

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

The Honorable Lamar S. Smith, Presiding

H.R. 2299 the “Child Interstate Abortion Notification Act”

**Thursday, March 8, 2012
2141 Rayburn Building**

**Prepared Testimony of
Professor Teresa Stanton Collett***

Good morning Congressman Smith, Members of the Committee, and other distinguished guests. My name is Teresa Stanton Collett and I am a professor of law at the University of St. Thomas School of Law in Minneapolis, Minnesota, where I teach bioethics and two advanced constitutional law courses. My testimony today is not intended to represent the views of my employer, the University of St. Thomas, or any other organization or person.

I am honored to have been invited to participate in this hearing on H.R. 2299, the “Child Interstate Abortion Notification Act” (“CIANA”). This bill is the culmination of a decade of Congressional effort to insure that young girls are not coerced or deceived into crossing state lines to obtain secret abortions. In 1998, 2001, and 2004, I testified in support of “the Child Custody Protection Act,” and in 2005, I testified before the House Committee on the Judiciary regarding the merits of H.R. 748, the “Child Interstate Abortion Notification Act.” In 2008 I participated in a Congressional Forum on the merits of H.R.1063, an earlier version of CIANA. All of these predecessors to H.R. 2299 were premised on what Justice O’Connor has called “the quite reasonable assumption that [pregnant] minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart.”¹

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¹ *Planned Parenthood v. Casey*, 505 U.S.833, 895 (1992) (plurality). 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

Sizable bipartisan majorities of both Congressional houses voted to enact this common sense legislation during the last legislative session, only to have those votes nullified by opponents' last-minute procedural maneuvering.² House leadership refused to even allow a hearing on CIANA during the 2008 legislative session. This outcome is particularly troubling in light of the public's strong support for parental involvement.³

My testimony today is based on my scholarly study of parental involvement laws,⁴ and my practical experience in assisting state legislators across the country

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.

² On April 27, 2005, the House of Representatives passed the Child Interstate Abortion Notification Act (CIANA, H.R. 748) by a vote of 270 to 157. On July 27, 2006, the Senate passed the Child Custody Protection Act (S. 403) by a vote of 65-34. Notwithstanding the two-to-one margin of victory, Senator Richard Durbin, objected to a routine request by then Majority Leader Bill Frist to move on to the next step of the process – the naming of a House-Senate conference committee. Both bills died at the end of the Congressional session.

³ For more than three decades polls have consistently reflected over 70% of the American public support parental consent or notification laws. *See, e.g.*, Gallup Poll (released July 25, 2011) (71% support a law requiring parental consent); Pew Research Center for The People and The Press, *Abortion and the Rights of Terror Suspects Top Court Issues* (released Aug. 3, 2005) (73% favor requiring parental consent prior to a minor obtaining an abortion); Gallup/CNN/USA Today Poll (released Jan. 15, 2004) (73% favor requiring parental consent for abortion “for women under 18”); 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”).

“Even among those who say abortion should be legal in most or all cases, 71% favor requiring parental consent.” Pew Research Center for The People and The Press, *Support for Abortion Slips* at 9 (conducted August, 2009).

⁴ My scholarly articles on parental involvement laws include *Transporting Minors for Immoral Purposes: The Case for the Child Custody Protection Act & the Child Interstate Abortion Notification Act*, 16 HEALTH MATRIX 107 (2006); *Protecting Our Daughters: The Need for the Vermont Parental Notification Law*, 26 VT. L. REV. 101 (2001); and

evaluate parental involvement laws during the legislative process.⁵ It also represents my experience in assisting the attorneys general of Florida, New Hampshire, and Oklahoma in defending their parental involvement laws. Just last week I testified as an expert witness in an Alaska District Court regarding judicial bypass of parental notification laws.

In my brief time during this hearing I would like to briefly discuss four points: 1) minors benefit from parental involvement when deciding whether to continue or terminate a pregnancy; 2) CIANA addresses a real problem; 3) a federal solution to the problem is necessary; and 4) CIANA is constitutional.

Minors Benefit from Parental Involvement

There is widespread agreement that as a general rule, parents should be involved in their minor daughter's decision to terminate an unplanned pregnancy. The national consensus in favor of this position is illustrated by the fact that there are parental involvement laws on the books in forty-five of the fifty states although only thirty-seven are in force due primarily to judicial actions.⁶ Only five states in the nation have not

Seeking Solomon's Wisdom: Judicial Bypass of Parental Involvement in a Minor's Abortion Decision, 52 BAYLOR L. REV. 513 (2000).

⁵ I have testified on parental involvement legislation before state legislative committees in Oklahoma, New Hampshire, New Jersey, Texas, and Vermont. From 2000 to 2003 I served on the Texas Supreme Court Subadvisory Committee charged with proposing and overseeing court rules implementing the judicial bypass of parental notification in that state.

⁶ One state law is not being enforced due to an attorney general's opinion that the statute is unconstitutional. Courts have enjoined the implementation of seven state statutes based on claims of state or federal constitutional infirmity.

See *Planned Parenthood v. State*, *American Acad. of Pediatrics v. Lungren*, 940 P.2d 797 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So.2d 612 (Fla. 2003) (parental notification requirement violated state constitutional right to privacy) Florida citizens then passed a state constitutional amendment authorizing the legislature to enact a parental notice law which the state supreme court upheld in *ACLU of Fla. v. Hood*, SC04-1671 (Dec. 22, 2004) available at http://jweb.flcourts.org/pls/docket/ds_docket_search; *Planned Parenthood of Idaho, Inc. v. Lance*, No. CIV 00-0353-S-MHW (D. Idaho Mar. 8, 2002), aff'd in part and rev'd in part sub nom, *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908 (9th Cir. 2004); *Zbaraz v. Ryan*, No. 84 C 771 (N.D. Ill. 1996) (Ill. Supreme Ct. refused to issue rules implementing Ill. Stat.); *Wicklund v. State*, No. ADV-97-671 (Mont. Dist. Ct. Feb. 25, 1999) (parental notification law violated state constitution) available at http://www.mtbizlaw.com/1stjd99/WICKLUND_2_11.htm; *Glick v. McKay*, 616 F. Supp. 322, 327 (D. Nev. 1985), aff'd, 937 F.2d 434 (9th Cir. 1991); *Planned Parenthood*

attempted to legislatively insure some level of parental involvement in a minor's decision to obtain an abortion.⁷

This agreement even extends to young people, ages 18 to 29.⁸ To my knowledge, no organizations or individuals, whether abortion rights activists or pro-life advocates, dispute this point. On an issue as contentious and divisive as abortion, it is both remarkable and instructive that there is such firm and long-standing support for laws requiring parental involvement.

Various reasons underlie this broad and consistent support. As Justices O'Connor, Kennedy, and Souter observed in *Planned Parenthood v. Casey*,⁹ 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."¹⁰ Writing for a unanimous

of *Central New Jersey v. Farmer*, 762 A.2d 620 (N.J. 2000) (parental notification law with judicial waiver violates state constitution). See also N.M. Op. Att'y Gen. No. 90-19 (Oct. 3, 1990) (opining that a pre-Roe N.M. parental consent law was unconstitutional).

⁷ These are Hawaii, New York, Oregon, Vermont, and Washington. The proper classification of Connecticut is something that is open to debate as well.

⁸ A 2011 Poll by the Public Religion Research Institute found that 71% of millennial youth (18-29) supported parental consent laws. *Committed to Availability, Conflicted about Morality* at 17 available at <http://publicreligion.org/site/wp-content/uploads/2011/06/Millennials-Abortion-and-Religion-Survey-Report.pdf> (conduct May 2011). A 2005 poll of one thousand high school seniors also revealed that two-thirds believe that "a woman under 18 [should] be required by law to get the permission of a parent before she can have an abortion." Hamilton College National Youth Polls, *Guns, Gays and Abortion* (conducted Nov.10-20, 2005 by Zogby International) available at <<http://www.hamilton.edu/news/polls/HotButtonFinalReport.pdf>> (visited March 6, 2012). A Kaiser Family Foundation/MTV Survey of 603 people ages 18-24 found that 68% favored laws requiring parental consent prior to performance of an abortion on girls under 18. *Sex Laws: Youth Opinion on Sexual Health Issues in the 2000 Election* (conducted July 5-17, 2000) available at <<http://www.kff.org/kaiserpolls/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13549>> (visited March 6, 2012). Other polling results are available in Westlaw, Dialog library, poll file.

⁹ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

¹⁰ 505 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

court in 2005, Justice O'Connor noted "States unquestionably have the right to require parental involvement when a minor considers terminating her pregnancy, because of their 'strong and legitimate interest in the welfare of [their] young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.'"¹¹

Out of respect for the time constraints of this committee, I will limit my remarks to examining two of the benefits that are achieved by parental involvement statutes: improved medical care for young girls seeking abortions and increased protection against sexual exploitation by adult men.

Improved Medical Care of Minor Girls

Medical care for minors seeking abortions is improved by parental involvement in three ways. First, parental involvement laws allow parents to assist their daughter in the selection of the abortion provider.

As with all medical procedures, one of the most important guarantees of patient safety is the professional competence of those who perform the medical procedure. In *Bellotti v. Baird*, the United States Supreme Court acknowledged the superior ability of parents to evaluate and select appropriate healthcare providers.¹²

In this case, however, we are concerned only with minors who according to the record range in age from children of twelve years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.¹³

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.

¹¹ *Ayotte v. Planned Parenthood*, 546 U.S. 320, 326 (2006).

¹² 443 U.S. 622 at 641 (1979) (*Bellotti II*).

¹³ *Bellotti v. Baird*, 443 U.S. 622 at 641 (1979) (*Bellotti II*).

Historically, the National Abortion Federation has recommended that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the state Board of Medical Examiners and that the doctor have admitting privileges at a local hospital not more than twenty minutes away from the location where the abortion is to occur in order to insure adequate care should complications arise.¹⁴ These recommendations were deleted after they were introduced into evidence in malpractice cases against abortion providers. Notwithstanding this change in the NAF recommendations, a well-informed parent seeking to guide her child is more likely to inquire regarding these matters than a panicky teen who just wants to no longer be pregnant.

Second, parental involvement laws insure that parents have the opportunity to provide additional medical history and information to abortion providers prior to performance of the abortion.¹⁵

¹⁴ National Abortion Federation, *Having an Abortion? Your Guide to Good Care* (2000) which was available at <<http://www.prochoice.org/pregnant/goodcare.htm>> (visited Jan. 1, 2000).

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.

See also Anna Glasier, *Counseling for Abortion*, in MODERN METHODS OF INDUCING ABORTION 112, 117 (David T. Baird et al. eds., 1995) ("20% of women suffer from severe feelings of loss, grief and regret"); Jo Ann Rosenfeld, *Emotional Responses to Therapeutic Abortion*, 45 AM. FAM. PHYSICIAN 137, 138 (1992) ("Teenagers who do not tell their parents about their abortion have an increased incidence of emotional problems and feelings of guilt."); Mika Gissler, *Suicides After Pregnancy in Finland 1987-1994: Register to Linkage Study*, 313 BRIT. MED. J. 1431, 1433 (1996); H. David et

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, have the opportunity to disclose the medical risks of the procedure to the adult who can advise the girl in giving her informed consent to the surgical procedure. Parental notification insures that the abortion providers inform a mature adult of the risks and benefits of the proposed treatment, after having received a more complete and thus more accurate medical history of the patient.

The third way in which parental notification will improve medical treatment of pregnant minors is by insuring that parents have adequate knowledge to recognize and respond to any post-abortion complication that may develop.¹⁷ While it is often claimed that abortion is one of the safest surgical procedures performed today, the actual rate of many complications is simply unknown because there is no coordinated national effort to collect and maintain this information.¹⁸

Notwithstanding this failure by public health authorities, abortion providers have identified infection as one of the most common post-abortion complications.¹⁹ The

al., *Postpartum and Postabortion Psychotic Reactions*, 13 FAMILY PLANNING PERSPECTIVES 889 (1981) and David C. Reardon, 95 So. Med. J. 834 (Aug. 2002) available at www.sma.org/smj/index.cfm. Additional sources are collected and discussed in Thomas R. Eller, *Informed Consent Civil Actions for Post-Abortion Psychological Trauma*, 71 NOTRE DAME L. REV. 639 (1996).

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).

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

¹⁸ "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 sometime 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).

¹⁹ David A. Grimes, *Sequelae of Abortion*, in MODERN METHODS OF INDUCING ABORTION 95, 99-100 (David T. Baird et al. eds., 1995).

warning signs of infection typically begin within the first forty-eight to ninety-six hours after the abortion and can include fever, pain, pelvic tenderness, and elevated white blood count.²⁰ Caught early, most infections can be treated successfully with oral antibiotics.²¹ Left untreated, it can result in death.

Similarly post-operative bleeding after an abortion is common, and even where excessive²² can be easily controlled if medical treatment is sought promptly. However, hemorrhage is a one of the most serious post-abortion complications and should be evaluated by a medical professional immediately.²³ Untreated it can result in the death of the minor.²⁴

Experts often characterize a perforated uterus is a “normal risk” associated with abortion.²⁵ This complication also can be easily dealt with if detected early, but lead to serious consequences if medical help is not sought promptly.

²⁰See E. Steve Lichtenberg et al., *Abortion Complications: Prevention and Management*, in A CLINICIAN’S GUIDE TO MEDICAL AND SURGICAL ABORTIONS 197, 206 (Maureen Paul et al. eds., 1999).

²¹See *id.* at 206-07.

²² Excessive bleeding is defined as “saturation of more than one pad per hour for more than three hours” under *Complications, Standard 3*, n 23. National Abortion Federation, *Clinical Policy Guidelines*, 40, http://www.prochoice.org/pubs_research/publications/downloads/professional_education/cpgs_2005.pdf (2005).

²³ *Id.* at 39-40.

²⁴ See *Evans v. Mutual Assur., Inc.*, 727 So. 2d 66 (Ala. 1999) (discussing a dispute between a physician and the malpractice carrier regarding coverage for the death of an 18-year-old girl from hemorrhaging induced by abortion).

²⁵ *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

Many minors may ignore or deny the seriousness of post-abortion symptoms or may lack the financial resources to respond to those symptoms.²⁶ 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.²⁷ Absent parental notification, hemorrhaging may be mistaken for a heavy period and severe depression as typical teenage angst.

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.²⁸

In the past, opponents to the predecessor of this Act, the Child Custody Protection Act, have argued that passage of federal legislation in this area would endanger teens since parents may be abusive and many teens would seek illegal abortions.²⁹ This is a phantom fear. Parental involvement laws are on the books in over two-thirds of the states, some for over thirty years, and there is no case where it has been established that these laws led to parental abuse or to self-inflicted injury.³⁰ Similarly, there is no

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.

²⁶ *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Health and Welfare, 2001-2002 Legis. Sess. (Vt. 2001) 33* (testimony of ASue@ an anonymous Vermont mother, on March 20, 2001).

²⁷ *See id.*

²⁸ *See n. 7 supra.*

²⁹ *See Donna Leusner, Parental Notification of Abortion Approved, The Star-Ledger (June 25, 1999) available online at www.nj.com/page1/ledger/c21e74.html. “They would go to New York. They would go to a back alley. They would do what they have to do to avoid telling their parents. . . . Don’t force them to do that,” said Sen. Richard C. Codey (D-Essex) who voted no [to passage of the Parental Notification of Abortion Act]. *Id.**

³⁰ 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

evidence that these laws have led to an increase in illegal abortions or attempted self-induced abortions.³¹

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.³² Assessing the accuracy of this claim is difficult since parental notification or consent laws rarely impose reporting requirements regarding the use of judicial bypass. Alabama, Idaho, South Dakota and Wisconsin are four of the few states that report the number of minors who obtain judicial bypass orders related to abortion. Data regarding the number of bypasses granted in those states from 2005 to 2010 reveals that the judicial bypass is relatively rare and its use varies significantly among states.³³

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).

³¹ A review of medical literature and internet sources regarding self-induced abortions concluded "none of these reports involve children and adolescents." M.S. Coles & L.P. Koenigs, *Self-induced Medical Abortion in an Adolescent*, 20 J. Ped. Adol. Gyn. 93 at 95 (2007). On the issue of illegal abortions, *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).

³² *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 in states 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).

³³ Data for the chart was taken from Alabama Center for Health Statistics annual "Induced Terminations of Pregnancy Occurring in Alabama" reports, at www.adph.org/healthstats/assets; the Idaho Bureau of Vital Records and Health Statistics, Vital Statistics Annual Reports at <http://www.healthandwelfare.idaho.gov/Health/VitalRecordsandHealthStatistics/HealthStatistics/VitalStatistics/tabid/914/Default.aspx>; Idaho bypass data taken from Idaho State Judiciary, Annual Reports Trial Court Statewide Caseload Summaries at http://www.isc.idaho.gov/annual_cov.htm; the South Dakota Vital Statistics: State and County Comparison of Leading Health Indicators at <http://doh.sd.gov/Statistics/default.aspx>; and Wisconsin requires parental consent prior to abortion on a minor. Wisc. Stat. Ann. § 48.375. Data taken from Wisconsin Department

Ratio of Bypasses to Total Abortions on Minors						
State	Alabama	Idaho	South Dakota	South Dakota	Wisconsin	Wisconsin
Bypass type	Judicial bypass	Judicial bypass	Judicial bypass	Emancipated minor	Judicial bypass	Emancipated minor
2005	4/781	0/79	4/56	0/56	62/630	13/630
2006	7/839	0/121	0/44	0/44	42/596	24/596
2007	10/793	0/104	3/46	0/46	40/551	21/551
2008	6/778	12/83	0/57	1/57	31/500	17/500
2009	0/729	7/91	0/43	3/43	38/495	28/495
2010	1/654	5/81	Not available	Not available	Not available	Not available

CIANA addresses a real problem.

It is beyond dispute that young girls are being taken to out-of-state clinics in order to procure secret abortions. In 2005, the House Subcommittee on the Constitution heard the testimony of Marsha Carroll, the mother of a fourteen year-old-girl, who was secretly taken out-of-state by her boyfriend's parents to obtain an abortion. Upon arriving at the abortion clinic, Mrs. Carroll's daughter began to cry and tried to refuse the abortion. The boy's parents told her they would leave her in New Jersey if she resisted. She gave in to their pressure, had the abortion, and now suffers from depression and guilt.³⁴

of Health Services annual "Reported Induced Terminations of Pregnancy in Wisconsin" reports at <http://www.dhs.wisconsin.gov/stats/ITOP.htm>. In 2009, the South Dakota Department of Health revised the abortion reporting forms due to federal court ruling. The data includes information obtained on all forms used in 2009. The denominators are all abortions performed on minors.

Indiana has few bypass proceedings according to an early informal study published as part of a law review article. "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." Steven F. Stuhlberg, Note, *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, 929-30 (1992).

³⁴ *Child Interstate Abortion Notification Act: Hearing on HR 748 before the Subcomm. on the Constitution, H. Comm. on the Judiciary*, 109th Cong. (2005) (testimony of Marsha Carroll in support of HR 748).

In 1998, Joyce Farley testified before the House Subcommittee on the Constitution about the complications her daughter, Crystal, suffered as a result of a secret

A recent study of the literature documenting the impact of parental involvement laws concluded, “Some minors travel to other states with no, or at least less restrictive, parental involvement laws in order to obtain an abortion. To travel out of state, a minor must have access to transportation and must be within a reasonable distance of a state with less restrictive laws. The degree to which minors exercise this option varies by age, socioeconomic status and access to public transportation.”³⁵ “In general, the impact of these laws on minors’ travel appears to vary widely, depending on the specifics of the requirements, the abortion regulations of surrounding states and the state’s geography.”³⁶

Statutory Rape

Some teens who obtain abortions are pregnant as the result of statutory rape. National studies reveal “[a]lmost two thirds of adolescent mothers have partners older than 20 years of age.”³⁷ “Younger teenagers are especially vulnerable to coercive and

abortion. Crystal became pregnant at the age of twelve when Michael Kilmer, an eighteen year-old neighbor, got her drunk and then raped her. Mr. Kilmer’s mother, Rosa Hartford, took the young girl to a New York abortion clinic to avoid Pennsylvania’s parental consent law. Crystal’s mother, a registered nurse, learned of her daughter’s abortion when Crystal began experiencing severe pain and hemorrhaging at home following the abortion. The abortion was incomplete, and additional surgery was required. Ms. Hartford was convicted for interfering with the custody of the child’s parent. *Commonwealth v. Hartford*, No. 95-98 (Ct. Com. Pl. Sullivan County, Pa. Dec. 5, 1996). Ms. Hartford’s conviction was reversed for failure to provide proper jury instructions on the elements of interference with custody. *Commonwealth v. Hartford*, No. 00088PHL97 (Pa. Super. Ct. Oct. 28, 1997).

³⁵ Dennis A *et al.*, *The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review* at 4, New York: Guttmacher Institute, 2009.

³⁶ *Id.* at 27.

³⁷ American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues: 1998*, 103 PEDIATRICS 516, 519 (1999), also available on the worldwide web at <<http://www.aap.org/policy/re9828.html>>. See also Nat’l Ctr. for Health Statistics, *Report to Congress on Out-of-Wedlock Childbearing*, DHHS Pub. No. (PHS) 95-1257 (1995) available at <http://www.cdc.gov/nchs/data/misc/wedlock.pdf>.

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

Id. at 12.

nonconsensual sex. Involuntary sexual activity has been reported by 74% of sexually active girls younger than 14 years and 60% of those younger than 15 years.”³⁸ 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.*”³⁹ Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.⁴⁰

Failure to Report by Abortion Providers

Abortion providers are reluctant to report information indicating a minor is the victim of statutory rape.⁴¹ The clearest example of this reluctance is the arguments presented in the lawsuit filed by a Kansas abortion provider to prohibit enforcement of that state’s reporting requirement related to sexual abuse of minors. Claiming that

³⁸ American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues*, 116 PEDIATRICS 281, 281 (2005), also available on the worldwide web at <<http://pediatrics.aappublications.org/content/116/1/281.full>> (last viewed March 6, 2012).

³⁹ Mike A. Males, *Adult Involvement in Teenage Childbearing and STD*, LANCET 64 (July 8, 1995) (emphasis added).

⁴⁰ *Id.* citing HP Boyer and D. Fine, *Sexual Abuse as a Factor in Adolescent Pregnancy and Child Maltreatment*, FAM. PLAN. PERSPECTIVES at 4 (1992) (1992 study of 535 teen mothers in Washington state revealed that two-thirds were victims of molestation, rape, or attempted rape prior to their first pregnancy”); and HP Gershenson, et al. *The Prevalence of Coercive Experience Among Teenage Mothers*, J. INTERPERS. VIOL. 204 (1989). See also D.J. Taylor et al., *Demographic Characteristics in Adult Paternity for First Births to Adolescents under 15 Years of Age*, J. Adol. Health (Apr. 1999), at 251 (finding that adult fathers, responsible for 26.7% of births to very young adolescents, were a mean of 8.8 years older than the mother); Bradford D. Gessner and Katherine A. Preham-Hester, *Experience of Violence Among Teenage Mothers in Alaska*, 22 J. Adol. Health 383, 387 (1998) (66% of births to teens under the age of 16 were result of statutory rape (male was 3+ years older than girl)).

⁴¹ See Chinué Turner Richardson and Cynthia Dailard, *Politicizing Statutory Rape Reporting Requirements: A Mounting Campaign?*, THE GUTTMACHER REPORT ON PUBLIC POLICY 1 (Aug. 2005), also available at <http://www.guttmacher.org/pubs/tgr/08/3/gr080301.html>, and Patricia Donovan, *Caught Between Teens and the Law: Family Planning Programs and Statutory Rape Reporting*, 3 FAM. PLAN. PERSPECTIVES 5 (1998).

children under the age of sixteen were sufficiently mature to engage in non-abusive sexual intercourse, Aid for Women, a Kansas City abortion provider, sued to enjoin the state's mandatory reporting law on the basis that it violated minors' constitutional right to informational privacy. The district court, adopting the arguments of the abortion provider, ruled that minors between the ages of twelve and fifteen had a constitutional right to engage in non-coercive sexual activity, including but not limited to "penile-vaginal intercourse, oral sex, anal sex, and touching of another's genitalia by either sex."⁴² On appeal from a preliminary injunction in the case, the Court of Appeals for the Tenth Circuit rejected such a constitutional right,⁴³ but the district continued to assert the unconstitutionality of the reporting law at the conclusion of trial.⁴⁴ Unfortunately the appeal to the Tenth Circuit was rendered moot by unrelated legislative changes in the law.⁴⁵

Failure to report the sexual abuse of minor may result in the minor returning to an abusive relationship. In Ohio, a thirteen-year-old girl was impregnated by her twenty-one-year old soccer coach, John Haller. In order to conceal the illegal relationship, Mr. Haller arranged for the girl to obtain an abortion by first impersonating her father during a telephone call with the clinic, and then pretending to be her brother while accompanying the girl to the clinic to obtain an abortion.⁴⁶ The sexual abuse was only discovered after another teacher overheard the girl arguing with Haller about their relationship, and reported the conversation to law enforcement.⁴⁷ Subsequently the girl and her parents sued the abortion provider, Planned Parenthood of Southwest Ohio Region, for failure to comply with the Ohio sexual abuse reporting statute. "Planned Parenthood did not deny that it had not filed an abuse report."⁴⁸

In 2001 an Arizona Planned Parenthood affiliate was found civilly liable for failing to report the fact that the clinic had performed an abortion on a twelve-year-old girl who had been impregnated by her foster brother. The abortion provider did not

⁴² *Aid For Women v. Foulston*, 327 F.Supp.2d 1273 (D.Kan. 2004).

⁴³ *Aid to Women v. Foulston*, 441 F.3d 1101 (10th Cir. 2006).

⁴⁴ *Aid to Women v. Foulston*, 427 F. Supp. 2d 1093 (D. Kan. 2006).

⁴⁵ *Aid to Women v. Foulston*, No. 06-3187,2007 WL 6787808 (10th Cir. Sept. 18, 2007).

⁴⁶ *Roe v. Planned Parenthood Southeast Region of Ohio*, 912 N.E.2d 61, 64-65 (Ohio 2009).

⁴⁷ *Id.*

⁴⁸ *Roe v. Planned Parenthood Southwest Ohio Region*, 173 Ohio App. 3d 414 (1st Dist. Ct. App. 2007) available at <http://www.sconet.state.oh.us/rod/docs/pdf/1/2007/2007-ohio-4318.pdf>.

report the crime as required by law and the girl returned to the foster home where she was raped and impregnated a second time.⁴⁹ In 2003 two Connecticut doctors were prosecuted for failing to report to public officials that an eleven-year old girl had been impregnated by a seventy-five year old man.⁵⁰

By failing to report, abortion providers reduce the chances that rapes will be discovered, and by failing to preserve fetal tissue, they may make it impossible to effectively prosecute those rapes that are discovered.

⁴⁹ See *Glendale Teen Files Lawsuit Against Planned Parenthood*, THE ARIZONA REPUBLIC, Sept. 2, 2001 and *Judge Rules Against Planned Parenthood* at www.12news.com/headline/PlannedParenthood122602.html

⁵⁰ See Charlotte Allen, *Planned Parenthood's Unseemly Empire*, 13 Weekly Standard (2007) (describing the ongoing criminal prosecution by Connecticut officials of Adam Gault, a forty-one year old man who imprisoned and impregnated a fifteen-year-old girl). Connecticut has a history of failure to protect its youth from statutory rape. In 1998, the office of the United States Department of Health & Human Services Inspector General reported:

This review examined whether cases of suspected statutory rape in Connecticut were being identified, reported and targeted for intervening services. It also assessed the related implications, including social costs. While the State has taken steps toward addressing the problem of statutory rape, the effectiveness of these steps could be improved. Many of the teenaged girls and boys in OIG's sample were pursued by adults over the age of 21, and over half these adults had histories of reported domestic violence and/or abuse of their children. The OIG recommended that the State identify ways to pursue criminal action against alleged perpetrators and ensure that appropriate services are provided to victims and others, as needed. However, the State should consult with ACF to prevent any possible negative consequence in the area of voluntary paternity acknowledgment. The State indicated it would continue to work to resolve the problems and develop an acceptable protocol. (CIN:A-01-97-02504)

June Gibbs Brown, *United States Department of Health & Human Services Office of the Inspector General Semi-Annual Report, April 1, 1998 – September 30, 1998* at 48 (1998) available at <http://oig.hhs.gov/publications/docs/semiannual/1998/98-fsemi.pdf> (last viewed March 6, 2012).

For additional examples, see AUL, *The Case for Investigating Planned Parenthood* Available at <http://www.aul.org/aul-special-report-the-case-for-investigating-planned-parenthood/>.

A federal solution to the problem is necessary

Both Joyce Farley and Marsha Carroll wanted to care for their daughters as the girls experienced their unplanned pregnancies. Both mothers lived in Pennsylvania, a state requiring parental consent prior to the performance of abortions on minors. Yet both mothers were deprived of the opportunity to counsel and protect their daughters by others adults who took the girls to states having no parental involvement requirements related to abortion.

Both girls were subjected to pressure by those who had an interest in hiding or ending the girls' pregnancies. In both cases, abortion providers failed to intervene to insure that the girls freely gave their informed consent to the abortions. Both girls suffered lasting harm from their abortions.

These cases reveal the limitations of states' authority to protect parents' rights to direct the medical care of their minor children⁵¹ outside the individual states' geographic boundaries. While Pennsylvania, like many states, statutorily protects a parent's right to be involved in their daughter's decision to obtain an abortion, these statutory protections were easily evaded by taking the minor to a state that does not require parental consent or notification prior to performance of abortions on minors.

At least one state has attempted to address this problem statutorily. Legislators in Missouri realized that abortion providers in the neighboring state of Illinois deliberately marketed their services to Missouri minors on the basis that no parental involvement is required prior to performance of an abortion on a minor in Illinois. To discourage this practice, the legislature passed a law creating civil remedies for parents and their daughters against individuals who would "intentionally cause, aid, or assist a minor" in obtaining an abortion without parental consent or a judicial bypass of Missouri's consent requirement.⁵² Abortion providers immediately attacked the law as unconstitutional. The state attorney general vigorously defended the law as a reasonable means to insure that Missouri minors had the benefit of parental involvement when deciding whether to obtain abortions.

The Missouri Supreme Court upheld the constitutionality of the law limiting the activities subject to civil liability, and by excluding out-of-state conduct. "Of course, 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."⁵³

⁵¹ *Parham v. J.R.*, 442 U.S. 584 (1979).

⁵² Mo.Rev.Stat. § 188.028 (2005).

⁵³ *Planned Parenthood of Kansas v. Nixon*, 220 S.W.3d 732, 742 (Mo. 2007).

The Missouri court was constrained by the United States Supreme Court decision, *Bigelow v. Virginia*, 421 U.S. 809 (1975). In *Bigelow* the Court overturned a Virginia law restricting advertising of abortion by out-of-state providers:

Moreover, the placement services advertised in appellant's newspaper were legally provided in New York at that time. The Virginia Legislature could not have regulated the advertiser's activity in New York, and obviously could not have proscribed the activity in that State. Neither could Virginia prevent its residents from traveling to New York to obtain those services or, as the State conceded Virginia possessed no authority to regulate the services provided in New York—the skills and credentials of the New York physicians and of the New York professionals who assisted them, the standards of the New York hospitals and clinics to which patients were referred, or the practices and charges of the New York referral services.⁵⁴

While there is scholarly debate on the point,⁵⁵ the judicial consensus appears to be that states do not have the power to regulate conduct in neighboring states. Yet out-of-state conduct can completely defeat state laws requiring parental involvement in their daughters' decisions regarding abortion. Congressional action is required to protect states' recognition of parents' right to be involved in their daughters' decisions to obtain abortions.

CIANA is constitutional

Opponents of CIANA have persistently claimed that passage of the law would violate the constitutional right to travel and would exceed Congressional authority under the interstate commerce clause. Both claims are baseless.

⁵⁴ 421 U.S. at 822 (1975).

⁵⁵ See e.g. C. Steven Bradford, *What Happens If Roe Is Overruled? Extraterritorial Regulation of Abortion by the States*, 35 Ariz. L. Rev. 87, 170 (1993); Lea Brilmayer, *Interstate Preemption: The Right to Travel, the Right to Life, and the Right to Die*, 91 Mich. L. Rev. 873, 876 (1993); Richard H. Fallon, Jr., *If Roe Were Overruled: Abortion and the Constitution in a Post-Roe World*, 51 St. Louis U. L.J. 611, 627-41 (2007); Donald H. Regan, *Siamese Essays: (I) CTS Corp. v. Dynamics Corp. of America and Dormant Commerce Clause Doctrine; (II) Extraterritorial State Legislation*, 85 Mich. L. Rev. 1865, 1906-08, 1912-13 (1987); Mark D. Rosen, *Extraterritoriality and Political Heterogeneity in American Federalism*, 150 U. Pa. L. Rev. 855, 955-64 (2002); and William Van Alstyne, *Closing the Circle of Constitutional Review from Griswold v. Connecticut to Roe v. Wade: An Outline of a Decision Merely Overruling Roe*, 1989 Duke L.J. 1677, 1684.

The “right to travel” is composed of “at least three different components.”⁵⁶ It protects: (1) “the right of a citizen of one State to enter and to leave another State,” (2) “the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State,” and (3) “for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.”⁵⁷

CIANA imposes no obstacle on a minor entering or leaving any state. CIANA does not prohibit anyone from accompanying minors to obtain an abortion; it simply requires those aiding or assisting minors to obtain an abortion to comply with the parental involvement laws of the minor’s state of residence. Nor does the act cause minors to be treated as “an unfriendly alien when temporarily present in the second State.” CIANA also does not deal with individuals who elect to travel in order to become permanent residents of another state. In short, the act “does not directly impair the exercise of the right to free interstate movement.”⁵⁸

CIANA is a legitimate exercise of Congressional authority under its authority to regulate interstate commerce. “To keep the channels of commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.”⁵⁹ The Supreme Court has repeatedly said crossing state lines is interstate commerce regardless of whether any commercial activity is involved.⁶⁰ “[T]he transportation of persons across state lines ... has long been recognized as a form of “commerce.”⁶¹

As recently as 2005 in *Gonzales v. Raich*, the United States Supreme Court upheld Congressional authority to regulate conduct related to medical care.⁶² There is

⁵⁶ *Saenz v. Roe*, 526 U.S. 489, 500 (1999).

⁵⁷ *Id.*

⁵⁸ *See Saenz v. Roe*, 526 U.S. at 501 (California statute limiting welfare benefits to residents with less than one year of residency did not violate the right of a citizen of one State to enter and leave another State, because statute did not directly impair the right to free interstate movement); *Doe v. Miller*, 405 F.3d 700, 712 (8th Cir.2005) (Iowa residency restriction for sex offenders did not implicate the right to travel because it did not prevent the sex offender from entering or leaving the state).

⁵⁹ *Caminetti v. United States*, 242 U.S. 470 (1917).

⁶⁰ *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 255-56 (1964); and *Edwards v. California*, 314 U.S. 160, 172 & n. 1 (1941).

⁶¹ *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564 (1997).

⁶² *Gonzales v. Raich*, 545 U.S. 1 (2005) (upholding provisions of Controlled Substances Act that prohibited the use and distribution of marijuana in states that recognized medical uses for the drug).

little reason to believe that the Court would sustain a challenge to the constitutionality of CIANA.⁶³

Conclusion

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 performed 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.

By passage of the Act before this Committee, Congress will protect the ability of the parents to be involved in the decisions of their minor daughters facing an unplanned pregnancy.

Experience in states having parental involvement laws has shown that, when notified, parents and their daughters unite in a desire to resolve issues surrounding an unplanned pregnancy. If the minor chooses to terminate the pregnancy, parents can assist their daughters in selecting competent abortion providers, and abortion providers may receive more comprehensive medical histories of their patients. In these cases, the minors will more likely be encouraged to obtain post-operative check-ups, and parents will be prepared to respond to any complications that arise.⁶⁴

If the minor chooses to continue her pregnancy, involvement of her parents serves many of the same goals. Parents can provide or help obtain the necessary resources for early and comprehensive prenatal care. They can assist their daughters in evaluating the 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.⁶⁵

⁶³ *Gonzales v. Carhart*, 550 U.S. 124 (2007) involved substantive due process claims by the plaintiffs. They did not raise any claim under the interstate commerce clause. *Id.* at 1640 (Thomas, J. concurring) ("I also note that whether the Act constitutes a permissible exercise of Congress' power under the Commerce Clause is not before the Court. The parties did not raise or brief that issue; it is outside the question presented; and the lower courts did not address it.")

⁶⁴ 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).

⁶⁵ See *Statement of Marie Sica, Constitutional Amendment ACR-2/SCR86*, Public Hearing before N.J. Assembly Judiciary Committee, Oct. 16, 2000, at p. 16x.

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 performed 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.

The Child Interstate Parental Notification 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.