Prepared Testimony of

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

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

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

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[1] Cases evidencing the general rule that parents are legally entitled to make medical decisions on behalf of their children include Newmark v. Williams, 588 A.2d 1108 (Del. Super. Ct. 1991) (upholding parents' rejection of chemotherapy in favor of prayer treatment where survival was not assured even with medical intervention.); *In re* Eric B., 235 Cal Rptr. 22 (Cal. Ct. App. 1987) (requiring medical monitoring of child following court-ordered chemotherapy treatments over renewed parental objections); *In re* Green, 292 A.2d 387 (Pa. 1972) (dismissing court ordered medical intervention for seventeen-year-old poliomyelitis patient suffering from 94% curvature of the spine on basis that condition is not considered life-threatening); and *In re* Baby K, 832 F.Supp. 1022 (E.D. Va. 1993), *aff'd*, 16 F.3d. 590 (4th Cir.), *cert. denied*, 115 S.Ct. 91(1994) (court rejected petition by hospital and natural father to remove anacephalic child from life support over mother's objection). *See also* Gina Kolata, *Battle over a Baby's Future Raises Hard Ethical Issues,* NY TIMES, Dec. 27, 1994, at A1, and Michelle O. Ray, *Defying Death Sentence, Baby Ryan Heads*

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

Parental Rights to Control Medical Care of Minors

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

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

Home, NEWS TRIB., Mar. 6, 1995, at A1 (news reports of successful effort by parents of premature handicapped infant to enjoin hospital from discontinuing dialysis without their consent).

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

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

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

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

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

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

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

Widespread Public Support

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

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

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

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

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

remarkable and instructive that there is such firm and long-standing support for laws requiring parental involvement.

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

Improved Medical Care of Minors Seeking Abortions

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

For example, the National Abortion Federation recommends that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the state Board of Medical Examiners, and that he

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

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

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

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

Id.

or she have admitting privileges at a local hospital not more than twenty minutes away from the location where the abortion is to occur.[14] A well-informed parent seeking to guide her child is more likely to inquire regarding these matters than a panicky teen who just wants to no longer be pregnant.

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

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

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

The third way in which parental involvement improves medical treatment of pregnant minors is by insuring that parents have adequate knowledge to recognize

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

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

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

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

and respond to any post-abortion complication that may develop.[17] In a recent ruling by a Florida intermediate appellate court upholding that state's parental involvement law, the court observed:

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

Abortion proponents often claim that abortion is one of the safest surgical procedures performed today. However the actual rate of many complications is simply unknown.[19] At least one American court has held that a perforated uterus is a "normal risk" associated with abortion.[20] Untreated, a perforated uterus may

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

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

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

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

result in an infection, complicated by fever, endometritis, and parametritis.[21] "The risk of death from postabortion sepsis [infection] is highest for young women, those who are unmarried, and those who undergo procedures that do not directly evacuate the contents of the uterus. . . . A delay in treatment allows the infection to progress to bacteremia, pelvic abscess, septic pelvic thrombophlebitis, disseminated intravascular coagulophy, septic shock, renal failure, and death."[22]

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

Increased Protection from Sexual Assault

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

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

[22] *Id.*

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

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

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

***father more births among California school-age girls than do boys under age 18*."[26] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[27]**

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

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

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

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

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

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

Cooperation by abortion providers in reporting is especially important for prosecution of sexual abuse cases. Some courts have thrown out convictions of sexual assault because the fetal tissue that would have provided DNA evidence related to the perpetrator's identity was destroyed.[31]

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

Effectiveness of Judicial Bypass

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

Opponents of the Child Custody Protection Act have argued that its passage would endanger teens since parents may be abusive and many teens would seek illegal abortions.[34] This is a phantom fear. Parental involvement laws are on the

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

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

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

Id. at 273-74.

[33] See n. 7 *supra*.

[34] See Donna Leusner, *Parental Notification of Abortion Approved*, The Star-Ledger (June 25, 1999) available online at www.nj.com/page1/ledger/c21e74.html. "They would go to New York. They would go to a back alley. They would do what they have to do to avoid telling their parents. . . . Don't force them to do that," said

books in over two-thirds of the states, some for over twenty years, and there is no case where it has been established that these laws led to parental abuse or to self-inflicted injury.[35] Similarly, there is no evidence that these laws have led to an increase in illegal abortions.[36]

It often asserted that parental involvement laws do not increase the number of parents notified of their daughters' intentions to obtain abortions, since minors will commonly seek judicial bypass of the parental involvement requirement.[37] Assessing the accuracy of this claim is difficult since parental notification or consent laws rarely impose reporting requirements regarding the use of judicial bypass. The Idaho parental consent law enacted in 2000 is one of the few exceptions to this general rule.[38] Based upon the reporting required under that law, no abortions

Sen. Richard C. Codey (D-Essex) who voted no [to passage of the Parental Notification of Abortion Act]. *Id.*

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

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

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

[38] 18 Idaho §609A(4) provides:

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

obtained by minors were pursuant to a judicial bypass. From September 1, 2000 through April 3, 2001, thirty-three minors have been reported as obtaining an abortion in Idaho. Thirty-one of these abortions were performed after obtaining parental consent. One minor was legally emancipated, and did not need parental consent, and one report did not indicate the nature of the consent obtained prior to performance of the abortion.[39]

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

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emergency.

(a) The knowing failure of the attending physician to perform any one (1) or more of the acts required under this subsection is grounds for discipline pursuant to section 54-1814(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure continues, payable to the center for vital statistics and health policy, but such failure shall not constitute a criminal act.

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

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

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

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

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

from 1994 through 1999. Of these only about seven percent or 1,000 girls bypassed parental involvement via court order.[44] Texas implemented its Parental Notification Act in 2000. During the state legislative hearings, the Texas Family Planning Council submitted a study indicating that a parent accompanied 69% of minors seeking abortions in Texas.[45] After passage of the Texas Parental Notification Act, 96% of all minors seeking an abortion in Texas involved a parent.[46]

Conclusion

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

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

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

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

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

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

Experience in states having parental involvement laws has shown that, when notified, parents and their daughters unite in a desire to resolve issues surrounding an unplanned pregnancy. If the minor chooses to terminate the pregnancy, parents can assist their daughters in selecting competent abortion providers, and abortion providers may receive more comprehensive medical histories of their patients. In these cases, the minors will more likely be encouraged to obtain post-operative check-ups, and parents will be prepared to respond to any complications that arise.[47]

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

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

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

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

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

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

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

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

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

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