

TRANSPORTING MINORS FOR IMMORAL PURPOSES: THE CASE FOR THE CHILD CUSTODY PROTECTION ACT & THE CHILD INTERSTATE ABORTION NOTIFICATION ACT

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In January 2001, Richard North Patterson's *Protect and Defend* was number seventeen on the *New York Times* Best Sellers' List for hardcover fiction. His novel pits concerned pro-life parents against a young pro-choice lawyer in seeking to advise Mary Ann Tierney, a fifteen-year-old girl. Mary Ann is confronted with the news that she is pregnant, and she carries a child that has a high probability of being hydrocephalic. The novel, however, suffers from a lack of balance as many reviewers have noted,¹ characterizing Mary Ann's father as a self-centered anti-choice zealot and her mother as a weak-willed coward. The young lawyer is portrayed as empathic and strong—supporting Mary Ann in her apparent decision to obtain an abortion without her parents' consent. The lawyer goes so far as to shelter

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¹ Ellin M. Mulholland, *Protect and Defend*, by Richard North Patterson, published by Alfred A. Knopf, 2000, 550 pages, \$26.95, 73 N.Y. St. B. J. 53 (Mar./Apr. 2001) (book review).

Those who espouse pro-choice are seen as standing on principle, as supporting reason over belief. Those who view abortion as the taking of life are seen as coming from a tradition of unyielding rules, a paradoxical mixture of mysticism and literal belief; the repression of women; the suppression of dissent, whether philosophical or scientific.

Id.; and Linda Mowery, *Protect and Defend* by Richard North Patterson, <http://www.themysteryreader.com/patterson-protect.html> (last visited Sept. 22, 2005) (book review) ("As far as fiction goes, I like Patterson's left-wing Utopia. . . . Those of you who embrace the far right and conservative causes, those of you who do not accept a woman's right to determine her reproductive freedom, will likely find that this book will irritate and even anger you."). *But see* Cheryl Baisden, *The Lawyer's Bookshelf*, 207 N. J. LAW., MAG. 54 (Feb. 2001) (book review) ("Pro-life leaders declined to speak with Patterson. To his credit, their lack of input does not show through in the finished product.").

Mary Ann from her family by sharing her apartment with the girl until a judicial bypass of the state's requirement of parental consent can be obtained. Left unanswered at the end of the novel is the question of how the family is to deal with Mary Ann's abortion as she returns home for the remaining three years until she attains the age of majority.

Similarly, activists opposing federal legislation ensuring compliance with state laws that require parental involvement in a minor's decision to obtain an abortion ignore the reality that minors obtaining secret abortions return to the homes of their parents, at least until they attain majority. Consider the testimony of Congressman James Oberstar in support of the Child Custody Protection Act:

Her so-called friends had helped her obtain an abortion outside of Maryland using a false name, and probably false medical information. Then they dumped her back near her parents' house and disappeared. This broken girl is now hospitalized for severe depression and faces a long and difficult recovery. Her family has been torn and denied the opportunity to provide the love, support, and advice that she needed to make a well thought out decision on the best possible course of action for herself.²

Unfortunately this story is not unique.

Both Marcia Carroll and Joyce Farley tell stories of people taking their daughters across state lines for abortions and then leaving the girls for them to help cope with the consequences. Mrs. Carroll testified,

The adults put the children in the taxi to take them to the train station. [The boyfriend's] stepfather met the children at the train station, where he had to purchase my daughter's ticket since she was only fourteen. They put the children on the train from Lancaster to Philadelphia. From there, they took two subways to New Jersey. That is where his family met the children and took them to the abortion clinic, where one of the adults had made the appointment.

When my daughter started to cry and have second thoughts, they told her they would leave her in New Jersey. They

² *Child Custody Protection Act: Hearing on H.R. 3682 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary, 105th Cong. (1998)* (testimony of the Hon. James L. Oberstar, U.S. Rep.) (excerpts attached as App. A).

planned, paid for, coerced, harassed, and threatened her into having the abortion. They left her alone during the abortion and went to eat lunch.

After the abortion, [the boyfriend's] stepfather and grandmother drove my daughter home from New Jersey and dropped her off down the road from our house.

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

As a consequence of my daughter being taken out of our state for an abortion without parental knowledge, she is suffering intense grief. My daughter cries herself to sleep at night and lives with this everyday.³

It is Mrs. Carroll, not the (now ex-) boyfriend or his family, who helps her daughter through her daily struggles.

Perhaps even more disturbing is the story of Joyce Farley:

My daughter was a victim of several horrible crimes between the ages of [twelve] and [thirteen]. My child was provided alcohol, raped and then taken out of state by a stranger to have an abortion. This stranger turned out to be the mother of the adult male who provided the alcohol and then raped my [twelve] year old daughter while she was unconscious. The rapist's mother arranged and paid for an abortion to be performed on my child.

Following the abortion, the mother of the rapist dropped off my physically-, emotionally-battered child in another town [thirty] miles away from our home. The plan was to keep the rape and abortion a secret. If I had not contacted the State police on the morning of August 31, 1995, when I found my child missing, she might not be alive today. Severe pain and bleeding revealed complications from an incomplete abortion. This required further medical care and a second abortion to be performed. When my daughter began having complications from the first abortion, I contacted the New York clinic only

³ *Child Interstate Abortion Notification Act: Hearing on HR 748 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 109th Cong. (2005) (testimony of Marcia Carroll in support of H.R. 748) (excerpts attached as App. A).

to be told that her bleeding was normal and to increase her Naprosyn, which was given for pain, to every hour if needed. Being a nurse, I knew this advice was wrong and could be harmful, but my daughter would not have known this. It was obvious proper care could not be received from the New York clinic. Our Family Doctor made a referral to a gynecologist, and my daughter received the care she needed—in spite of the fact that the Clinic made it difficult to obtain her medical records.⁴

Unfortunately, studies confirm that the experience of Mrs. Farley's daughter is not unique. "Younger teenagers are especially vulnerable to coercive and nonconsensual sex. Involuntary sexual activity has been reported in 74 [percent] of sexually active girls younger than [fourteen] years and 60 [percent] of those younger than [fifteen] years."⁵ Nearly 76 percent of all perpetrators of sexual abuse are friends or neighbors, and 30 percent are relatives other than parents.⁶

National studies reveal "[a]lmost two-thirds of adolescent mothers have partners older than [twenty] years of age."⁷ In a study of over

⁴ *Child Custody Protection Act: Hearing on H.R. 3682 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 105th Cong. (1998) (testimony of Joyce Forley) (excerpts attached as App. A).

⁵ American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy—Current Trends and Issues: 1998*, 103 PEDIATRICS 516 (1999) (describing trends in adolescent pregnancy). See also Kevin Fiscella et al., *Does Child Abuse Predict Adolescent Pregnancy?* 101 PEDIATRICS 620, 622 (1998) (describing sexual abuse as the only predictor of early pregnancy), and Vincent M. Rue et al., *Induced Abortion and Traumatic Stress: A Preliminary Comparison of American and Russian Women*, 10 MED. SCI. MONITOR (SPECIAL REPORT) SR5, SR9 tbl.4 (2004) (study found that 64 percent of American women felt pressured by others to have an abortion). Cf. David Finkelhor & Lisa M. Jones, *Explanations for the Decline in Child Sexual Abuse Cases*, JUV. JUST. BULL., Jan. 2004, at 9, available at <http://www.ncjrs.org/pdffiles1/ojjdp/199298.pdf> (relating the decline in sexual abuse to the decline in teen pregnancy).

⁶ ADMIN. FOR CHILD & FAMILIES, U.S. DEP'T OF HEALTH & HUM. SERV., CHILD MALTREATMENT 2003 63 (2005).

Less than 3 percent (2.7 [percent]) of parents committed sexual abuse; however, 29.9 percent of other relatives, 26.8 percent of other professionals, 23.0 percent of daycare providers, and 11.5 percent of residential facility staff committed sexual abuse (figure 5–3). More than three-quarters (75.9 [percent]) of perpetrators who were friends or neighbors committed sexual abuse.

Id.

⁷ American Academy of Pediatrics Committee on Adolescence, *supra* note 5, at 518. See also U.S. DEP'T OF HEALTH AND HUM. SERV., REPORT TO CONGRESS ON OUT-OF-WEDLOCK CHILDBEARING, DHHS PUB. NO. 95-1257, at x (1995), available at <http://www.cdc.gov/nchs/data/misc/wedlock.pdf>.

46,000 pregnancies by school-age girls in California, researchers found that

71 [percent], or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of [five] years older than the mothers. . . . Even among junior high school mothers aged [fifteen] or younger, most births are fathered by adult men [six to seven] years their senior. *Men aged [twenty-five] or older father more births among California school-age girls than do boys under age [eighteen].*⁸

A survey of 1,500 unmarried minors having abortions revealed that among minors who reported that neither parent knew of the abortion, 89 percent said that a boyfriend was involved in deciding or arranging the abortion (and 93 percent of those age fifteen and under said that a boyfriend was involved).⁹ Furthermore, 76 percent indicated that a boyfriend helped pay the expenses of the abortion. Clearly, a number of young girls who obtained abortions without their

In fact, data indicate[s] that, among girls [fourteen] 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 [twenty] or older, suggesting that differences in power and status exist between many sexual partners.

Id.

⁸ Mike A. Males, *Adult Involvement in Teenage Childbearing and STD*, 346 LANCET 64, 64-65 (1995) (emphasis added). Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older. *Id.* at 65. See also Harold P. Gershenson et al., *The Prevalence of Coercive Sexual Experience Among Teenage Mothers*, 4 J. INTERPERSONAL VIOLENCE 204, 210 (1989). In Virginia during 1999 and 2000, 219 births to girls age thirteen and fourteen were fathered by men over the age of eighteen. John B. Nezelek, Center for Injury and Violence Prevention, VA Dep't of Health, *Estimating the Incidence of Statutory Rape in Virginia* 13 (2002), available at <http://www.vahealth.org/civp/sexualviolence/statrape.pdf>. A 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. Debra Boyer & David Fine, *Sexual Abuse as a Factor in Adolescent Pregnancy and Child Maltreatment*, 24 FAM. PLAN. PERSP. 4, 4 (1992). A study conducted by the Ounce of Prevention Fund in 1986 evaluated 445 teen mothers in Illinois who were pregnant by age sixteen. Sixty percent of these girls reported they had been forced into an unwanted sexual experience. The mean age for the first instance was 11 ½ years old and more than half the mothers were abused by men more than ten years their senior. Ounce of Prevention Fund, *Heart to Heart: An Innovative Approach to Preventing Child Sexual Abuse*, <http://ounceofprevention.org/index.php?section=programs&action=program&program=5&page=16> (last visited Sept. 22, 2005).

⁹ Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196, 205 (1992).

parents' knowledge were encouraged to do so by a sexual partner who could be charged with statutory rape.

Abortion providers are reluctant to report information indicating a minor is the victim of statutory rape.¹⁰ Yet, failure to report statutory rape may result in the minor returning to an abusive relationship. For example, a Planned Parenthood affiliate in Arizona 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 report the crime as required by law, and the girl returned to the foster home where she was raped and impregnated a second time.¹¹ An Oregon abortion clinic provided an abortion to an eleven-year-old, yet failed to report the sexual abuse as required by state law. The abuse was disclosed to law enforcement only because the abortion was incomplete and the girl was subsequently taken to the hospital where a doctor reported the abuse.¹² In Connecticut the case of a ten-year-old girl who was impregnated by a seventy-five-year-old man went unreported. The child was examined by two physicians, but neither reported the sexual abuse to public authorities as required by Connecticut law.¹³ A thirty-six-year-old Nebraska man went so far as to impersonate the father of the sixteen-year-old girl he had impregnated in an attempt to obtain an abortion, and thus hide any evidence of their illegal relationship.¹⁴

¹⁰ Patricia Donovan, *Caught Between Teens and the Law: Family Planning Programs and Statutory Rape Reporting*, THE GUTTMACHER REPORT ON PUBLIC POLICY, June 1998, at 5.

¹¹ See *Glendale Teen Files Lawsuit Against Planned Parenthood*, ARIZ. REPUBLIC, Sept. 2, 2001, at B3, and *Arizona Trial Judge Concludes Planned Parenthood Negligently Failed To Report Abortion*, HEALTH L. WK., Jan. 10, 2003, at 7.

¹² Inara Verzemnieks, *Child's Abortion: No Alarm Bells?*, OREGONIAN, Mar. 11, 1997 (reporting failure of abortion clinic to report sexual abuse of eleven-year-old impregnated by forty-one-year-old live-in-lover of child's mother).

¹³ Christine Walsh, *Conn. Doc Set to Be Cleared in Abuse Case*, INDIA NEW ENGLAND, Jan. 15, 2003, http://www.indianewengland.com/global_user_elements/printpage.cfm?storyid=345711 (discussing the role the doctors played in the abuse case); Colin Poitras, *Failure to Report Pregnancy Brings Charges*, HARTFORD COURANT, Apr. 27, 2002, at A1; John Christoffersen, *Medical Society Urges Dismissal of Charges Against Bridgeport Doctor*, ASSOCIATED PRESS, Aug. 21, 2002; Christa Lee Rock, *Doctors Want Case Dropped*, NEW HAVEN REG., Aug. 23, 2002.; Colin Poitras, *Charges Against Doctors Let Stand in Child's Case*, HARTFORD COURANT, Sept. 24, 2001, at B1; *Doctors to Stand Trial for not Reporting Abuse, Referring for Abortion*, ASSOCIATED PRESS, Sept. 26, 2002; Daniel Tepfer, *Man, 75, Admits He Fathered Girl's Baby*, CONN. POST, Oct. 9, 2002.

¹⁴ Angie Brunkow, *Man Who Said He Was Girl's Dad Sentenced*, OMAHA WORLD-HERALD, June 14, 2000, at 20.

Secret abortions do nothing to expose these men's wrongful conduct.¹⁵ In fact, by aborting the pregnancy, abusive partners destroy the public evidence of their misconduct and are licensed to continue the abuse. Furthermore, by failing to preserve fetal tissue the abortion providers may make effective prosecution of the rape difficult or impossible since the defendant's paternity cannot be established through the use of DNA testing.¹⁶

Concerns such as these, as well as recognition of the medical benefits to minors from parental involvement,¹⁷ have persuaded legislators and citizens of forty-five states to enact some form of parental involvement legislation.¹⁸ However, not all of these laws are in ef-

¹⁵ See *Manning v. Hunt*, 119 F.3d 254, 273 (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.

¹⁶ See *Commonwealth v. Sasville*, 616 N.E.2d 476, 484 (Mass. App. Ct. 1993).

¹⁷ See *infra* text accompanying notes 100-46.

¹⁸ Only Hawaii, New York, Oregon, Vermont, and Washington have failed to pass a parental involvement law of same type. See Alabama, ALA.CODE §§ 26-21-2-26-21-4 (1992); Alaska, ALASKA STAT. §§ 18-16.010-18-16.030 (2004); Arizona, ARIZ. REV. STAT. ANN. § 36-2152 (2003); Arkansas, ARK. CODE ANN. §§ 20-16-801-20-16-804 (2000); California, CAL. HEALTH & SAFETY CODE § 123450 (West 1996); Colorado, COLO. REV. STAT. §§ 12-37.5-101-12-37.5-108 (2004); Delaware, DEL. CODE ANN. tit. 24, § 1783 (1997); Florida, FLA. STAT. ANN. § 390.01114 (2005); Georgia, GA. CODE ANN. § 15-11-112 (2001); Idaho, IDAHO CODE ANN. §§ 18-609-18-609A (2004 & Supp. 2005); Illinois, 750 ILL. COMP. STAT. 70/15 (West 2005); Indiana, IND. CODE § 16-34-2-4 (West 1997); Iowa, IOWA CODE §§ 135L.1-135L.6 (West 1997 & Supp.2005); Kansas, KAN. STAT. ANN. § 65-6705 (2002); Kentucky, KY. REV. STAT. ANN. § 311.732 (West 2004); Louisiana, LA. STAT. ANN. §§ 40.1299.35.1-40.1299.35.5 (West 2001); Maine, 22 ME. REV. STAT. ANN. tit. 22, § 1597-A (2004); Maryland, MD. CODE ANN. HEALTH-GEN. § 20-103 (LexisNexis 2005); Massachusetts, MASS. GEN. LAWS ch. 112, § 12S (2003); Michigan, MICH. COMP. LAWS ANN. §§ 722.901-722.904 (West 2003); Minnesota, MINN. STAT. ANN. §144.343 (West 2005); Mississippi, MISS. CODE ANN. §§ 41-41-51-41-59 (West 1999); Missouri, MO. REV. STAT. § 188.028 (2004); Montana, MONT. CODE ANN. §§ 50-20-202-50-20-212 (West 2005); Nebraska, NEB. REV. STAT. §§ 71-6901-71-6902 (2003); Nevada, NEV. REV. STAT. § 442.255 (2004); New Hampshire, N.H. REV. STAT. §§ 132:24-132:26 (Supp. 2004); New Jersey, N.J. STAT. ANN. §§ 9:17A-1-

fect.¹⁹ Of the laws in effect, some have little impact due to broad waiver provisions²⁰ or broad definitions of who is to receive notice or give consent on behalf of the minor.²¹ Parents in twenty-eight states

9:17A-1.6 (West 2005); New Mexico, N.M. Stat. Ann. § 30-5-1 (LexisNexis 2003); North Carolina, N.C. GEN. STAT. §§ 90-21.6-90-21.7 (2003); North Dakota, N.D. CENT. CODE § 14.02.1-03 (2004); Ohio, OHIO REV. CODE ANN. § 2919.121 (West. Supp. 2005); Oklahoma, 2005 Okla. Sess. Law Serv. 1002-03 (West) (intended to be enacted as Okla. Stat. tit., § 1-740.2); Pennsylvania, 18 PA. CONS. STAT. ANN. § 3206 (West 2000); Rhode Island, R.I. GEN. LAWS § 23-4.7-6 (2001); South Carolina, S.C. CODE ANN. § 44-41-30 (2002); South Dakota, S.D. CODIFIED LAWS § 34-23A-7 (1994 & Supp. 2003); Tennessee, TENN. CODE ANN. §§ 37-10-301-37-10-303 (2001); Texas, TEX. FAM. CODE ANN. §§ 33.001-33.011 (Vernon 2002); Utah, UTAH CODE ANN. § 76-7-304(2) (2003); Virginia, VA. CODE ANN. § 16.1-241 (2003 & Supp. 2005); West Virginia, W. VA. CODE § 16-2F-3 (LexisNexis 2003); Wisconsin, WIS. STAT. ANN. § 48.375 (2004); and Wyoming, WYO. STAT. § 35-6-118 (2005).

¹⁹ In the face of claims of state or federal constitutional infirmity, courts have enjoined the implementation of seven state statutes. *See* State v. Planned Parenthood of Alaska, 35 P.3d 30 (Alaska 2001). The state has announced it will appeal the lower court decision. Masha Herbst, *State to Appeal Abortion Decision*, JUNEAU EMPIRE, Oct. 22, 2003. *See also* Glick v. McKay, 616 F. Supp. 322, 327 (D. Nev. 1985), *aff'd*, 937 F.2d 434 (9th Cir. 1991); Am. 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, 1996 WL 33293423 (N.D. Ill. Feb. 8, 1996) (Illinois Supreme Court refused to issue rules implementing Illinois statute); Wicklund v. State, No. ADV 97-671, 1999 Mont. Dist. LEXIS 1116 (Mont. Dist. Ct. Feb. 11, 1999) (parental notification law violated state constitution), *and* Planned Parenthood of N. New England v. Heed, 296 F.Supp.2d 59, 65 (D.N.H. 2003) (striking down statute due to absence of health exception), *aff'd*, 390 F.3d 53, 65 (1st Cir. 2004), *cert. granted sub nom.* Ayotte v. Planned Parenthood of N. New England, 125 S. Ct. 2294 (2005). *Cf.* Nova Health Sys. v. Edmondson, 373 F.Supp.2d 1234, 1241 (N.D. Okla. 2005) (challenging Oklahoma parental notification law due to absence of time limits for court hearings in judicial bypass provisions).

²⁰ *See* CONN. GEN. STAT. ANN. § 19(a)-601 (2002) (stating that the abortion provider need only discuss the possibility of parental involvement); DEL. CODE ANN. tit. 24, § 1783(a) (1997) (allowing notice to a licensed mental health professional not associated with an abortion provider); KAN. STAT. ANN. § 65-6705(j) (2002) (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) (2004) (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); UTAH CODE ANN. § 76-7-304 (2003) (stating that a physician need notify only if possible); *and* W. VA. CODE § 16-2F-1 (stating physician not affiliated with an abortion provider may waive the notice requirement).

²¹ OHIO REV. CODE ANN. § 2919.12 (Anderson 2005) (stating that notice may be given to a brother, sister, step-parent, or grandparent if certain qualifications are met); WIS. STAT. ANN. § 48-375 (stating that the notice may be given to any adult family member).

are effectively guaranteed the right to be involved in their minor daughters' decisions to obtain abortions in most cases where the abortions are obtained in the minor's state of residence.²² The Child Custody Protection Act (CCPA) and its companion legislation, the Child Interstate Abortion Notification Act (CIANA), are designed to ensure that these state law protections of minors continue, whether the minor obtains the abortion in her home state or elsewhere.

I. CROSSING STATE LINES

It is difficult to know how often minors or others influencing them seek to evade the protections of effective parental involvement laws since official statistics are somewhat unreliable.²³ There are some indications that taking minors across state lines to avoid parental knowledge or consent is a significant problem. For example, after the Pennsylvania Abortion Control Act was implemented,²⁴ officials at clinics in New Jersey and New York noted an increase in the number of Pennsylvania patients: "At the South Jersey Women's Center in Cherry Hill, the percentage of patients from Pennsylvania more than tripled over [ten] months, from 7 percent in January 1995 to about 25 percent in October, said George Dainoff, the clinic's medical director."²⁵ A significant increase was also reported by the administrator of Southern Tier Women's Services in Vestal, New York.²⁶

More recently, from 2000 to 2002, out-of-state minors obtained approximately one-third of all abortions obtained by minors in Delaware.²⁷ David Greenberg, past president and CEO of Planned Parenthood of Delaware, explained the reasons minors come to Delaware to obtain abortions:

²² The guarantee is qualified by the fact that every state, except Utah, 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 parental involvement is not in the minor's best interest and obtaining an abortion is the best resolution of the pregnancy.

²³ See Rebekah Saul, *Abortion Reporting in the United States: An Examination of the Federal-State Partnership*, 30 FAM. PLAN. PERSP. 244, 245 (1998).

²⁴ 18 PA. CONS. STAT. ANN. § 3206 (West 2000).

²⁵ Mary Ellen Alu, *Teens Leave Pa. to Obtain Abortions*, THE MORNING CALL (Allentown, Pa.), Jan. 7, 1996, at B01.

²⁶ *Id.* ("At Southern Tier Women's Services in Vestal, N.Y., the percent of Pennsylvania patients doubled since the law went into effect, said administrator Peg Johnston").

²⁷ JIM KESSLER ET AL., THE DEMOGRAPHICS OF ABORTION: THE GREAT DIVIDE BETWEEN ABORTION RHETORIC AND ABORTION REALITY 12 (2005), available at http://www.thirdway.com/products/the_demographics_of_abortion.pdf.

Sometimes, it's because the Delaware provider is closer or cheaper. Delaware requires parental notification for teens [fifteen] and younger. Delaware also has several 'bypasses.' One lets a teen's grandmother bring her. Another allows a licensed mental health worker to sign a statement if the girl cannot involve her parents.²⁸

This last exception ensures that minors need not experience the discomfort of revealing the consequences of their sexual activity to their parents, who, more likely than not, will be less than pleased to learn of their daughters' pregnancies.

Sixteen, or almost one-quarter of sixty-six abortions performed on minors in 2003 in South Dakota, were performed on girls from out-of-state.²⁹ Nine of the minors were from Minnesota and seven were from Iowa. In 2002, the percentage of abortions performed on nonresident minors grew to almost 28 percent. There were seventy-six abortions performed on minors in South Dakota, with fifty-five of the minors from South Dakota, thirteen from Minnesota, seven from Iowa, and one girl whose residence was unknown.³⁰ South Dakota and Iowa require one parent be notified prior to performance of an abortion on a minor.³¹ Minnesota law requires that both parents be notified,³² which may explain the larger number of Minnesota minors who obtain abortions in South Dakota.

Vermont has no parental involvement law. In 2001, abortions were performed on 149 minors. Four of the minors were from Massachusetts, eleven were from New Hampshire, and four were from New York.³³ Of these three states, only Massachusetts has a parental in-

²⁸ Angie Cannon, *GOP Legislators Take Aim at Cross-State Abortion Traffic: The Idea is to Stop Teenagers from Circumventing Laws Requiring Parental Notification*, PHILA. INQUIRER, May 20, 1998, at A10. Dr. Greenberg is currently president and CEO of Planned Parenthood Columbia-Willamette in Portland, Oregon. See PLANNED PARENTHOOD OF THE COLUMBIA/WILLAMETTE ANNUAL REPORT 2003-2004 at 2, <http://www.plannedparenthood.org/pp2/cwt/files/cwt/PPCW2004AR.pdf>.

²⁹ S.D. DEP'T OF HEALTH, 2003 SOUTH DAKOTA VITAL STATISTICS REPORT: A STATE AND COUNTY COMPARISON OF LEADING HEALTH INDICATORS, INDUCED ABORTION 59 (2003), available at <http://www.state.sd.us/doh/Stats/10-InducedAbortion.pdf>.

³⁰ S.D. DEP'T OF HEALTH, 2002 SOUTH DAKOTA VITAL STATISTICS REPORT: A STATE AND COUNTY COMPARISON OF LEADING HEALTH INDICATORS, INDUCED ABORTION 49 (2002).

³¹ IOWA CODE ANN. § 135L.1-135L.8 (West 1997 & Supp. 2005); and S.D. CODIFIED LAWS § 34-23A-7 (1994 & Supp. 2003).

³² MINN. STAT. ANN. § 144.343 (West 2005).

³³ VT. DEP'T OF HEALTH, STATE OF VERMONT 2001 VITAL STATISTICS, 2001 VERMONT ABORTIONS, E-1 AGE OF PATIENT AND PLACE OF RESIDENCE (2001),

volvement law in effect³⁴ and its courts are notorious for granting every application for judicial bypass.³⁵ New Hampshire's parental notification law is currently enjoined by the courts.³⁶ New York is one of the five states in the nation that has not passed a parental involvement law.

According to the Illinois Public Health Department in 1998, more than 700 minors from Wisconsin, Indiana, and Missouri obtained abortions in Illinois.³⁷ While abortions in Illinois had declined overall, the percentage of abortions performed on non-residents increased by 17 percent.³⁸ Illinois' parental notification law has been enjoined by the courts,³⁹ while the surrounding states of

<http://www.healthyvermonters.info/hs/stats/VSB2001/e01.htm>. In 2000, one minor from Connecticut, ten minors from Massachusetts, and fifteen from New Hampshire obtained abortions in Vermont. VT. DEP'T OF HEALTH, STATE OF VERMONT 2000 VITAL STATISTICS, 2000 VERMONT ABORTIONS, E-1 AGE OF PATIENT AND PLACE OF RESIDENCE (2000), <http://www.healthyvermonters.info/hs/stats/VSB2000/e01.htm>. One minor from Maine, thirteen from Massachusetts, fifteen from New Hampshire, and four from New York obtained abortions in Vermont in 1999. VT. DEP'T OF HEALTH, STATE OF VERMONT 1999 VITAL STATISTICS, 1999 VERMONT ABORTIONS, E-1 AGE OF PATIENT AND PLACE OF RESIDENCE (1999), <http://www.healthyvermonters.info/hs/stats/VSB1999/e01.htm>.

³⁴ MASS. GEN. LAWS ch. 112, § 12S (2003).

³⁵ See Teresa S. Collett, *Seeking Solomon's Wisdom: Judicial Bypass of Parental Involvement in a Minor's Abortion Decision*, 52 BAYLOR L. REV. 513, 522-23 (2000).

[A]pproximately 16,000 petitions for judicial bypass have been heard by Massachusetts courts since 1981, yet only thirteen of these petitions have been denied, and eleven of those denials were overturned on appeal. An earlier study of the Massachusetts experience revealed that the average hearing lasted only 12.12 minutes, and 'more than 92 percent of the hearings [were] less than or equal to 20 minutes.'

Id.

³⁶ *Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53, 65 (1st Cir. 2004) *cert. granted sub nom.*, *Ayotte v. Planned Parenthood of Northern New England*, 125 S. Ct. 2294 (2005).

³⁷ Dave McKinney, *Ryan Makes New Push for Abortion Consent Law*, CHI. SUN-TIMES, July 22, 2000, at 5. See also James Fuller, *Bill Restricts Abortions for Out-of-State Teens*, CHI. SUN-TIMES, Feb. 12, 2001, at 14 ("According to the Public Health Department, Illinois physicians performed 4,294 abortions on women from other states in 1999. Of those, 632 were minors, down from 718 in 1998.").

³⁸ Dave McKinney, *Ill. Abortion Laws a Lure for Teens*, CHI. SUN-TIMES, July 12, 2000, § NEWS, at 1.

³⁹ *Zbaraz v. Ryan*, No. 84CV771, 1996 WL 33293423 (N.D. Ill. 1996) (Illinois Supreme Court refused to issue rules implementing Illinois parental notification statute); *Zbaraz v. Hartigan*, 763 F.2d 1532, 1560 (7th Cir. 1985) (enjoining enforcement of the Illinois Parental Notice of Abortion Act of 1983 until the Illinois Supreme Court promulgates rules which assure the expeditious and confidential disposition of the waiver of notice proceedings at trial and on appeal).

Wisconsin,⁴⁰ Indiana,⁴¹ and Missouri⁴² have parental involvement laws in effect.

A major Illinois draw for many out-of-state women is the Hope Clinic for Women in Granite City near St. Louis, which performed a record-setting number of abortions in 1998. Some women seeking abortions come to the facility from as far as Tennessee, five hours away.

'The Hope Clinic does procedures up to 24 weeks in a pregnancy,' said Laura Keefe, a manager at Memphis Regional Planned Parenthood. 'In Tennessee, we stop at 13 weeks, six days. Anyone who's 14 weeks or over, we have to refer them out.'

Sally Burgess, the Hope Clinic's executive director, downplayed the notion that underage teens were crossing into Illinois hoping to obtain abortions without their parents' knowledge.

Of the teens Hope sees, Burgess said more than half are accompanied by a parent, and clinic policy aims to have all girls 14 and under be accompanied by a responsible adult.

'It is really a very small number of teens who come here without any contact with their parents,' she said.⁴³

The Hope Clinic website informs viewers that the clinic is just ten minutes from St. Louis, Missouri, over the state line in Illinois, where over 6,000 abortions are performed each year.⁴⁴ Despite Ms. Burgess's claims, the advertising is clearly directed at St. Louis residents,

⁴⁰ WIS. STAT. ANN. § 48.375.

⁴¹ IND. CODE § 16-34-2-4 (West 1997).

⁴² MO. REV. STAT. § 188.028 (2004).

⁴³ McKinney, *supra* note 38, § NEWS, at 1. See also Angie Cannon, *GOP Trying to Block Teens from Out-of-State Abortions: Bill Would Bar Anyone From Transporting Minors to Avoid Law in Home State*, AKRON BEACON J., May 28, 1998, at A7. But see Jo Mannies, *Abortion Foes Want U.S. to Adopt a Federal Parental-Consent Law; They Say That Would Cut Number of Missouri Teens Getting it Done Elsewhere*, ST. LOUIS POST-DISPATCH, Jan. 22, 2003, at A8 ("At Hope [Clinic], spokeswoman Allison Hile denies that parental-consent concerns are an issue with many of its abortion patients. 'Only 6 percent of our patients are minors from other states, and a lot of them have mom with them,' she said.").

⁴⁴ Hope Clinic, *Why HOPE Clinic*, <http://www.hopeclinic.com/GeneralInformationWhyHopeClinic.htm> (last visited Nov. 26, 2005).

who would be subject to Missouri law if they obtained abortions in St. Louis.

In contrast, Indiana, which has a parental consent law and is surrounded by Michigan, Ohio, Kentucky, Illinois, and Wisconsin, all of which, with the exception of Illinois, have parental involvement laws, reported only twenty-eight of 630 abortions were performed on non-resident minors in 2002.⁴⁵

The advertising of abortion clinics located in states with no parental involvement laws in effect or with liberal bypass provisions reinforces the statistical and anecdotal evidence suggesting that minors cross state lines to evade parental notification or consent requirements. In addition to the Hope Clinic's attempt to attract Missouri citizens, "Yellow Pages in Pennsylvania carry display ads promoting abortion clinics in New Jersey and Maryland with this eye-catching marketing phrase: 'No Parental Consent Required.'"⁴⁶ Abortion rights organizations also reinforce this message: "Usually you can get around telling your parents *by going to a clinic in a state without these restrictions* or, explaining your situation to a judge. But this can take time, so call right away."⁴⁷

All of this evidence supports the conclusion that abortion providers and others seeking to conceal minors' pregnancies from the minors' parents encourage minors to cross state lines to avoid the requirements of parental involvement laws. It is this conduct that the CCPA is designed to address.

II. TERMS OF THE CCPA AND CIANA

The CCPA would make it a federal crime to circumvent a home-state law requiring notification or consent of one or both parents prior to an abortion by transporting a minor across state lines to obtain an abortion.⁴⁸ If found guilty, the defendant could be fined or imprisoned for not more than one year, or both.⁴⁹ Any parent who suffers harm from a violation of the Act may obtain appropriate relief in a civil action as well.⁵⁰ This bill was originally introduced with the number

⁴⁵ IND. STATE DEP'T OF HEALTH, EPIDEMIOLOGY RESOURCE CENTER, DATA ANALYSIS TEAM, INDIANA INDUCED TERMINATION OF PREGNANCY REPORT – 2003 tbl. 1a & 1b (2005), <http://www.state.in.us/isdh/dataandstats/itp/2003/toc.htm> .

⁴⁶ Cannon, *supra* note 43, at A7.

⁴⁷ *See, e.g.*, Coal. for Positive Sexuality, Parental Consent (1997), <http://www.positive.org/Resources/consent.html> (last visited Nov. 26, 2005) (emphasis added).

⁴⁸ Child Custody Protection Act, S. 403, 109th Cong. (2005).

⁴⁹ S. 403, § 2(a)(1).

⁵⁰ S. 403, § 2(d).

S.8,⁵¹ as one of the Senate Republican leadership's "'Top 10' priorities"⁵² and subsequently reintroduced as S. 403.

On April 27, 2005, the House of Representatives passed the companion bill, the CIANA,⁵³ by a vote of 270-157.⁵⁴ Like the CCPA, CIANA amends the federal criminal code to prohibit transporting a minor across a state line to obtain an abortion to avoid parental involvement laws in a minor's home state.⁵⁵ CIANA also requires an abortion provider⁵⁶ who performs an abortion on a minor who is a resident of a state other than that in which the abortion is performed to provide at least twenty-four hours actual notice (in person) to a parent of the minor before performing the abortion (or if actual notice is not possible after a reasonable effort, twenty-four hours constructive notice by certified mail).⁵⁷ Transporting a minor with intent to evade parental involvement laws or performing an abortion without complying with CIANA's requirements may result in a criminal fine or imprisonment up to one year or both.⁵⁸ Civil relief is also available to any parent who suffers harm from a violation of the Act.⁵⁹ Like the CCPA, CIANA provides an affirmative defense to criminal and civil actions if the abortion provider reasonably believed the parent had consented or been notified as required by the law of the minor's home state or that the minor had obtained a judicial bypass of parental involvement in her home state.⁶⁰

Opponents of the CCPA and CIANA argue that any federal intervention in this area is misguided because a majority of teens already involve a parent in their decisions to obtain abortions, and those who

⁵¹ See <http://thomas.loc.gov> (enter "S.8" in the "Search Bill Text" box, click the circle associated with "Bill Number," and click "Search").

⁵² David Crary, *Bill Aims to Curb Out-of-State Abortions*, ABC NEWS, Jan. 30, 2005, available at <http://abcnews.go.com/US/LegalCenter/wireStory?id=456556>.

⁵³ Child Interstate Abortion Notification Act, H.R. 748, 109th Cong. (2005).

⁵⁴ Sheryl Gay Stolberg, *House Tightens Parental Rule For Abortions*, N.Y. TIMES, Apr. 28, 2005, at A1.

⁵⁵ S. 403, § 2(d).

⁵⁶ Abortions can be provided by non-physicians in Vermont, California, Rhode Island, Connecticut and Washington State. "New legislation in California, administrative rule changes in Rhode Island, and an attorney general opinion in Connecticut and most recently in Washington state have specifically established the role of these clinicians in those states providing medical abortions." *The Role of Advanced Practice Nurses and Physicians Assistants in Medical Abortions*, CLINICIANS FOR CHOICE, June, 2004, at 5, available at <http://www.prochoice.org/cfc/newsletter.html#nurses>.

⁵⁷ H.R. 748, § 3.

⁵⁸ H.R. 748, § 2.

⁵⁹ H.R. 748, § 2.

⁶⁰ H.R. 748, § 2.

do not often have good reasons for not doing so—including fear for their personal safety.⁶¹ Relying upon the fact that numerous medical associations oppose parental involvement laws, they argue that teens will delay or avoid needed care, sometimes resorting to dangerous self-treatments or “back-alley abortions.”⁶² Finally, abortion rights activists argue that it is not the role of the federal government to involve itself in an issue that is first and foremost a matter of family law, historically an area regulated by the states.⁶³ These are powerful arguments if true, but careful examination reveals them to be false.

III. TEENS’ INVOLVEMENT OF A PARENT AND THE CONSEQUENCES

The claim that a majority of teens have involved a parent in their decision to obtain abortions uniformly originates from a study by Stanley Henshaw and Kathryn Kost.⁶⁴ The methodology of the study itself is subject to several criticisms. While it purports to be “based on a nationally representative sample of more than 1,500 unmarried minors having an abortion,”⁶⁵ no respondents from the twenty-one states requiring parental involvement at that time were included. Therefore, no respondent was impacted by a parental consent or notification law. Further, the sample included only respondents who obtained abortions—there is no information from adolescents who decided to continue their pregnancies.

Even more importantly, the study is based only on a survey of adolescents with no attempt to gain information from the parents of the minors. To obtain an accurate understanding of the impact and value of parental involvement in minors’ abortion decisions, it is necessary to have information from both the adolescents and their parents. Without information obtained directly from parents of those adolescents who responded to survey questions about their parents, there

⁶¹ *Child Custody Protection Act: Hearing on H.R. 1755 Before the H. Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 108th Cong. 64-66 (2004) (prepared statement of the Rev. Doctor Katherine Hancock Ragsdale, Episcopal Priest, on behalf of NARAL Pro-Choice America), available at <http://judiciary.house.gov/media/pdfs/printers/108th/94919.PDF>.

⁶² 148 CONG. REC. H1345, H1347 (2002) (statement of Congresswoman Jane Harman), available at http://www.house.gov/harman/issues/statements/107/041702_ST_Custody.html.

⁶³ CTR. FOR REPROD. RIGHTS, *THE CHILD CUSTODY PROTECTION ACT (CCPA): HARMING YOUNG WOMEN WHO SEEK ABORTIONS 7* (2004), available at http://www.reproductiverights.org/pdf/pub_bp_ccpaharming_women.pdf.

⁶⁴ Henshaw & Kost, *supra* note 9, at 196.

⁶⁵ *Id.*

is no basis for assessing the accuracy of the adolescents' perceptions regarding their parents' knowledge, behavior, and attitudes.

Researcher bias is most evident in the design of the survey. Minors whose parents knew of their pregnancy were asked whether they experienced any of eleven possible "adverse" consequences from their parents finding out, but were not asked about any possible positive outcomes. At a minimum, balanced research would require asking respondents to also report benefits of parents finding out about their intended abortion and whether the minors are glad that their parents were involved in the decision-making process.

Notwithstanding these obvious flaws, the study is extensively relied upon in the debate regarding parental involvement laws. Opponents of such laws commonly cite the study for the proposition that "most teens voluntarily involve their parents in their abortion decision,"⁶⁶ relying on the fact that 61 percent of minors surveyed claimed a parent knew of their decision to obtain an abortion.⁶⁷ Yet according to the study, only 45 percent of the minors had informed a parent of their pregnancy and abortion plans.⁶⁸ The remaining parents had learned of the pregnancy and abortion plans from someone other than the minor.⁶⁹

Of the girls under age sixteen whose parents were unaware of their pregnancy, only 47 percent involved "any adult" in their abortion decision or arrangements.⁷⁰ For girls ages sixteen and seventeen, the percentage involving "any adult" only went up to 52 percent.⁷¹ "By the definitional parameters of Dr. Henshaw's study, the 'involvement' which the 'any adult' had in the girl's abortion 'arrangements' may have involved only paying for the abortion or driving to the clinic.

⁶⁶ See, e.g., ACLU Reproductive Freedom, *Laws Restricting Teenagers' Access to Abortion* (Apr. 1, 2001), <http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=9034&c=223> (finding that most minors who have abortions notify at least one parent) (last visited Nov. 25, 2005); Family Communication, *Questions & Answers: Teens' Access to Confidential Reproductive Health Services* (2000), <http://www.familycommunication.org/resources/qna.asp> ("A 1991 study of unmarried minors having abortions in states without parental involvement laws found that 61[percent] told one or both parents about their intent to have abortions.") (last visited Nov. 25, 2005); NARAL Pro-Choice New York, *Parental Consent Laws: Why Requiring Parental Notification for Abortion Is Dangerous for Young Women* (2005), <http://www.prochoiceny.org/s06factsheets/200311041.shtml> ("61 [percent] of young women voluntarily notified at least one parent when seeking an abortion") (last visited Nov. 25, 2005).

⁶⁷ Henshaw & Kost, *supra* note 9, at 200 tbl.3.

⁶⁸ *Id.* at 200.

⁶⁹ *Id.*

⁷⁰ *Id.* at 205 tbl.8.

⁷¹ *Id.*

'Involvement' did not necessarily include any sort of 'counsel' or emotional support."⁷²

With parental involvement laws in effect, the increase in parental involvement is dramatic. In 2004, 771 girls got abortions in Alabama with a parent's approval and fifteen with a judge's approval according to state health department records.⁷³ Idaho similarly reports only 5 percent using judicial bypass to avoid that state's parental consent law in 2003.⁷⁴ South Dakota reports less than 10 percent (six of sixty-six) of the minors obtained judicial bypasses, rather than allow a parent be notified of their intent to obtain an abortion.⁷⁵ In Wisconsin, with its more liberal definition of who could provide consent,⁷⁶ 85 percent of the minors obtaining abortions had parental consent.⁷⁷ In Texas, parental involvement in abortion decision-making by minor girls significantly increased, from 69 percent to approximately 95 percent, immediately after enactment of that state's parental notification law.⁷⁸ "In Massachusetts, where the state's parental consent law has been in operation for more than twenty years, the number of girls seeking parental bypass has substantially declined from a rate of 900-1000 per year in 1991 to a rate of 450-500 in 2003."⁷⁹ With the encouragement of parental involvement laws, a substantial majority of minors include their parents in deciding how to respond to an unexpected pregnancy.

Contrary to the concerns expressed by opponents of CCPA and CIANA, the Henshaw and Kost study found that the primary reason

⁷² Brief of Amici Curiae Loren Leman et al. in Support of Petitioner at 22, *Ayotte v. Planned Parenthood of Northern New England*, No. 04-1144, 2005 WL 1912327 (U.S. Aug. 8, 2005) (summarizing the deposition testimony of Dr. Stanley Henshaw).

⁷³ Ala. Ctr. for Health Statistics, *Induced Terminations of Pregnancy Occurring in Alabama, 2004* (2005), <http://ph.state.al.us/chs/HealthStatistics/Tables/2004/Word%20Pro%20-20OCCURRENCE,%202004%20INDUCED%20TERM.pdf> (last visited Nov. 25, 2005).

⁷⁴ BUREAU OF HEALTH POLICY & VITAL STATISTICS DIV. OF HEALTH, IDAHO DEP'T OF HEALTH AND WELFARE, *INDUCED ABORTION DATA SUMMARY* 14 tbl. 9 (2004), available at http://www.healthandwelfare.idaho.gov/_Rainbow/Documents/families/2003%20Abortion%20Data%20Summary.pdf.

⁷⁵ S.D. DEP'T OF HEALTH, *supra* note 29, at 72.

⁷⁶ Wisconsin allows any of the following to provide consent to a minor's abortion: a parent, grandparent, aunt, uncle, brother or sister, who are at least twenty-five years of age. WIS. STAT. ANN. § 48.375.

⁷⁷ BUREAU OF HEALTH INFO. & POLICY, WIS. DEP'T OF HEALTH & FAMILY SERV. *REPORTED INDUCED TERMINATIONS OF PREGNANCY IN WISCONSIN* 6 tbl.4 (2004), available at <http://dhfs.wisconsin.gov/stats/pdf/ITOP-2004.pdf>.

⁷⁸ Teresa Stanton Collett, *Protecting Our Daughters: The Need for the Vermont Parental Notification Law*, 26 VT. L. REV. 101, 126 n.126 (2001).

⁷⁹ Brief of Amici Curiae Loren Leman et al., *supra* note 72, at 22.

minors avoided telling their parents was not fear of physical violence or abandonment, but a desire to avoid parental disappointment:

The most common reasons for not telling a parent regarded the relationship between the minor and the parent and the minor's concern about what the parent thought of her. The minors' most frequently cited reasons for not telling their mother were the desire not to disappoint her (73 [percent]), the fear that she would be angry (55 [percent]) and not wanting her to know that they had had sex (32 [percent]). The proportions who cited those reasons for not telling the father were 60 [percent], 51[percent] and 38 [percent], respectively. Thirty-two percent of those who had not told their mother and 28 [percent] of those who had not told their father mentioned fear of being pressured to stop seeing their boyfriend.

Twenty-five percent of the minors who had not told their mother and 12 [percent] of those who had not told their father said that their parent was already under too much stress. The most common sources of stress mentioned for both mothers and fathers were related to family, work, finances and health. The desire to avoid causing problems between the parents or between the parent and stepparent was cited by 20 [percent] as the reason for not telling their mother and by 24 [percent] as the reason for not telling their father.

Some respondents said they had not told their mother because they had feared pressure to leave home (18 [percent]), other punishment (15 [percent]) or being beaten (6 [percent]). Among those who had not told their father, those proportions were 13 [percent], 12 [percent] and 7 [percent], respectively. Others had been afraid that their mother or their father would try to make them continue the pregnancy (14 [percent] and 8 [percent], respectively) or have an abortion (5 [percent] and 4 [percent], respectively); in some of these cases, this expectation proved to be correct. The most commonly written-in answers were that someone else had already told the mother or father, that the respondent hadn't wanted to worry her mother, and that she had minimal communication with her father.⁸⁰

⁸⁰ Henshaw and Kost, *supra* note 9, at 202-03. See also Mary S. Griffin-Carlson & Kathleen J. Mackin, *Parental Consent: Factors Influencing Adolescent Disclosure Regarding Abortion*, 28 *ADOLESCENCE* 1, 5-8 (1993) (discussing a study of 439 clients age 21 or under of five abortion clinics in metropolitan Atlanta).

Adolescents are often reluctant to inform their parents about any action that they know would displease or disappoint them. Therefore, it is not surprising that adolescents are fearful of their parents' disapproval or disappointment upon learning of a minor daughter's pregnancy. But such fear does not justify empowering an adolescent to disregard the very people in her life who can provide her with informed, experienced input and sincere, selfless support while responding to an unplanned pregnancy.

The study also identified some effects of parental involvement for those minors who indicated that a parent knew of their intention to obtain an abortion. The most commonly reported effect was that parents' stress increased.⁸¹ Parental stress upon learning of a child's problem is hardly uncommon or indicative of family dysfunction. Another "adverse" result was that parents forced the respondent to stop seeing her boyfriend. It is not clear whether this consequence was harmful to the child; it may have been both beneficial for the child and mutually agreed upon as in her best interests.⁸² "[P]arents whose daughters told them about the pregnancy were understanding and supportive as often as they were upset and disappointed."⁸³ In fact, when parents were told about the pregnancy by their daughter, 87 percent of mothers and 77 percent of fathers were supportive of an abortion, while only 5 percent of the mothers and 6 percent of the fathers were not supportive.⁸⁴

These results comport with the experience in states having parental involvement laws in effect. As part of the preparation for litigation related to the Minnesota parental involvement law, Minnesota Attorney General Hubert Humphrey prepared a memorandum in 1989,

In the present study, when asked why they did not discuss their abortion decision with parents, the clients gave four basic responses: fear of rejection, fear of disappointing parents, wanting to spare parents the problem, and wanting to handle the problem by themselves. When asked why they chose to confide in parents, they most often said: they needed money; they needed emotional support; it was the parents' right to know.

Id. at 8.

⁸¹ The effects reported by minors in descending order of frequency were: parents' stress increased (25 percent); parents making respondent have an abortion (11 percent); respondent uncomfortable living at home (10 percent); respondent forced to stop seeing boyfriend (7 percent); problems between respondent's mother and father or stepparent (6 percent); respondent punished (3 percent); health of parents suffered (1 percent); physical violence in home (1 percent); respondent forced to leave home (1 percent); respondent beaten (+). Henshaw & Kost, *supra* note 9, at 204 tbl.7.

⁸² *Id.*

⁸³ *Id.* at 207.

⁸⁴ *Id.* at 203 tbl.6.

which 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.” He also noted that the plaintiffs in the case conceded that there was no evidence of any increase in medical complications which could be attributed to the law.⁸⁵

Testimony before the Texas House of Representatives' Committee on State Affairs, when considering the Texas Parental Notification Act, on Massachusetts' experience with its parental consent law revealed a similar absence of unintended, but harmful, consequences.⁸⁶ 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 that state's law. In response to questioning, she also testified that there had been no increase in the number of illegal abortions in Massachusetts since the enactment of the statute in 1981.⁸⁷

IV. OBJECTIONS BY PROFESSIONAL ASSOCIATIONS

Medical associations opposing the CCPA⁸⁸ assume that teens will not seek necessary health care if they know that their parents must

⁸⁵ See Minn. Office of the Attorney Gen., Background Briefing Concerning the Minnesota Parent Notification Law 3 (1989).

⁸⁶ Audio Tape: *Hearings on Tex. H.B. 623 Before the H.R. Comm. on State Affairs*, 76th Leg., R.S. 13 (Apr. 19, 1999) (statement of Jamie Sabino, Chair of the Massachusetts Judicial Consent for Minors Lawyer Referral Panel) (tapes available from Office of House Comm. Coordinator).

⁸⁷ *Id.*

⁸⁸ The American Medical Association (AMA) and the American Academy of Pediatrics (AAP) oppose parental involvement laws related to abortion arguing that although parental involvement is ideal, laws mandating parental involvement threaten minors' health by encouraging teens to seek out dangerous alternatives to avoid telling their parents.

With respect to parental involvement when minors seek an abortion, the Council on Ethical and Judicial Affairs believes that the following guidelines constitute good medical practice.

1. Physicians should ascertain the law in their state on parental involvement[.]
2. Physicians should strongly encourage minors to discuss their pregnancy with their parents[.]
3. Physicians should not feel or be compelled to require minors to obtain consent of their parents before deciding whether to undergo an abortion. The patient—even an adolescent—generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate.
4. Physicians should try to ensure that minor patients have made an informed decision . . . Minors should be urged to seek the advice and counsel

consent. This assumption appears to be based on surveys of teenagers conducted by reproductive rights activists.⁸⁹ However, the only study to actually test behavior of teens, rather than merely their opinions, rendered a different outcome. In establishing their family practice, an Israeli group of physicians sent some invitations to only teens and some invitations to teens after obtaining parental consent. The spontaneous response rate for both seventh- and tenth-graders was higher if parents were involved.⁹⁰ This is unsurprising in light of general studies related to foregone health care among teens that indicate desire for secrecy is relatively low compared to other concerns that act as barriers to access to health care.⁹¹

of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers, or the clergy.

COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS, REPORT H—A-92, MANDATORY PARENTAL CONSENT TO ABORTION 5 (1992), available at http://www.ama-assn.org/ama1/pub/upload/mm/369/ceja_ha92.pdf.

The AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects.

Am. Acad. of Pediatrics, *The Adolescent's Right to Confidential Care When Considering Abortion*, 97 PEDIATRICS 746, 750 (1996) (American Academy of Pediatrics Policy Statement).

⁸⁹ See Diane M. Reddy et al., *Effect of Mandatory Parental Notification on Adolescent Girls' Use of Sexual Health Care Services*, 288 JAMA 710 (2002) (concluding that "[m]andatory parental notification for prescribed contraceptives would impede girls' use of sexual health care services, potentially increasing teen pregnancies and the spread of STDs") (one author employed by Planned Parenthood of Wisconsin, Inc.); and Rachel K. Jones et al., *Adolescents' Reports of Parental Knowledge of Adolescents' Use of Sexual Health Services and Their Reactions to Mandated Parental Notification for Prescription Contraception*, 293 JAMA 340 (2005) (concluding that "[m]ost minor adolescent females seeking family planning services report that their parents are aware of their use of services" and these minors would continue using clinic services with parental notification, but "mandated parental notification laws would likely" cause an increase in unsafe sexual behavior, teen pregnancy and STD's) (all authors are affiliated with The Alan Guttmacher Institute, the research affiliate of Planned Parenthood Federation of America).

⁹⁰ Barry Knishkowsky et al., *Adolescent Preventative Health Visits: A Comparison of Two Invitation Protocols*, 13 J. AM. BOARD FAM. PRAC. 11 (2000).

⁹¹ Carol A. Ford et al., *Foregone Health Care Among Adolescents*, 282 JAMA 2227, 2232 (1999) (63.3 percent of teens did not seek health care because they thought the problem would go away; 15.5 percent because they were afraid of what the physician would say or do; 14 percent because they could not pay; 11.7 percent because the parent or guardian would not go; and 11.5 percent because they did not want parents to know).

Recent research indicates that parental involvement is fundamental to the well-being of teens. "Very little attention is given to the important role that parents play in the healthy development of their adolescent children. Their importance in the lives of their teens is strongly supported in research, particularly current research on resiliency."⁹² Research consistently reveals that "[g]reater parental supervision and involvement is related to girls being more sexually assertive, delaying sexual initiation, using dual contraception, and being less likely to become pregnant or acquire an STD."⁹³

In a study of 609 teenage females who had been recruited from neighborhoods characterized by high rates of unemployment, substance abuse, violence, and STDs, the girls who reported less parental monitoring were 2.5 times more likely to become pregnant in the six month follow-up period than those who reported greater parental involvement. This finding led researchers to conclude "interventions designed to increase parental monitoring or adolescent females' perceptions of their parents' monitoring may be effective components of pregnancy prevention programs designed for minority youth."⁹⁴ Similarly, a study of 522 adolescent females found that:

Adolescents with less parental monitoring were significantly more likely than those perceiving more parental monitoring to report that they did not use condoms during their most recent act of sexual intercourse or to report that they did not use any kind of contraception during their last [five] intercourse occasions. Less perceived parental monitoring was marginally associated with reporting multiple sex partners in the past [six] months and having a sex partner who is believed to have concurrent sex partners. Past and recent use of marijuana was associated with less perceived parental monitoring, as was recent use of alcohol. Adolescents who perceived less parental monitoring were also more likely to report that they had been arrested. Of importance, adolescents reporting less parental

⁹² MINN. DEP'T. OF HEALTH, *HEALTHY MINNESOTANS: STRATEGIES FOR PUBLIC HEALTH*, VOL. 2, at Category: Child and Adolescent Growth and Development 6 (2002).

⁹³ Mary B. Short & Susan L. Rosenthal, *Helping Teenaged Girls Make Wise Sexual Decisions*, 48 *CONTEMPORARY OB/GYN* 84, 88 (2003).

⁹⁴ Richard A. Crosby et al., *Low Parental Monitoring Predicts Subsequent Pregnancy Among African-American Adolescent Females*, 15 *J. PEDIATRIC & ADOLESCENT GYNECOLOGY* 43, 45 (2002).

monitoring were 1.7 times more likely to have a laboratory-confirmed STD.⁹⁵

These conclusions are consistent with studies finding that parental involvement laws reduce both teen pregnancy rates and teen abortion rates.⁹⁶

V. ANTICIPATED INJURIES FROM SELF-INDUCED OR ILLEGAL ABORTIONS

Some opponents may be willing to accept that parental involvement laws provide a necessary incentive for a significant number of teens whose primary objection to having their parents know they are pregnant is embarrassment and fear of parental disappointment, yet these opponents still object on the basis of what they agree would be a rare case of a minor who might injure herself by attempting to self-induce an abortion or seek an illegal abortion.

Similar arguments have been asserted before in debates regarding other abortion regulations. They ultimately have proven groundless. When the Hyde Amendment, which restricted governmental funding for abortions, was first being considered Dr. Willard Cates, representing the Centers for Disease Control Abortion Surveillance Branch, predicted a total of seventy-seven excess deaths to women who would seek illegal abortions and an additional five excess deaths due to delays in seeking abortion.⁹⁷ The same department would later admit that no such increase in mortality or morbidity had occurred.⁹⁸ Even Dr. Cates later admitted that “nationally, there were only two deaths

⁹⁵ Ralph J. DiClemente et al., *Parental Monitoring: Association with Adolescents' Risk Behaviors*, 107 PEDIATRICS 1363, 1365 (2001).

⁹⁶ See Michael J. New, *Analyzing the Effect of Pro-Life Legislation on the Incidence of Abortion Among Minors* 8 (June 15, 2005) (unpublished manuscript on file with author) (finding that “parental involvement laws on average reduce the number of abortions performed on teens by around 15 percent”); Virginia G. Cartoof & Lorraine V. Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 AM. J. PUB. HEALTH 397, 397-98 (1986); Patricia Donovan, *Judging Teenagers: How Minors Fare When They Seek Court Authorized Abortions*, 15 FAM. PLAN. PERSP. 259, 266 (1983); Robert Wm. Blum et al., *The Impact of a Parental Notification Law on Adolescent Abortion Decision-Making*, 77 AM. J. PUB. HEALTH 619, 619-20 (1987); and James L. Rogers et al., *Impact of the Minnesota Parental Notification Law on Abortion and Birth*, 81 AM. J. PUB. HEALTH 294 (1991).

⁹⁷ Diana B. Pettiti & Willard Cates, Jr., *Restricting Medicaid Funds for Abortions: Projections of Excess Mortality For Women of Childbearing Age*, 67 AM. J. PUB. HEALTH 860, 861 (1977).

⁹⁸ Center for Disease Control, *Health Effects of Restricting Federal Funds for Abortion—United States*, 28 MMWR: MORBIDITY AND MORTALITY WKLY. REP. 37, 37 (1979).

following illegal abortions in 1976, four in 1977, seven in 1978, none in 1979 and ‘we think one two in 1980 and one so far in 1981.’ One death, he said, is ‘directly attributable’ and three are ‘indirectly attributable’ to lack of federal funds.”⁹⁹

This experience, combined with the experience of states having parental involvement laws with no ill effects on the well-being of minors—some for over two decades—suggests that injuries from self-induced or illegal abortions is largely a phantom fear.

VI. MEDICAL BENEFITS OF PARENTAL INVOLVEMENT

Testimony regarding families’ experiences absent parental involvement laws, as well as the medical literature concerning women’s health, suggest that there are many medical benefits from requiring parental involvement.

First and foremost, parental involvement laws ensure that parents have adequate knowledge to assist their daughters in responding to any post-abortion complications that may arise.¹⁰⁰ When considering the Texas Parental Notification Act, legislators heard several stories of parents whose ability to respond to their daughters’ medical crises were limited by not knowing of their daughters’ abortions. Leslie French, a nineteen year-old student at the University of Texas testified regarding “Amy,” who was fifteen and pregnant. Amy obtained an abortion on Friday, suffered terrible complications, and subsequently died on Sunday. Because Amy’s parents did not know of her abortion, they delayed taking her to hospital until she was unconscious. Hospital personnel originally told the parents that Amy died of septic shock syndrome, but one of her friends who knew of the abortion told them

⁹⁹ Victor Cohn, *Fund Cutoff Fails to Stem Low-Income Abortions; Abortions Continue After Fund Cutoff*, Wash. Post, Sept. 4, 1981, at A1 (quoting Dr. Willard Cates’ discussion of the effects of the Hyde Amendment). See also Heather Boonstra & Adam Sonfield, *Rights Without Access: Revisiting Public Funding of Abortion for Poor Women*, 3 THE GUTTMACHER REP. PUB. POL’Y 8, 10 (Apr. 2000), available at <http://www.guttmacher.org/pubs/tgr/03/2/gr030208.pdf>.

Indeed, a 1979 study by the Center for Disease Control (currently the Federal Centers for Disease Control and Prevention) linked four deaths to the unavailability of Medicaid funding. But while these deaths were tragic and unnecessary, the relatively small number suggested that there was little demographic impact from recourse to illegal or self-induced abortion.

Id.

¹⁰⁰ Audio Tape: *Hearings on Tex. H.B. 623 Before the H.R. Comm. on State Affairs*, 76th Leg., R.S. 13 (Apr. 19, 1999) [hereinafter Michael Love testimony] (testimony of Michael Love, an OBGYN) (tapes available from Office of House Comm. Coordinator).

after Amy's death. The parents then confirmed her death was due to complications from the abortion. Healthcare providers explained that they initially refused to discuss the abortion as the cause of death because of their concern for Amy's right to privacy.¹⁰¹

Veronica Moore testified about the effect of her daughter's secret abortion:

My daughter suffered an abortion two months ago tomorrow. She's only [fifteen]-years-old. In the process of her abortion, when she mentioned it to this [nineteen]-year-old adult male that she was pregnant, his response was 'Don't worry about it. I'll take care of it. Just find a place for us to go.' His attempt was to cover it up before Mama found out about it.

. . .

Even today she still has her nightmares. She does not eat. She has lost ten pounds, maybe even more. Due to abortion she's suffered, we've ended up in emergency room twice. In the ambulance they would not even start an IV, or pull off my driveway until I signed a consent form for her, for them to treat her in that ambulance. In the emergency room, once we got there, they would not treat her until I had signed consent forms for them to treat her. But yet still, a nineteen-year-old boy can take her to an abortion clinic just to cover up his mess, and pay the money, and I don't have to be alerted, or called, or notified, or anything about it.

My daughter has had nightmares. She's heard the baby crying in the middle of the night. She just recently, as of last week, started sleeping back in her own room, cause she had diverted to my bedroom. I had moved everything of hers into my bedroom to accommodate her, because she would not go in her room to sleep. She was having the nightmares in the middle of the night, trying to get up out of the bed to go find this baby that was crying.

. . .

When she went for the abortion she was not notified of any risks that she would suffer or endure, be it psychological, emotional, physical or whatever. She was not given any type

¹⁰¹ Audio Tape: *Hearings on Tex. H.B. 623 Before the H.R. Comm. on State Affairs*, 76th Leg., R.S. 13 (Apr. 19, 1999) (testimony by Leslie French, a healthcare provider) (tapes available from Office of House Comm. Coordinator).

of information about the mental torment she would go through, about the possibility of her being sterile, about the possibility of her receiving an infection. She was not told that she would bleed for five weeks off and on. She was not told that she would not eat. She did not—she was not told that she may not ever have another child. She was not told that she would be crying all night long. She was not told that every time she sees a pregnant woman or a pregnant girl or a baby that she would break down and cry in the middle of where ever she may be yet. She wasn't told any of these risks that are involved with this invasive procedure.

He took her to an abortion clinic where a man has nineteen pages worth of lawsuits against him.¹⁰²

As a mother and nurse, Mrs. Moore's personal experience made her an effective proponent for parental notification.

At the same hearing Dr. Michael Love, an obstetrician and gynecologist practicing in Austin, Texas, testified to the value of parental knowledge of a minor's abortion:

I know from my own personal experience—I have dealt with septic abortion. And it was a young lady that I cared for. She chose to go to one of the local reproductive clinics here in town, obtain their services, and if it were not for her parents knowing about what happened and caring for her, she probably would have died, because by the time I was notified about her, she already had an elevated temperature of 104—, she was obtunded, didn't know who she was, where she was, and if not for the concern of her parents who were able to bring her to the emergency room for treatment and subsequent surgery, there is a strong possibility that she would have died, much as the [fifteen]-year-old girl who died at Ben Taub hospital in the mid 90's [sic].¹⁰³

¹⁰² Audio Tape: *Hearings on Tex. H.B. 623 Before the H.R. Comm. on State Affairs*, 76th Leg., R.S. 13 (Apr. 19, 1999) (testimony by Veronica Moore, mother and nurse, relaying a personal experience with her child's abortion) (tapes available from Office of House Comm. Coordinator).

¹⁰³ Michael Love testimony, *supra* note 100.

The credibility of Dr. Love's testimony was increased by the fact that he had previously worked in a clinic that performed elective abortions.¹⁰⁴

Such stories, however, are not isolated to Texas. The Vermont legislature heard the testimony of two families who experienced the adverse effects of secret abortions. In the first case, a sixteen-year-old girl developed a high fever and hemorrhaging as well as suicidal impulses following a secret abortion.¹⁰⁵ She was given the name and fee structure of a mental health counselor when she sought help from her abortion provider. She continued to suffer because she had exhausted her financial resources by paying for the abortion and was unable to access her parents' health insurance without their knowledge.¹⁰⁶ She only obtained professional counseling after her parents insisted she reveal the reason for her changes in behavior.¹⁰⁷

A second mother and father provided a written account of their teenage son's struggle to overcome depression following his girlfriend's secret abortion, as well as her hospitalization for infection following the failure to remove all fetal parts during the abortion. The sixteen-year-old girl had revealed the abortion to her mother, and they had sought post-abortion help from the clinic, but the clinic "dismissed her symptoms as normal, and sent them along."¹⁰⁸ Two days later the girl collapsed, was rushed to the hospital, and emergency surgery was performed.¹⁰⁹ Both the pregnant girl and her boyfriend

¹⁰⁴ *Id.*

¹⁰⁵ *Parental Notification of Abortion: Hearings on H. 218 Before the H. Comm. on Health and Welfare, 2001-2002 Legis. Sess. (Vt. 2001)* [hereinafter *Health Hearings*] (testimony of "Sue" an anonymous Vermont mother, on March 20, 2001).

¹⁰⁶ *See Parental Notification of Abortions: Hearings on H. 218 Before the H. Judiciary Comm., 2001-2002 Legis. Sess. (Vt. 2001)* [hereinafter *Judiciary Hearings*] (testimony of Nancy Mosher, President and CEO of Planned Parenthood of N. New England on April 16, 2001) (exchange between Representative Margaret Flory and Nancy Mosher, President and CEO of Planned Parenthood of N. New England on April 16, 2001). As excerpted from the transcript:

Rep. Flory: If they [pregnant minors seeking abortions] have insurance, it would be billed to the insurance or not?

Ms. Mosher: Not if they don't want their parents to know.

Rep. Flory: But if –

Ms. Mosher: It would be billed to their parent's insurance if their, you know, if their mom's with them while they're having the pregnancy test, absolutely.

Id.

¹⁰⁷ *Health Hearings, supra* note 105 (testimony of "Sue").

¹⁰⁸ *Id.* (Rutland Constituents in Pain, written testimony submitted to House Health and Welfare, dated February 21, 2001).

¹⁰⁹ *Id.*

are healing from the after-effects of the abortion through the loving support of their parents.

In New Jersey, legislators considering a state constitutional amendment to ensure parental involvement heard the story of another young girl who died because her parents did not know of her abortion. Alda Atkinson told the story of

a [fifteen]-year-old who came home from school not feeling well, [laid] down on the couch, and during the night she quietly bled to death. [The parents] had no idea what was the cause. And eventually, some of [the girl's] friends came forward to say she had an abortion. It was actually her second.¹¹⁰

Both Congress¹¹¹ and the federal courts¹¹² have received similar testimony of the harm suffered from the inability of parents to effectively respond to minors' secret abortions. Parental notice or consent laws, including CCPA and CIANA, are aimed at preventing such tragedies.

By aborting their pregnancies, women lose the health benefits that childbirth and its accompanying lactation bring, including reduced risk of breast, ovarian, and endometrial cancer.¹¹³ One-third of all

¹¹⁰ *Senate Committee Substitute for Assembly Concurrent Resolution No. 2 and Senate Concurrent Resolution No. 86: Public Hearing Before the S. Law and Public Safety Committee*, 2001-2002 Legis. Sess. (N.J. 2001).

¹¹¹ *See Child Custody Protection Act: Hearing on H.R. 3682 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 105th Cong. (1998) (testimony of the Hon. James L. Oberstar, U.S. Rep.) (excerpts attached as App. A); *Child Interstate Abortion Notification Act: Hearing on H.R. 748 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Marcia Carroll); *Child Custody Protection Act: Hearing on H.R. 3682 Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 105th Cong. (1998) (statement of Joyce Farley).

¹¹² *See Fla. Dep't of Health v. N. Fla. Women's Health & Counseling Servs., Inc.*, 852 So. 2d 254, 262-63 (Fla. Dist. Ct. App. 2001), *rev'd*, 866 So. 2d 612 (Fla. 2003); Amicus Brief of The American Center for Law and Justice in Support of Petitioner at 21-22, *Ayotte v. Planned Parenthood of Northern New England*, No. 04-1144, 2005 WL 1902070 (U.S. Aug. 8, 2005) (discussing how "[o]fficial allowance of secret abortions by minors teaches such minors that it is permissible to lie to their parents, even regarding serious matters.").

¹¹³ *See John M. Thorp, Jr. et al., Long-Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence*, 58 *OBSTETRICAL & GYNECOLOGICAL SURV.* 67, 67 (2003); Valerie Beral et al., *Does Pregnancy Protect Against Ovarian Cancer?*, *LANCET*, May 20, 1978, at 1083 ("pregnancy—or some component of the childbearing process—protects directly against ovarian cancer"); and Grethe Albrektsen et al., *Is the Risk of Cancer of the Corpus Uteri Reduced by a Recent Pregnancy? A Prospective Study of 765,756 Norwegian Women*, 61 *INT'L J. CANCER* 485 (1995).

women in the United States will suffer from cancer in their lifetime,¹¹⁴ and cancer is the second leading cause of death in the United States.¹¹⁵ Breast cancer is the most common cancer diagnosed in women, and the second leading cause of cancer death in women.¹¹⁶ It is estimated that about 211,240 women in the United States will be diagnosed with invasive breast cancer in 2005, and about 40,410 women will die from the disease.¹¹⁷ One of the recognized risk factors for breast cancer is having no children or delaying childbearing until after the age of thirty.¹¹⁸

In 1970, the World Health Organization published the results of an international study of breast cancer and reproductive experience involving 250,000 women from seven areas. The study established that women having their first child under age eighteen have only about one-third the breast cancer risk of those whose first birth is delayed until age thirty-five or older. The researchers also noted that data “suggest[s] [an] increased risk [of breast cancer] associated with abortion—contrary to the reduction in risk associated with full-term births.”¹¹⁹

Childbirth also has a protective effect against ovarian cancer.¹²⁰ Ovarian cancer is the seventh most common cancer, but ranks fourth as the cause of cancer death in women.¹²¹ It causes more deaths than any other cancer of the female reproductive system.¹²² The American Cancer Society estimates that there will be about 22,220 new cases of ovarian cancer in this country in 2005. About 16,210 women will die of the disease. While less common than breast cancer, it is more likely to be fatal. Childbirth reduces the risk of this cancer.¹²³

¹¹⁴ AMERICAN CANCER SOCIETY, *CANCER FACTS & FIGURES: 2005 1* (2005), available at <http://www.cancer.org/downloads/STT/CAFF2005f4PWSecured.pdf>.

¹¹⁵ *Id.* at 2.

¹¹⁶ *Id.* at 9.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ B. MacMahon, *Age at First Birth and Breast Cancer Risk*, 43 *BULL. WORLD HEALTH ORG.* 209, 209 (1970). See also Peter M. Layde et al., *The Independent Associations of Parity, Age at First Full Term Pregnancy, and Duration of Breastfeeding with the Risk of Breast Cancer*, 42 *J. CLINICAL EPIDEMIOLOGY* 963, 966 (1989).

¹²⁰ Beral et al., *supra* note 113, at 1083; and David Purdie et al., *Reproductive and Other Factors and Risk of Epithelial Ovarian Cancer: An Australian Case-Control Study*, 62 *INT’L J. CANCER* 678, 680 (1995) (finding a reduced risk of ovarian cancer with increasing number of children).

¹²¹ AMERICAN CANCER SOCIETY, *supra* note 114, at 10.

¹²² *Id.* at 16.

¹²³ See Beral et al., *supra* note 113; and Purdie et al., *supra* note 120, at 680.

Endometrial cancer is a cancer that develops from the inner lining of the uterus. In 2005, 40,880 new cases of endometrial cancer are expected to be diagnosed, and 7,310 women are expected to die from this cancer.¹²⁴ Researchers have found that the process of childbirth results in the shedding of malignant or pre-malignant cells which lead to endometrial cancer.¹²⁵ This protective effect increases with each birth.¹²⁶

In contrast, abortions render women 30 percent more likely to develop breast cancer¹²⁷ and also increase the likelihood of developing cervical¹²⁸ and ovarian cancer.¹²⁹ Medical literature is filled with peer-reviewed studies demonstrating how harmful abortion is to one's health.¹³⁰ Abortion also creates numerous health hazards for subsequent pregnancies, including increasing the likelihood of death during childbirth.¹³¹ Furthermore, women who have had abortions experience

¹²⁴ AMERICAN CANCER SOCIETY, *supra* note 114, at 21.

¹²⁵ Albrektsen, *supra* note 113, at 489.

¹²⁶ Louise A. Brinton et al., *Reproductive, Menstrual, and Medical Risk Factors for Endometrial Cancer: Results from a Case-Control Study*, 167 AM. J. OBSTETRICS & GYNECOLOGY 1317, 1322 (1992).

¹²⁷ ELIZABETH RING-CASSIDY & IAN GENTLES, WOMEN'S HEALTH AFTER ABORTION 17 (2nd ed. 2003) ("Since 1957, evidence linking induced abortion to the later development of breast cancer has been observed in [twenty-three] of [thirty-seven] studies worldwide, including ten of fifteen U.S. studies."). *See also* Joel Brind et al., *Induced Abortion as an Independent Risk Factor for Breast Cancer: A Comprehensive Review and Meta-Analysis*, 50 J. EPIDEMIOLOGY & COMMUNITY HEALTH 481 (1996); and Nancy Krieger, *Exposure, Susceptibility, and Breast Cancer Risk: A Hypothesis Regarding Exogenous Carcinogens, Breast Tissue Development, and Social Gradients, Including Black/White Differences, in Breast Cancer Incidence*, 13 BREAST CANCER RES. & TREATMENT 205 (1989). *See generally* John Kindley, Comment, *The Fit Between the Elements for an Informed Consent Cause of Action and the Scientific Evidence Linking Induced Abortion with Increased Breast Cancer Risk*, 1998 WIS. L. REV. 1595 (1998).

¹²⁸ *See generally* David A. Grimes, *Sequelae of Abortion*, in MODERN METHODS OF INDUCING ABORTION 95, 105 (David T. Baird et al. eds., 1995).

¹²⁹ RING-CASSIDY & GENTLES, *supra* note 127, at 35 ("[C]hildbirth provides women with protection from cancers of the reproductive system.").

¹³⁰ *See generally* Thorp et al., *supra* note 113; David C. Reardon et al., *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, 95 S. MED. J. 834, 834 (2002) ("Higher death rates associated with abortion persist over time and across socioeconomic boundaries."); Karen Malec, *The Abortion-Breast Cancer Link: How Politics Trumped Science and Informed Consent*, 8 J. AM. PHYSICIANS & SURGEONS 41 (2003) (the vast majority of studies have found that abortion increases the risk of breast cancer).

¹³¹ *See* RING-CASSIDY & GENTLES, *supra* note 127, at 41.

These complications include: cervical damage leading to future problems in carrying a pregnancy to term; uterine damage resulting in *placenta previa* which increases the morbidity and mortality risks for both mother and infant; and ectopic pregnancy. Data indicate that in the past twenty years

“varying degrees of emotional distress”¹³² and are more likely to exhibit self-destructive behaviors, including suicide.¹³³

Two studies, one from the United States and the other from Finland, have shown surprising increased rates of suicide following abortion.¹³⁴ This phenomena is not seen after miscarriage.¹³⁵ The United States study showed that women who had abortions were 2.5 times more likely to die from suicide.¹³⁶ The Finnish study showed that women who had abortions were 3.1 times more likely to die from

the incidence of these complications has risen sharply. Studies reveal that induced abortion can put a woman at a seven-fold increased risk of placenta previa and a 30 to 510 per cent increased risk of delivering a premature infant. Children born prematurely are at an enormously increased risk of developing cerebral palsy. Ectopic pregnancies are reaching epidemic proportions, the rates having doubled or tripled in many parts of the world in direct proportion to the increase in induced abortions.

Id. Abortion also increases the risk of infertility, pelvic inflammatory disease, and Chlamydia trachomatis. *Id.* at 64-69. For a thorough discussion of abortion’s contribution to maternal mortality see *id.* at 85-98.

¹³² *Id.* at 131. See also Anna Glasier, *Counseling for Abortion*, in MODERN METHODS OF INDUCING ABORTION 112, 117 (David T. Baird et al. eds., 1995); and 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.”). 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). For cases involving claims of psychological injury see *Edison v. Reproductive Health Services*, 863 S.W.2d 621 (Mo. Ct. App. 1993) and *Showery v. State*, 678 S.W.2d 103, 109 (Tex. App. 1984).

¹³³ RING-CASSIDY & GENTLES, *supra* note 126, at 189.

Post-abortion behaviors tend to be self-destructive and include suicide, both actual and attempted; deliberate self-harm such as mutilation and other punishments; unconscious self-harm in the form of substance abuse, smoking, and various eating disorders; and unstable, often abusive and battering, relationships. . . . [T]he suicide rate following abortion is six times greater than that following childbirth, and three times the general suicide rate.

Id.; See also Mika Gissler et al., *Suicides After Pregnancy in Finland, 1987-94: Register Linkage Study*, 313 BRIT. MED. J. 1431, 1433 (1996); and Henry P. David et al., *Postpartum and Postabortion Psychotic Reactions*, 13 FAM. PLAN. PERSP. 88 (1981).

¹³⁴ Thorp et al., *supra* note 112, at 74. See also *Impact of Abortion on Women: Hearing on S.R. 253 Before the S. Subcomm. on Science, Technology, and Space of the S. Comm. on Commerce, Science, and Transportation*, 108th Cong. (2004) (testimony of Elizabeth M. Shadigian, M.D., Clinical Associate Professor, Department of Obstetrics, University of Michigan).

¹³⁵ Thorp et al., *supra* note 113, at 74 (miscarriage referred to medically as “spontaneous abortion”).

¹³⁶ *Id.* at 73 tbl.7 (citing n.96, David C. Reardon et al., *Deaths Associated With Pregnancy Outcome: A Record Linkage Based Study of Low Income Women*, S. MED. J. 834, 834-41 (2002)).

suicide than non-pregnant women and 6.0 times more likely to die from suicide than women who completed their pregnancy.¹³⁷

Of particular concern is a survey study of Minnesota high school students that found adolescent girls were ten times more likely to attempt suicide in the six months after an abortion than adolescents who did not have abortions.¹³⁸ This is even more dramatic than the findings of the Finnish study showing that teenagers who have abortions are two-to-four times more likely to commit suicide compared to adult women who have abortions.¹³⁹

In addition, self-harm is more common in women who have undergone induced abortion.¹⁴⁰ In England, psychiatric hospital admissions because of suicide attempts are three times more likely for women after induced abortion.¹⁴¹ Regardless of whether there is a causal link, the observation of the association between abortion and suicide “suggests careful screening and follow-up for depression and anticipatory guidance/precautions for women who choose elective abortion.”¹⁴²

At least forty-nine studies have demonstrated a statistically significant increase in premature births or low birth weight risk in women with prior induced abortions.¹⁴³ Premature birth may cause brain damage and an array of other severe, lifelong injuries ranging from cerebral palsy to blindness in the infants.¹⁴⁴

¹³⁷ *Id.* at 73 tbl.7 (citing n.90, M. Gissler et al., *Suicides After Pregnancy in Finland*, 313 BRIT. MED. J. 1431, 1431-34 (1996)).

¹³⁸ B. GARFINKEL ET AL., STRESS, DEPRESSION AND SUICIDE: A STUDY OF ADOLESCENTS IN MINNESOTA, RESPONDING TO HIGH RISK YOUTH 43-55 (1986).

¹³⁹ Amy R. Sobie & David C. Reardon, *Detrimental Effects of Adolescent Abortion*, 9 POST-ABORTION REVIEW (2001), http://www.afterabortion.info/PAR/V9/n1/teens_vs_older.html.

¹⁴⁰ *Impact of Abortion on Women: Hearing on S.R. 253 Before the S. Subcomm. on Science, Technology, and Space of the S. Comm. on Commerce, Science, and Transportation*, 108th Cong. (2004) (testimony of Elizabeth M. Shadigian, M.D., Clinical Associate Professor, Department of Obstetrics, University of Michigan) (citing Thorp et al., *supra* note 113, at 73 n.97 (A. Gilchrist et al., *Termination of Pregnancy and Psychiatric Morbidity*, 167 BRIT. J. PSYCHIATRY 243, 243-48 (1995))).

¹⁴¹ *Id.* (citing Thorp et al., *supra* note 113, at 73 n.93 (Christopher Morgan et al., *Suicides After Pregnancy*, 314 BRIT. MED. J. 902 (1997))).

¹⁴² Thorp et al., *supra* note 113, at 76.

¹⁴³ Brent Rooney & Byron C. Calhoun, *Induced Abortion and Risk of Later Premature Births*, 8 J. AM. PHYSICIANS & SURGEONS 46, 46 (2003), available at <http://www.jpands.org/vol8no2/rooney.pdf>.

¹⁴⁴ MARCH OF DIMES, PREMATUREITY: THE ANSWERS CAN'T COME SOON ENOUGH: COMPLICATIONS OF PREMATURE BIRTH (2005), <http://www.marchofdimes.com/prematurity/5512.asp>.

Large studies have reported a doubling of [early premature births] risk from two prior [induced abortions]. Women who had four or more [induced abortions] experienced, on average, nine times the risk of [extremely early premature birth], an increase of 800 percent. These results suggest that women contemplating [induced abortion] should be informed of this potential risk to subsequent pregnancies, and that physicians should be aware of the potential liability and possible need for intensified prenatal care.¹⁴⁵

While it is often said that abortion is significantly safer than completing the pregnancy, the fact is we simply don't have the statistical information to know. Abortion providers have conceded this fact in the published literature.¹⁴⁶ Yet any attempts to remedy this critical lack of public health information are fought by abortion-rights advocates.¹⁴⁷

VII. FEDERALISM CONCERNS

The final argument that opponents of the CCPA and CIANA raise are related to the proper limits on federal power:

¹⁴⁵ Rooney & Calhoun, *supra* note 143, at 46.

¹⁴⁶ J. Richard Udry et al., *A Medical Record Linkage Analysis of Abortion Underreporting*, 28 FAM. PLAN. PERSP. 228, 228 (1996), available at www.agi-usa.org/pubs/journals/2822896.html ("The primary limitation of many U.S. studies is that they use data on average characteristics of abortion patients, rather than directly matching records, and they rely on complicated algorithms and corrections that introduce opportunities for measurement error."). See also Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective*, in A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS 11, 20 (Maureen Paul et al., eds. 1999) ("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 the procedure was performed."); Haishan Fu et al., *Measuring the Extent of Abortion Underreporting in the 1995 National Survey of Family Growth*, 30 FAM. PLAN. PERSP. 128 (1998), available at <http://www.agi-usa.org/pubs/journals/3012898.html>; THE ALAN GUTTMACHER INSTITUTE, ISSUES IN BRIEF: THE LIMITATIONS OF U.S. STATISTICS ON ABORTION 2-3 (1997), <http://www.agi-usa.org/pubs/ib14.pdf>; and Audrey F. Saftlas et al., *Pregnancy-Related Morbidity*, in FROM DATA TO ACTION: CDC'S PUBLIC HEALTH SURVEILLANCE FOR WOMEN, INFANTS, AND CHILDREN 129, 137 (1994), available at <http://www.cdc.gov/reproductivehealth/Products&Pubs/DatatoAction/pdf/rhow10.pdf> ("no nationally representative data about legal abortion-related morbidity have been available or collected since the 1970s"); and David C. Reardon, *The Cover-Up: Why U.S. Abortion Mortality Statistics Are Meaningless*, 8 POST-ABORTION REVIEW (2000), <http://www.afterabortion.org/PAR/V8/n2/abortiondeaths.html>.

¹⁴⁷ See, e.g., *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (contesting statistical reporting requirement of Pennsylvania law).

Allowing a state's laws to extend beyond its borders runs completely contrary to the state sovereignty principles on which this country is founded. For example, gambling using slot machines is legal in the state of Nevada, but not in California. Residents of Nevada are prohibited from gambling while in California, while California residents of those states are permitted to gamble while in Nevada. Forcing citizens of California to carry their home state's law into Nevada, thereby prohibiting them from using slot machines while in Nevada, would be inconsistent with federalism principles. Requiring compliance within the borders of one state with the different and possibly conflicting law of another state would be even more ludicrous in the case of abortion—a constitutionally protected right—then it would be in the case of casino gambling, which is not a constitutionally protected activity.¹⁴⁸

Inherent in this argument are a number of assumptions, chief among them that a minor's obtaining a secret abortion is a "constitutionally protected activity" and that this activity trumps the historically recognized constitutional right of parents to direct the care and upbringing of their minor children. Both assumptions have little basis in the Supreme Court's current interpretation of the Constitution.

In *H.L. v. Matheson*, the Court specifically rejected the idea that "every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."¹⁴⁹ As Justice Stevens has observed, the Supreme Court "has never challenged a State's reasonable judgment that [a minor's abortion] decision should be made after notification to and consultation with a parent."¹⁵⁰ There simply is no right for all minors to obtain secret abortions found in the Constitution or its judicial interpretation.

In contrast, "the fundamental right of parents to make decisions concerning the care, custody, and control of their children"¹⁵¹ is one of the oldest interests protected by American law.¹⁵² The Court's re-

¹⁴⁸ CTR. FOR REPROD. RIGHTS, *supra* note 63, at 7.

¹⁴⁹ 450 U.S. 398, 408 (1991) (quoting *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 75 (1976)).

¹⁵⁰ *Hodgson v. Minnesota*, 497 U.S. 417, 445 (1990) (Stevens, J. concurring).

¹⁵¹ *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

¹⁵² *See, e.g., Meyer v. Nebraska*, 262 U.S. 390, 390-91 (1923) (holding that a state law prohibiting the teaching of foreign languages in public schools unconstitutionally infringes upon the liberty interests of parents and teachers); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (finding that the State may not abrogate parents' rights to direct their children's education) ("[Parents] have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.");

peated affirmations of this right have firmly established it as having constitutional magnitude.¹⁵³ Within this right is the right of a parent to direct the medical care of a minor:

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. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.¹⁵⁴

Laws requiring parental involvement prior to the performance of an abortion on a minor are merely a limited application of this general rule to a specific surgical procedure. For this reason, both parental notification and consent requirements have been upheld.¹⁵⁵

Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”).

¹⁵³ See, e.g., *Matheson*, 450 U.S. at 410 (“[C]onstitutional interpretation has consistently recognized that the parents’ claim to authority . . . to direct the rearing of their children is basic in the structure of society.” (quoting *Ginsberg v. New York*, 390 U.S. 629, 639 (1968))); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (“Our jurisprudence historically has reflected . . . broad parental authority over minor children. Our cases have consistently followed that course.”); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (“We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected.”); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents . . . is now established beyond debate as an enduring American tradition.”); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children ‘come[s] to this Court with a momentum for respect . . .’” (citing *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring))).

¹⁵⁴ *Parham*, 442 U.S. at 602 (citing *Pierce*, 268 U.S. at 535).

¹⁵⁵ See, e.g., *Lambert v. Wicklund*, 520 U.S. 292, 298 (1997) (upholding a Montana law requiring parental notification for minors seeking abortions); *Planned*

Given that states clearly have the constitutional authority to enact parental involvement laws, the only question posed by the CCPA and CIANA is whether Congress can pass legislation giving them extraterritorial effect. Professor Mark Rosen addressed this issue in his testimony before a Congressional Subcommittee:

First, [the CCPA] can be conceptualized as a federal law extension to state law that functions to increase the state law's efficacy. So understood, [the CCPA] does not extend the operation of state law extraterritorially, but simply is federal law that operates across state borders, as federal law often does.

Second, the criticism that [the CCPA] unlawfully extends state laws is based on the misconception that one state's regulatory authority ends at its borders. An early approach to choice-of-law believed that territorial location alone answered the question of what law applies, but this has been almost universally rejected in this country.¹⁵⁶ Today, state laws regularly apply to persons, transactions, and occurrences that occur outside the state's borders.¹⁵⁷ Thus scholarly restatements of the law and the Model Penal Code both understand that states may regulate their citizens out-of-state activities, and may even criminalize out-of-state activity that is permissible in the state where it occurs.¹⁵⁸

Parenthood v. Casey, 505 U.S. at 899 (“Our cases establish, and we reaffirm today, that a State may require a minor seeking an abortion to obtain the consent of a parent or guardian”); *Hodgson*, 497 U.S. at 417 (upholding a Minnesota law requiring parental notification and a forty-eight hour waiting period for minors seeking abortions); *Matheson*, 450 U.S. at 413 (noting that the mere requirement of parental notification for minors seeking abortions is constitutional, even though it may impose a burden on some minors); *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (“[A]lthough children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for ‘concern, . . . sympathy, and . . . paternal attention.’”) (quoting *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (1971)). As applied to minors, parental involvement laws further “the important considerations of family integrity and protecting adolescents . . . identified in *Bellotti II*.” *Matheson*, 450 U.S. at 411.

¹⁵⁶ See DAVID P. CURRIE ET AL., *CONFLICT OF LAWS: CASES—COMMENTS—QUESTIONS 2-6* (2001).

¹⁵⁷ For a comprehensive examination of states' powers to regulate their citizens' out-of-state activities, see Mark D. Rosen, *Extraterritoriality and Political Heterogeneity in American Federalism*, 150 U. PA. L. REV. 855, 856 (2002).

¹⁵⁸ A State “may apply at least some laws to a person outside its territory on the basis that he is a citizen, resident or domiciliary of the State.” RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §402 reporter's note 5 (1986). This principle

Third, even if states lacked the power to regulate their citizens' out-of-state activities under contemporary law, the Effects Clause and the Commerce Clause both can serve to extend states' regulatory powers. The Effects Clause gives Congress the power to alter the extraterritorial effect that one state's public acts, records and judicial proceedings have in other states. Thus before Congress enacted the Violence Against Women Act's full faith and credit provision, it was uncertain whether a protective order issued in State A would have effect in State B, whose laws differed from State A such that no protective order would be issued on the facts.¹⁵⁹ The federal act provided that State B was required to give effect to State A's protective order.¹⁶⁰ Similarly, while states on their own may not enact protectionist legislation that disallows goods from other states to cross their borders,¹⁶¹ the Commerce Clause allows Congress to grant states such powers to discriminate against goods from other states.¹⁶² As a structural matter, a federal government that umpires the sister states' regulatory powers vis-a-vis one another is eminently sensible, and several constitutional provisions—

applies to both extraterritorial criminal and civil legislative powers. *Id.* at §403 cmt. f. The Restatement applies its principles to the extraterritorial powers enjoyed by states within the United States. *Id.* at §402 reporter's note 5.

Directed to the criminal context, the Model Penal Code provides that State A may impose liability if "the offense is based on a statute of this State that expressly prohibits conduct outside the State." MODEL PENAL CODE §1.03(1)(f) (1962). The Model Penal Code provides that State A has extraterritorial legislative jurisdiction even if the activity it prohibits occurs in a State in which the activity is permissible. *Id.* at § 1.03 cmt. 3(b). The major limitation identified by the Model Penal Code is that the regulated conduct must bear "a reasonable relation to a legitimate interest" of the regulating state." *Id.* at § 1.03 cmt. 6. The Comment states that the "reasonable relation to legitimate interest" requirement "expresses the general principle of the fourteenth amendment limitation on state legislative jurisdiction." *Id.*

¹⁵⁹ See Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders*, 98 NW. U. L. REV. 827, 828-31 (2004).

¹⁶⁰ See 18 U.S.C. §2265 (2000).

¹⁶¹ See, e.g., *City of Philadelphia v. New Jersey*, 437 U.S. 617, 629 (1978).

¹⁶² See, e.g., *New York v. United States*, 505 U.S. 144, 171 (1992) ("While the Commerce Clause has long been understood to limit the States' ability to discriminate against interstate commerce, that limit may be lifted, as it has been here, by an expression of the 'unambiguous intent' of Congress.") (citations omitted).

including the Effects Clause and the Commerce Clause—empower Congress to serve this function.¹⁶³

In short, both state and federal governments have the ability to extend the reach of state laws that protect the welfare of the citizens of the states.

This principle clearly applies to CCPA. CIANA, however, goes beyond the extraterritorial enforcement of individual states' parental involvement laws and adds a national requirement of twenty-four hour notification to a parent of the minor's intent to obtain an abortion in cases where the minor has crossed state lines to obtain an abortion, absent a declaration of abuse by the minor, a medical emergency, an order of judicial bypass from the minor's home state, or compliance with the requirements of any parental involvement law from the minor's state of residence.¹⁶⁴ If the minor's home state has no parental involvement law and the minor crosses state lines to obtain an abortion, the law would require notification of the minor's parent.¹⁶⁵ For example, a minor residing in Washington is not legally required to involve a parent in her decision to obtain an abortion. Under CIANA, if she were to travel to Oregon to obtain an abortion, since neither state has a parental involvement law, CIANA would require the abortion provider to notify a parent of the minor twenty-four hours prior to the performance of the abortion.

The constitutional authority for Congress to enact such a law lies in its power to regulate interstate commerce. It seems beyond dispute that the provision of abortion services is within the channels of commerce, and therefore within the congressional power to regulate interstate commerce,¹⁶⁶ particularly when considering that the CCPA and

¹⁶³ *Congressional Power to Enact H. R. 1755, the "Child Custody Protection Act": Hearing on H. R. 1755 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 108th Cong. 6-7 (2004) (testimony of Mark D. Rosen, Associate Professor (with tenure), Chicago Kent College of Law), available at <http://www.judiciary.house.gov/media/pdfs/rosen072004.pdf>.

¹⁶⁴ Child Interstate Abortion Notification Act, H.R. 748, 109th Cong. § 2 (2005).

¹⁶⁵ H.R. 748, § 2.

¹⁶⁶ See *American Life League v. Reno*, 47 F.3d 642, 643 (4th Cir. 1995), cert. denied, 516 U.S. 809 (1995); *United States v. Gregg*, 226 F.3d 253, 268 (3d Cir. 2000); *Hoffman v. Hunt*, 126 F.3d 575, 589 (4th Cir. 1997), cert. denied, 523 U.S. 1136 (1998); *United States v. Bird*, 124 F.3d 667, 678 (5th Cir. 1997); *Norton v. Ashcroft*, 298 F.3d 547, 558 (6th Cir. 2002); and *United States v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996). See generally Robert J. Pushaw, Jr., *Does Congress Have the Constitutional Power to Prohibit Partial-Birth Abortion?*, 42 HARV. J. ON LEGIS. 319,

CIANA are, in part, responding to interstate advertising by abortion providers.¹⁶⁷ While opponents argue that a federal law would effectively impose the laws of twenty-four states on the rest of the Union,¹⁶⁸ this analysis ignores the fact that the legislatures of forty-five states have enacted some form of parental involvement in a minor's decision to obtain an abortion.¹⁶⁹ There is little merit in the claim that this legislation is responding to purely intrastate issues or supporting a minority position among the states.

CONCLUSION

Experience has shown that parental involvement laws decrease teen pregnancy and increase the ability of responsible parents to guide and support their minor daughters during this difficult time. They protect the health of minors by ensuring that parents had adequate information to monitor and respond knowledgeably to any post-abortion complications that arise. Such laws also assure the ability of parents to intervene in cases where their young daughters are being victimized by adult males who seek to conceal the consequences of their sexual conduct by persuading the girls to obtain secret abortions. Legislators in forty-five states have recognized the value of parental involvement in a minor's decision to obtain an abortion and have passed some form of parental involvement law. The CCPA and CIANA simply furthers the ability of states to protect their minor citizens and the rights of parents to be involved in the decisions of their daughters who are facing unplanned pregnancies.

321-23 (2005).

¹⁶⁷ See *supra* text accompanying notes 44-46.

¹⁶⁸ CTR. FOR REPROD. RIGHTS, *supra* note 63, at 7.

¹⁶⁹ See *supra* note 18.

APPENDIX A

**Excerpts of Testimony of Marcia Carroll,
in support of HR 748, The Child Interstate Abortion Notifica-
tion Act, before the Subcommittee on the Constitution, U.S.
House of Representatives
March 3, 2005**

On Christmas Eve 2004, my daughter informed me she was pregnant. I assured her I would seek out all resources and help that was available. As her parents, her father and I would stand beside her and support any decision she made.

We scheduled appointments with her pediatrician, her private counselor, and her school nurse. I followed all of their advice and recommendations. They referred us to Healthy Beginnings Plus, Lancaster Family Services, and the WIC program. They discussed all her options with her. I purposefully allowed my daughter to speak alone with professionals so that she would speak her mind and not just say what she thought I wanted to hear.

My daughter chose to have the baby and raise it. My family fully supported my daughter's decision to keep her baby and offered her our love and support.

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

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

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

took two subways to New Jersey. That is where his family met the children and took them to the abortion clinic, where one of the adults had made the appointment.

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

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

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

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

**Excerpts of Testimony of Joyce Farley,
in support of H.R. 3682, the Child Custody Protection Act, Sub-
committee on the Constitution, U.S. House of Representatives
May 21, 1998**

My daughter was a victim of several horrible crimes between the ages of 12 and 13. My child was provided alcohol, raped and then taken out of state by a stranger to have an abortion. This stranger turned out to be the mother of the adult male who provided the alcohol and then raped my 12 year old daughter while she was unconscious. The rapist's mother arranged and paid for an abortion to be performed on my child. This woman lied and falsified records at the abortion clinic to make sure this abortion would be completed without my knowledge. The abortion had been arranged to destroy evidence—*evidence that my 12 year old daughter had been raped*. On August 31, 1995, my daughter, who had just turned 13, underwent a dangerous medical procedure without anyone present who knew her past medical history as shown by the false information in the medical record.

Following the abortion, the mother of the rapist dropped off my physically and emotionally battered child in another town 30 miles away from our home. The plan was to keep the rape and abortion a

secret. If I had not contacted the state police on the morning of August 31, 1995 when I found my child missing, she might not be alive today. Severe pain and bleeding revealed complications from an incomplete abortion. This required further medical care and a second abortion to be performed. When my daughter began having complications from the first abortion, I contacted the New York clinic only to be told that her bleeding was normal and to increase her Naprosyn, which was given for pain, to every hour if needed. Being a nurse, I knew this advice was wrong and could be harmful, but my daughter would not have known this. It was obvious proper care could not be received from the New York clinic. Our Family Doctor made a referral to a gynecologist, and my daughter received the care she needed—in spite of the fact that the Clinic made it difficult to obtain her medical records. Who would have helped my daughter if the mother of the rapist was successful in keeping the abortion a secret? My child suffered terribly, but I am thankful that she is alive.

The bill you are considering today may help prevent this from happening to my neighbor's child, my future grandchildren, or any child in the United States. It has been three years since these crimes were committed, but my daughter still suffers physically and emotionally.

**Hon. James L Oberstar United States Representative from the
Eighth Congressional District of the State of Minnesota, in
support of H.R. 3682, the Child Custody Protection Act,
Subcommittee on the Constitution, U.S. House of Representatives
May 21, 1998**

On April 15, my friends found out that their 14-year-old daughter was pregnant. As a family, they were devastated. Although they had always believed that life is sacred and rejected abortion as an option, they were suddenly faced with the very real impact that an unwanted pregnancy for a child has on a family. They agonized over deciding whether their daughter could mentally withstand the stress of carrying the baby to term versus the horrible guilt for their daughter and themselves associated with aborting the baby solely for their own convenience.

My friends decided to take time to carefully study the options. They took their daughter for an ultrasound so she could see the fetus growing within her and think about what that developing life might mean. They scheduled a visit to St. Anne's home in Prince George's county, a residential community and school established for young, unwed

pregnant teens. They scheduled a visit to the Shady Grove Crisis Pregnancy Center so their daughter could better understand abortion procedures, risks, and psychological consequences. They arranged for discussions with adoption agencies so they could understand how a baby might bring joy to some deserving couple out of the pain that they as a family would endure during their daughter's pregnancy. And they prayed frequently with their family, friends, and church community for guidance.

My friends' daughter was swamped with confusing and conflicting feelings about the pregnancy. Initially, she wanted an abortion to avoid the terrible impact on her life of an unwanted baby. Then, as she reflected on her family and her own religious belief, she decided that she would have to see the pregnancy through and give up the baby for adoption since she knew she had no resources to raise and care for a baby. Then she thought briefly about her responsibility to this new life and considered the possibility of keeping the baby and trying to provide the love and care that an infant and developing child would need.

While my friends were struggling with trying to find the right answer for their family, and their daughter was experiencing a whirlwind of conflicting emotions, their daughter's friends, some of whom were over 20 years old, were pressuring her to have an abortion and end the pregnancy. Without any concern for the potential risks to this young girl, without consideration of the consequences to the family, and with no thought of the long term psychological consequences to this child, they continued to "turn up the heat" on her to have an abortion.

Finally, on May 1, my friends' daughter ran away from home, helped by these older so-called friends. The girl left before my friends were even able to help her finish looking at her options. Before she could see what support might be available to her, and before the procedures and consequences of the abortion could be explained.

For sixteen days, my friends' daughter was missing and they heard nothing from her. In their anguish, my friends imagined every conceivable terrible thing that could happen to their daughter. The combined efforts of the Montgomery County Police Department and the Montgomery County Sheriff's Department were unable to locate this missing girl. In the case of the police department, they told my friends that they processed almost 2000 runaway cases a year and had only 2 detectives assigned to follow-up on current cases. When the police learned that my friends' daughter might be seeking an abortion, they showed even less concern for trying to find this missing teenager.

Empty nights of loneliness and regret gave way to dreary dawns of increasing hopelessness as time passed, and no word came back on the location of their daughter.

Finally, completely unexpectedly, my friends' daughter showed up at home, pale as a ghost, weak, distraught, and emotionally nearly destroyed. Her so-called friends had helped her obtain an abortion outside of Maryland using a false name, and probably false medical information. Then they dumped her back near her parents' house and disappeared. This broken girl is now hospitalized for severe depression and faces a long and difficult recovery. Her family has been torn and denied the opportunity to provide the love, support, and advice that she needed to make a well thought out decision on the best possible course of action for herself. Bullied by thoughtless and self-centered outsiders, my friends' daughter succumbed to coercion and was drawn away from the family that loved her at the time she needed them most.