



Katharine Button
05/14/98 01:36:46 PM

Record Type: Record

To: Jennifer L. Klein/OPD/EOP
cc:
Subject: Child Custody Protection Hearings

----- Forwarded by Katharine Button/WHO/EOP on 05/14/98 01:39 PM -----



Audrey T. Haynes

05/14/98 01:32:20 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Child Custody Protection Hearings

I just spoke with folks at NARAL regarding the hearing on Wed. in the Senate. She reported the following:

Hatch is bringing 4 potential witnesses:

1. Prof. Harrison - a UVA law professor
2. Ilene Roberts - representing the anti choice groups
3. A Parent/Victim case involving a mother in PA where daughter was transported into NJ (not confirmed yet)
4. PA Attorney General (not confirmed yet)

Leahy and Kennedy are carrying the water on the committee. Word is they are putting forth 2 witnesses who are confirmed and are putting pressure on Justice to be the third.

The two witnesses are:

1. Karen and Bill Bell- they are from Indiana and even though they had a close relationship with their daughter but she did not feel as though she could talk with them about an illegal abortion and ended up dying.
2. Dr. Rene' Jenkins from the American Society for Adolescent Medicine and is on the board of Howard University Hospital. Will speak from the aspect of health organizations, physicians, etc. will talk about the importance of confidentiality, et. Folks say she is excellent.
3. They are reserving for Justice?

Our internal meeting is scheduled for Monday at 5pm. They also said that Leahy and Kennedy staff wanted a meeting with WH staff and them.....??

thanks

Message Sent To:

Janelle E. Erickson/WHO/EOP
Peter G. Jacoby/WHO/EOP
Maria Echaveste/WHO/EOP
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Robin Leeds/WHO/EOP
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NARAL Promoting Reproductive Choices**FAX COVER SHEET**

DATE: May 13, 1998

TO: Elena Kagan, Deputy Assistant to the President

OFFICE: Domestic Policy Council

FAX: 456-2878

FROM: Betsy Cavendish, Legal Director, NARAL

PHONE: (202) 973-3012 **FAX:** (202) 973-3030

THIS IS PAGE ONE OF 28 TOTAL PAGES

COMMENTS: Elena, I spoke briefly with your assistant, Laura. Attached are materials on the Child Custody Protection Act. The Senate Judiciary Committee is holding hearings on the bill on May 20 and the House just announced that they will hold hearings the following day. In short, the bill is moving fast and we need to stop the train.

Opponents are limited in witnesses, but of course, DOJ would be a "free" witness and its voice would be of huge assistance to reproductive rights. I have spoken to Dawn about this possibility and have not received a final response.

I also include for your information a letter to the editor of the WSJ we wrote last week in response to Mary Ann Glendon's piece, in which we dispute her erroneous claim that the President has never wavered from supporting unrestricted abortion rights up to and including birth.

It would be nice to see you soon! Betsy

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NARAL Promoting Reproductive Choices

TO: Reproductive Choice & Judiciary Committee Staff
FROM: Allison Herwitt, Acting Director for Government Relations
DATE: April 16, 1998
RE: *Senate Judiciary Hearing on S. 1645, the so-called "Child Custody Protection Act"*

As early as the week of April 27, 1998, the Senate Judiciary Committee may hold a hearing on S. 1645, legislation that would make it a federal crime to transport a young woman across state lines for an abortion. The bill, sponsored by Senator Spencer Abraham, would prohibit anyone, including a step-parent, grandparent or religious counselor, from taking a young woman across state lines for an abortion if it would violate the state's parental involvement law.

While NARAL strongly believes that adolescents should be encouraged to seek their parent's advice and counsel when facing difficult choices regarding abortion and other reproductive health issues, the government cannot mandate healthy, open family communication where it does not already exist. Most young women do involve one or both parents when considering abortion. In states that enforce no mandatory parental consent or notice requirements, more than 75 percent of minors under 16 involve one or both parents. However, when a young woman cannot involve a parent, public policies and medical professionals should encourage her to involve a trusted adult.

Instead of encouraging young women to involve a trusted adult who may be able to offer much needed assistance, this bill will cause some young women to face these decisions alone, without any help. Should S. 1645 be enacted, it could endanger young women's lives and health by isolating young women who believe they cannot involve a parent.

Attached is a fact sheet on S. 1645 to help you prepare for the upcoming hearing. Please do not hesitate to call me if you have additional questions. I can be reached at 973-3047.

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NARAL Promoting Reproductive Choices**S. 1645/H.R. 3682 IS A THREAT TO YOUNG WOMEN'S HEALTH**

Legislation was recently introduced in the House and Senate that would prohibit anyone, including a step-parent, grandparent or religious counselor, from taking a young woman across state lines for an abortion if it would violate the state's parental involvement law.

Adolescents should be encouraged to seek their parents' advice and counsel when facing difficult choices regarding abortion and other reproductive health issues. Indeed, most young women do involve one or both parents when considering abortion. Even in states that enforce no mandatory parental consent or notice requirements, more than 75 percent of minors under 16 involve one or both parents.¹ The government, however, cannot mandate healthy family communication where it does not already exist.

When a young woman cannot involve a parent, public policies and medical professionals should encourage her to involve a trusted adult. Indeed, one study found that more than half of all young women who did not involve a parent did involve an adult, including 15 percent who involved a step-parent or adult relative.² However, if S. 1645/H.R. 3682, the so-called "Child Custody Protection Act" is enacted, it could endanger young women's lives and health by isolating young women who believe they cannot involve a parent. Rather than making abortion more difficult and dangerous for young women, Congress should do more to create the conditions which enable women to make true choices by providing comprehensive sexuality education and ensuring that women have access to a range of effective contraceptives.

This Legislation Would Further Isolate Those Young Women Who -- For Good Reasons -- Do Not Involve A Parent In Their Decision To Have An Abortion.

Most young women find love, support and safety in the home. Many, however, justifiably fear that they would be physically or emotionally abused if forced to disclose their pregnancy. Often young women who do not involve a parent come from families where government-mandated disclosure could have devastating effects.

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- There were approximately 3.1 million cases of child abuse reported in 1996. Young women considering abortion are particularly vulnerable because family violence is often at its worst during a family member's pregnancy.³
- Among minors who did not tell a parent of their abortion, 30 percent had experienced violence in their family or feared violence or being forced to leave home.⁴
- In Idaho, a 13-year-old sixth grade student named Spring Adams was shot to death by her father after he learned she was to terminate a pregnancy caused by his acts of incest.⁵
- In addition to fear of violence, some minors do not involve a parent because they believe that the knowledge would damage their relationship with the parent, they fear that it would escalate conflict or coercion, or they want to protect a vulnerable parent from stress and disappointment.⁶

When a young woman believes that she cannot involve a parent, the law cannot mandate healthy, open family communication where it does not already exist. Indeed there is no evidence that laws like S. 1645/H.R. 3682 will do anything but isolate young women who believe -- for valid reasons -- that they cannot involve a parent. Instead of encouraging young women to involve a trusted adult who may be able to offer much needed assistance, this law will cause some young women to face these decisions alone, without any help.

This Legislation Would Endanger Young Women's Health.

Young women who determine that they cannot involve a parent often seek help and guidance from other important and trusted people in their lives such as grandparents, aunts or ministers. Such people can provide a minor with valuable advice, counsel and assistance. However, this bill would discourage young women from seeking such help or assistance and would further isolate them in their decision. As a result, the legislation could force some young women to turn to illegal or self-induced abortion or to delay the procedure.

- By discouraging -- in fact, criminalizing -- people who help young women in crisis pregnancies, the law could expose these young women to increased health risks. In one study, 93 percent of the minors who did not involve a parent in their decision to obtain an abortion were nonetheless accompanied by someone to the abortion clinic.⁷ Such company is important to provide assistance to a minor before and after the abortion. However, under this legislation, minors will be forced to go by themselves and potentially to drive long distances by themselves, thereby exposing them to greater health risks.

- When faced with parental involvement laws, young women who feel they cannot involve a parent take drastic steps:
 - The American Medical Association noted that "[b]ecause the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a 'back alley' abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since . . . 1973."⁸
 - In Indiana, Rebecca Bell, a young woman who had a very close relationship with her parents, died from an illegal abortion because she did not want her parents to know about her pregnancy but Indiana law required parental notice before she could have a legal abortion.⁹
- Obstacles such as parental involvement laws increase the health risks to women by increasing the gestational age at which young women obtain abortions. The American Medical Association concluded in a 1992 study that parental consent and notice laws "increase the gestational age at which the induced pregnancy termination occurs, thereby also increasing the risk associated with the procedure."¹⁰ Although a first or second trimester abortion is far safer than childbirth, the risk of death or major complications significantly increases for each week that elapses after eight weeks.¹¹ This legislation could exacerbate the time delays for young women seeking abortion and could cause young women to get later abortions.

A Parent Could Be Prosecuted Under This Legislation For Helping A Daughter Facing A Crisis Pregnancy.

Under this legislation, a parent, step-parent or grandparent could be jailed for taking his or her daughter to a neighboring state for an abortion.

- Access to abortion providers in the United States is limited. Eighty-four percent of counties do have an abortion provider.¹² For some women, a reproductive health facility in another state may be the closest to their home. For instance, a reproductive health clinic in Duluth, Minnesota serves women from Minnesota, Wisconsin, Michigan and Ontario, Canada.¹³ Under this legislation, a parent of a pregnant minor who lives in a state that requires the written consent of a parent could be subject to criminal charges for taking her minor daughter to an out-of-state facility if the parent failed to comply with the written consent of the state of residence, even if the out-of-state facility was the closest to the parent's home.

- Six states (AR, ID, MN, MS, ND, UT) have laws that require both parents to be involved in a minor's decision to terminate a pregnancy.¹⁴ Some of these statutes do not provide an exception when the parents are divorced or separated, where the non-custodial parent has not been involved in the minor's life, or where one parent fears abuse from the other parent. A parent's perception in a dysfunctional family that there will be violence if the non-custodial parent learns of the daughter's pregnancy is likely to be accurate.¹⁵
- If S. 1645/H.R. 3682 goes into effect, a parent in these states would be prohibited from taking his or her daughter to a neighboring state to obtain an abortion. For instance, in Mississippi, where the state requires that both parents consent to a minor's abortion, a parent could not take a daughter to Alabama or Louisiana even if the parent complied with the one parent consent law in Alabama or Louisiana.¹⁶

Because A Judicial Bypass Is Not A Realistic Option, Some Young Women Obtain Abortions in Neighboring States.

Many states that require parental consent or notice laws provide a judicial bypass through which a young woman can seek a court order allowing an abortion without parental involvement. For young women, it can be overwhelming and at times impossible to manage the judicial bypass procedures. Some young women cannot maneuver the legal procedures required, or cannot attend hearings scheduled during school hours. Others do not go or delay going because they fear that the proceedings are not confidential or that they will be recognized by people at the courthouse. Many young women do not want to reveal intimate details of their personal lives to strangers.¹⁷ The time required to schedule the court proceeding may result in a delay of a week or more, thereby increasing the health risks of the abortion.¹⁸

Some young women who manage to arrange a hearing face judges who are vehemently anti-choice and who routinely deny petitions, despite rulings by the U.S. Supreme Court that a minor must be granted a bypass if she is mature or if an abortion is in her best interests. As a result, minors in states with parental involvement laws frequently go to a neighboring state to obtain an abortion instead of trying to obtain a judicial bypass.¹⁹

- In Indiana, lawyers and clinics routinely refer teenagers out of state because local judges either refuse to hold hearings or are widely known to be anti-choice.²⁰
- Young women's concern about confidentiality is especially acute in rural areas. For instance, in one case a minor discovered that her bypass hearing would be conducted by her former Sunday school teacher.²¹
- The Ohio Supreme Court upheld the denial of a petition of a 17-year-old girl who testified that her father beat her. At the time, she was a senior in high school with a 3.0 average who played team sports, worked 20-25 hours a week, and paid for her automobile expenses and medical care.²²

The Legislation Contains Legal Deficiencies.

The legislation contains several legal weaknesses that could render it unconstitutional.

- Under this legislation, a young woman who determined that she could not involve her parents may have to go through a judicial bypass in two states. For instance, if the young woman lived in a state with one parent consent law, but the closest clinic was in a state that also had a one parent consent law, the minor would have to go through the judicial bypass in her state of residence as well as in the state that she obtained the abortion. Requiring a minor to juggle judicial bypasses in two different states could constitute an unconstitutional undue burden.²³
- Under the legislation, a person could be prosecuted for taking a minor to a neighboring state, even if that person does not intend -- or even know -- that the parental involvement law of the state of residence has not been followed. Such a result would violate the due process rights of a person who assists a minor facing a crisis pregnancy by creating a strict liability statute.²⁴
- The "life" exception is unconstitutionally narrow. First, the "life" exception impermissibly limits the situations that would qualify under it by enumerating certain circumstances -- but not others. As the Supreme Court has recognized, life exceptions cannot pick and choose among life-threatening circumstances.²⁵ Second, there is no exception at all for when a woman's health would be endangered. As the Court noted in *Casey*, "the essential holding of *Roe* forbids a State from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health."²⁶

Making Abortion Less Necessary Among Teenagers Requires A Comprehensive Effort to Reduce Teen Pregnancy.

Abortion among teenagers should be made less necessary, not more difficult and dangerous. A comprehensive approach to promoting adolescent reproductive health and reducing teen pregnancy will require an array of components, including: age-appropriate health and sexuality education; access to confidential health services, including family planning and abortion; life options programs that offer teens practical life skills and the motivation to delay sexual activity; and programs for pregnant and parenting teens that teach parenting skills and help ensure that teens finish school.

March 1998

Notes:

1. Stanley K. Henshaw and Kathryn Kost, "Parental Involvement in Minors' Abortion Decisions," *Family Planning Perspectives*, vol. 24, no. 5 (Sept./Oct. 1992): 200, table 3.
2. Henshaw and Kost, "Parental Involvement," 207.
3. Ching-Tung Wang and Deborah Daro, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1996 Annual Fifty State Survey* (Chicago: National Committee for Prevention of Child Abuse, 1997); H. Amaro, et al., "Violence During Pregnancy and Substance Abuse," *American Journal of Public Health*, vol. 80 (1990): 575-579.
4. Henshaw and Kost, "Parental Involvement," 196.
5. Margie Boule, "An American Tragedy," *Sunday Oregonian*, Aug. 27, 1989.
6. American Academy of Pediatrics, Committee on Adolescence, "The Adolescent's Right to Confidential Care When Considering Abortion," *Pediatrics*, vol. 97, no. 5 (May 1996): 748.
7. Henshaw and Kost, "Parental Involvement," 207.
8. American Medical Association, Council on Ethical and Judicial Affairs, "Mandatory Parental Consent to Abortion," *Journal of the American Medical Association*, vol. 269, no. 1 (Jan. 6, 1993): 83.
9. Rochelle Sharpe, "Abortion Law: Fatal Effect?" Gannett News Service, Nov. 27, 1989; CBS, "60 Minutes," Feb. 24, 1991 (videotape on file with NARAL).
10. American Medical Association, "Induced Termination of Pregnancy Before and After *Roe v. Wade*, Trends in the Mortality and Morbidity of Women," *JAMA*, vol. 268, no. 22 (Dec. 1992): 3238.
11. Willard Cates, Jr. and David Grimes, "Morbidity and Mortality of Abortion in the United States," *Abortion and Sterilization*, Jane Hodgson, ed. (New York: Grune and Stratton, 1981), 158; Rachel Benson Gold, *Abortion and Women's Health: A Turning Point for America?* (New York: Alan Guttmacher Institute, 1990), 29-30.
12. Stanley K. Henshaw and Jennifer Van Vort, "Abortion Services in the United States, 1991 and 1992," *Family Planning Perspectives*, vol. 26, no. 3 (May/June 1994): 103.
13. *Hodgson v. Minnesota*, 648 F. Supp. 756, 761 (D. Minn. 1986).
14. Ark. Code Ann. § 20-16-801 to -808 (Michie 1991); Idaho Code § 18-609(6) (1987); Minn. Stat. § 144.343 (West 1989); Miss. Code Ann. § 41-41-51 to -55 (1993); N.D. Cent. Code § 14-02.1-03.1 (1991); Utah Code Ann. § 76-7-304(2) (1995).
15. *Hodgson*, 648 F. Supp. at 769.
16. See, e.g., Stanley K. Henshaw, "The Impact of Requirements for Parental Consent on Minors' Abortions in Mississippi," *Family Planning Perspectives*, vol. 27, no. 3 (May/June 1995): 122.
17. *Hodgson*, 648 F. Supp. at 763-64.
18. *Hodgson*, 648 F. Supp. at 763.

19. Charlotte Ellertson, "Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana," *American Journal of Public Health*, vol. 87, no. 8 (Aug. 1997): 1371-72; Virginia G. Cartoof and Lorraine V. Klerman, "Parental Consent for Abortion: Impact of the Massachusetts Law," *American Journal of Public Health*, vol. 76, no. 4 (April 1986): 397-400.
20. Tamar Lewin, "Parental Consent to Abortion: How Enforcement Can Vary," *New York Times*, May 28, 1992, A1.
21. *Memphis Planned Parenthood v. Sundquist*, No. 3:89-0520, slip op. at 13 (M.D. Tenn. Aug. 26, 1997).
22. *In re Jane Doe 1*, 57 Ohio St.3d 135 (1991).
23. Under *Planned Parenthood v. Casey*, a restriction that has the purpose or effect of placing a substantial obstacle in the path of a woman seeking a pre-viability abortion is an unconstitutional undue burden. 505 U.S. 833 (1992).
24. *Colautti v. Franklin*, 439 U.S. 379, 394-97 (1979); *Liparota v. United States*, 471 U.S. 419, 423-428 (1985).
25. *Casey*, 505 U.S. at 879.
26. *Casey*, 505 U.S. at 880 (citations omitted).

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April 23, 1998

MEMORANDUM OF LAW

To: Laurie Rubiner
From: Peter Rubin *Pete PR*
Re: Constitutionality of the proposed Child Custody Protection Act

You have asked me to review and comment upon the constitutionality of the proposed Child Custody Protection Act, which would criminalize transporting a woman under the age of 18 across state lines for purposes of obtaining an abortion if the parental notification or consent laws of the state in which the woman resides have not been met before she obtains the abortion.

This proposed legislation violates the Constitution in at least two ways and raises at least substantial constitutional concerns in a third. First, even if the statutory ends were permissible — even if it did not violate any constitutional provision for the federal legislature to prohibit pregnant minors who wish to do so from obtaining out of state abortions without complying with regulations imposed by their home states — the means chosen in this bill to achieve those ends are unconstitutional. Government may not attempt to deter a minor from engaging in a particular activity by making it more dangerous. See *Carey v. Population Services International*, 431 U.S. 678 (1977). Here the proposed statute does not actually prohibit pregnant adolescents from obtaining out of state abortions without complying with the parental notification or consent laws of their states of residence. It seeks, rather, to deter them from doing so by denying them the assistance of any compassionate or caring adult, including family members such as grandparents, aunts and uncles, etc. Under the Due Process Clause of the Fourteenth Amendment this is not a permissible means of achieving even an otherwise legitimate governmental end.

Next, the proposed statute violates the undue burden test for abortion regulation adopted by the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 877 (1992). Under the analytical approach articulated by the Court in that case, the proposed statute has the unconstitutional purpose and would have the unconstitutional effect of placing a "substantial obstacle" in the path of pregnant adolescents seeking to exercise their right to choose to terminate a pregnancy. In addition, the statute as now drafted lacks a required exception for the health of the pregnant woman.

Finally, the statute raises substantial federalism concerns. Although the law in this area is less well defined, the statute appears to be unique, both in prohibiting interstate travel for a lawful purpose, in working a discrimination among citizens in the applicability of local law based only on their state of residence, and in requiring citizens to carry with them legal restrictions imposed by their state of residence regardless of where they travel within the nation.

Background

1. The Proposed Law

The proposed Child Custody Protection Act would amend the Criminal Code to add a provision, 18 U.S.C. § 2401, imposing criminal penalties for "Transportation of minors to avoid certain laws relating to abortion." The proposed statute provides that

whoever knowingly transports an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion, if the requirements of a law requiring parental involvement in a minor's abortion decision, in the State in which the individual resides, are not met before the individual obtains the abortion, shall be fined under this title, imprisoned not more than 1 year or both.

Proposed 18 U.S.C § 2401(a).¹ In addition to these criminal penalties, the law also provides a civil cause of action for a parent or guardian who "suffers legal harm" from a violation of subsection (a). See proposed 18 U.S.C. § 2401(c). The law provides an exception "if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself." Proposed 18 U.S.C. § 2401(b).

2. The State Laws With Which the Statute Seeks to Compel Compliance

Constitutional assessment of this law requires an examination of its practical effects. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 886-887 (1992) (assessment even of the facial validity of a statute turns on evidence in the record). This in turn requires a description of the legal background against which it has been proposed and particularly of the state statutes with which it seeks to compel compliance.

Over twenty years ago the Supreme Court held that pregnant minors as well as pregnant adults have a constitutional right to choose whether to terminate a pregnancy. *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 74 (1976). The Court has of course acknowledged that "the State has somewhat broader authority to regulate the activities of children than of adults," *id.* at 74-75, but it has also explained that the decision to terminate a pregnancy may not be regulated as freely as other decisions a minor may wish to make for herself:

The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. . . . A pregnant adolescent . . . cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman is not mitigated by her minority. Indeed, considering her probable education,

¹ As drafted, the statute makes no exceptions for circumstances where the perpetrator believes in good faith that the pregnant adolescent has notified her parents or otherwise complied with the laws of her state of residence.

employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Bellotti v. Baird (Bellotti II), 443 U.S. 622, 642 (1979) (plurality opinion) (citations omitted).

Consequently, since 1976 legal restrictions on the availability of abortions have been impermissible if they "impose undue burdens upon a minor capable of giving an informed consent." *Bellotti v. Baird (Bellotti I)*, 428 U.S. 132, 147 (1976). In application of this standard, the Court has held that the interests of parents in their minor daughter's pregnancy does not outweigh the daughter's constitutional right to choose whether to terminate her pregnancy. "Any independent interest the parent may have in the termination of the minor daughter's pregnancy is no more weighty than the right of privacy of the competent minor mature enough to have become pregnant." *Danforth*, 428 U.S. at 75. It has also held that the states may legislate concerning parental involvement in the abortion decision only as a means "to protect the minor's welfare." *Hodgson v. Minnesota*, 497 U.S. 417, 455 (1990).

The decision of the Supreme Court in *Casey*, 505 U.S. at 878, reaffirmed these principles. There the Court held that "[r]egulations which do no more than create a structural mechanism by which . . . the parent or guardian of a minor[] may express profound respect for the life of the unborn are permitted," but only "if they are not a substantial obstacle to the woman's exercise of the right to choose." 505 U.S. at 877 (controlling plurality opinion of O'Connor, Kennedy, and Souter, JJ.).

Under the undue burden test, laws that may "in fact amount to [an] 'absolute, and possibly arbitrary, veto'" over the decision of the pregnant young woman are invalid, *Bellotti II*, 443 U.S. at 644, including laws that absolutely mandate either parental consent or parental notification before a pregnant minor can obtain an abortion. See *Danforth*, 428 U.S. 52 (striking down consent law that would by its terms give parents the power to veto a pregnant minor's abortion decision); *Bellotti II*, 443 U.S. 622 (striking down statute effectively requiring a pregnant woman "consult[] or notify[]" her "available" parent or parents because it would effectively give them a veto over her decision); *Hodgson*, 497 U.S. 417 (striking down two-parent notification law). As Justice Powell wrote for the Court in 1983, state abortion laws must make "provision for a mature or emancipated minor completely to avoid hostile parental involvement by demonstrating to the satisfaction of the court that she is capable of exercising her right to choose an abortion." *Akron v. Akron Center For Reproductive Health (Akron I)*, 462 U.S. 416, 441 n. 31 (1983).

Parental consent and notification laws — including all the laws with which the proposed statute seeks to compel compliance — thus must provide what has come to be called a "judicial bypass" proceeding. At this proceeding the pregnant adolescent must be allowed to show either

that she is "mature enough and well enough informed" to make her own abortion decision without notifying or seeking the consent of her parents, or that "the desired abortion would be in her best interests." *Bellotti II*, 443 U.S. at 643-644. The bypass is a safety valve that prevents notification and consent laws from being an undue burden. And even a notification or consent law with a judicial bypass provision will be invalid if it presents a "substantial obstacle" to obtaining an abortion. See *Bellotti II*, 443 U.S. at 647 (striking a judicial bypass provision that imposed an undue burden on minors' right to seek an abortion); *Casey*, 505 U.S. at 899 (parental consent laws must have an "adequate" bypass procedure).

Thus, although subsection (a) of the proposed law purports to dictate compliance with statutes that "requir[e] parental involvement in a minor's abortion decision," in fact the state laws to which it refers do not require such involvement. See § 2401(a). And indeed, this is acknowledged in another subsection of the proposed statute which defines "law requiring parental involvement in a minor's abortion decision" to mean a law "requiring before an abortion is performed on a minor, either the notification to, or consent of, a parent or guardian of that minor, or proceedings in a state court." Proposed 18 U.S.C. § 2401(d).

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3. The Circumstances in Which A Pregnant Minor Will Seek An Out-of-State Abortion

This leads to an obvious question: Since a pregnant minor cannot be forced to notify or obtain the consent of her parents before obtaining an abortion, but may under all notification and consent laws in the country obtain judicial consent to her abortion — and since these judicial bypass procedures are themselves invalid if they present a "substantial obstacle" to a pregnant minor's exercise of her right to choose — why would any pregnant minor seek to cross state lines in order to avoid these laws?

The answer is that, in practice, the judicial bypass does not always work as required by the Supreme Court's rulings. Indeed, the Court itself recently recognized this problem. To begin with, not all judges will apply the law conscientiously. To give but one example, the Supreme Court in *Hodgson v. Minnesota* described unchallenged judicial findings that "a number of counties [in Minnesota] are served by judges who are unwilling to hear bypass petitions." *Hodgson*, 497 U.S. at 440. There is also evidence that the rate at which some state judges grant these petitions is disproportionately low, something that appears to reflect their own personal views about abortion, rather than the legal standards they are supposed to apply: For example, in 1992 the director of a woman's clinic in Indianapolis reported that in six years she had never known of any minor successfully obtaining a judicial bypass in that city. See Lewin, Parental Consent to Abortion: How Enforcement Can Vary, *The New York Times*, May 28, 1992 at A1. In Ohio, one 17 1/2 year old had a petition denied by a judge who concluded that she had "not had enough hard knocks in her life." *Id.*

In addition, although bypass procedures are required by the Constitution in order to prevent imposition of a substantial obstacle in the path of a pregnant minor who wishes to have an abortion, in at least some states "[t]he court [bypass] experience produced fear, tension, anxiety, and shame among minors, causing some who were mature, and some whose best interests would have been served by an abortion, to forego the bypass option and either notify their

parents or carry to term." *Hodgson*, 497 U.S. at 441-442 (quoting the unchallenged finding of the district court). Indeed, rather than undergo the judicial bypass process, some girls have apparently been driven to obtain unlawful abortions, something from which at least one 17 year old, Becky Bell, has died. *Lewin, supra*.

One Minnesota judge who adjudicated bypass petitions "testified that minors found the bypass procedure "a very nerve-wracking experience,"" *Hodgson*, 497 U.S. at 441 n. 29. "[A]nother testified that the minor's "level of apprehension is twice what I normally see in court." A Massachusetts judge who heard similar petitions in that State expressed the opinion that 'going to court was "absolutely" traumatic for minors . . . "at a very, very difficult time in their lives."'" *Id.* (citations omitted). In *Hodgson*, a Minnesota doctor who performs abortions "testified that when her minor patients returned from the court process, 'some of them are wringing wet with perspiration. They're markedly relieved, many of them. They — they dread the court procedure often more than the actual abortion procedure. And it — it's frequently necessary to give them a sedative of some kind beforehand.'" *Id.*

For purposes of assessing its constitutionality, then, it must be remembered that this statute operates on some of the most vulnerable, scared and desperate young women and girls in our society. These may well not be the majority of pregnant minors to whom the law would apply. Undoubtedly many pregnant women cross state lines to obtain abortions because the nearest abortion provider is not in their home state. Among minors crossing state lines for this reason, many may have consulted their parents and involved them in their decision. Others would likely not object to the application of the Child Custody Protection Act. But, as the Supreme Court's decision in *Casey* makes clear, the constitutional assessment of the statute begins not with this latter group of pregnant minors, but with those who do not wish to notify their parents or to undergo their home state's judicial bypass regime. See *Casey*, 505 U.S. at 895 (facial validity of husband-notification law is determined by assessing the law's effect on those "married women who do not wish to notify their husbands of their intentions" to get abortions). Unable to tell their parents of their pregnancies these are young women and girls would rather seek the assistance of another adult, perhaps a close relative, in travelling out of state to obtain an abortion, than comply with the bypass provisions of the state in which they reside.

Analysis

1. The Statute Fails to Use Reasonable Means To Achieve Its Ends In Violation of the Due Process Clause

To begin with, even if it were permissible for the government to prevent the pregnant minors affected by this statute from crossing state lines in order to obtain out of state abortions without complying with the laws of their home state, the means used in this statute to achieve those ends violate Due Process which requires government to use only "reasonable" means to achieve even its legitimate ends. See *Hodgson v. Minnesota*, 497 U.S. at 450.

This law does not prohibit pregnant minors themselves from crossing state lines nor does it purport to criminalize their conduct in obtaining abortions in other states without complying with the laws of their state of residence. Rather it punishes any adult who provides them

assistance by transporting them across state lines. And it covers *all* adults, including relatives to whom a desperate, frightened pregnant adolescent might turn.

The law thus would deny pregnant minors fearful of telling their parents of their pregnancy — perhaps because of a history of abuse or even because their own father or another relative may be responsible for the pregnancy — the assistance of any compassionate or sympathetic adult, including any adult family member, at a time when they need it the most. These pregnant minors would still be permitted to attempt to obtain an out of state abortion, but the proposed law would require them to do so on their own.

The Court's cases make clear that such a brutal and harmful mechanism for achieving even a legitimate governmental purpose would violate the Constitution. Government may not attempt to deter a minor from engaging in a particular activity — here, obtaining an out of state abortion without complying with her home state's parental consultation or bypass law — by making it more hazardous. See *Carey v. Population Services International*, 431 U.S. 678, 694-695 (1977) (plurality opinion) (state may not restrict minors' access to contraceptives as a means of "deter[ing]" "minors' sexual activity" by "increasing the hazards attendant on it"); *id.* at 714-716 (Stevens, J., concurring in the judgment) (same principle); *Eisenstadt v. Baird*, 405 U.S. 438, 448 (1973) (prohibiting distribution of contraceptives to the unmarried is an "unreasonable" way of achieving the goal of "discouraging premarital sexual intercourse").

Instructive in this regard is *Hodgson v. Minnesota*, in which the Court recently held that a two-parent notification provision — justifiable, like the proposed statute, only to the extent that it serves the best interests of the pregnant minor — did not "reasonably further any legitimate state interest." 497 U.S. 417, 450 (1990). The Court concluded that

Not only does two-parent notification fail to serve any state interest with respect to functioning families, it disserves the state interest in protecting and assisting the minor with respect to dysfunctional families. The record reveals that in the thousands of dysfunctional families affected by this statute, the two-parent notice requirement proved positively harmful to the minor and her family. The testimony at trial established that this requirement, ostensibly designed for the benefit of the minor, resulted in major trauma to the child, and often to a parent as well. . . . In [some] circumstances, the statute was not merely ineffectual in achieving the State's goals but actually counterproductive.

497 U.S. at 450-451 (citations omitted). See also *id.* at 454 (the only permissible justification for "any rule requiring parental involvement in the abortion decision" is "the best interests of the child.").

The Court of course has recognized that it would be desirable for parents to be involved in the important decisions their children may make, including the decision whether to carry a pregnancy to term. However, the Court has also recognized that "The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a

minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter." *Bellotti II*, 443 U.S. at 642. Because the Child Protection Custody Act attempts to achieve its ends only by depriving the scared, pregnant minor of the assistance of any sympathetic adult, it violates the Constitution. As in *Hodgson*, the Due Process Clause requires government to "adopt less burdensome means to protect the minor's welfare." *Hodgson*, 497 U.S. at 455.

2. *The Proposed Law Unduly Burdens The Right of a Pregnant Minor to Obtain an Abortion*

Next, under the analytical approach recently articulated by the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 883, 887 (1992), the proposed statute unconstitutionally imposes an "undue burden" upon the constitutional rights of those pregnant adolescents to whom it applies. See *Casey*, 505 U.S. 883, 887 (1992) (controlling plurality opinion of O'Connor, Kennedy, and Souter, JJ.) (making clear that the right of a pregnant minor "to make the ultimate decision" cannot be unduly burdened).

As the Supreme Court explained in *Casey*, an undue burden exists, and therefore a provision of law is invalid, if it "has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." *Id.* at 887. Because the proposed statute has both this purpose and this effect, it is unconstitutional.

a. First, the statute's effect will be to place a substantial obstacle in the path of the young women it targets who seek to exercise their constitutionally-protected right to choose. As described above, under *Casey*, the facial validity of the statute must be assessed by its impact upon those subject to the law "who do not wish" to comply with its requirements. *Casey*, 505 U.S. at 895. If "in a large fraction of" these cases the law would "operate as a substantial obstacle to a woman's choice to undergo an abortion," it is "an undue burden, and therefore invalid." *Id.* See also *Fargo Women's Health Center v. Schafer*, 507 U.S. 1013 (1993) (O'Connor, J., concurring in denial of stay and injunction) (reaffirming that this is the proper approach for determining the facial validity of a statute under *Casey*'s undue burden standard).

Here, then, the constitutionality of the Act must be measured by its impact upon the class of pregnant women and girls under eighteen who would rather seek the assistance of an adult in travelling out of state than notify their parents or undergo their home state's judicial bypass regime. These young women are willing to go to great lengths — seeking an abortion out of state — in order to avoid the practical effects of the laws of their home states.

The fact that they have chosen to go to such lengths to avoid the legal requirements imposed by their states of residence indicates that the proposed statute, which would force them to choose between, on the one hand, notifying their parents or going through their state's judicial bypass procedure, or, on the other, giving up their right to choose, will "in a large fraction of the cases . . . operate as a substantial obstacle to [their] choice to undergo an abortion," *id.*, effectively resulting in their carrying their pregnancies to term despite their desire to obtain an abortion.

Casey makes clear that "[r]egulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." 505 U.S. at 877. Where, however, a regulation, even one with a benign purpose, will "dete[r]" a "significant number of women . . . from procuring an abortion as surely as if the [government] had outlawed abortion," it imposes an undue burden and it cannot stand. See *Casey*, 505 U.S. at 894 (invalidating as an undue burden Pennsylvania's spousal notification law). See also *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 759 (1986) (statute is invalid if it would "intimidate women into continuing pregnancies").

Of course it could be argued that what leads to the creation of the "substantial obstacle" in this case is the flawed operation of certain states' judicial bypass regimes. If the bypass provisions were functioning properly, the pregnant minor could avoid the prohibitive effects of the proposed federal law by seeking a not-unduly-burdensome bypass in her state of residence.

Undoubtedly flaws in the implementation of some states' judicial bypass regimes are one of the but-for causes of the interference that the proposed statute will work with respect to the right to choose. However, so long as the proposed statute would in effect impose a substantial obstacle upon the pregnant minors it affects who seek out of state abortions without complying with the laws of their states of residence, it violates the constitution under *Casey*. That it might not be the only cause of this, or that some group of pregnant minors might also be able to obviate this effect by bringing an action challenging as an undue burden the operation of the notification and consent laws in their state of residence, is irrelevant. See *Casey*, 505 U.S. at 897 (striking down law that by its terms did nothing more than require women to notify their spouses of their intent to have an abortion because "[w]hether the prospect of the notification itself deters . . . women from seeking abortions, or whether the husband . . . prevents his wife from obtaining an abortion until it is too late, the notice requirement will often be tantamount to [a] veto . . .").

b. Next, the statutory text demonstrates that the *purpose* of the law is to create a substantial obstacle that will prevent these minor women from obtaining abortions. The law contains an exception that reveals that its drafters intend that the law should act as an absolute prohibition on abortions. Under the statute, the restriction on transportation across state lines for purposes of obtaining an abortion does not apply "if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself." Proposed 18 U.S.C. § 2401(b).

Tellingly, this is *not* an exception for the performance in an emergency of a life-saving abortion. Such an exception would make sense if the law were truly intended merely to enforce compliance with laws in the pregnant minor's home state relating to parental consent or notification. This compliance process would take some time, and thus would not be appropriate in the case of a medical emergency.

Rather, this exception is designed to permit the pregnant woman to obtain an abortion *that she would otherwise be unable to obtain altogether*, whether she must do so on an emergency basis or not. Although in some sense this exception is broader than what might be expected in a law truly designed to compel notification or bypass, it reveals that the statute is *intended* not to foster effective compliance with state laws that themselves pose no substantial obstacle to the exercise of the right to choose, but to effectively require those young women afraid to comply with state laws to carry their pregnancies to term. Even if the law would not be effective in achieving this goal, because this is its purpose, it violates the Fourteenth Amendment to the Constitution.

c. Lastly, even aside from these infirmities, the proposed statute would still violate the Constitution under *Casey* because it lacks the required exception for the health of the pregnant woman. The Court in *Casey* made clear that "the essential holding of *Roe*," which it reaffirmed, "forbids a State to interfere with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." *Casey*, 505 U.S. at 880.

As currently written, the proposed statute contains no exception for the pregnant adolescent's health at all. As the Court explained in *Roe*'s companion case, *Doe v. Bolton*, 410 U.S. 179 (1973), the constitution requires statutes that would restrict abortion to contain an exception for the preservation of the woman's "psychological as well as physical well-being." 410 U.S. at 192. Under *Doe*, such provisions will only be constitutionally adequate if they permit a doctor to assess the woman's health "in the light of all factors — physical, emotional, psychological, familial, and the woman's age — relevant to the well-being of the patient." *Id.*

3. The Statute Raises Substantial Federalism Concerns

Finally, this statute raises substantial federalism concerns. The proposed law is unlike all other federal laws of which I am aware that prohibit the transportation of individuals across state lines. These laws ordinarily seek to make federal crimes out of crossing state lines for unlawful purposes. See, e.g., 28 U.S.C. § 2421 (prohibiting transportation in interstate commerce of "any individual . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense"); 28 U.S.C. § 2423 (prohibiting transportation in interstate commerce of "any individual under the age of 18 years . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense"). By contrast, the statute here prohibits the transportation of minors across state lines for a purpose that is *lawful*. Nor is it limited to adults who *coerce* individuals to crossing state lines for purposes of having an abortion. The pregnant adolescent will likely have consented to going out of state and, indeed, in the ordinary case may well have asked the adult for assistance in doing just that.

This law is also unusual — indeed, perhaps, unique — in that it seeks in effect to render the laws of the "destination" states inapplicable to some individuals based solely on their state of residence. Viewed from the other side, it seeks to subject the pregnant adolescent to the laws of her state of residence wherever she may travel within the United States.

The federalism concerns that restrict Congress's power to regulate the interstate movement of people and its power to impose any regime of "disparate treatment of residents and nonresidents" of a state, *Jones v. Helms*, 452 U.S. 412, 422 (1981), are reflected in the constitutional "right to travel." "Although the textual source of this right has been the subject of debate, its fundamental nature has consistently been recognized by th[e Supreme] Court." *Id.* at 418. As the Court explained in *Shapiro v. Thompson*,

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the *Passenger Cases*, 7 How. 283, 492 (1849):

"For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."

Shapiro v. Thompson, 394 U.S. 618, 629-630 (1969).

The right to travel protects against not only those laws that actually burden, restrict or deter movement across state lines, but those that "penalize" it as well. See *Dunn v. Blumstein*, 405 U.S. 330, 339-340 (1972). In this it imposes a restriction upon the enactment of laws that discriminate between residents and non-residents of each State, much in the same way as the Privileges and Immunities Clause of Article IV, which applies at least to state enactments.

That Clause provides that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." U.S. Const. Art. IV, § 2.² Nothing in its text restricts its applicability only to state legislative enactments. And indeed, Justice O'Connor has argued that the right to interstate travel, which does restrict Congress, is itself rooted in the Privileges and Immunities Clause of Article IV. See *Zobel v. Williams*, 457 U.S. 55, 78-81 (1982) (O'Connor, J., concurring in judgment). Nonetheless, because Justice Harlan concluded that it did not "limi[t] federal power," *Shapiro*, 394 U.S. at 666 (Harlan, J., dissenting), and because that argument finds some support in the Privileges and Immunities Clause's position in Article IV of the Constitution, I will describe the restrictions imposed upon states by the Clause primarily to shed light upon the probable scope of the at-least-closely-analogous protections provided by the right to travel.

² The Supreme Court has found that "the terms 'citizen' and 'resident' are 'essentially interchangeable' . . . for purpose of analysis of most cases under the Privileges and Immunities Clause." *Hicklin v. Orbeck*, 437 U.S. 524, n. 8 (1978) (citation omitted).

The Privileges and Immunities Clause, fundamental to the structure of our federal system, "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of state B enjoy." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948). With very limited exceptions, e.g., *Baldwin v. Montana Fish and Game Commission*, 436 U.S. 371 (1978) (Montana may charge non-residents more than residents for a hunting license), the Privileges and Immunities Clause prohibits laws that distinguish between residents and non-residents with respect to goods and opportunities (at least those that are not attributable to state programs or revenues). See L. Tribe, *American Constitutional Law*, § 6-35 at 540. What is legal for the residents of a state must be available within that state to residents of the other states as well. ✓

This rule has been specifically held to apply to the legal terms under which one may obtain an abortion. In *Doe v. Bolton*, the Supreme Court invalidated a law that would have made abortions available in Georgia only to state residents. It held:

Just as the Privileges and Immunities Clause, Const. Art. IV, § 2, protects persons who enter other States to ply their trade, *Ward v. Maryland*, 12 Wall. 418, 430 (1871); *Blake v. McClung*, 172 U.S. 239, 248-256 (1898), so must it protect persons who enter Georgia seeking the medical services that are available there. ✓ See *Toomer v. Witsell*, 334 U.S. 385, 396-397 (1948). A contrary holding would mean that a State could limit to its own residents the general medical care available within its borders. This we could not approve.

Doe v. Bolton, 410 U.S. 179, 200 (1973).

There can be little doubt that ordinarily a law that operates as the proposed one does would violate the constitutional right to travel. Congress could not forbid individuals to shop out of state on Sunday if they are residents of a state with blue laws that mandate Sunday store closures. ✓ It could not forbid individuals who are away from their home states to buy handguns. ✓ without complying with the restrictive laws of their states of residence. ✓ Indeed, it could not forbid adult women from obtaining abortions out of state without complying with waiting periods imposed by their states of residence. ✓ These laws would be beyond congressional power under the federalism principles reflected in the right to travel. To saddle individuals with the laws of their home state wherever they travel in the land would not be permissible. Although the limited number of decisions in this area leave it an open issue, whether a law like the proposed one is permissible that has this structure but that affects only a class of minors presents at least a substantial constitutional question.

II

105TH CONGRESS
2D SESSION**S. 1645**

To amend title 18, United States Code, to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 1998

Mr. ABRAHAM (for himself, Mr. LOTT, Mr. DEWINE, Mr. INHOFE, Mr. NICKLES, Mr. COVERDELL, Mr. HELMS, Mr. COATS, Mr. SESSIONS, Mr. ENZI, Mr. CRAIG, Mr. KYL, Mr. HATCH, Mr. FAIRCLOTH, Mr. BROWNBACK, Mr. SANTORUM, Mr. MCCONNELL, Mr. HUTCHINSON, Mr. BOND, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Child Custody Protec-
5 tion Act".

1 **SEC. 2. TRANSPORTATION OF MINORS TO AVOID CERTAIN**
2 **LAWS RELATING TO ABORTION.**

3 (a) IN GENERAL.—Title 18, United States Code, is
4 amended by inserting after chapter 117 the following:

5 **CHAPTER 117A—TRANSPORTATION OF MI-**
6 **NORS TO AVOID CERTAIN LAWS RE-**
7 **LATING TO ABORTION**

“Sec.

“2401. Transportation of minors to avoid certain laws relating to abortion.

8 **“§ 2401. Transportation of minors to avoid certain**
9 **laws relating to abortion**

10 “(a) OFFENSE.—Except as provided in subsection
11 (b), whoever knowingly transports an individual who has
12 not attained the age of 18 years across a State line, with
13 the intent such individual obtain an abortion, if in fact
14 the requirements of a law, requiring parental involvement
15 in a minor’s abortion decision, in the State where the indi-
16 vidual resides, are not met before the individual obtains
17 the abortion, shall be fined under this title or imprisoned
18 not more than one year, or both.

19 “(b) EXCEPTION.—The prohibition of subsection (a)
20 does not apply if the abortion was necessary to save the
21 life of the minor because her life was endangered by a
22 physical disorder, physical injury, or physical illness, in-
23 cluding a life endangering physical condition caused by or
24 arising from the pregnancy itself.

1 “(c) CIVIL ACTION.—Any parent or guardian who
2 suffers legal harm from a violation of subsection (a) may
3 obtain appropriate relief in a civil action.

4 “(d) DEFINITIONS.—For the purposes of this sec-
5 tion—

6 “(1) a law requiring parental involvement in a
7 minor’s abortion decision is a law—

8 “(A) requiring, before an abortion is per-
9 formed on a minor, either—

10 “(i) the notification to, or consent of,
11 a parent or guardian of that minor; or

12 “(ii) proceedings in a State court; and

13 “(B) that does not provide as an alter-
14 native to the requirements described in sub-
15 paragraph (A) notification to or consent of any
16 person or entity who is not described in that
17 subparagraph;

18 “(2) the term ‘minor’ means an individual who
19 is not older than the maximum age requiring paren-
20 tal notification or consent, or proceedings in a State
21 court, under the law requiring parental involvement
22 in a minor’s abortion decision; and

23 “(3) the term ‘State’ includes the District of
24 Columbia and any commonwealth, possession, or
25 other territory of the United States.”.

4

1 (b) CLERICAL AMENDMENT.—The table of chapters
2 for part I of title 18, United States Code, is amended by
3 inserting after the item relating to chapter 117 the follow-
4 ing new item:

“117A. Transportation of minors to avoid certain laws relating to
abortion 2401.”.

○

NARAL Promoting Reproductive Choices

May 8, 1998

Ned Crabb
Letters Editor
The Wall Street Journal
200 Liberty Street
New York, NY 10281

Dear Mr. Crabb:

Professor Mary Ann Glendon's diatribe against President Clinton and his stand against the "Mexico City" abortion gag rule displays an extraordinary lack of understanding of the issues and groups involved and of the current state of women's reproductive health around the world (On Abortion, It's Clinton vs. The U.N., May 5, 1998).

It is important for your readers to understand that the only reason the payment of U.N. dues is tied to the issue of abortion is because abortion opponents in Congress have inextricably linked the two. Anti-choice lawmakers are in effect holding hostage important foreign policy priorities of the Administration in an attempt to force the President to accept restrictive anti-family planning language. Glendon's piece also obscures the fact that, since the passage of the 1973 Helms Amendment, it has been illegal to use U.S. funds for abortion services overseas.

The language to which President Clinton objects would deny U.S. family planning assistance to any organization operating overseas that uses its *own non-U.S. funds* to provide abortion services or even advocate on abortion issues in its own country. According to Secretary of State Madeline Albright, the "lobby" ban is "basically a gag rule that would punish organizations for engaging in the democratic process in foreign countries and for engaging in legal activities that would be protected by the First Amendment if carried out in the United States."

Professor Glendon also appears to lack any understanding of the impact restrictive abortion policies have on women around the world. According to information presented at the recent World Bank Conference on Safe Motherhood, approximately seventy to eighty thousand women die each year from unsafe abortions and every minute of every day a woman dies of complications related to pregnancy and childbirth. *That's almost 600,000 deaths per year.* Abortion is a safe procedure when carried out legally under standard medical conditions, but under the threat of criminal prosecution or in substandard facilities, it becomes frighteningly unsafe. Restricting access to safe abortion and jeopardizing funding for family planning services only exacerbates this problem and further endangers women facing crisis pregnancies.

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Ms. Glendon's statement that President Clinton "has never wavered" from some "principle" of unrestricted access to abortion is also counterfactual and preposterous. President Clinton, like NARAL, supports *Roe v. Wade*, which allows states to restrict abortion after viability, so long as women's health and lives are protected. As Governor of Arkansas, Clinton even signed legislation banning post-viability abortions, with exceptions for life, health, rape and incest.

Finally, Ms. Glendon slurs family planning organizations by suggesting that much of their political advocacy work is aimed at population control through pressuring poor women into abortion and sterilization. Nothing could be further from the truth. Family planning organizations and pro-choice groups merely advocate that women need the full range of reproductive options available to them in order to responsibly manage their reproductive lives. That means access to safe abortion services, but also to the family planning services that help to reduce the need for abortion.

I would suggest that the Professor do more research on what happens to women when their reproductive options are limited or denied. She can start with the country of Nepal where abortion is prohibited under any circumstances, including rape, incest and the endangerment of the woman's life. It would be interesting to see how she "spins" the deaths of the women in that country who seek unsafe abortions despite the big hand of government and the threat of imprisonment. They do so because they have no choice and only limited options.

There is room for legitimate differences of opinion when it comes to the issue of abortion. But all parties suffer when inaccuracies and unsubstantiated assertions are presented as fact as they are in Ms. Glendon's piece.

Sincerely,



Kate Michelman
President