Parents' Right to Know

Voice mail 866-828-8355 E-mail: Janet@ParentsRight2Know.org…………………………………………………………

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

The Honorable Steve Chabot, Presiding

July 15, 2004

Prepared Testimony of
Professor Teresa Stanton Collett*

Good afternoon Mr. Chairman, Members of the Committee, and other distinguished guests. My name is Teresa Stanton Collett and I am a professor of law at the University of St. Thomas School of Law in Minneapolis, Minnesota.

I am honored to have been invited to testify on House Bill HR 1755, the "Child Custody Protection Act" (the "Act"). My testimony represents my professional knowledge and opinion as a law professor who writes in the area of family law, and specifically on the topic of parental involvement laws. It also represents my experience in assisting legislators across the country in evaluating parental involvement laws during the legislative process and defending parental involvement laws in the courts. I have served as a member of the Texas Supreme Court Subadvisory Committee charged with proposing court rules implementing the judicial bypass of that state's parental notice law, and I am currently representing a group of New Hampshire legislators defending that state's law in the federal courts. I appeared before the House Judiciary Committees in 1998 and 2001 to testify in support of predecessors to HR 1755, as well as the Senate Judiciary Committee last month in support of S.B. 851, the companion bill to HR 1755. My testimony today is not intended to represent the views of my employer, the University of St. Thomas, or any other organization or person.

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

---

* Professor of Law, University of St. Thomas School of Law, MSL 400, 1000 LaSalle Avenue, Minneapolis, MN 55403-2015, telephone 651-962-4973, fax (651) 962-4996, email tscollett@stthomas.edu.

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

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

Parental Rights to Control Medical Care of Minors

The United States Supreme Court has described parents' right to control the care of their children as "perhaps the oldest of the fundamental liberty interests recognized by this Court."[3] In addressing the right of parents to direct the medical care of their children, the Court has stated:

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

It is this need to insure the availability of parental guidance and support that underlies the laws requiring a parent is notified or gives consent prior to the performance of an abortion on his or her minor daughter. The national consensus in favor of this position is illustrated by the fact that there are parental involvement laws on the books in forty-four of the fifty

---

anacephalic child from life support over mother's objection). *See also* Gina Kolata, *Battle over a Baby's Future Raises Hard Ethical Issues,* NY TIMES, Dec. 27, 1994, at A1, and Michelle O. Ray, *Defying Death Sentence, Baby Ryan Heads Home*, NEWS TRIB., Mar. 6, 1995, at A1 (news reports of successful effort by parents of premature handicapped infant to enjoin hospital from discontinuing dialysis without their consent).

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

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

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

states.[5] Only six states in the nation have not attempted to legislatively insure some level of parental involvement in a minor's decision to obtain an abortion.[6]

---

[5] See Ala. Code § § 26-21-1 to-8 (Westlaw 2003 through organizational and 1st session); Alaska Stat. §§ 18.16.010(a)(3), .020, .030, .090(2) (Bender, WESTLAW through 2002 Replacement Set).; Ariz. Rev. Stat. Ann. § 36-2152 (West, WESTLAW through May 2004); Ark. Code Ann. § § 20-16-801 to-808 (WESTLAW through end of 2003 Reg. Sess.); Cal. Health & Safety Code § 123450 (West 1996 & Supp. 1999); COLO. REV. STAT. ANN. §§ 12-37.5-101 to -108 (WESTLAW through ch. 18 of 2003 1st Reg. Sess.); H.B. 1376, 64th General Assembly, Gen. Sess. (Co. 2003); Conn. Gen. Stat. Ann. § 19(a)-601 (WESTLAW current with amendments received through 2003 Jan. Reg. Sess., June 30 Sp. Sess. and Sept. 8 Sp. Sess.); Del. Code Ann. tit. 24, § § 1780-1789B (WESTLAW current through 2003 Regular Session of the 142nd General Assembly); Fla. Stat. Ann. § 390.01115 (WESTLAW current through May 12, 2004); Ga. Code Ann. § § 15-11-110 to-118 (WESTLAW current through end of 2003 Reg. Sess.); Idaho Code § 18-609(6) (WESTLAW current through end of 2003 session); 750 Ill. Comp. Stat. 70/1-70/99 (WESTLAW current through P.A. 93-673 of the 2004 Reg. Sess.); Ind. Code Ann. § § 16-18-2-267, 16-34-2-4 (WESTLAW current through P.L. 1 of 2004 2nd Regular Sess.); Iowa Code Ann. § § 135L.1-8 (WESTLAW current through end of 2003 1st Ex. Sess.); Kan. Stat. Ann. § 65-6705 (WESTLAW current through 2003 Reg. Sess.); Ky. Rev. Stat. Ann. § 311.732 (WESTLAW current through end of 2003 Reg. Sess.); La. Rev. Stat. Ann. § 40:1299.35.5 (WESTLAW current through all 2004 First Extraordinary Session Acts); Me. Rev. Stat. Ann. tit. 22, § 1597-A (WESTLAW current through 2003 First Special Session of the 121st Legislature); Md. Code Ann., Health-Gen. § 20-103 (WESTLAW current with laws from the 2004 Regular Session effective through May 11, 2004); Mass. Ann. Laws ch. 112, § 12s (WESTLAW current through Ch. 115 of the 2004 2nd Annual Sess.); Mich. Stat. Ann. § § 722.901 et seq. (WESTLAW current through P.A.2004, No. 102); Minn. Stat. Ann. § § 144.343 , 645.452 (WESTLAW current with 2004 Regular Session laws through Chapters 140, 144, 147, 150 to 152 and 158); Miss. Code Ann. § § 41-41-51 to-63 (WESTLAW current through end of 2003 Reg. Sess.); Mo. Ann. Stat. § § 188.015, 188.028 (WESTLAW current through the End of the First Regular and Second Extraordinary Sessions of the 92nd General Assembly (2003); Mont. Code Ann. § § 50-20-201 to-215 (WESTLAW current through the 2003 Regular Session of the 58th Legislature); Neb. Rev. Stat. § § 71-6901 to- 6909 (WESTLAW current through First Regular Session of the 98th Legislature (2003)); Nev. Rev. Stat. § § 442.255-.257 (WESTLAW current through the 2003 Reg. Sess. Of the 72nd Legislature and the 19th and 20th Spec. Sess. (2003)); N.H. Stat. Ann. §§132.25 et seq. (WESTLAW current through end of 2003 Reg. Sess.); N.J. Stat. Ann. § § 9:17A-1 to-1.12 (WESTLAW current through L.2004); N.M. Stat. Ann. § § 30- 5-1(C) (WESTLAW current through the Spec. Sess. Of the 46th Legislature (2004)); N.C. Gen. Stat. § § 90-21.6 et seq. (WESTLAW current through the 2003 Second Ex. Sess.); N.D. Cent. Code § § 14-02.1 to 03.1 (WESTLAW current through 2003 General and Spec. Sess.); OHIO REV. CODE ANN. §§ 2151.85, 2505.073, 2919.12, 2919.122 (WESTLAW current through 2004 File 76 of the 125th GA (2003-2004), apv. by 5/6/04); 18 Pa. Cons. Stat. Ann. § 3206 (WESTLAW current through Act 2004-21); R.I. Gen. Laws § 23-4.7-6 (WESTLAW current through Jan. 2003 Sess.); S.C. Code Ann. § § 44-41-10, 30 to-37 (WESTLAW current through end of 2003 Reg. Sess.); S.D. Codified Laws § § 26-1-1, 34-23A-7 (WESTLAW current through the end of the 2004 Reg. Sess.); Tenn. Code Ann. § 37-10-301 et seq. (WESTLAW current with laws from 2004 Second Reg. Sess. eff. April 30, 2004); Tex. Fam. Code Ann. § 33.001-.004 (WESTLAW current through the end of the 2004 Fourth Called Session); Utah Code Ann. § 76-7-304 (WESTLAW current through 2003 2nd Spec. Sess.); Va. Code Ann. § 16.1-241(V) as amended by Senate Bill 335 (WESTLAW current through 2003 Reg. Sess.); W. Va. Code § § 16-2F-1 et seq. (WESTLAW current with Laws of the 2004 Regular Session effective before April 15, 2004); Wis. Stat. Ann. § 48.375 (WESTLAW current through 2003 Act 137, published 3/4/04); Wyo. Stat. Ann. § 35-6-118 (WESTLAW current through 2003 Reg. Sess.).

[6] These are Hawaii, New York, Oklahoma, Oregon, Vermont, and Washington. But see Gandy v. Nova Health Systems, No. 02-5094 (10th Cir. awaiting opinion) (dispute regarding proper characterization of Oklahoma's abortion liability law).

Of the forty-four states that have enacted laws, nine statutes have been determined to have state or federal constitutional infirmities. Therefore the laws of thirty-five states are in effect today.[7] Ten of these states have laws that empower abortion providers to decide whether to involve parents or allow notice to or consent from people other than parents or legal guardians.[8] These laws are substantially ineffectual in assuring parental involvement in a minor's decision to obtain an abortion. However, parents in the remaining twenty-five states are effectively guaranteed the right to parental notification or consent in most cases.[9]

Widespread Public Support

There is widespread agreement that as a general rule, parents should be involved in their minor daughter's decision to terminate an unplanned pregnancy. This agreement even extends to young people, ages 18 to 24.[10] To my knowledge, no organizations or

---

[7] Courts in the face of claims of state or federal constitutional infirmity have enjoined the implementation of nine state statutes. See *Planned Parenthood v. State*, 3AN-97-6014 C1 (Alaska Super. Ct. Oct. 13, 2003) (Decision on Remand). The state has announced it will appeal the lower court decision. State to Appeal Abortion Decision, JUNEAU EMPIRE, Oct. 22, 2003;, *Glick v. McKay*, 616 F. Supp. 322, 327 (D. Nev. 1985), aff'd, 937 F.2d 434 (9th Cir. 1991); *American Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated state constitutional right to privacy); *North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So.2d 612 (Fla. 2003) (parental notification requirement violated state constitutional right to privacy); *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 (N.D. Ill. 1996) (Ill. Supreme Ct. refused to issue rules implementing Ill. Stat.); *Wicklund v. State*, No. ADV-97-671 (Mont. Dist. Ct. Feb. 25, 1999) (parental notification law violated state constitution) available at http://www.mtbizlaw.com/1stjd99/WICKLUND_2_11.*htm Planned Parenthood of Northern New England v. Heed*, 296 F.Supp.2d 59 (D.N.H. 2003) (striking down statute due to absence of health exception) appeal filed, No. 04-1161 (1st Cir); and *Planned Parenthood of Idaho, Inc. v.Wasden*, No. 02-35700 (9th Cir. July 16, 2004) (inadequate emergency bypass).

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

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

[10] A Kaiser Family Foundation/MTV Survey of 603 people ages 18-24 found that 68% favored laws requiring parental consent prior to performance of an abortion on girls under 18. *Sex Laws: Youth Opinion on Sexual Health Issues in the 2000 Election* (conducted July 5-17, 2000) available at <http://www.kcts.org/productions/youthpolitics/issues/index.asp l> (visited July 14, 2004). Similar results are found in polls taken from September 1981 to January 2004, which consistently reflect over 70% of the American public support parental consent or notification laws. See, e.g., Gallup/CNN/USA Today Poll (released Jan. 15, 2004) (73% favor requiring parental consent for abortion "for women under 18"); Gallup/CNN/USA Today Poll (Jan. 2003) (73% favor requiring parental consent for abortion "for women

individuals, whether abortion rights activists or pro-life advocates, dispute this point.[11] On an issue as contentious and divisive as abortion, it is both remarkable and instructive that there is such firm and long-standing support for laws requiring parental involvement.

Various reasons underlie this broad and consistent support. As Justices O'Connor, Kennedy, and Souter observed in *Planned Parenthood v. Casey*,[12] parental consent and notification laws related to abortions "are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart."[13] This reasoning led the Court to conclude that the Pennsylvania parental consent law was constitutional.

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

Improved Medical Care of Minor Girls

---

under 18") at http://www.ropercenter.uconn.edu/cgi-bin/hsrun.exe/Roperweb/HPOLL/StateId/CSueoIxGXgRkWdxycsQSKzWLZYY6u-U5Hp/HAHTpage/summary_link?QSTN_ID=480478; CBS News/ NY Times Poll (released Jan. 15, 1998) (78% of those polled favor requiring parental consent before a girl under 18 years of age could have an abortion); Americans United for Life, Abortion and Moral Beliefs, A Survey of American Opinion (1991); Wirthlin Group Survey, Public Opinion, May-June 1989; Life/Contemporary American Family (released December, 1981) (78% of those polled believed that "a girl who is under 18 years of age [should] have to notify her parents before she can have an abortion"). Other polling results are available in Westlaw, Dialog library, poll file.

[11]"Adolescents should be encouraged to seek their parents' advice when facing difficult choices regarding family planning and prevention and treatment of sexually transmitted diseases (STDs)." NARAL Prochoice America, *Mandatory Parental Consent and Notice Laws and the Freedom to Choose*, Summary (Jan. 22, 2003) at http://www.naral.org/facts/parental_consent_laws.cfm; "Physicians should strongly encourage minors to discuss their pregnancy with their parents. Physicians should explain how parental involvement can be helpful and that parents are generally very understanding and supportive. If a minor expresses concerns about parental involvement, the physician should ensure that the minor's reluctance is not based on any misperceptions about the likely consequences of parental involvement." Council on Ethical and Judicial Affairs, American Medical Association, *Mandatory Parental Consent to Abortion*, JAMA 82 (January 6 1993) (opposing laws that mandate parental involvement on the basis that such laws may expose minors to physical harm, or compromise "the minor's need for privacy on matters of sexual intimacy.")

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

[13] 505 U.S. at 895. In *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976), the first of a series of United States Supreme Court cases dealing with parental consent or notification laws, Justice Stewart wrote, "There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried pregnant minor to seek the help and advice of her parents in making the very important decision of whether to have a child." *Id.* at 91. Three years later the Court acknowledged that parental consultation is critical for minors considering abortion because "minors often lack the experience, perspective and judgment to avoid choices that could be detrimental to them." *Bellotti v. Baird*, 443 U.S. 622, 640, (1979) (*Bellotti II*) (plurality opinion). The *Bellotti* Court also observed that parental consultation is particularly desirable regarding the abortion decision since, for some, the situation raises profound moral and religious concerns. *Bellotti II*, 443 U.S. at 635.

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

As with all medical procedures, one of the most important guarantees of patient safety is the professional competence of those who perform the medical procedure. In *Bellotti v. Baird*, the United States Supreme Court acknowledged the superior ability of parents to evaluate and select appropriate healthcare providers.[14]

> In this case, however, we are concerned only with minors who according to the record range in age from children of twelve years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.[15]

In testimony before a federal district court, one abortion provider described some clinics as having a "cattle herd mentality" [16] and published news accounts bear this out.[17]

Parents helping their daughters respond to an unplanned pregnancy through abortion will evaluate not only the clinic, but the physician performing the abortion. For example, historically the National Abortion Federation has recommended that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the state Board of Medical Examiners and that the doctor have admitting privileges at a local hospital not more than twenty minutes away from the location where the abortion is to occur in order to insure adequate care should complications arise.[18] These recommendations were deleted after they were introduced into evidence in malpractice cases against abortion providers. Notwithstanding this change in the NAF recommendations, a well-informed parent seeking to guide her child is more likely to inquire regarding these matters than a panicky teen who just wants to no longer be pregnant.

---

[14] 443 U.S. 622 at 641 (1979) (*Bellotti II*).

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

[16] *Women's Medical Ctr. of NW Houston v. Archer*, 159 F.Supp. 2d 414 at 428 (S.D. Tex. 1999).

[17] See Warren King, *State, Osteopath Settle Case*, The Seattle Times (July 25, 1990) at http://archives.seattletimes.nwsource.com (abortionist agrees to discontinue his practices of using expired medications, nonsterile supplies and instruments, and failing to follow basic sanitation procedures such as washing his hands and putting on fresh gloves before approaching each patient); Steve Wheeler, *Ex-Delta Women's Clinic Workers File Complaints*, THE BATON ROUGE ADVOCATE 1B (Oct. 4, 1994) (former employees charge that that conditions at clinic are "unsafe and unsterile"); T.C. Brown, *Abortion Clinic Must Get License: Shaker Blvd. Center 1of 12 Under Order*, THE PLAIN DEALER (Cleveland, Ohio Nov. 12, 1999) (clinic referred to state attorney general due to infection control problem); and Leslie Reed, *Planned Parenthood Site Penalized: An Abortion Foe's Complaint Spurs Inspections; A Lincoln Clinic Gets Probation for Violating Instrument Sterilization Rules*, OMAHA WORLD-HERALD (Dec. 25, 2002).

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

Care in the selection of the individual performing the abortion is especially important as evidenced by the recent conviction of Dr. Brian Finkel on 22 counts of sexually abusing patients.[19] Dr. Finkel performed twenty percent of all abortions in Arizona, prior to the disclosure of the abuse.[20] Unfortunately his is not an isolated case. Dr. Phillip Alberts, an Oregon abortionist, died before trial could be completed on 29 counts of sexually abusing his patients.[21] Dr. Ronald Stevenson also provided abortions in Oregon prior to his conviction this year for sexual harassment of patients. Patients had previously complained to police of sexual assault in 1997.[22] These are just three of the reported cases of sexual assaults of patients by abortion providers.

A second benefit of parental involvement laws is that parents have the opportunity to provide additional medical history and information to abortion providers prior to performance of the abortion.[23]

---

[19] Carol Sowers, *Finkel Gets 35 Years; Phoenix Abortion Doctor Sentenced in Sex-Abuse Case*, ARIZONA REPUBLIC at B1 (Jan. 3, 2004) at 2004 WL 57356056.

[20] Carol Sowers, *Prosecutor Wraps Up Abortion Doctor Case*, ARIZONA REPUBLIC at B4 (Oct. 28, 2003) at 2003 WL 71410084.

[21] *Woman Wins Claim Against Dr. Alberts for Unneeded Surgery*, PORTLAND OREGONIAN D02 (Aug. 12, 1995) at 1995 WL 9181194.

[22] See e.g. Lisa Rosetta, *Doctor Convicted of Harassment*, The Bulletin (Bend, Ore. Feb. 14, 2004) at http://www.bendbulletin.com. ().

[23] See Kaisernetwork.org, *Texas Department of Health Tentatively Approves New Abortion Regulations*, State Politics and Policy (Nov. 3, 2003) (new regulations result of settlement of lawsuit over failure to properly enforce parental notification and informed consent requirements of Texas law.) at http://www.kaisernetwork.org/daily_reports/rep_index.cfm?hint=2&DR_ID=20656. Plaintiffs in lawsuit resulting in new regulations included mother of minor who had history of mental health problems, yet obtained judicial bypass. Kaisernetwork.org, *Texas Justice Foundation Lawsuit Claims State Agencies Fail to Enforce Abortion Laws*, State Politics and Policy (Jan. 25, 2002).

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

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

See also Anna Glasier, *Counseling for Abortion, in* MODERN METHODS OF INDUCING ABORTION 112, 117 (David T. Baird et al. eds., 1995)("20% of women suffer from severe feelings of loss, grief and regret"); Jo Ann Rosenfeld, *Emotional Responses to Therapeutic Abortion*, 45 AM. FAM. PHYSICIAN 137, 138 (1992) ("Teenagers who do not tell their parents about their abortion have an increased incidence of emotional problems and feelings of guilt."); Mika Gissler, *Suicides After Pregnancy in Finland 1987-1994: Register to Linkage Study,* 313 BRIT. MED. J. 1431, 1433 (1996); H. David et al., *Postpartum and Postabortion Psychotic Reactions*, 13 FAMILY PLANNING PERSPECTIVES 889 (1981) and David C. Reardon, 95 So. Med. J. 834 (Aug. 2002) available at www.sma.org/smj/index.cfm. Additional sources are collected and discussed in Thomas R. Eller, *Informed Consent Civil Actions for Post-Abortion Psychological Trauma*, 71 NOTRE DAME L. REV. 639 (1996).

> The medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.[24]

Abortion providers, in turn, have the opportunity to disclose the medical risks of the procedure to the adult who can advise the girl in giving her informed consent to the surgical procedure.[25] Parental notification insures that the abortion providers inform a mature adult of the risks and benefits of the proposed treatment, after having received a more complete and thus more accurate medical history of the patient.

The third way in which parental involvement improves medical treatment of pregnant minors is by insuring that parents have adequate knowledge to recognize and respond to any post-abortion complication that may develop.[26] While it is often claimed that abortion is one of the safest surgical procedures performed today, the actual rate of many complications is simply unknown because there is no coordinated national effort to collect and maintain this information.[27]

Notwithstanding this failure by public health authorities, abortion providers have identified infection is one of the most common post-abortion complications.[28] The warning signs of infection typically begin within the first forty-eight to ninety-six hours after the abortion and can include fever, pain, pelvic tenderness, and elevated white blood count.[29] Caught early, most infections can be treated successfully with oral antibiotics.[30] Left untreated, it can result in death.

Similarly post-operative bleeding after an abortion is common, and even where excessive[31] can be easily controlled if medical treatment is sought promptly. However,

---

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

[25] This is particularly important in cases where the consent forms signed by the patients often seemingly limit their ability recover should they be injured during the abortion. See e.g. *Broemmer v. Abortion Serv. of Phoenix, Ltd.,* 840 P.2d 1013 (Ariz. 1992) and *Blanton v. Womancare, Inc*., 696 P.2d 645 (Cal. 1985).

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

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

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

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

[30] *See id*. at 206-07.

[31] The National Abortion Federation defines excessive bleeding as "saturation of more than one pad per

hemorrhage is a one of the most serious post-abortion complications and should be evaluated by a medical professional immediately. [32] Untreated it can result in the death of the minor.[33]

Experts often characterize a perforated uterus is a "normal risk" associated with abortion.[34] This complication also can be easily dealt with if detected early, but lead to serious consequences if medical help is not sought promptly.

Many minors may ignore or deny the seriousness of post-abortion symptoms or may lack the financial resources to respond to those symptoms.[35] This is because some of the most serious complications are delayed and only detected during the follow-up visit; yet, only about one-third of all abortion patients actually keep their appointments for post-operative checkups.[36] Absent parental notification, hemorrhaging may be mistaken for a heavy period and severe depression as typical teenage angst.

Increased Protection from Sexual Assault

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental notification will provide increased protection against sexual exploitation of minors by adult men. National studies reveal "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[37] In a study of over 46,000

---

hour for more than three hours." NATIONAL ABORTION FEDERATION, CLINICAL POLICY GUIDELINES, *Delayed Bleeding*, Standard 3 (2002) available at http://www.guideline.gov and enter National Abortion Federation as search.

[32] NATIONAL ABORTION FEDERATION, CLINICAL POLICY GUIDELINES, *Complications: Bleeding*, Policy Statement (2002) available at http://www.guideline.gov and enter National Abortion Federation as search.

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

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

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

[36] *See id*.

[37] American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy – Current Trends and Issues: 1998*, 103 PEDIATRICS 516, 519 (1999), also available on the worldwide web at <http:// www.aap.org/policy/re9828.html>. See also Nat'l Ctr. for Health Statistics, *Report to Congress on Out-*

pregnancies by school-age girls in California, researchers found that "71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers. . . . Even among junior high school mothers aged 15 or younger, most births are fathered by adult men 6-7 years their senior. *Men aged 25 or older father more births among California school-age girls than do boys under age 18*."[38] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[39]

A survey of 1500 unmarried minors having abortions revealed that among minors who reported that neither parent knew of the abortion, 89% said that a boyfriend was involved in deciding or arranging the abortion (and 93% of those 15 and under said that a boyfriend was involved).[40] Further, 76% indicated that a boyfriend helped pay the expenses of the abortion. Clearly, a number of young girls who obtained abortions without their parents' knowledge were encouraged to do so by a sexual partner who could be charged with statutory rape. Secret abortions do nothing to expose these men's wrongful conduct.[41] In fact, by aborting the pregnancy abusive partners avoid the public evidence of their misconduct and are licensed to continue the abuse. Parental notification laws insure that parents have the opportunity to protect their daughters from those who would victimize their daughters further.

---

of-Wedlock Childbearing, DHHS Pub. No. (PHS) 95-1257 (1995) available at http://www.cdc.gov/nchs/data/misc/wedlock.pdf.

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

Id. at 12.

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

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

[40] Henshaw & Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Fam. Plan. Persp.196-213 (1992).

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

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

Id. at 273-74.

Abortion providers are reluctant to report information indicating a minor is the victim of statutory rape.[42] Failure to report 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.[43] 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.[44] Or consider the case of the Connecticut ten-year old girl impregnated by a seventy-five year old man. The child was examined by two physicians who failed to report the sexual abuse to public authorities, as required by Connecticut law.[45] A 36-year-old Nebraska man went so far as to impersonate the father of the 16-year-old girl he had impregnated in an attempt to obtain an abortion, and thus hide any evidence of their illegal relationship.[46]

Furthermore, by failing to preserve fetal tissue the abortion providers may make effective prosecution of the rape impossible since the defendant's paternity cannot be established through the use of DNA testing.[47]

Today you will hear from Joyce Farley and her daughter about the attempt of the mother of rapist to insure that her son's misdeed would not be discovered. This conduct is not unique.[48] Just last December another woman impersonated the mother of her son's girlfriend in an attempt to bypass the parental involvement law of Wisconsin.[49] School

---

[42] Patricia Donovan, *Caught Between Teens and the Law: Family Planning Programs and Statutory Rape Reporting*, 3 Family Planning Perspectives 5 (1998).

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

[44] Inara Verzemnieks, *Child's Abortion: No Alarm Bells?*, THE OREGONIAN (Mar. 11, 1997) (reporting failure of abortion clinic to report sexual abuse of 11-year-old impregnated by 41-year-old live-in-lover of child's mother).

[45] Christine Walsh, *Conn. Doc Set to be Cleared in Abuse Case,* India New England (Jan. 15, 2003) available at http://www.indianewengland.com/news/2003/01/15/Connecticut/Conn-Doc.Set.To.Be.Cleared.In.Abuse.Case-345711.shtml. "Failure To Report Pregnancy Brings Charges." *The Hartford Courant*, April 27, 2002; John Christoffersen, Associated Press. "Medical Society Urges Dismissal of Charges Against Bridgeport Doctor." *Boston Globe*, August 21, 2002; Christa Lee Rock. "Doctors Want Case Dropped." *New Haven Register*, August 23, 2002; Colin Poitras. "Charges Against Doctors Let Stand In Child's Case." *The Hartford Courant*, September 24, 2002; "Doctors to Stand Trial for not Reporting Abuse, Referring for Abortion." Associated Press; September 26, 2002; Steve Ertelt's *Pro-Life Infonet* at http://www.prolifeinfo.org, September 27, 2002; Daniel Tepfer. "15 Year Sentence Wanted for Child Predator: Man, 75, Admits He Fathered Girl's Baby." *Connecticut Post*, October 9, 2002.

[46] *Omaha World-Herald*, June 14, 2000; "Omaha Man Sentenced in Abortion-Fraud Case."

[47] *See Commonwealth v. Sasville*, 616 N.E.2d 476 (Mass. 1993).

[48] *See* Jessica McBride, *Mother Charged with Falsifying Consent Form for Abortion*, Milwaukee Journal Sentinel (Dec. 22, 2003) available at http://www.jsonline.com.

[49] Jessica McBride, *Mother Charged with Falsifying Consent Form for Abortion*, MILWAUKEE

officials also have taken it upon themselves to advise minors to have abortions and keep it secret from their parents.[50] Such conduct has been found to be unconstitutional, I should note.

States adopting parental involvement laws have come to the reasonable conclusion that secret abortions do not advance the best interests of most minor girls.[51] This is particularly reasonable in light of the fact that most teen pregnancies are the result of sexual relations with adult men, and many of these relationships involve criminal conduct. Parental involvement laws insure that parents have the opportunity to protect their daughters from those who would victimize their daughters again and again and again. The Child Custody Protection Act would insure that men cannot deprive these minors of this protection by merely taking the girls across state lines for abortions.

Effectiveness of Judicial Bypass

In those few cases where it is not in the girl's best interest to disclose her pregnancy to her parents, state laws generally provide the pregnant minor the option of seeking a court determination that either involvement of the girl's parent is not in her best interest, or that she is sufficiently mature to make decisions regarding the continuation of her pregnancy. This is a requirement for parental consent laws under existing United States Supreme Court cases, and courts have been quick to overturn laws omitting adequate bypass.[52]

In the past opponents of the Child Custody Protection Act have argued that its passage would endanger teens since parents may be abusive and many teens would seek illegal abortions.[53] This is a phantom fear. Parental involvement laws are on the books in over two-thirds of the states, some for over twenty years, and there is no case where it has been established that these laws led to parental abuse or to self-inflicted injury.[54] Similarly, there is no evidence that these laws have led to an increase in illegal abortions.[55]

JOURNAL SENTINEL (Dec. 22, 2003) at www.jsonline.com/news. /metro/dec03/194706.asp.

[50] Arnold v. Board of Education, 880 F.2d 305 (11th Cir. 1989). See also Gruenke v. Seip, 225 F.3d 290 306 (3rd Cir. 2000) (coach required player to take pregnancy test without advising parents of concern).

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

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

Id. at 273-74.

[52] See n. 7 *supra*.

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

[54] A 1989 memo prepared by the Minnesota Attorney General regarding Minnesota's experience with its

It often asserted that parental involvement laws do not increase the number of parents notified of their daughters' intentions to obtain abortions, since minors will commonly seek judicial bypass of the parental involvement requirement.[56] Assessing the accuracy of this claim is difficult since parental notification or consent laws rarely impose reporting requirements regarding the use of judicial bypass. A few states however have begun to gather this information. In 2002, 852 girls got abortions in Alabama with a parent's approval and 12 with a judge's approval, according to state health department records. Idaho similarly reports less than five percent using judicial bypass to avoid that state's parental consent law (64 minors with parental consent/3 with judicial bypass) in 2002. South Dakota reports fourteen of seventy-six minors obtained judicial bypasses, rather than parental consent. In Texas where 3,654 minors obtained abortions, the Texas Department of Health paid for assistance in 284 judicial bypass proceedings. In Wisconsin, less than ten percent of the minors obtaining abortions did so with the use of an order obtained through judicial bypass (727 with parental involvement/63 with judicial bypass).

Conclusion

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

Experience in states having parental involvement laws has shown that, when notified, parents and their daughters unite in a desire to resolve issues surrounding an unplanned pregnancy. If the minor chooses to terminate the pregnancy, parents can assist their daughters in selecting competent abortion providers, and abortion providers may receive more comprehensive medical histories of their patients. In these cases, the minors will more likely be encouraged to obtain post-operative check-ups, and parents will be prepared to respond to any complications that arise.[57]

---

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

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

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

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

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

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

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

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

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