitation, for it does not preclude the minor from traveling. The minor's right to travel to another state is wholly unimpeded by CIANA.

In addition, the Court has recognized that the right to interstate travel "may be regulated or controlled by the exercise of a State's police power" and by the Federal Government as well.[234] Protecting the health and well-being of minor girls and the rights of parents to raise their children are substantial, indeed compelling, reasons for restricting minors from obtaining an abortion without parental involvement. First, young adolescent girls who undergo abortions face a heightened risk of suffering from long-term physical and psy-

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

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

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

[232] *Saenz v. Roe,* 526 U.S. 489, 502 (1999).

[233] *See id.* at 500.

[234] *United States v. Guest,* 383 U.S. 745, 759 n.17 (1966).

chological complications. Second, "[c]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society," and that "[p]roperly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter."[235] Thus, "[u]nder the Constitution, the State can properly conclude that parents . . . who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility."[236] Third, the fundamental rights of minors, including the right to travel, are not equal to those of adults. Although the Court has previously concluded that the fundamental rights of a child are "virtually coextensive with that of an adult,"[237] it also has recognized that "[t]hese rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults."[238] Thus, "the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'"[239]

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

> [T]he Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.[240]

Therefore, "[l]egal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding."[241] Consequently, a State may properly subject minors to more stringent limitations than are permissible with respect to adults. Examples include laws that prohibit the sale of cigarettes and alcoholic beverages to minors, laws that prohibit the sale of firearms and deadly weapons to minors without parental consent, and laws that prohibit third parties from exposing minors to certain types of literature. Similarly, Congress may restrict the right of minors to travel across state lines to a greater extent than it may adults.

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

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[235] *Bellotti v. Baird,* 443 U.S. 622, 638 (1979) (*Bellotti II*).
[236] *Id.* at 639.
[237] *Id.* at 634.
[238] *Id.* at 635.
[239] *Id.*
[240] *Id.*
[241] *Id.* at 638–39.

CIANA regulates interstate commerce, and Congress has the exclusive authority to regulate such activity.

Hearings

The Committee's Subcommittee on the Constitution held 1 day of hearings on H.R. 2299 on March 8, 2012. Testimony was received from Professor Teresa Collett, Professor of Law, University of St. Thomas School of Law; The Very Rev. Dr. Katherine Hancock Ragsdale, President and Dean, Episcopal Divinity School; and Dr. Michael New, Department of Social Sciences, University of Michigan—Dearborn.

Committee Consideration

On March 27, 2012, the Committee met in open session and ordered the bill H.R. 2299 favorably reported without amendment, by a rollcall vote of 20 to 13, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 2299.

1. An amendment offered by Mr. Nadler that provides an exemption for grandparents and adult siblings, provided that such grandparent or adult sibling did not have sexual contact with the minor. Failed by a vote of 7-16.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan		X	
Mr. Poe		X	
Mr. Chaffetz			
Mr. Griffin		X	
Mr. Marino			
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt			
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez			
Mr. Polis			
Total	7	16	

2. An amendment offered by Mr. Scott that provides an exemption for taxicab drivers, and others in the business of professional transport, unless the individual had sexual contact with the minor. Failed by a vote of 10-14.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle			
Mr. Amodei		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	10	14	

3. An amendment offered by Mr. Watt that provides an exemption for persons transporting a minor if delay endangers the physical health of the minor seeking the abortion. Failed by a vote of 11-13.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle			
Mr. Amodei		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	11	13	

4. An amendment offered by Mr. Watt that provides an exemption for cases where the abortion is necessary to protect the health or save the life of the abortion-seeking minor. Failed by a vote of 12-15.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen	X		
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	12	15	

5. An amendment offered by Ms. Jackson Lee that provides an exemption for clergy, godparents, aunts, uncles, or first cousins, unless the individual had sexual contact with the minor. Failed by a vote of 11-16.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen	X		
Mr. Johnson, Jr.	X		
Mr. Pierluisi		X	
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	11	16	

6. An amendment offered by Ms. Jackson Lee that provides an exemption for cases where pregnancy is a result of sexual contact with parent, guardian, or other household member. Failed by a vote of 11-17.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	11	17	

7. An amendment offered by Ms. Jackson Lee that changes the effective date from 45 days to 120 days after enactment. Failed by a vote of 11-17.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member			

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	11	17	

8. An amendment by Mr. Johnson that provides an exception to the disclosure requirement if the minor's home poses a threat to physical safety. Failed by a vote of 11-18.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert		X	
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	11	18	

9. An amendment offered by Mr. Quigley that provides an exemption for cases of rape or incest. Failed by a vote of 11-15.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin			
Mr. Marino		X	
Mr. Gowdy			
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member			
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	11	15	

10. An amendment offered by Ms. Chu that provides an exemption in Section 2 of the bill for those who have transported a minor in order to protect the life and health of the minor. Failed by a vote of 9-15.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy			
Mr. Ross			
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member			
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	9	15	

11. An amendment offered by Mr. Nadler that provides for a Federal judicial bypass. Failed by a vote of 8-16.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa		X	
Mr. Pence			
Mr. Forbes			
Mr. King			
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy			
Mr. Ross			
Ms. Adams		X	
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member			
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			

ROLLCALL NO. 11—Continued

	Ayes	Nays	Present
Ms. Jackson Lee			
Ms. Waters			
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley			
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis			
Total	8	16	

12. An en bloc amendment offered by Mr. Scott that restricts prosecution to offenders in the first degree and provides that no Federal notification is required if both the minor's home state, and the state in which she is seeking an abortion, do not require parental involvement in the minor's decision. Failed by a vote of 14-17.

ROLLCALL NO. 12

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble		X	
Mr. Gallegly		X	
Mr. Goodlatte		X	
Mr. Lungren		X	
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes			
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan		X	
Mr. Poe		X	
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy			
Mr. Ross		X	
Ms. Adams			
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman	X		
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		

ROLLCALL NO. 12—Continued

	Ayes	Nays	Present
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Cohen			
Mr. Johnson, Jr.	X		
Mr. Pierluisi	X		
Mr. Quigley	X		
Ms. Chu	X		
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis	X		
Total	14	17	

13. H.R. 2299 was favorably reported without amendment, by a rollcall vote of 20 to 13, a quorum being present.

ROLLCALL NO. 13

	Ayes	Nays	Present
Mr. Smith, Chairman	X		
Mr. Sensenbrenner, Jr.	X		
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Lungren	X		
Mr. Chabot	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Franks	X		
Mr. Gohmert			
Mr. Jordan	X		
Mr. Poe	X		
Mr. Chaffetz	X		
Mr. Griffin	X		
Mr. Marino	X		
Mr. Gowdy			
Mr. Ross	X		
Ms. Adams			
Mr. Quayle	X		
Mr. Amodei	X		
Mr. Conyers, Jr., Ranking Member		X	
Mr. Berman		X	
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			

ROLLCALL NO. 13—Continued

	Ayes	Nays	Present
Ms. Waters		X	
Mr. Cohen			
Mr. Johnson, Jr.		X	
Mr. Pierluisi	X		
Mr. Quigley		X	
Ms. Chu		X	
Mr. Deutch		X	
Ms. Sánchez		X	
Mr. Polis		X	
Total	20	13	

Committee Oversight Findings

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

New Budget Authority and Tax Expenditures

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

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2299, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 9, 2012.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2299, the "Child Interstate Abortion Notification Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc:

Honorable John Conyers, Jr.
Ranking Member

H.R. 2299—Child Interstate Abortion Notification Act.

As ordered reported by the House Committee on the Judiciary on April 9, 2012.

CBO estimates that implementing H.R. 2299 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 2299 would establish new Federal crimes relating to the transporting of minors across State lines without parental notification to obtain abortions. Because the legislation would establish new offenses, the government would be able to pursue cases that it otherwise would not be able to prosecute. We expect that H.R. 2299 would apply to a relatively small number of offenders, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 2299 could be subject to criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

H.R. 2299 contains an intergovernmental and a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring doctors, in certain cases, to provide parental notification in person or by certified mail before performing an abortion on a minor who is not a resident of the State in which the abortion would be performed. CBO estimates the cost for doctors in publicly owned or private medical facilities to comply with that mandate would be minimal. The bill also contains a private-sector mandate by prohibiting the transport of a minor across State lines with the intent to obtain an abortion in a State that does not require parental notification or consent. CBO estimates that the aggregate costs of the intergovernmental and private-sector mandates would be small and well below the annual thresholds established in UMRA ($73 million for intergovernmental mandates and $146 million for private-sector mandates in 2012, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs) and Melissa Merrell and Marin Randall (for mandates). The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2299 is designed

to prohibit taking minors across State lines in circumventions of laws requiring the involvement of parents in abortion decisions.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2299 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

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

Sec. 1. Short title.

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

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

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

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

Subsection (c) of Section 2 provides that a defendant can present an affirmative defense to a prosecution for an offense, or to a lawsuit, based on a violation of this section if the defendant: (1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that was required under State law had the abortion been performed in the State where the minor resides; or (2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to obtain an abortion.

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

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

Sec. 3. Child Interstate Abortion Notification.

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

Subsection (b) of Section 3 provides that subsection (a) does not apply if: (1) the abortion is performed or induced in a State that has a law in force requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law; (2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion; (3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect; (4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself; or (5) the minor is physically accompanied by a person who presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor.

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

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

Sec. 4. Severability and Effective Date.

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

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

Changes in Existing Law Made by the Bill, as Reported

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

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

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

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

(a) OFFENSE.—

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

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

(b) EXCEPTIONS.—

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

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

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

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

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

(d) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).

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

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

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

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

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

(ii) proceedings in a State court; and

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

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

(4) the term "parent" means—

(A) a parent or guardian;

(B) a legal custodian; or

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

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

§ 2432. Transportation of minors in circumvention of certain laws relating to abortion

Notwithstanding section 2431(b)(2), whoever has committed an act of incest with a minor and knowingly transports the minor across a State line with the intent that such minor obtain an abortion, shall be fined under this title or imprisoned not more than one year, or both. For the purposes of this section, the terms "State", "minor", and "abortion" have, respectively, the definitions given those terms in section 2435.

CHAPTER 117B—CHILDINTERSTATE ABORTION NOTIFICATION

§ 2435. Child interstate abortion notification

(a) OFFENSE.—

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

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

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

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

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

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

(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, but an exception under this paragraph does not apply unless the attending physician or an agent of such physician, within 24 hours after completion of the abortion, notifies a parent in writing that an abortion was performed on the minor and of the circumstances that warranted invocation of this paragraph; or

(5) the minor is physically accompanied by a person who presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor.

(c) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).

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

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

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

(2) the term "actual notice" means the giving of written notice directly, in person, by the physician or any agent of the physician;

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

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

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

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

(ii) proceedings in a State court;

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

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

(6) the term "parent" means—

(A) a parent or guardian;

(B) a legal custodian; or

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

as determined by State law;

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

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

Dissenting Views

H.R. 2299, the "Child Interstate Abortion Notification Act," (CIANA) imposes draconian criminal penalties on a vast array of individuals—including the clergy, grandparents, and health care professionals—arising from their involvement in assisting a minor in obtaining an abortion. This measure is yet another attack by the Majority against women's reproductive freedom.[1] For example, the House Judiciary Committee has, to date, met on 12 occasions during this Congress to consider various measures intended to restrict women's reproductive freedom.[2]

While, in most instances, young women[3] should and do turn to their parents when facing difficult decisions regarding their pregnancy, not all circumstances are ideal. In some cases, it is impossible or even dangerous for a young woman to involve her parents in that decision, or even to inform them of the pregnancy. Where, for example, the parent, close relative, or family friend may have caused the pregnancy, it may become necessary for the young woman to turn to a sibling, a grandparent, a clergyperson, or other trusted adult for assistance and guidance. CIANA, however, would turn that responsible adult into a criminal and thereby effectively force this young woman to face one of the most difficult situations in her life alone.

CIANA also imposes criminal penalties on health care professionals who fail to comply with the bill's unreasonable notification requirements. Under the bill, health care professionals would be forced to be knowledgeable of and to comply with the laws of all 50 states, the District of Columbia, Puerto Rico, territories, possessions, and Indian tribes and reservations. Such professionals would also be forced under CIANA to comply with a new Federal parental

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[1] *See, e.g.,* Jessica Valenti, *Republicans Wage War on Women: Latest Paternalistic Efforts to Control Female Sexuality Are Part of a Long Pattern,* BALTIMORE SUN, Feb. 28, 2012, *available at* http://articles.baltimoresun.com/2012-02-28/news/bs-ed-war-on-women-20120228__1__democratic-women-republicans-contraception.

[2] *No Taxpayer funding for Abortion Act: Hearing on H.R. 3 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary,* 112th Cong. (2011); *Markup of H.R. 3, the No Taxpayer Funding for Abortion Act, by the H. Comm. on the Judiciary,* 112th Cong. (Mar. 3, 2011); *The State of Religious Liberty in the United States: Hearing Before the Subcomm. on the Const. of the H. Comm. on the Judiciary,* 112th Cong. (2011); *Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act (PRENDA) of 2011: Hearing on H.R. 3541 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary,* 112th Cong. (2011); *Markup of H.R. 3541, the Susan B. Anthony and Frederick Douglass Prenatal Nondiscrimination Act of 2011 by the H. Comm. on the Judiciary,* 112th Cong. (Feb. 7, 8, 16, 2012); *Child Interstate Abortion Notification Act: Hearing on H.R. 2299 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary,* 112th Cong. (2012) [hereinafter CIANA Hearing]; *Markup of H.R. 3803, the District of Columbia Pain-Capable Unborn Child Protection Act, by the H. Comm. on the Judiciary,* 112th Cong. (July 18, 2012); *Markup of H.R. 2299, the Child Interstate Abortion Notification Act, by the H. Comm. on the Judiciary,* 112th Cong. (Mar. 27, 2012); *The District of Columbia Pain-Capable Unborn Child Protection Act: Hearing on H.R. 3803 Before the H. Subcomm on the Const. of the H. Comm. on the Judiciary,* 112th Cong. (2012); *The Obama Administration's Abuse of Power: Hearing Before the H. Comm. on the Judiciary,* 112th Cong. (2012).

[3] H.R. 2299 defines a "minor" as "an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision." H.R. 2299, 112th Cong. § 2 (2011).

notification requirement, which is unconstitutionally restrictive. Health care professionals would be subject to criminal sanction under the bill if they fail to comply with these requirements. As a result, CIANA would criminalize the otherwise lawful practice of medicine and dangerously undermine the doctor-patient relationship.

Finally, CIANA violates fundamental principles of federalism. The bill would effectively force a young woman to carry the laws of her state on her back whenever she traveled across state lines. And, it would impose laws enacted in one state on the citizens of another state, even in those states that have no comparable statutes and states that specifically rejected such measures.

Not surprisingly, H.R. 2299 is opposed by the American Academy of Pediatrics, the American Congress of Obstetricians and Gynecologists, and the Society for Adolescent Health and Medicine;[4] the National Latina Institute for Reproductive Health;[5] Physicians for Reproductive Choice and Health;[6] the National Partnership for Women and Families;[7] the Reproductive Health Technologies Project;[8] the National Abortion Federation;[9] the American Civil Liberties Union;[10] the Center for Reproductive Rights;[11] a coalition of 26 women's health and civil liberties organizations;[12] and a coalition of 17 religious and faith based organizations and communities.[13]

For these reasons, and those described below, we respectfully dissent and we urge our colleagues to reject this seriously flawed bill.

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[4] CIANA Hearing (letter from the American Academy of Pediatrics, the American Congress of Obstetricians and Gynecologists, & the Society for Adolescent Health and Medicine to Rep. Trent Franks (R-AZ), Chair, & Rep. Jerrold Nadler (D-NY), Ranking Member, Subcomm. on the Const. of the H. Comm. on the Judiciary (Mar. 7, 2012)) (on file with the H. Comm. on the Judiciary, Democratic staff).

[5] *Id.* at 104 (testimony of the National Latina Institute for Reproductive Health).

[6] *Id.* at 145 (testimony of Michelle Forcier, Board Member, Physicians for Reproductive Choice and Health).

[7] *Id.* at 140 (testimony of Debra Ness, President, & Andrea Friedman, Director of Reproductive Health Programs, National Partnership for Women and Families).

[8] *Id.* at 149 (testimony of Kirsten Moore, President & CEO, Reproductive Health Technologies Project).

[9] *Id.* at 137 (testimony of the National Abortion Federation).

[10] *Id.* at 109 (testimony of Laura W. Murphy, Director, Washington Legislative Office, *et al.* American Civil Liberties Union).

[11] *Id.* at 117 (testimony of the Center for Reproductive Rights).

[12] *Id.* at 134 (letter from Abortion Care Network, Advocates for Youth, American Association of University Women, American Civil Liberties Union, American Medical Student Association, Association of Reproductive Health Professionals, Black Women's Health Imperative, Break the Cycle, Center for Reproductive Rights, DC For Democracy, JACPAC, National Abortion Federation, National Asian Pacific American Women's Forum, National Council of Jewish Women, National Latina Institute for Reproductive Health, National Family Planning & Reproductive Health, National Network of Abortion Funds, National Partnership for Women & Families, National Women's Health Network, National Women's Law Center, National Organization for Women, NARAL Pro-Choice America, People For the American Way, Physicians for Reproductive Choice and Health, Planned Parenthood Federation of America, and Population Connection to Rep. Trent Franks (R-AZ), Chair, & Rep. Jerrold Nadler (D-NY), Ranking Member, Subcomm. on the Const. of the H. Comm. on the Judiciary (Mar. 8, 2012).

[13] Letter from Anti-Defamation League, Catholics for Choice, Concerned Clergy for Choice, Hadassah, Jewish Reconstructionist Federation, Jewish Women International, Methodist Federation for Social Action, National Council of Jewish Women, Presbyterian Voices for Justice, Religious Coalition for Reproductive Choice, Religious Institute, Spiritual Youth for Reproductive Freedom, Union for Reform Judaism, Unitarian Universalist Association of Congregations, Unitarian Universalist Women's Federation, Women's Alliance for Theology, Ethics and Ritual, Women of Reform Judaism to Rep. Trent Franks (R-AZ), Chair, & Rep. Jerrold Nadler (D-NY), Ranking Member, Subcomm. on the Const. of the H. Comm. on the Judiciary (Mar. 27, 2012) (on file with the H. Comm. on the Judiciary, Democratic staff).

DESCRIPTION AND BACKGROUND

CIANA is old wine in a new bottle. Similar legislation has been introduced in at least five prior Congresses under Republican leadership.[14] The bill provides both criminal penalties for, and a civil cause of action against, a person who takes an unemancipated minor across state or international boundaries for the purpose of obtaining an abortion in circumvention of the minor's home state's parental involvement laws. It also imposes criminal penalties on, and provides for a civil cause of action against, any physician who performs such an abortion.

A summary of the principal substantive provisions of H.R. 2299 follows. The bill amends title 18 of the United States Code to add two new chapters 117A and 117B. As added by the bill, chapter 117A consists of sections 2431 and 2432.[15] New section 2431(a)(1), in turn, makes it a crime, punishable by a fine or imprisonment of up to 1 year for anyone who "knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides." The prohibition is triggered if "an abortion is performed or induced on the minor, in a State or a foreign nation other than the State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides." Subsection 2431(a)(2) makes this prohibition applicable to an individual who takes the minor across an international boundary.

Section 2431(b) specifies an unconstitutionally narrow exception to the bill's prohibition. The exception applies only "if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself."

Section 2431(c) sets forth two affirmative defenses. It provides that it is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of new section 2431, if the defendant:

> (1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or
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> (2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's

[14] *See, e.g.,* Child Interstate Abortion Notification Act, H.R. 748, 109th Cong. (2005); Child Custody Protection Act, S. 403, 109th Cong. (2005); Child Custody Protection Act, H.R. 1755, 108th Cong. (2003); Child Custody Protection Act, S. 851, 108th Cong. (2003); Child Custody Protection Act, H.R. 476, 107th Cong. (2001); Child Custody Protection Act, H.R. 1218, 106th Cong. (1999); Child Custody Protection Act, S. 661, 106th Cong. (1999); Child Custody Protection Act, H.R. 3682, 105th Cong. (1998); Child Custody Protection Act, S. 1645, 105th Cong. (1998).

[15] For reasons that are not entirely clear, both sections 2331 and 2332 are entitled "Transportation of minors in circumvention of certain laws relating to abortion."

> State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to procure an abortion.

Section 2431(d) provides a cause of action to a parent "who suffers harm from a violation" of section 2431(a), unless the parent committed an act of incest with the minor.

Section 2431(e) sets forth various definitions.

New section 2432 specifies that an individual who has had incest with a minor and transports that minor across state lines with the intention that the minor obtain an abortion would be subject to a fine or imprisonment of not more than 1 year.

New chapter 117B, as added to title 18 of the United States Code, consists solely of section 2435, which does not impose any legal duties or penalties on the minor. Rather, the focus of this provision is on the health care profession.

Section 2435(a) mandates that a physician give 24 hours "actual notice" to a parent before performing an abortion on a minor who is from out-of-state. This provision applies even if the minor came from a state that does not have a parental consent or notification law. Note that section 2435(d)(2) defines "actual notice" as "the giving of a written notice directly, in person." Section 2435(a)(2), in turn, authorizes the physician to give at least 24 hours "constructive notice" to the patient's parents if it is not possible to provide them with "actual notice" after the abortion provider has made a reasonable effort to do so. Although section 2435(d)(3) defines "constructive notice" as "notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified," the bill fails to define "reasonable effort."

Section 2435(b) specifies five exceptions to section 2435(a):

> (1) the abortion is performed or induced in a State that has, in force, a law requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;
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> (2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;
>
> (3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect;
>
> (4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, but an exception under this paragraph

> does not apply unless the attending physician or an agent of such physician, within 24 hours after completion of the abortion, notifies a parent in writing that an abortion was performed on the minor and of the circumstances that warranted invocation of this paragraph; or
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> (5) the minor is physically accompanied by a person who presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor.

It should be noted that the bill fails to include any exception for an instance where the parent cannot be located or where it is otherwise impossible to provide timely written notice. The bill's exception for a minor accompanied by an individual who "presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor," fails to specify what would qualify as sufficient documentation. Also, the narrowness of the exception for the minor's medical condition would prohibit a physician from performing an abortion where the minor is from out of state and the minor has a non-life threatening medical emergency.

Section 2435's requirements, as set forth in subsection (a), and limited exceptions, as set forth in subsection (b), create some very convoluted requirements for physicians and their patients. If a minor from a state with no parental consent or notice laws traveled to a state also with no parental consent or notification laws, the bill requires the physician to provide "actual notice" directly in person to the patient's parents without the minor having the option of a judicial bypass. The bill's failure to provide for this option directly violates prior Supreme Court rulings.[16] Also, in order for the exceptions to apply in cases where the minor is the victim of sexual abuse, the doctor must report any sexual abuse to the proper authorities where the minor resides. This exception only comes into play if one of the abusers was a parent pursuant to section 2435(b)(3). H.R. 2299, however, fails to define the term "proper authorities."

Other problems presented by the provisions include the following. If a minor from a state with a strict parental consent or notification law went to another state with a strict parental consent or notice law, the minor is required to abide by her own state law in order for an adult to transport her across state lines. H.R. 2299 requires the physician to comply with the laws of the state in which her practice is located as well. Minors who live in very rural states may find that cities in adjoining states are closer than cities in other states. Additionally, the minor's own jurisdiction may not have a provider of abortion services.

If a minor who comes from a state with a strict parental consent or notification law seeks an abortion in a state with no parental consent or notice law, then the minor must still abide by her state law in order for an adult to transport her across state lines. And, the physician must provide "actual notice" to the patient's parents. As a result, a physician would be required to know: (1) the require-

[16] Bellotti v. Baird, 443 U.S. 622, 643–44 (1979).

ments of this legislation; (2) the laws of all 50 states, the District of Columbia, Puerto Rico, territories, possessions, Indian tribes and reservations concerning parental consent or notice; and (3) the place of residence of the minor in order for her to comply with this bill.

Section 2435(c) authorizes a parent who "suffers harm" from a violation of section 2435(a) to file a civil action unless the parent had committed an act of incest with the minor. And, section 2435(d) sets forth various definitions.

CONCERNS WITH H.R. 2299

I. H.R. 2299 ENDANGERS THE HEALTH AND SAFETY OF YOUNG WOMEN

Every young woman should be able to turn to her parents when faced with a pregnancy and receive the counsel and support she needs. Fortunately, that occurs in the overwhelming majority of cases, and this bill would be inapplicable under such circumstances.

Unfortunately, there are many reasons why some pregnant young women cannot turn to their parents for support and guidance. CIANA simply ignores this very real fact and fails to take into account those instances where a minor may need immediate treatment or where the minor's parents themselves pose a direct threat to the young woman.

A major flaw of CIANA is that it would render responsible adults—including well-intentioned siblings, grandparents, and members of the clergy—subject to criminal prosecution and civil suit. The bill would make it impossible for a pregnant minor to seek the assistance of any other adult no matter what the situation is at home.

We attempted to address this serious defect of the bill by offering amendments to exempt persons to whom a young woman might turn for assistance in a difficult situation. For example, Rep. Jerrold Nadler (D-NY) offered an amendment to exempt a grandparent or adult sibling of the minor unless the grandparent or adult sibling had sexual contact with the minor. Rep. Robert C. "Bobby" Scott (D-VA) offered an amendment that would have exempted taxicab drivers, bus drivers, or other persons in the business of professional transport who might unwittingly be subject to this legislation, unless that person had sexual conduct with the minor or is a registered sex offender. Rep. Scott also offered an amendment that would have added siblings to the minor and the parents of the minor as persons who could not be sued or prosecuted under the bill. Rep. Sheila Jackson Lee (D-TX) offered an amendment creating an exception for clergy, godparents, aunts, uncles, or first cousins of the minor unless that person had sexual contact with the minor. Each of these amendments was rejected.

Another equally serious flaw of CIANA is that it ignores the kinds of problems young people face. An estimated 772,000 children were found to be victims of abuse or neglect in 2008.[17] Young women considering abortion are particularly vulnerable because

[17] U.S. Department of Health and Human Services, Administration of Children, Youth and Families, Children's Bureau, Child Maltreatment 2008 (2010).

family violence is often at its worst during a family member's pregnancy.[18]

Nearly half of pregnant teens who have a history of abuse report being assaulted during their pregnancy, most often by a family member.[19] For example, at the hearing on this legislation, The Very Reverend Dr. Katherine Hancock Ragsdale discussed some of these problems that young women face.[20] She movingly described a 15-year-old who had been made pregnant during a date rape and sought to obtain an abortion on her own because she feared violence if her father found out about the pregnancy.

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.[21] As one young woman explained, "[m]y older sister got pregnant when she was seventeen. My mother pushed her against the wall, slapped her across the face and then grabbed her by the hair, pulled her through the living room out the front door and threw her off the porch. We don't know where she is now."[22] In Idaho, a 13-year-old 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.[23]

As the Supreme Court has recognized, "[m]ere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the pregnancy and often the worst abuse can be associated with pregnancy."[24]

To address this very real danger, Rep. Hank Johnson (D-GA) offered an amendment that would have created an exception to the bill if the disclosure of the pregnancy or the decision to terminate the pregnancy to one or both of the minor's parents would endanger the physical safety of the minor. Similarly, Rep. Jackson Lee offered an amendment that would have created an exception where the pregnancy was the result of sexual contact with a parent or any other person who has permanent or temporary care or custody or responsibility for the supervision of the minor, or by any household or family member. Both amendments were rejected.

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[18] *See, e.g.,* H. Amaro *et al., Violence During Pregnancy and Substance Abuse,* 80 AM. J. OF PUB. HEALTH 575–579 (1990); University of Pittsburgh Medical Center, Information for Patients, Abuse During Pregnancy, ED/JAW Rev. (Mar. 2003).

[19] American Psychological Association, Parental Consent Laws for Adolescent Reproductive Health Care: What Does the Psychological Research Say? (Feb. 2000), citing A.B. Berenson, et al., Prevalence of Physical and Sexual Assault in Pregnant Adolescents, 13 J. of Adolescent Health 466–69 (1992).

[20] CIANA Hearing at 43 (testimony of the Very Reverend Kathleen Ragsdale).

[21] Martin Donohoe, Parental Notification and Consent Laws for Teen Abortions: Overview and 2006 Ballot Measures MEDSCAPE Ob/Gyn & Women's Health, Feb. 9, 2007, *available at* http://www.medscape.com/viewarticle/549316 (last visited Oct. 20, 2010); Stanley K. Henshaw & Kathryn Kost, Parental Involvement in Minors' Abortion Decisions, 24 FAMILY PLANNING PERSPECTIVES 197, 199–200 (1992).

[22] Helena Silverstein, Girls on the Stand: How Courts Fail Pregnant Minors (2007) (quoting Melissa Jacobs). Are Courts Prepared to Handle Judicial Bypass Proceedings? 32 Human Rights 4 (Winter 2005).

[23] Margie Boule, An American Tragedy, Sunday Oregonian, Aug. 27, 1989.

[24] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 889 (1992) (citing expert witness testimony).

II. H.R. 2299 IS UNCONSTITUTIONAL

A. H.R. 2299 Lacks an Adequate Exception To Protect the Life of a Young Woman and Fails To Include Any Exception To Protect Her Health

H.R. 2299 has an unconstitutionally narrow exception to protect the life of the woman, and no health exception. These exceptions are especially important in light of the tremendous uncertainty and onerous civil and criminal penalties responsible adults and health care providers would face under the bill. In particular, the delay that the bill's notice requirements would impose under section 2432 could be fatal or dangerous to a young woman's health and future fertility.

The narrowness of the "life" exception in both sections—applying only "if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself"—would also place health care providers in an impossible position. Just how severe must a physical threat to a woman's health be before a physician could feel confident that a life exception may be invoked? How much could a court second-guess a medical decision of this type in a future court proceeding? What would be the cost of defending such a case even if a physician ultimately prevailed in a civil or criminal case, or both?

As the Supreme Court has long-recognized, laws containing life exceptions cannot pick and choose among life-threatening circumstances.[25] The Court requires any restriction on abortion to include an exception "where it is necessary, in appropriate medical judgment, for the preservation of the life or the health of the mother."[26] In *Ayotte v. Planned Parenthood of Northern New England,* the Court expressly reiterated its prior holdings in *Roe* and *Casey* that a state may not restrict access to an abortion that is necessary to preserve the life or health of the pregnant woman.[27] The Court also stated the factual proposition that in a small number of cases a pregnant minor requires an immediate abortion to prevent serious health consequences, something proponents of this legislation still incorrectly assert is not the case.[28] Therefore, a state statute that restricts a pregnant minor's access to an abortion must include an exception for medical emergencies involving the minor's health or life.

In recognition of the fact that CIANA fails to include any health exception whatsoever in clear violation of Supreme Court precedent,[29] Rep. Judy Chu (D-CA) offered an amendment that would

[25] Casey, 505 U.S. at 879.

[26] *Id.*

[27] 126 S. Ct. 961, 967 (2006). In *Doe v. Bolton,* 410 U.S. 179 (1973), the Court held that, to determine whether an abortion is necessary to protect a woman's "health," a doctor may exercise his or her judgment based on various factors, such as a woman's physical, emotional, psychological, and familial well-being, as well as her age.

[28] Ayotte, 126 S. Ct. at 967 ("New Hampshire has not taken real issue with the factual basis of this litigation: In some very small percentage of cases, pregnant minors, like adult women, need immediate abortions to avert serious and often irreversible damage to their health.").

[29] Roe v. Wade, 410 U.S. 113, 164–65 (1973) (holding that a state may regulate or proscribe post-viability abortions with the exception where it is necessary for the preservation of the life or health of the woman).

have expanded the exception to save the life of the young woman to include protecting her health as required by the Constitution. Rep. Melvin Watt (D-NC) offered an amendment that would have created an exception for a person who has a good faith belief that the minor's life or health would be endangered by the delay necessary to comply with the law requiring parental involvement in a minor's abortion decision in the state where the minor resides, including any proceedings in state court. Rep. Watt also offered an amendment to create an exception to protect the life and health of the minor. Rep. Mike Quigley (D-IL) offered an amendment to create an exception of the minor's pregnancy was the result of rape or incest. All of these amendments were rejected.

B. H.R. 2299 Fails To Include the Constitutionally-Mandated Judicial Bypass for Parental Notification and Consent Laws

The Supreme Court has held that a state may not impose a blanket parental-consent requirement that would empower a parent to veto a young woman's decision to have an abortion.[30] If a state requires a minor to obtain consent from one or both of the minor's parents, it must also give her the opportunity to bypass that mandate by seeking a judicial determination that she is either sufficiently mature to make her own decision or that, even if she is "immature," the proposed abortion is in her "best interests."[31] As the Supreme Court has recognized, "Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to become pregnant."[32] Consistent with this holding, the courts have made it clear that reasonable alternatives to parental consent are necessary for these laws to pass constitutional scrutiny.

The Court has also invalidated state parental consent laws that do not include judicial bypass procedures. In *Ohio v. Akron Center for Reproductive Health,* the Court, in holding that the Ohio parental notification statute at issue was constitutional, appeared to suggest that the statute's judicial bypass procedure adequately protected a pregnant minor's right to obtain an abortion.[33] The Court expressly declined, however, to decide whether a state parental notification law that did not include a judicial bypass procedure would *per se* violate the Constitution. In *Lambert v. Wicklund,* the Court similarly declined to reach the question of whether a state parental notification law must contain a judicial bypass procedure.[34] Rather, the Court held narrowly that the Montana parental notification law at issue, which contained a judicial bypass procedure, did not place an undue burden on a pregnant minor's right to obtain an abortion.[35]

A parental notification law would be unconstitutional if it did not provide a pregnant minor with some alternative to parental notification. In *H.L. v. Matheson,* the Court upheld as constitutional a state statute that requires an unemancipated minor who lives with

[30] Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976).
[31] Bellotti, 443 U.S. at 643–44.
[32] Danforth, 428 U.S. at 75.
[33] 497 U.S. 502 (1990).
[34] 520 U.S. 292 (1997).
[35] *Id.* at 295.

her parents to notify them, "if possible," before she obtains an abortion, but includes exceptions for a minor who demonstrates that notification is not in her best interests.[36] Moreover, in *Belotti v. Baird,* the Court indicated that a parental notification law would be unconstitutional if it did not provide an alternative to notification for a "mature" minor or when notification would not be in a minor's best interests.[37] In that case, the Court observed:

> [U]nder state regulation such as that undertaken by Massachusetts, every minor must have the opportunity—if she so desires—to go directly to a court without first consulting or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent.[38]

The Court has yet to establish specific parameters for the adequacy of judicial bypass procedures in the context of state parental involvement laws. In writing for the majority in *Akron,* Justice Kennedy rejected the dissenting opinion's call to articulate specific procedural thresholds for the constitutionality of a judicial bypass alternative, such as whether it must be anonymous or only confidential, or how quickly a state must provide a pregnant minor with the opportunity for a court proceeding. He stated only that the Ohio judicial bypass procedure contained "reasonable steps" to protect the identity of pregnant minors seeking a judicial bypass and that the procedure included adequate provisions to expedite a pregnant minor's request for a proceeding.[39] The Court's majority also held that a state may validly require a pregnant minor to establish "by clear and convincing evidence" during a judicial bypass hearing that she is mature enough to make an abortion decision without parental involvement.[40]

To address this defect, Rep. Nadler offered an amendment that would have allowed an adult who had a reasonable belief that compliance with the judicial bypass procedure of the minor's state of residence would either compromise the minor's intent to maintain confidentiality with respect to the choice to terminate the pregnancy, or would be futile or ineffective in the minor's home state, could apply to a Federal district court in the district in which the minor resides for a waiver of the application of the Act. The amendment was rejected.

C. H.R. 2299 Imposes an Unconstitutional Undue Burden on a Young Woman's Right To Obtain an Abortion

The Supreme Court has ruled that the constitutional right to privacy includes a minor's decision to terminate her pregnancy.[41] In addition, the Court has held that any restriction that has the purpose or effect of placing an "undue burden" on a woman's right to

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[36] 450 U.S. 398 (1981).
[37] Belotti v. Baird, 443 U.S. 622 (1979).
[38] *Id.* at 647.
[39] Akron, 497 U.S. at 513.
[40] *Id.* at 515.
[41] Danforth, 428 U.S. at 74.

choose to have an abortion prior to viability is unconstitutional.[42] H.R. 2299 is in conflict with this longstanding precedent.

The bill's Federal parental notification provision—which is imposed where neither the state in which the procedure is performed nor the young woman's home state have their own parental notification schemes—does not include any judicial bypass.[43] Accordingly, the young woman will not be able to obtain an abortion until the physician provides notice of the abortion to one of her parents.[44] CIANA's Federal notification provision thus makes parental notification mandatory for these young women with absolutely no option for a court bypass. As a result, this provision directly violates the Supreme Court's holdings that a statute requiring parental involvement, in order to be constitutional, must offer an alternative such as a judicial bypass.[45]

Moreover, the requirement that the doctor must provide 24 hours actual notice, or at least 48 hours of constructive notice to the parents of the minor before providing the abortion care, would also impose an undue burden on a woman's right to choose.[46] In contrast, the Supreme Court in *Casey* upheld a 24-hour delay precisely because there was an exception for the preservation of the life and health of the woman.[47]

Without these exceptions, CIANA's Federal notification provision would likely be held unconstitutional because these delays will place a woman's health at risk and impose an "undue burden" on a woman's right to choose.

III. H.R. 2299 VIOLATES FUNDAMENTAL PRINCIPLES OF FEDERALISM

H.R. 2299 would require young women to carry their own state laws with them when they travel to other states.[48] As Professors Laurence Tribe of Harvard Law School and Peter Rubin of Georgetown University Law Center have explained, the predecessor version of this legislation "amounts to a statutory attempt to force this most vulnerable class of young women to carry the restrictive laws of their home states strapped to their backs, bearing the great weight of those laws like the bars of a prison that follows them wherever they go."[49]

It would, moreover, impose on the people of one state who have specifically considered and rejected parental notification laws, the

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[42] Casey, 505 U.S. at 874.

[43] The following states do not have enforceable parental involvement laws and would likely be subject to CIANA's Federal notification provisions: Alaska, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, Washington, and the District of Columbia. NARAL Pro-Choice America Foundation, Who Decides? The Status of Women's Reproductive Rights in the United States (21th ed. 2012), *available at* www.WhoDecides.org.

[44] The bill provides two exceptions: the narrow exception to preserve the life, but not the health of the young woman; and the exception for a young woman who "declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, *before an abortion in performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides* of the known or suspected abuse or neglect." H.R. 2299, 112th Cong. § 2435(a)(4)–(5) (2011) (emphasis added).

[45] Hodgson v. Minnesota, 497 U.S. 417, 420 (1990); Akron 497 U.S. at 510.

[46] *Id.*

[47] Casey, 505 U.S. at 886.

[48] Memorandum from Professors Laurence H. Tribe, Harvard University School of Law, & Peter J. Rubin, Georgetown University Law Center, to the H. Comm. on the Judiciary, at 2 (Sept. 2, 2001) (on file with the H. Comm. on the Judiciary, Democratic staff).

[49] *Id.*

laws of another state requiring such notification. It would nullify the right of a state, within its own borders, to set its own policies in this very difficult area.

To address this defect, Rep. Scott offered an amendment creating an exception if neither the minor's state of residence, nor the state in which the abortion is performed, have a parental notification law in effect. The amendment was rejected.

This bill would also treat a young woman who travels to a state, or who resides in a state temporarily (such as a college student), differently than a minor living in that state. For example, New York does not have a parental notification or consent law. Nevertheless, a young woman who travels into New York, or who temporarily resides in New York, would be subject under H.R. 2299 to an entirely different legal scheme. She would either have to obtain a court bypass from her home state or, if no bypass is available, be subject to the bill's Federal mandatory notice requirements. CIANA would thus discriminate against young women within the same state on the basis of their state of origin and would deprive them of their right to travel to engage in conduct legal in another state in violation of constitutionally protected rights to equal protection and interstate travel.

CONCLUSION

Without question, promoting the involvement of parents in decisions concerning the pregnancy of a minor is a laudable and desirable goal. H.R. 2299, however, ignores the real circumstances that often affect young pregnant women and, by doing so, places these women at mortal risk. These young people must not be forced to risk their lives and health if they seek the protection of responsible adults in those circumstances where their parents have or will precipitate a dangerous situation for their child. This bill violates these basic principles of humanity and regard for human dimension of these problems. It also violates the Constitution in significant respects and tramples upon fundamental principles of federalism.

For these reasons, we respectfully dissent, and we urge our colleagues to oppose this seriously flawed and unconstitutional legislation.

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