105TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
105–605

CHILD CUSTODY PROTECTION ACT

JUNE 25, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CANADY of Florida, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3682]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3682) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

TABLE OF CONTENTS

59–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Custody Protection Act".

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

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

"CHAPTER 117A—TRANSPORTATION OF MINORS TO AVOID CERTAIN LAWS RELATING TO ABORTION

"§ 2401. Transportation of minors to avoid certain laws relating to abortion

"(a) OFFENSE.—

"(1) GENERALLY.—Except as provided in subsection (b), 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, and thereby in fact abridges the right of a parent under a law, requiring parental involvement in a minor's abortion decision, of the State where the individual resides, shall be fined under this title or imprisoned not more than one year, or both.

"(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed on the individual, in a State other than the State where the individual resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the individual resides.

"(b) EXCEPTIONS.—(1) The prohibition of subsection (a) 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.

"(2) An individual transported in violation of this section, and any parent of that individual, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

"(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant reasonably believed, based on information the defendant obtained directly from a parent of the individual or other compelling facts, that before the individual obtained the abortion, the parental consent or notification, or judicial authorization took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the individual resides.

"(d) CIVIL ACTION.—Any parent who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

"(e) DEFINITIONS.—For the purposes of this section—

"(1) a law requiring parental involvement in a minor's abortion decision is a law—

"(A) requiring, before an abortion is performed on a minor, either—

"(i) the notification to, or consent of, a parent of that minor; or

"(ii) proceedings in a State court; and

"(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

"(2) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

"(C) a person standing in loco parent is who has care and control of the minor, and with whom the minor regularly resides;

who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required;

"(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court,

under the law requiring parental involvement in a minor's abortion decision; and

"(4) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States.".

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

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

PURPOSE AND SUMMARY

H.R. 3682, the Child Custody Protection Act, has two primary purposes. The first is to protect the rights of parents to be involved in the medical decisions of their minor daughters. The second is to protect the health and safety of children by preventing valid and constitutional state parental involvement laws from being circumvented.

To achieve these purposes, H.R. 3682 makes it a federal offense to knowingly transport a minor across a state line with the intent that she obtain an abortion, in circumvention of a state's parental consent or parental notification law. Violation of the Act is a Class One misdemeanor, carrying a fine of up to $100,000 and incarceration of up to one year.

H.R. 3682, introduced by Congresswoman Ileana Ros-Lehtinen, will strengthen the effectiveness of state laws designed to protect children from health and safety risks. In many cases, only a girl's parents know of her prior psychological and medical history, including allergies to medication. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or the release of pertinent data from family physicians. When a pregnant girl is taken to have an abortion without her parents" knowledge, none of these precautions can be taken. Thus, when parents are not involved, the risks to the minor girl's health significantly increase. H.R. 3682 is designed to protect state laws which safeguard minor girls' physical and emotional health by ensuring parental involvement in their abortion decision.

H.R. 3682 does not supercede, override, or in any way alter existing state laws regarding minors' abortions. Nor does the Act impose any parental notice or consent requirement on any state. H.R. 3682 addresses interstate transportation of minors in order to circumvent valid, existing state laws, and uses Congress' authority to regulate interstate activity to protect those laws from evasion.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 3682, the Child Custody Protection Act, is designed to address the problem of people transporting minor girls across state lines in defiance of parental consent and notification laws. Many states have laws that require the consent or notification of at least one parent, or court authorization, before a minor can obtain an abortion. Yet despite court approval of and overwhelming public support for these laws,[1] vulnerable children are taken from their

[1] A 1996 CNN/USA Today survey conducted by the Gallup Organization revealed that 74 percent of Americans support parental consent before an abortion is performed on a girl under the age of 18. Parental notification laws receive even greater support. A 1992 national poll by the Wirthlin Group found that 80 percent of Americans support requiring parental notification before an abortion is performed on a girl under the age of 18.

families to out-of-state abortion clinics in flagrant disregard for the legal protections that many states have enacted. In 1995, Kathryn Kolbert, an attorney with the pro-abortion Center for Reproductive Law and Policy, stated, "There are thousands of minors who cross state lines for an abortion every year and who need the assistance of adults to do that."[2]

According to Professor Teresa Collett of the South Texas College of Law, who testified before the Subcommittee on the Constitution:

> Differing regulations allow opportunistic behavior by those who seek to avoid parental involvement, not out of concern for the well-being of the pregnant girl, but out of a desire to evade responsibility or avoid discovery of criminal acts. By transporting the pregnant girl from a state that requires parental involvement to one that has no such requirements, it is presently possible to obtain abortion services with no knowledge on the part of the girl's parents. This evasion is troubling on two counts: First, it forecloses any attempts by the parents to assist their daughter in her decision;[3] and second, it deprives the girl of the protection afforded by a judicial assessment of the motivations of those urging her to obtain an abortion.[4] It is these harms that the Child Custody Protection Act attempts to remedy.[5]

THE PROBLEM

Many states have decided that involvement of a parent in his daughter's decision to abort her child is crucial. Among other important considerations, parental involvement increases the probability that, if a girl suffers complications after an abortion, she will receive prompt and appropriate medical attention. Indeed, a perforated uterus has been considered a "normal risk" of the abortion procedure.[6] Untreated, a perforated uterus may result in an infection, complicated by fever, endometritis, and parametritis.[7] The New England Journal of Medicine describes the risk of such infection this way:

---

[2] See "Labor of Love is Deemed Criminal," The Nat'l L.J., Nov. 11, 1996.

[3] In her testimony, *infra*, Professor Collett cited the following:

> "These cases demonstrate a willingness to protect from unjustified state interference the parental right to structure the education and religious beliefs of one's children. Likewise, in this case we encounter a state intrusion on this parental right. Coercing a minor to obtain an abortion or to assist in procuring an abortion and to refrain from discussing the matter with the parents unduly interferes with parental authority in the household and with the parental responsibility to direct the rearing of their child. This deprives the parents of the opportunity to counter influences on the child the parents find inimical to their religious beliefs or the values they wish instilled in their children." *Arnold* v. *Board of Educ. of Escambia County Ala.,* 880 F.2d 305 at 312-14 (11th Cir. 1989). See also *Planned Parenthood Assn. of Atlanta Area, Inc.* v. *Miller,* 934 F.2d 1462 (11th Cir. 1991) (state interest in family integrity and protecting adolescents); *Planned Parenthood League* v. *Bellotti,* 868 F.2d 459 (1st Cir. 1989).

[4] In her testimony, *infra*, Professor Collett cited: *In re Jane Doe,* 566 N.E. 2d 1181 (Ohio 1990) (refusing to adopt specific factors for determining maturity).

[5] Hearing on H.R. 3682, the Child Custody Protection Act, before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess. (May 21, 1998) (statement of Professor Teresa Stanton Collett, South Texas College of Law) [hereinafter Collett Testimony].

[6] *Reynier* v. *Delta Women's Clinic,* 359 So.2d 733 (La. Ct. App. 1978).

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

> The risk of death from postabortion sepsis [infection] is highest for young women, those who are unmarried, and those who undergo procedures that do not directly evacuate the contents of the uterus. * * * A delay in treatment allows the infection to progress to bacteremia, pelvic abscess, septic pelvic thrombophlebitis, disseminated intravascular coagulophy, septic shock, renal failure, and death.[8]

Without the knowledge that their daughter has had an abortion, parents are incapable of providing an adequate medical history to physicians called upon to treat any complications the girl might experience. This may delay proper diagnosis and further imperil the girl's health.

Testimony from parents

The Subcommittee on the Constitution heard testimony from two mothers whose daughters were secretly taken for abortions, with devastating consequences.

Joyce Farley, the mother of a minor girl, reported how her 12-year-old daughter was provided alcohol, raped, and then taken out of state by the rapist's mother for an abortion.[9] In the words of Joyce Farley, the abortion was arranged to destroy evidence—evidence that her 12-year-old daughter had been raped.[10] On August 31, 1995, her daughter, who had just turned 13, underwent a dangerous medical procedure without anyone present who knew her past medical history (as shown by the false medical history that was given to the abortionist).[11] Following the abortion, the mother of the rapist dropped off the child in another town 30 miles from the child's home.[12] The child returned to her home with severe pain and bleeding which revealed complications from an incomplete abortion.[13] When Joyce Farley contacted the original clinic that performed the abortion, the clinic told her that the bleeding was normal and to increase her daughter's Naprosyn, a medication given to her for pain, every hour if needed.[14] Fortunately, being a nurse, Ms. Farley knew this advice was wrong and could be harmful, but her daughter would not have known this.[15] Ms. Farley's daughter, because of her mother's intervention, ultimately received further medical care and a second procedure to complete the abortion.[16]

Eileen Roberts' 13-year-old daughter was encouraged, by a boyfriend and his adult friend, to obtain a secret abortion.[17] The adult friend drove Ms. Roberts' daughter to the abortion clinic 45 miles away from her home and even paid for their daughter to receive

---

[8] Id.
[9] Hearing on H.R. 3682, the Child Custody Protection Act, before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess. (May 21, 1998) (statement of Joyce Farley).
[10] Id.
[11] Id.
[12] Id.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] Hearing on H.R. 3682, the Child Custody Protection Act, before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess. (May 21, 1998) (statement of Eileen Roberts).

the abortion.[18] After two weeks of observing their daughter's depression, Ms. Roberts and her husband discovered that their child had an abortion from a questionnaire they found under her pillow, which their daughter had failed to return to the abortion clinic.[19] As a result of their daughter's depression, their daughter was hospitalized.[20] Upon a physical examination, doctors found that the abortion had been incompletely performed and required surgery to repair the damage done by the abortionist.[21] The hospital called Ms. Roberts and told her that they could not do reparative surgery without a signed consent form.[22] The following year, Ms. Roberts' daughter developed an infection and was diagnosed with having pelvic inflammatory disease, which again required a two-day hospitalization for IV antibiotic therapy and requiring a signed consent form.[23] Ms. Roberts and her family were responsible for over $27,000 in medical costs all of which resulted from this one secret abortion.[24]

Widespread circumvention of State laws

States with parental involvement laws are becoming increasingly aware of those laws being circumvented. Abortion clinics often blatantly encourage the evasion of state parental consent laws. Abortion clinics regularly advertise their "no parental consent" status in the "yellow pages" thereby encouraging and profiting from such interstate activities. The following is a survey of several states and their experience with evasion of parental involvement laws.

Pennsylvania

Pennsylvania passed a parental consent law in 1994. News reports have repeatedly maintained that Pennsylvania teenagers are going out of state to New Jersey and New York for abortions. In fact, in 1995 The New York Times reported, "Planned Parenthood in Philadelphia has a list of clinics, from New York to Baltimore, to which they will refer teenagers, according to the organization's executive director, Joann Coombs." Moreover, the Times gave accounts of clinics which had seen an increase in patients from Pennsylvania. One clinic, in Cherry Hill, New Jersey reported seeing a threefold increase in Pennsylvania teenagers coming for abortions, to a rate of approximately six girls per week. Likewise, a clinic in Queens, New York reported that it was not unusual to see Pennsylvania teenagers as patients in 1995, though earlier it had been rare.[25]

In the period just prior to the Pennsylvania laws taking effect, efforts were underway to make it easier for teenagers to go out of state for abortions. For instance, Newsday reported that

[18] Id. While Ms. Roberts' daughter was not taken to another state, her story is illustrative of the harms involved when a child is secretly taken away from her parents for an abortion. After this experience, Ms. Roberts formed an organization called Mothers Against Minor Abortions (MAMA). Ms. Roberts testified: "I speak today for those parents I know around the country, whose daughters have been taken out of state for their abortions." Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.
[23] Id.
[24] Id.
[25] "Teenagers Cross State Lines in Abortion Exodus," The New York Times, Dec. 18, 1995.

"[c]ounselors and activists are meeting to plot strategy and printing maps with directions to clinics in New York, New Jersey, Delaware and Washington, D.C., where teenagers can still get abortions without parental consent. * * * 'We will definitely be encouraging teenagers to go out of state,' said Shawn Towey, director of the Greater Philadelphia Woman's Medical Fund, a nonprofit organization that gives money to women who can't afford to pay for their abortions."[26]

Moreover, some abortion clinics in nearby states, such as New Jersey and Maryland, use the lack of parental involvement requirements in their own states as a "selling point" in advertising directed at minors in Pennsylvania. One ad that appeared in the 1996 Yellow Pages for Scranton, Pennsylvania was purchased by Metropolitan Medical Associates, an abortion clinic in Englewood, New Jersey. Unlike Pennsylvania, which has a parental consent law, in New Jersey, as the ad proclaims, "No Parental Consent Required."[27] Another ad appeared in the 1997–98 Yellow Pages for Harrisburg, Pennsylvania. The purchaser of the ad, Hillcrest Women's Medical Center, maintains a clinic in Harrisburg, but the ad also promotes the option of going to a sister clinic in Rockville, Maryland (about 100 miles away) where, the ad notes, there is "No Waiting Period" and "No Parental Consent" requirement.

Missouri

In 1997, a study in the American Journal of Public Health reported that a main abortion provider in Missouri refers minors out of state for abortions if the girl does not want to involve her parents. Reproductive Health Services, which performs over half of the abortions performed in Missouri, refers minors to the Hope Clinic for Women in Granite City, Illinois. Research has found that based on the available data, the frequency of a minor traveling out of state for an abortion increased by over 50 percent when Missouri's parental consent law went into effect. Furthermore, it was found that compared to older women, underage girls were significantly more likely to travel out of state to have their abortions.[28]

Massachusetts

Massachusetts has also seen an increase in out-of-state abortions performed on its teenage residents since the state's parental consent law went into effect in April of 1981, according to a published study and anecdotal information. A 1986 study published in the American Journal of Public Health found that in the four months prior to implementation of the parental consent law, an average of 29 Massachusetts minors obtained out-of-state abortions each month (in Rhode Island, New Hampshire, Connecticut, and New York—data for Maine was not available). After the parental consent law was implemented, however, the average jumped to be-

[26] Charles V. Zehren, "As Pennsylvania Limits Access, Fight Rages On," Newsday, Feb. 22, 1994, at 13.

[27] It is noteworthy that in September, 1996, a reporter for The Record newspaper published in nearby Hackensack, New Jersey, was told by two staff abortionists at the Metropolitan Medical clinic that at least 1,500 partial-birth abortions are performed in the clinic annually. "Most are teenagers," one doctor told the newspaper. See Ruth Padawer, "The Facts on Partial-Birth Abortion," The Record, Sept. 15, 1996, at RO4.

[28] Charlotte Ellertson, "Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana," Am. J. Pub. Health, August 1997.

tween 90 and 95 out-of-state abortions per month (using data from the five states of Rhode Island, New Hampshire, Connecticut, New York, and Maine)—representing one-third of the abortions obtained by Massachusetts' minors.[29]

The study noted that due to what the authors described as "astute marketing," one abortion clinic in New Hampshire was able to nearly double the monthly average of abortions performed on Massachusetts minors (from 14 in 1981 to 27 in 1982). The abortionist "began advertising in the 1982 Yellow Pages of metropolitan areas along the northern Massachusetts border, stating 'consent for minors not required.'" [30]

In April of 1991, the Planned Parenthood League of Massachusetts estimated that approximately 1,200 Massachusetts minor girls travel out of state for abortions each year, the majority of them to New Hampshire. Planned Parenthood said that surveys of New Hampshire clinics revealed an average of 100 appointments per month by Massachusetts minors.[31]

Mississippi

A 1995 study of the effect of Mississippi's parental consent law revealed that Mississippi has also experienced an increase in the number of minors traveling out of state for abortion. The study, published in Family Planning Perspectives, compared data for the five months before the parental consent law took effect in June of 1993, with data for the six months after it took effect, and found that "[a]mong Mississippi residents having an abortion in the state, the ratio of minors to older women decreased by 13% * * * [h]owever, this decline was largely offset by a 32% increase in the ratio of minors to older women among Mississippi residents traveling to other states for abortion services." [32]

Based on the available data, the study suggests that the Mississippi parental consent law appeared to have "little or no effect on the abortion rate among minors but a large increase in the proportion of minors who travel to other states to have abortions, along with a decrease in minors coming from other states to Mississippi." [33]

Virginia

Grace S. Sparks, executive director of the Virginia League of Planned Parenthood, predicted in February of 1997 that if Virginia were to pass a parental notification law, teenagers would travel out of state for abortions. "In every state where they've passed parental notification, * * * there's been an increase in out-of-state abortions," she said, adding, "I suspect that that's what will happen in Virginia, that teen-agers who cannot tell their parents * * * will go out of state and have abortions * * *." [34]

---

[29] Virginia G. Cartoof and Lorraine V. Klerman, "Parental Consent for Abortion: Impact of the Massachusetts Law," Am. J. Pub. Health, April 1986, at 398.

[30] Id.

[31] "Mass. Abortion Laws Push Teens Over Border," Boston Herald, April 7, 1991.

[32] Stanley K. Henshaw, "The Impact of Requirements for Parental Consent on Minors' Abortions in Mississippi," Fam. Planning Perspectives, June 1995.

[33] Id.

[34] Lisa A. Singh, "Those Are the People Who Are Being Hurt," Style Weekly, Feb. 11, 1997.

Virginia's parental notification law took effect on July 1, 1997. According to a recent article in The Washington Post, initial reports indicate that abortions performed on Virginia minors have dropped 20 percent during the first five months that the law has been in effect (from 903 abortions during the same time period in 1996 to approximately 700 abortions in 1997). The article suggests, however, that Virginia teenagers are traveling to the District of Columbia in order to obtain an abortion without involving their parent. In fact, the National Abortion Federation (NAF), which runs a toll-free national abortion hotline, said that calls from Virginia teenagers seeking information on how to obtain an abortion out-of-state were the largest source of teenage callers seeking out-of-state abortions, at seven to 10 calls per day. NAF hotline operator Amy Schriefer has gone so far as to talk a Richmond area teenage girl through the route (involving a Greyhound bus and the Metro's Red Line) to obtain an abortion in the District of Columbia.[35]

Adult male predators and evasion of parental involvement laws

Importantly, evasion of a state's parental involvement law can sometimes be part of an effort to cover up commission of a crime.

The majority of teenage girls who become pregnant are impregnated by adult men, according to the California Center for Health Statistics.[36] One study of 46,500 school-age mothers in California found that two-thirds of the girls were impregnated by adult, post-school fathers, with the median age of the father being 22 years.[37] Further, one study reports that 58 percent of the time it is the girl's boyfriend who accompanies a girl for an abortion when her parents have not been told about the pregnancy.[38] Obviously, many of these males are vulnerable to statutory rape charges, thus providing a strong incentive to pressure the much younger girl to agree to an abortion without revealing the pregnancy to the parents. Currently, such a male often can evade parental consent requirements by driving his victim across state lines.

According to Professor Collett, it is becoming increasingly clear that most underage pregnancies are the result of a lack of sexual restraint by adult men.[39] In a study of over 46,000 pregnancies by school-age girls in California, researchers found that "71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers. * * * Even among junior high school mothers aged 15 or younger, most births are fathered by adult men 6–7 years their senior. *Men aged 25 or older father more births among California school-age girls than do boys under age 18*."[40] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[41]

---

[35] "Fewer Teens Receiving Abortions In Virginia," The Washington Post, March 3, 1998.

[36] See Collett Testimony (citing Mike A. Males, "Adult Involvement in Teenage Childbearing and STD," Lancet, vol. 346 (July 1995)).

[37] See Mike A. Males and Kenneth S.Y. Chew, "The Ages of Fathers in California Adolescent Births, 1993," Am. J. Pub. Health (April 1996).

[38] See Stanley Henshaw and Kathryn Post, "Parental Involvement in Minors' Abortion Decisions," Fam. Planning Perspectives, vol. 24, no. 5 (September/October 1992).

[39] See Collett Testimony.

[40] Mike A. Males, "Adult Involvement in Teenage Childbearing and STD," Lancet, vol. 64, (July 8, 1995)(emphasis added).

[41] See Collett Testimony.

EFFECT OF THE CHILD CUSTODY PROTECTION ACT

H.R. 3682 builds upon two of the few points of agreement in the national debate over abortion: the desirability of parental involvement in a minor's abortion decision and the need to protect a pregnant minor's physical health.

The Act does not establish a national requirement of parental consent or notification prior to the performance of an abortion on young girls who lack sufficient maturity to determine whether abortions are in their best interest. Nor does it attempt to regulate any purely intrastate activities related to the procurement of abortion services, or reverse or modify any existing case law defining the ability of non-custodians to encourage, counsel, or assist young girls in obtaining secret abortions. H.R. 3682 will simply help to ensure the effectiveness of state laws designed to provide a layer of protection against these dangers to children's health and safety.

H.R. 3682 would also help to foreclose one proven strategy of escaping penalty by sexual predators and their accomplices. Men who engage in acts that states classify as statutory rape would no longer be able to pressure their young victims into crossing state lines to obtain abortions without the knowledge or consent of the girl's parents, or judicial approval, when that knowledge or consent or approval is required by the state where the girl resides.

A common but misguided criticism of this legislation is that it will isolate pregnant teenagers, forcing them to face their decision alone. The Act, however, does not forbid assisting a minor in her decision about whether to have an abortion, but merely requires that the person assisting a young pregnant girl abide by the state law of the girl's residence. "Instead of secreting the girl across state lines to obtain an abortion, then returning her to the very home that abortion rights activists would have us imagine as abusive and violent, the friend could either help the girl inform her parents of her condition in order to comply with the state notification or consent law, or help the girl obtain judicial approval to consent to the abortion." [42]

CONSTITUTIONAL ANALYSIS

Constitutional authority for the child custody protection act

H.R. 3682 is a regulation of commerce among the several states. Commerce, as that term is used in the Constitution, includes travel whether or not that travel is for reasons of business.[43] To transport another person across state lines is to engage in commerce among the states. There is thus no need to address the scope of Congress' power to regulate activity that is not, but that affects, commerce among the States.[44] Under current Supreme Court jurisprudence, Congress can adopt rules concerning interstate commerce, such as

[42] Collett Testimony.

[43] See, e.g., *Caminetti* v. *United States*, 242 U.S. 470 (1917).

[44] See *A.L.A. Schechier Poultry Corp.* v. *United States*, 295 U.S. 495 (1935); *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964); *United States* v. *Lopez*, 514 U.S. 549 (1995).

this one, for reasons related primarily to local activity rather than commerce itself.[45]

The interstate transportation of minors for the purposes of securing an abortion is, therefore, clearly a form of interstate commerce which the Constitution expressly empowers Congress to regulate.[46] H.R. 3682 only regulates conduct which involves interstate movement, and only the national government is expressly authorized by the Constitution to address this activity. Even under the more limited view of the commerce power that has prevailed in the past, H.R. 3682 would be within Congress' power. H.R. 3682 does not rest primarily on a congressional policy independent of that of the state that has primary jurisdiction to regulate the subject matter involved. Rather, in H.R. 3682 Congress is seeking to ensure compliance with the laws of the state primarily concerned, which is the state in which the minor resides. Congress, therefore, is dealing with a problem that arises from the federal union, not making its own decisions concerning local matters. H.R. 3682 is a federal law that regulates interstate commerce as a means of protecting children's health and safety, providing a federal penalty for its violation. The Supreme Court described the power granted Congress by the Commerce Clause as a "positive power," a power "to govern affairs which the individual states, with their limited territorial jurisdictions, are not fully capable of governing."[47] Congress has a long history of passing legislation to help states solve problems that are beyond local solutions.[48] H.R. 3682 is a federal act that will help states meaningfully enforce their parental consent and involvement laws.

Roe v. Wade and the Child Custody Protection Act

In *Roe* v. *Wade*,[49] a majority of the Supreme Court found that the Fourteenth Amendment's "due process" clause, which provides that no state shall deprive any person of "life, liberty, or property" without due process of law, includes within it a "substantive" component, which should be understood to bar a state from prohibiting abortions under some circumstances. This "substantive" component of the Fourteenth Amendment's "due process" clause, also described in that case as including a "right to privacy," has been held to forbid virtually all state prohibitions on abortion during the first trimester of pregnancy.[50] Although *Roe* v. *Wade* has never been overruled, its "trimester" method of regulation, and its holding that the right to an abortion was a "fundamental freedom" which a state could override only for a compelling purpose have been all but

---

[45] *United States* v. *Darby*, 312 U.S. 100 (1941). Therefore, even if H.R. 3682 reflected a substantive congressional policy concerning abortion and domestic relations it would be a valid exercise of the commerce power because it is a regulation of interstate commerce.

[46] U.S. Constitution, Article I, Section 8, clause 3.

[47] See *United States* v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944).

[48] See, e.g., *Perez* v. *United States*, 402 U.S. 146 (1971) (legislative history of the Consumer Credit Protection Act, 18 U.S.C. 891 et seq., indicating that loansharking " 'simply cannot be solved by the states alone' "); *United States* v. *Sheridan*, 329 U.S. 379 (1946) (in adopting the National Stolen Property Act, 18 U.S.C. 2314, Congress "contemplated coming to the aid of the states in detecting and punishing criminals" who "make a successful get away and thus make the state's detecting and punitive processes impotent"); *United States* v. *Bishop*, 66 F.3d 569 (3rd Cir.) (Congress found in considering the Anti Car Theft Act of 1992, 18 U.S.C. 2119, that "significant barriers to [state and local] enforcement" had resulted in car thieves escaping punishment), cert. denied, 133 L. Ed. 2d 529, 116 S.Ct. 681 (1995).

[49] 410 U.S. 113 (1973).

[50] *Planned Parenthood* v. *Casey,* 505 U.S. 833, 985 (Scalia, J., Dissenting).

repudiated.[51] In *Planned Parenthood* v. *Casey*,[52] while the central holding of *Roe* was expressly preserved, the scope of permissible state regulation of abortion and the standards to be applied in evaluating the constitutionality of the regulation were significantly changed. Instead of declaring that the right to seek an abortion was a "fundamental right" calling for a "compelling state interest" to regulate, the new holding was that state regulation of abortion was permissible so long as such regulation did not place an "undue burden" on a woman's exercise of her constitutional rights with regard to abortion.[53]

H.R. 3682 does not raise any questions concerning the permissible regulation of abortion that are independent of the state laws that it is designed to effectuate. To the extent that a state rule is inconsistent with the Court's doctrine, that rule is ineffective and H.R. 3682 would not make it effective. Therefore, it is unnecessary to ask whether the "life exception" in Subsection (b) of H.R. 3682 is an adequate exception to a rule regulating abortion or whether the inability to circumvent a state law is an "undue burden." Because constitutional limits on the States" regulatory authority are in effect incorporated into Subsection (a) of the Act, Subsection (b) is in addition to any exceptions required by the Court's doctrine.

Constitutionality of parental involvement laws

Following the Court's decision in *Roe* v. *Wade,*[54] many states enacted parental consent or notification statutes requiring minors to notify or seek the consent of their parents before undergoing an abortion. A parental consent law is generally a law that requires one or both parents to give actual consent to the minor's decision to have an abortion. A parental notification law generally requires the physician, or in some statutes another health care provider, to notify one or both of the parents of the minor female at some time prior to the abortion.

The Court first considered parental involvement in a minor daughter's abortion in *Planned Parenthood of Central Missouri* v. *Danforth*.[55] The Missouri statute gave a minor girl's parent an absolute veto over her decision to have an abortion. The majority, led by Justice Blackmun, found that the veto power was unconstitutional.[56] The majority, however, also noted in this case that the state had greater authority to regulate abortion procedures for minor girls than for adult females.[57]

---

[51] Hearing on H.R. 3682, the Child Custody Protection Act, before the Subcommittee on the Constitution of the House Committee on the Judiciary, 105th Cong., 2d Sess. (May 21, 1998) (statement of Professor Stephen B. Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law) [hereinafter Presser Testimony].

[52] 505 U.S. 833 (1992).

[53] For the articulation of the "undue burden" standard in *Casey,* see id. at 874–880. While the "undue burden" standard as expressed in *Casey* appeared only to be the views of the three-person plurality, Justice Scalia predicted that "undue burden" would henceforward be the relevant standard, Id., at 984–995 (Scalia, J. Dissenting), and it now appears that the lower federal courts understand that the "undue burden" standard is the correct one to be applied in abortion cases. See, e.g., *Manning* v. *Hunt,* 119 F.3d 254, 260 (4th Cir. 1997) ("The trend does appear to be a move away from the strict scrutiny standard toward the so-called "undue burden" standard of review").

[54] 410 U.S. 113 (1973).

[55] 428 U.S. 52 (1976).

[56] Id.

[57] Id. at 74–75.

In *Bellotti* v. *Baird,* the Court remanded a parental consent statute that was unclear as to whether the parents had authority to veto the abortion and as to the availability of a judicial bypass procedure.[58] The statute returned to the Supreme Court in *Bellotti* v. *Baird (Bellotti II).*[59] The statute in *Bellotti II* required a minor to receive the consent of her parents or a judicial bypass proceeding that did not take into account whether the minor was sufficiently mature to make an informed decision regarding the abortion. The Supreme Court invalidated the statute without a majority opinion.

Justice Powell's plurality opinion held that a state could limit the ability of a minor girl to obtain an abortion by requiring notification or consent of a parent if, but only if, the state established a procedure where the minor girl could bypass the consent or notification requirement.[60] This has become the de facto constitutional standard for parental consent and notification laws. In upholding parental involvement laws, the plurality found three reasons why the constitutional rights of minors were not equal to the constitutional rights of adults: "The peculiar vulnerability of children; their inability to make decisions in an informed, mature manner; and the importance of the parental role in child rearing."[61] Thus, the plurality tried to design guidelines for a judicial bypass proceeding that allowed states to address these interests.

In *H.L.* v. *Matheson*,[62] a minor girl challenged the constitutional validity of a state statute that required a physician to give notice to the parents of a minor girl whenever possible before performing an abortion on her. By a vote of six to three, the statute was found to be constitutional. Chief Justice Burger's majority opinion found that a state could require notification to the parents of a minor girl because the notification "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 whether or not to bear a child."[63]

In *Planned Parenthood Association of Kansas City, Missouri, Inc.* v. *Ashcroft,*[64] the Court found a state law to be constitutional which required a minor to receive the consent of one of her parents for an abortion or, in the alternative, to obtain the consent of a juvenile court judge. While there was no majority opinion, this case marked the first time the Court directly upheld a parental consent requirement.

In *Ohio* v. *Akron Center for Reproductive Health,*[65] the Supreme Court upheld a statute that required a physician to give notice to one of the minor's parents or, under some circumstances, another relative, before performing an abortion on the minor. The statute permitted the physician and the minor to avoid the requirement by a judicial bypass. Justice Kennedy, writing for the majority, held that the bypass proceeding did not unconstitutionally impair a mi-

---

[58] 428 U.S. 132 (1976).
[59] 443 U.S. 622 (1979).
[60] Id. at 651.
[61] Id. at 634.
[62] 450 U.S. 398 (1981).
[63] Id. at 409.
[64] 462 U.S. 476 (1983).
[65] 497 U.S. 502 (1990).

nor's rights by the creation of unnecessary delay.[66] The Court established in this case that it will not invalidate state procedures so long as they seem to be reasonably designed to provide the minor with an expedited process.

In *Hodgson* v. *Minnesota,*[67] the Court invalidated a state statute that required notification of both parents prior to a minor girl's abortion without the option of a judicial bypass. The Court, however, upheld statutory requirements that both parents be notified of the abortion and a 48 hour waiting period between notification and the performance of the abortion, if such requirements were accompanied by a judicial bypass procedure that met constitutional standards.

This line of cases makes clear that a state may require the consent of, or notification to, one or both of a minor's parents if the state provides for a constitutionally sound judicial bypass procedure. The Child Custody Protection Act is designed to preserve the application of such state laws, supplemented by a penalty section to provide a uniform penalty for those individuals circumventing laws by crossing state lines. Because the Act derives its substantive content entirely from state law, the Act will only be enforceable when a prosecutor can show that a constitutionally enforceable state parental consent or notification law exists. Thus, the Act itself will never implicate any constitutional issues associated with parental notification or consent mandates.

Judicial bypass procedures

Some critics of H.R. 3682 charge that it will remove the only viable option to minors who feel they cannot tell their parents, but this ignores the available judicial bypass procedures which all valid parental involvement statutes contain. Alternatively, opponents of H.R. 3682 acknowledge the judicial bypass alternative but dismiss it as too complicated and intrusive to be an effective option for most young girls. Yet, in actuality, the proceedings are simple.[68] According to Professor Collett:

---

[66] Id. at 514–515.

[67] 497 U.S. 417 (1990).

[68] See *Orr* v. *Knowles,* 337 N.W.2d 699 at 706 (Neb. 1983). Notwithstanding empirical evidence to the contrary, abortion rights activists also characterize the courts as "vehemently anti-choice," refusing minors' request to bypass parental involvement in an arbitrary and capricious manner. "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 interest. 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." NARAL Publications—"Factsheet: S. 1645 is a Threat to Young Women's Health" (1998). Yet a survey of Massachusetts cases filed between 1981 and 1983 found that every minor that sought judicial authorization to bypass parental consent received it. Robert H. Mnookin, *Bellotti* v. *Baird,* A Hard Case in In the Interest of Children: Advocacy, Law Reform, and Public Policy 149 at 239 (Robert H. Mnookin ed., 1985). A subsequent study found that orders were refused to only 1 of 477 girls seeking judicial authorization from Massachusetts courts between December 1981 and June 1985. Susanne Yates & Anita J. Pliner, "Judging Maturity in the Courts: the Massachusetts Consent Statute," 78 Am. J. Pub. Health 646, 647 (1988). The average hearing lasted only 12.12 minutes, and "more than 92 percent of the hearings [were] less than or equal to 20 minutes." Id. At 648. Based upon a review of bypass petitions filed in Minnesota from August 1, 1981, to March 1, 1986, a federal trial court determined that of the 3,573 bypass petitions filed, six were withdrawn, nine were denied, and 3,558 were granted. See *Hodgson* v. *State of Minnesota,* 648 F. Supp. 756 at 765 (D. Minn. 1986). Similar ease in obtaining judicial approval as an alternative to parental involvement is suggested by a recent report on the newly enacted Virginia statute requiring parental notification. Out of 18 requests for judicial bypass, "all but one of the requests were granted eventually." In Virginia, since the law took effect, 18 teenagers have gone to a judge, who determines whether the girl is mature enough to make her own decision about

> In those few cases where the girl's parents are unable or unwilling to guide and support her during her time of decision, judicial bypass proceedings provide a quick, effective way to insure that those who would cast themselves as guardians of the girl's reproductive freedom are not in reality perpetrators of yet another type of violence against their young victims.[42]

H.R. 3682 does not alter the judicial bypass proceeding available to minor girls in their respective state courts. A judicial bypass provides a mechanism for minor girls to get permission from an adjudicatory tribunal[43] to receive an abortion without parental involvement. The standard for judicial bypass proceedings follows the general test set forth in *Bellotti* v. *Baird (Bellotti II)*.[44] A valid bypass procedure must:

1. Allow the minor to show that she possesses *maturity* and information to make the decision, in consultation with her physician, without regard to her parents' wishes;
2. Allow the minor to show that, even if she cannot make the decision by herself, that the "desired abortion would be in her *best interests*";
3. Be confidential (such that her identity is not divulged to her parents or others); and
4. Be conducted "with expedition to allow the minor an effective opportunity to obtain the abortion."

The maturity and best interest tests have been upheld as constitutional in several Supreme Court cases.[45] Evidence concerning maturity may include work and personal experience, appreciation of the gravity of the procedure, and displays of personal judgment.[46] Generally, if the minor is found mature enough to make the abortion decision, the minor may obtain the abortion.

If a judge finds that the minor is not sufficiently mature, the judge may also consider whether an abortion would be in the minor's best interest. This consideration may include medical risks which depend on the time, place or type of procedure to be performed.[47] Concerns about the minor's general health risks are also encompassed in the "best interests" prong. For example, one court found that it was in the best interests of a minor it deemed immature to obtain an abortion due to a heart condition.[48] Because she was unable to discontinue heart medication that caused fetal birth defects without risk of grave physical harm to herself, the judge concluded it was in her best interests to obtain an abortion. Judges

---

abortion. All but one of the requests were granted eventually." Ellen Nakashima, "Fewer Teens Receiving Abortion in Virginia: Notification Law to Get Court Test," Washington Post (March 3, 1998).

[42] Collett Testimony.

[43] The tribunal can consist of a judge of a general jurisdiction trial court, a juvenile court judge, or an administrative panel delegated authority by state law to make decisions concerning abortions for minor girls. See Constitutional Law, Hornbook Series, 5th Edition, (John R. Nowak and Ronald D. Rotunda, eds.)., 1995.

[44] 443 U.S. 622 (1979) *(Bellotti II).*

[45] See *Ohio* v. *Akron Center for Reproductive Health,* 497 U.S. 502 (1990) (mature and best interests); *Planned Parenthood* v. *Casey,* 112 S.Ct. 2791 (1992) (sufficiently mature and in the minor's best interest); and *Hodgson* v. *Minnesota,* 497 U.S. 417 (1990) (mature and capable of giving informed consent or that abortion without notice to both parents would be in her best interest).

[46] See *Hodgson,* 497 U.S. 417 (1990).

[47] See generally 1 Am. Jur. 2d ABORTION AND BIRTH CONTROL 66.

[48] See *In Re Moe,* 26 Mass App 915 (1988).

may also consider evidence or history of physical, sexual, or emotional abuse by parents or guardians under the "best interest" umbrella.[49]

Constitutionality of lack of proof of specific intent as to violation of State law

Ignorance or mistake of fact is not a defense in crimes where it is necessary for the protection of the public to require citizens to determine the facts of the situation at their peril, such as in the case of statutory rape.[50] This proposition can be defended on the ground that there is a measure of wrong in the act, even as the defendant understood it.[51] H.R. 3682 operates on a similar principle. A stranger that secretly takes a minor girl across state lines for a dangerous medical procedure without ascertaining her parents" consent has certainly acted, in some measure, wrongly. H.R. 3682, by requiring that the transporter "in fact" abridge a parental right, puts the transporter under a strict duty to ascertain parental permission before action is taken in order to guard against a possible violation. Importantly, the Act provides an affirmative defense where the defendant reasonably believed, based on information the defendant obtained directly from a parent of the minor or other compelling facts, that the state parental involvement law where the minor girl resides had been complied with. Some critics of H.R. 3682 question the constitutionality of providing an affirmative defense in a criminal law. Yet, examples of criminal laws with affirmative defenses are numerous.[52]

Federalism and the Child Custody Protection Act

The United States Constitution created a federal government with limited and enumerated powers, and the employed means for ensuring that the federal government would not overwhelm the state and local governments. According to Professor Presser:

> The system of checks and balances, whereby the three branches of the federal government restrained each other, was an important aspect of this plan, but equally important was the basic notion that the federal government was not to intrude on the domestic matters which had traditionally been the prerogative of state and local governments. Because of fears that the federal government might still overwhelm that of the states, some states qualified their ratification of the new Constitution with the insistence that it needed to be amended by a Bill of Rights,

---

[49] 1 Am. Jur. 2d ABORTION AND BIRTH CONTROL 66. Also, the court may consider alternatives to abortion such as marriage, adoption, and whether assuming the responsibilities of motherhood would be best in such situations.

[50] See generally *Washington* v. *Abbott,* 726 P.2d 988 (1986) (holding that the element of "knowledge" need not be an implied element of statutory rape).

[51] See generally *State* v. *Audette,* 8 Vt. 400 (1908).

[52] See generally 33 U.S.C. 1319 (Enforcement standards for water pollution prevention); 18 U.S.C. 3146 (Penalty for failure to appear); 18 U.S.C. 2252A (Certain activities relating to material constituting or containing child pornography); 18 U.S.C. 1512 (Tampering with a witness); 18 U.S.C. 373 (Solicitation to commit a crime of violence); 18 U.S.C. 1204 (International parental kidnaping); 18 U.S.C. 845 (Exceptions and relief from disabilities concerning explosive materials); 18 U.S.C. 177 (Injunctions for biological weapons); 18 U.S.C. 17 (Insanity defense); 10 U.S.C. 850a (Defense of lack of mental responsibility); 10 U.S.C. 920 (Rape and carnal knowledge).

> which would further insure that the federal government would be limited in scope.[53]

As stated in Section I of this report, this Act does not attempt to regulate or impose policy on the individual states. Rather, it is predicated on the validity of state law and derives its substantive application from state law. H.R. 3682 merely seeks to implement state policies that are being transgressed or evaded.

H.R. 3682 is drafted in order to further the goal of preserving the discretion of each state to address an important aspect of the controversial abortion issue. According to Professor Presser: "By imposing penalties on anyone who seeks to deny a minor or her family the protections of a state's parental consent/judicial bypass provisions with regard to abortion, as H.R. 3682 would do, the Congress would simply be reinforcing our Federalism scheme, and ensuring that each state's policy aims regarding this controversial issue are not frustrated."[54]

H.R. 3682 does not supersede, override, or alter existing state laws regarding minors' abortions. Rather, H.R. 3682 uses Congress' authority to regulate interstate activity to protect state laws from evasion. Professor Presser testified:

> As Justice Scalia and others have recognized, the political process of each state exists to resolve these difficult questions through the exercise of popular sovereignty, the bedrock of our entire Constitutional system. Not for nothing are the first three words of the Constitution "We the people," and unless the Constitution itself expressly denies the people any discretion over a particular area it is their right, indeed, it is their duty to govern themselves regarding that issue through the legislative process. This is the most important right in the Constitution, the right of self government, for which our system of dual sovereignty exists. This Bill is an important step in reinforcing Federalism and in reinforcing self-government. It deserves to be enacted.[55]

In short, H.R. 3682 does not encroach on state powers, but rather reinforces state powers.

H.R. 3682 is not unlike the Mann Act[56] which prohibits the knowing transportation of women in interstate commerce for purposes of prostitution. The Mann Act does not exempt transportation into states in which prostitution might be legal. In *U.S.* v. *Pelton,*[57] the Eighth Circuit upheld the Mann Act against a challenge of unconstitutionality in its application to transporting a person into Nevada where prostitution was legal. The Mann Act is an example of valid and constitutional federal law that, in certain applications, criminalizes the transportation of persons into a state for a purpose which may be legal under the laws of that state.

---

[53] Presser Testimony (internal citations omitted).
[54] Presser Testimony.
[55] Presser Testimony.
[56] 18 U.S.C. 2421.
[57] 578 F.2d 701 (1978) (cert. denied).

HEARINGS

The Committee's Subcommittee on the Constitution held a hearing on H.R. 3682, the "Child Custody Protection Act" on May 21, 1998. Testimony was received from the following witnesses: Representative Ileana Ros-Lehtinen; Representative James L. Oberstar; Representative Nita Lowey; Representative Lincoln Diaz-Balart; Representative Sheila Jackson-Lee; Representative Christopher H. Smith; Ms. Joyce Farley of Dushore, Pennsylvania; Ms. Eileen Roberts, Mothers Against Minors' Abortion; Reverend Katherine Hancock Ragsdale, Episcopalian Priest; Professor Teresa Collett, Professor of Law, South Texas College of Law; Professor Stephen Presser, Raoul Berger Professor of Legal History, Northwestern University School of Law; and Mr. Robert Graci, Office of the Attorney General of Pennsylvania.

COMMITTEE CONSIDERATION

On June 11, 1998, the Subcommittee on the Constitution met in open session and ordered reported the bill H.R. 3682, as amended, by a vote of 7 to 2, a reporting quorum being present. On June 17, and June 23, 1998, the Committee met in open session and ordered reported favorably the bill, H.R. 3682 with an amendment in the nature of a substitute, by a recorded vote of 17 to 10, a quorum being present.

VOTE OF THE COMMITTEE

1. Mr. Canady offered an amendment to clarify that neither the minor girl who is being taken out of state for an abortion, nor her parents, may be subject to prosecution or civil action and to add an affirmative defense where the defendant reasonably believed, based on information the defendant obtained directly from a parent of the individual or other compelling facts, that the state parental involvement law where the minor girl resides had been complied with. The amendment was agreed to by a voice vote.

2. An amendment was offered by Mr. Nadler to Mr. Canady's amendment to delete the word "affirmative" from the affirmative defense. The amendment was defeated by a 9–15 roll call vote.

ROLLCALL VOTE NO. 1

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Gallegly
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Mr. Wexler	Mr. Goodlatte

Mr. Rothman	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Mr. Graham
	Ms. Bono

3. An amendment was offered by Mr. Nadler to Mr. Canady's amendment to delete from the affirmative defense the provision that the defendant's reasonable belief about compliance with the state law where the minor resides must be "based on information the defendant obtained directly from a parent of the individual or other compelling facts." The amendment was defeated by a 8–15 roll call vote.

ROLLCALL VOTE NO. 2

AYES	NAYS
Mr. Frank	Mr. Hyde
Mr. Nadler	Mr. Sensenbrenner
Mr. Scott	Mr. Gekas
Mr. Watt	Mr. Coble
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Goodlatte
Mr. Wexler	Mr. Buyer
Mr. Rothman	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Rogan
	Mr. Graham
	Ms. Bono

4. An amendment was offered by Mr. Canady to clarify that circumventing a state's parental involvement law is an abridgement of a parent's right and to ensure that either parental notice or consent or a judicial bypass is obtained before the out-of-state abortion, according to what would have been required by the first state's law. The amendment was agreed to by a voice vote.

5. An amendment was offered by Mr. Barr to add the phrase "in fact" to Mr. Canady's amendment to clarify that, under the new language as amended, knowledge of violation of the state law is not an element requiring specific proof. The amendment was agreed to by a voice vote.

6. An amendment was offered by Mr. Scott to exempt the sibling of a minor from the penalty provision of this Act. The amendment was defeated by a 6–15 roll call vote.

ROLLCALL VOTE NO. 3

AYES	NAYS
Mr. Frank	Mr. Hyde
Mr. Scott	Mr. Gekas
Mr. Watt	Mr. Coble

Ms. Lofgren	Mr. Smith (TX)
Ms. Jackson-Lee	Mr. Gallegly
Mr. Rothman	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Ms. Bono

7. An amendment was offered by Ms. Jackson-Lee that would exempt ministers, rabbis, pastors, priests, or other religious leaders from the penalty provisions of the Act. The amendment was defeated by a 5–17 roll call vote.

ROLLCALL VOTE NO. 4

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Scott	Mr. Gekas
Mr. Watt	Mr. Coble
Ms. Jackson-Lee	Mr. Smith (TX)
Mr. Rothman	Mr. Gallegly
	Mr. Canady
	Mr. Inglis
	Mr. Goodlatte
	Mr. Buyer
	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Mr. Graham
	Ms. Bono
	Mr. Frank

8. An amendment was offered by Ms. Jackson-Lee to require that one year after the enactment of this bill, GAO submit a study on the impact on the number of illegal and unsafe abortions and increased parental abuse, and report to Congress the results of that study. The amendment was defeated by a 8–14 roll call vote.

ROLLCALL VOTE NO. 5

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Ms. Waters	Mr. Goodlatte
Mr. Wexler	Mr. Buyer

Mr. Rothman	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Mr. Graham
	Ms. Bono

9. An amendment was offered by Mr. Conyers to create an exception to the prohibitions of this bill to the extent such prohibitions would increase "hazards" to the minor or place an undue burden on a minor seeking an abortion. The amendment was defeated by a 8–14 roll call vote.

ROLLCALL VOTE NO. 6

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Nadler	Mr. Gekas
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Ms. Waters	Mr. Goodlatte
Mr. Wexler	Mr. Buyer
Mr. Rothman	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Mr. Graham
	Ms. Bono

10. An amendment was offered by Mr. Scott to create an exception where a minor has participated in a judicial bypass proceeding in any state court. The amendment was defeated by a 9–16 roll call vote.

ROLLCALL VOTE NO. 7

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Gallegly
Ms. Waters	Mr. Canady
Mr. Delahunt	Mr. Inglis
Mr. Wexler	Mr. Goodlatte
Mr. Rothman	Mr. Buyer
	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Mr. Graham
	Ms. Bono

11. An amendment was offered by Mr. Watt to create an exception where the abortion is necessary to prevent serious physical illness or a serious health condition. The amendment was defeated by a 11–16 roll call vote.

ROLLCALL VOTE NO. 8

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Nadler	Mr. Coble
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Gallegly
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Ms. Waters	Mr. Goodlatte
Mr. Delahunt	Mr. Buyer
Mr. Wexler	Mr. Bryant
Mr. Rothman	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Rogan
	Mr. Graham
	Ms. Bono

12. An amendment was offered by Mr. Scott to remove the ability of parents to file a civil action for violation of their rights under this bill. The amendment was defeated by a voice vote.

13. An amendment was offered by Mr. Scott to exempt from any criminal or civil liability abortion clinics and providers. The amendment was defeated by a voice vote.

14. An amendment was offered by Mr. Scott to create a health exception. The amendment was defeated by a voice vote.

15. An amendment was offered by Mr. Watt to require proof of specific intent to evade a state's parental involvement law. The amendment was defeated by a voice vote.

16. Two amendments were offered en bloc by Mr. Scott to remove the applicability of sections 2 and 3 of title 18 dealing with accessory after the fact and aiding and abetting principals under the bill. The en bloc amendment was defeated by a voice vote.

17. An amendment was offered by Mr. Frank to insert a non-severability clause. The amendment was defeated by a 5-15 roll call vote.

ROLLCALL VOTE NO. 9

AYES	NAYS
Mr. Frank	Mr. Hyde
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Lofgren	Mr. Coble

Ms. Jackson-Lee	Mr. Smith (TX)
	Mr. Canady
	Mr. Inglis
	Mr. Buyer
	Mr. Bryant
	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Rogan
	Ms. Bono

18. An amendment was offered by Mr. Scott to require a finding of significant federal interest and insufficiency of state laws before prosecution pursuant to this bill. The amendment was defeated by a voice vote.

19. An amendment was offered by Ms. Jackson-Lee to exclude grandparents from the prohibitions of this bill. The amendment was defeated by an 8–16 rollcall vote.

ROLL CALL VOTE NO. 10

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Smith (TX)
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Ms. Waters	Mr. Goodlatte
Mr. Wexler	Mr. Buyer
	Mr. Bryant
	Mr. Chabot
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Pease
	Mr. Rogan
	Mr. Graham
	Ms. Bono

20. Two amendments were offered en bloc by Ms. Jackson-Lee to exclude aunts, uncles, and first cousins from the prohibitions of this bill. The en bloc amendment was defeated by a 9–16 rollcall vote.

ROLLCALL VOTE NO. 11

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mr. Frank	Mr. Gekas
Mr. Scott	Mr. Coble
Mr. Watt	Mr. Smith (TX)
Ms. Lofgren	Mr. Canady
Ms. Jackson-Lee	Mr. Inglis
Ms. Waters	Mr. Goodlatte
Mr. Meehan	Mr. Buyer

Mr. Wexler	Mr. Bryant
	Mr. Chabot
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Pease
	Mr. Rogan
	Mr. Graham
	Ms. Bono

21. Final Passage. Mr. Hyde moved to report the bill, H.R. 3682, favorably as amended by the amendment in the nature of a substitute to the whole House. The motion was agreed to by a rollcall vote of 17–10.

ROLLCALL VOTE NO. 12

AYES	NAYS
Mr. Hyde	Mr. Conyers
Mr. Gekas	Mr. Frank
Mr. Coble	Mr. Nadler
Mr. Smith (TX)	Mr. Scott
Mr. Gallegly	Mr. Watt
Mr. Canady	Ms. Lofgren
Mr. Inglis	Ms. Jackson-Lee
Mr. Goodlatte	Ms. Waters
Mr. Buyer	Mr. Meehan
Mr. Bryant	Mr. Wexler
Mr. Chabot	
Mr. Jenkins	
Mr. Hutchinson	
Mr. Pease	
Mr. Rogan	
Mr. Graham	
Ms. Bono	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3682, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1998.

Hon. HENRY J. HYDE,
Chair, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3682, the Child Custody Protection Act.

If you wish further details on this estimate we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 3682—Child Custody Protection Act

CBO estimates that implementing H.R. 3682 would not result in any significant cost to the federal government. Because enactment of H.R. 3682 could affect direct spending and receipts, pay-as-you-go procedures would apply to the bill. However, CBO estimates that any impact on direct spending and receipts would not be significant. H.R. 3682 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no cost on state, local, or tribal governments.

H.R. 3682 would make it a federal crime to transport a minor across state lines, under certain circumstances, to obtain an abortion. Violators would be subject to imprisonment and fines. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the government probably would not pursue many such cases, however, so we estimate that any increase in federal cost for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriate funds.

Because those prosecuted and convicted under H.R. 3682 could be subject to criminal fines, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in the following year. CBO expects that any additional collections from enacting H.R. 3682 would be negligible, however, because of the small number of cases likely to be involved. Because any increase in direct spending would equal the fines collected with a one-year lag, the additional direct spending also would be negligible.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, section 8, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS

H.R. 3682 amends title 18 of the United States Code by adding sec. 2401 to criminalize the transportation of minors to avoid certain laws relating to abortion.

Section 1. Short Title

This section states that the short title of this bill is the "Child Custody Protection Act".

Section 2. Transportation of minors to avoid certain laws relating to abortion.

Section 2(a) amends title 18 of the United States Code by inserting after chapter 117 the following:

Chapter 117A—Transportation of minors to avoid certain laws relating to abortion

Subsection (a) of this section makes the knowing transportation across a state line of a person under 18 years of age with the intent that she obtain an abortion, in abridgement of a parent's right of involvement according to State law, a violation of this statute and a chargeable offense.

Subsection (a), paragraph (1), imposes a maximum of one year imprisonment or a fine, or both.

Subsection (a), paragraph (2) specifies the criteria for a violation of the parental right under this statute as follows: an abortion must be performed on a minor in a state other than the minor's residence and without the parental consent or notification, or the judicial authorization, that would have been required had the abortion been performed in the minor's state of residence.

Subsection (b), paragraph (1) specifies that subsection (a) does not apply if the abortion is necessary to save the life of the minor.

Subsection (b), paragraph (2) clarifies that neither the minor being transported nor her parents may be prosecuted or sued for a violation of this bill.

Subsection (c) provides an affirmative defense to prosecution or civil action based on violation of the bill where the defendant reasonably believed, based on information obtained directly from the girl's parent or other compelling facts, that the requirements of the girl's state of residence regarding parental involvement or judicial authorization in abortions had been satisfied.

Subsection (d) establishes a civil cause of action for a parent who suffers legal harm from a violation of subsection (a).

Subsection (e) sets forth definitions of certain terms in this bill.

Subsection (e)(1)(A) defines "a law requiring parental involvement in a minor's abortion decision" to be a law requiring either "the notification to, or consent of, a parent of that minor or proceedings in a State court."

Subsection (e)(1)(B) stipulates that a law conforming to the definition in (e)(1)(A) cannot provide notification to or consent of any person or entity other than a "parent" as defined in the subsequent section.

Subsection (e)(2) defines "parent" to mean a parent or guardian, or a legal custodian, or a person standing in loco parentis (if that person has "care and control" of the minor and is a person with whom the minor "regularly resides") and who is designated by the applicable state parental involvement law as the person to whom notification, or from whom consent, is required.

Subsection (e)(3) defines "minor" to mean a person not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the parental involvement law of the state, where the minor resides.

Subsection (e)(4) defines "State" to include the District of Columbia "and any commonwealth, possession, or other territory of the United States.'"

Section 2(b) is a clerical amendment to insert the new chapter in the table of chapters for part I of title 18.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

PART I—CRIMES

CHAPTER 117A—TRANSPORTATION OF MINORS TO AVOID CERTAIN LAWS RELATING TO ABORTION

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

(a) OFFENSE.—

(1) GENERALLY.—Except as provided in subsection (b), 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, and thereby in fact abridges the right of a parent under a law, requiring parental involvement

in a minor's abortion decision, of the State where the individual resides, shall be fined under this title or imprisoned not more than one year, or both.

(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed on the individual, in a State other than the State where the individual resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the individual resides.

(b) EXCEPTIONS.—(1) The prohibition of subsection (a) 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.

(2) An individual transported in violation of this section, and any parent of that individual, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant reasonably believed, based on information the defendant obtained directly from a parent of the individual or other compelling facts, that before the individual obtained the abortion, the parental consent or notification, or judicial authorization took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the individual resides.

(d) CIVIL ACTION.—Any parent who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

(e) DEFINITIONS.—For the purposes of this section—

(1) a law requiring parental involvement in a minor's abortion decision is a law—

(A) requiring, before an abortion is performed on a minor, either—

(i) the notification to, or consent of, a parent of that minor; or

(ii) proceedings in a State court; and

(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

(2) the term "parent" means—

(A) a parent or guardian;

(B) a legal custodian; or

(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides;

who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required;

(3) the term "minor" means an individual who is not older than the maximum age requiring parental notification or con-

sent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision; and

(4) the term "State" includes the District of Columbia and any commonwealth, possession, or other territory of the United States.

* * * * * * *

DISSENTING VIEWS

We strongly dissent from H.R. 3682. As the bill is written, it is opposed by the Administration and invites a veto by the President.[1] The legislation is opposed by a wide variety of groups who are concerned about reducing teen age pregnancy and protecting a women's right to choose, such as Planned Parenthood Federation of America, the National Abortion and Reproductive Rights Action League, and the Center for Reproductive Law and Policy.

Instead of increasing parental involvement in a minor's decision to terminate a pregnancy, H.R. 3682 will dramatically increase the dangers young women will face in decisions to obtain an abortion. Since the bill contains no prohibition whatsoever against women traveling across state lines to avoid a consent requirement, it will merely lead to more women traveling alone to obtain abortions or seeking illegal "back alley" abortions locally, hardly a desirable policy result. And to the extent young women continue to seek the involvement of close family members when they cannot confide in their parents—for example where a parent has committed incest or there is a history of child abuse—the bill will result in the criminal prosecution of a young woman's grandparents, siblings, and other close relatives.

The legislation is also dangerously over broad. Because of the criminal law's broad definition of conspiracy and the bill's strict liability, it would apply to all sorts of unsuspecting persons having any peripheral involvement in a minor's abortion—even if they had no knowledge of the bill's legal prohibitions or the fact that a minor was crossing state lines to seek an abortion. As a result, the law could apply to clinic employees, bus drivers, and emergency medical personnel. Further because the bill imposes significant new burdens on a women's right to choose.

Legislative proponents may claim that H.R. 3682 merely empowers the states to more vigorously enforce their laws. However, we have seen no effort by the Majority to empower states to enforce their gun, gambling, or tax, laws against residents who cross state lines to take advantage of the laws of other states. Instead we face another shortsighted effort to politicize a tragic family dilemma, which does nothing to respond to the underlying problem of teen pregnancies or dysfunctional families. For these and the other reasons set forth herein, we dissent from H.R. 3682.

---

[1] See Letter from Erskine B. Bowles, Chief of Staff to the President, to Representative Conyers, Ranking Member, Committee on the Judiciary (June 17, 1998); Letter from L. Anthony Sukin, Acting Assistant Attorney General, to Rep. Henry J. Hyde, Chairman, Committee on the Judiciary (June 24, 1998) (hereinafter Justice Department Letter).

I. H.R. 3682 WILL INCREASE THE DANGERS ATTENDANT ON YOUNG WOMEN

Under the legislation teenagers who are unable to satisfy a state parental involvement law—either because they cannot tell one parent (or in some states, both parents) about their pregnancy or because they have no fair chance of obtaining a judicial bypass—will be forced to travel alone across state lines to obtain an abortion. Although abortion is very safe, it is still far preferable to permit a trusted friend or family member to drive a woman home from this surgical procedure.[2]

As much as we would prefer the active and supporting involvement of parents in their children's major decisions, it is not always realistic to expect children to seek parental involvement in the sensitive area of abortion. And when a child is unwilling or unable to seek parental consent, the results can be tragic. The statement of Bill and Mary Bell submitted to the Constitution Subcommittee is telling in this regard.[3] The Bells were the parents of a daughter who died following an illegal abortion that she obtained because she did not want her parents to know about her pregnancy. A Planned Parenthood counselor in Indiana informed Becky that she would have to either notify her parents or petition a judge in order to get an abortion. Becky responded that she did not want to tell her parents because she did not want to hurt them. She also replied that if she could not tell her parents with whom she was very close, she would not feel comfortable asking a judge that she did not even know. Instead of traveling 110 miles to Kentucky, Becky opted to undergo an illegal abortion close to her home. Unfortunately, Becky developed serious complications from her illegal abortion that resulted in her death.

Moreover, many young women justifiably fear that they would be physically or emotionally abused if forced to disclose their pregnancy to their parents. Nearly one-third of minors who choose not to consult with their parents have experienced violence in their family or feared violence or being forced to leave home.[4] Furthermore, studies show that family violence is at its worst during a family member's pregnancy.[5] So we shouldn't be surprised if enact-

---

[2] The likelihood and length of the travel should not be understated. Many teenagers seeking an abortion must travel out of state to obtain the procedure, either because the closest facility is located in a neighboring state or because there is no in-state provider available. In fact, currently 84% of counties lack an abortion provider. Others seek to ensure confidentiality by going out of state. See 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.

[3] Hearing on H.R. 3682 "The Child Custody Protection Act" before the Subcommittee on the Constitution of the House Committee on the Judiciary (May 21, 1998) (Statement of Bill and Mary Bell, submitted for the record). See also Position Paper from The National Abortion Federation, "The True Victims of S. 1645/H.R. 3682 The Teen Endangerment Act" (June 1998) (describing the case of Keishawn, an eleven year old from Maryland, who was impregnated by her step-father, and sought an abortion with the assistance of her aunt, Vicky Simpson, who was awaiting an order granting her custody of Keishawn. Upon learning of the pregnancy, Keishawn's doctors in Maryland recommended that Keishawn have anesthesia during the abortion procedure, but, none of hospitals in Maryland would allow the abortion to be provided at their facility. As a result, Keishawn's aunt sought the attention of a specialist practicing in a neighboring state, who agreed to provide the abortion. Under H.R. 3682, Vicki could have been federally prosecuted for helping her young niece cope with this pregnancy resulting from incest).

[4] Stanley K. Henshaw and Kathryn Kost, "Parental Involvement in Minors" Abortion Decisions," Vol. 24, No. 5, Family Planning Perspectives (Sept./Oct. 1992): 196.

[5] 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 Pre-

Continued

ment of this legislation only exacerbates the dangerous cycle of violence in dysfunctional families.[6] This is the lesson of Spring Adams, an Idaho teenager who was shot to death by her father after he learned she was planning to terminate a pregnancy caused by his acts of incest.[7]

We are well aware that the proponents' response to the many safety risks posed by H.R. 3682 is to point to the state judicial bypass procedure. While bypass may have some theoretical value, in practice it is often difficult if not impossible for troubled young women to obtain. In many cases, teenagers live in regions where the local judges consistently refuse to grant bypasses, regardless of the facts involved. For example, a 1983 study found that a number of judges in Massachusetts refuse to handle abortion petitions or focus inappropriately on the morality of abortion and are insulting and rude to minors and their attorneys.[8] The Supreme Court found that in Minnesota, many judges refuse even to hear bypass proceedings.[9] Other teenagers may live in small communities where the judge may be a friend of the young woman's parents, a family member, or even the parent of a friend. Still others may live in regions where the relevant courts are not open in the evenings or on weekends, when minors could seek a bypass without missing school or arousing suspicion.[10]

Finally, many minors fear that the judicial bypass procedure lacks the necessary confidentiality. The American Medical Association has noted that "because the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies * * *. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since * * * 1973.[11] Many young women, faced with the prospect of embarrassment and social stigma, would rather resort to drastic measures rather than undergo the humiliation of revealing intimate details of their lives to a series of strangers in a formal legal process.

II. H.R. 3682 IS ANTI-FAMILY

H.R. 3682 is hostile to the well being of families. Despite proponents' claims that H.R. 3682 would enforce a parent's right to counsel their daughters, the reality is that it is impossible to legislate complex family relationships. The studies reveal that more than half of all young women who do not involve a parent in a decision to terminate a pregnancy choose to involve another trusted

---

vention of Child Abuse, 1997); H. Amaro, et al., "Violence During Pregnancy and Substance Abuse," American Journal of Public Health, vol. 80 (1990): 575-579.

[6] In 1996, there were a full 3.1 million cases of child abuse reported. Id.

[7] Margie Boule, "An American Tragedy," Sunday Oregonian, Aug. 27, 1989.

[8] Patricia Donovan, "Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions," vol. 15, no. 6, Family Planning Perspectives (Nov./Dec. 1983): 259.

[9] Hodgson v. Minnesota, 497 U.S. 417, 475 (1990). In Florida, after denying a bypass petition to a teenage Florida girl who was in high school, participated in extracurricular activities, worked 20 hours a week, and baby-sat regularly for her mother, the judge suggested that he, himself, as a representative of the court, had standing to represent the state's interest when the minor appealed the denial. In re T.W., 551 So. 2d 1186, 1190 (Fla. 1989).

[10] The courts in Massachusetts, Minnesota and Rhode Island are not open in the evenings or on weekends. See Donovan, supra note 8, at 259.

[11] American Medical Association, Council on Ethical and Judicial Affairs, AMA, "Mandatory Parental Consent to Abortion," Journal of the American Medical Association (JAMA) vol. 269, no. 1 (Jan. 6, 1993): 83.

adult, very often a relative.[12] Although the bill was amended to exempt parents from criminal and civil liability, no amendments were accepted that would have excepted other important family members—such as a grandparent, step-parent, an aunt, or a sibling.[13] The net result will be the exact opposite of the drafter's intent—weakening family communications and creating suspicion and mistrust among close family members.

Even non-parent adults who are in fact raising a child will be swept in by the bill's prohibitions. This is because the legislation includes an excessively narrow definition of "parent," referring only to a parent or guardian; a legal custodian; or a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides and who is designated by a state's parental involvement law as a person to whom notification, or from whom consent, is required.[14] There is no provision to afford protection to grandparents, aunts or uncles who are in fact raising a minor but have not been formally designated as the child's guardian. This is the case even where the child's parents cannot be located.[15]

The bill also illogically allows for civil actions between family members by authorizing lawsuits to be brought by parents suffering "legal harm" against any person assisting a minor in obtaining an abortion across state lines. The legislation is so broad that even a parent who committed rape or incest towards their own daughter is permitted to bring a lawsuit seeking compensation under H.R. 3682.

III. H.R. 3682 IS DANGEROUSLY OVERLY BROAD

Supporters of this bill claim to be targeting predatory individuals that force and coerce a minor into obtaining an abortion. However, the net cast by this bill is far broader and far more problematic.

The legislation includes a criminal penalty against all persons who "knowingly transport an individual who has not attained the age of 18 years across a state line, with the intent that such individual obtain an abortion, and thereby abridges the right of a parent under a law, requiring parental involvement in a minor's abortion decision, of the State where the individual resides."[16] There is no requirement that the individual be aware of this legal prohibition or have knowledge of the young woman's intent to evade her resident state's parental involvement laws.[17] Anyone simply transporting a minor could be jailed for up to one year or fined or both. Any bus driver, taxi driver, family member or friend transporting a young woman to obtain an abortion, but unaware that the young woman has not engaged a formal parental involvement process could conceivably be sent to jail under this prohibition. The same

---

[12] Henshaw and Kost, *supra* note 4 at 207.

[13] Rep. Scott and Rep. Jackson-Lee offered amendments to exempt these family members at full committee markup and each failed by roll-call vote.

[14] H.R. 3682, proposed § 2401(e)(2).

[15] Of the 39 states with parental involvement laws, only Illinois and South Carolina openly allow consent or notice to a grandparent. Ohio allows notice to a grandparent, step-parent or adult sibling under certain circumstances. National Abortion Rights Action League, "Who Decides? A State-By-State Review of Abortion and Reproductive Rights," pp. 154–55.

[16] H.R. 3682, proposed § 2401(a).

[17] An amendment offered at full committee markup of H.R. 3682 by Rep. Melvin Watt (D- NC) to add an intent requirement was defeated on a party line vote.

applies to emergency medical personnel who may be aware they are taking a minor across state lines to obtain an abortion, but would have no choice if a medical emergency were occurring.

These concerns were highlighted in the Justice Department's views on H.R. 3682 which observed:

> Congress has [in the past] opted for willfulness where there is a high likelihood of defendants reasonably believing that they are acting lawfully. * * * Many of the people a minor will likely turn to for help—people such as her grandmother, her aunt, her sibling (who also may be a minor), her religious counselor, her teenaged best friend—will often be people with little or no experience with abortion or knowledge of the relevant law, let alone its finer points. Seeking to aid her, they might well engage in conduct they reasonably believe to be lawful—a minor who is a granddaughter, a niece, a parishioner, or a friend across state lines to a place where she can legally have an abortion. In such circumstances, they would completely unwittingly violate a federal criminal law and expose themselves to criminal and civil sanction.[18]

The supporters of this bill inaccurately compare it to the Mann Act, which prohibits the transport of "any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the U.S., with intent that such individual engage in prostitution, or in a sexual activity for which any person can be charged with a criminal offense * * *." [19] The Mann Act, like most other criminal laws, requires that individuals have specific knowledge of the facts which make their actions illegal. Moreover, prostitution is illegal in 49 of the 50 states, whereas abortion is legal, and indeed, constitutionally protected. A person convicted of possessing stolen property, for example, must know or have reason to know that the property they possess is, in deed, stolen property. H.R. 3682 has no such intent requirement and, therefore, creates a strict criminal liability for anyone in violation. Such extreme measures in a bill that likely inflicts undue burdens on young women is indicative of the underlying purpose of the legislation: to make it much harder and much more dangerous for young women to exercise their constitutional right to obtain a safe and legal abortion.

The problems inherent in the enforcement of a strict liability crime are further exacerbated by existing criminal laws relating to accessories, accessories after the fact, and conspiracies.[20] A nurse at a clinic providing directions to a minor or her driver could be convicted as an accessory under this legislation. A doctor who procures a ride home for a minor and the person accompanying her because of car troubles coupled with the minor's expressed fear of calling her parents for assistance could be convicted as an accessory after the fact. A sibling of the minor that merely agrees to

---

[18] Justice Department Letter, supra note 1, at 8 (citations omitted)

[19] 18 U.S.C. § 2421.

[20] 18 U.S.C. § 2 (accessories); § 3 (accessories after the fact); and § 371 (conspiracies). During full committee markup of H.R. 3682, Rep. Bobby Scott (D–VA) offered an amendment which would prohibit prosecutions based on accessory or accessory after the fact culpability. The amendment was defeated by voice vote.

transport a minor across state lines without any knowledge of intent to evade the resident state's parental consent or notification laws could be thrown in jail and convicted of a conspiracy to violate this statute.

The civil liability provisions of this bill which create a blanket federal cause of action for a parent that suffers "legal harm" as a result of their child being transported across state lines would further chill family and doctor/patient relations. Agency law principles would enable an "aggrieved" parent to sue medical facilities, doctors, nurses, taxi drivers, relatives, ministers, and anyone else providing assistance to a minor transported across state lines to obtain an abortion. This is why in a letter to Ranking Member Conyers, White House Chief of Staff Erskine Bowles stated that the civil liability provisions of H.R. 3682 "would provide an unintended basis for vexatious litigation against individuals and organizations." [21]

Not only would the civil liability provision subject virtually everyone assisting a minor to lawsuits, it would subject everyone else the minor comes in contact with to the rules of discovery. Nothing would stop a lawyer from deposing other women who have visited the defendant clinic. Nothing would prevent parents and family members from being forced to give testimony concerning some of their most private conversations with the minor obtaining the abortion. And, nothing would protect friends of the minor from being dragged into depositions to discuss what they know about a subject that should be confidential.

The legislation also raises troubling questions concerning the impact of civil liability provisions on Federal Rule of Civil Procedure 26 protective orders when the entire scheme of this new federal cause of action is based on material that is invasive. In addition, it is unclear what types of changes family planning clinics may be required to make in order to protect themselves against legal actions. They may be required to interrogate anyone looking under the age of 25, require birth certificates, and encourage persons to drive alone in order to protect themselves from liability. It is not too difficult to conceive of anti-choice groups using this legislation to harass family planning clinics out of existence.

Finally, H.R. 3682 will present a number of complex, if not intractable, law enforcement problems. The Department of Justice has written:

> Enforcement of [the legislation] would present a myriad of serious enforcement problems. Compared with violations of other federal criminal statutes, violations of proposed [the proposed law] would be notably difficult to investigate and to prosecute, and would involve significant, and largely unnecessary, outlays of federal resources.[22]

---

[21] Letter from Erskine B. Bowles, supra note 1.

[22] See also Justice Department Letter, supra, note 1 at 9, The Department of Justice noted at least 6 significant enforcement problems: (1) there is no specific intent requirement; (2) investigations and prosecutions will impose a particular burden on federal authorities because it would criminalize travel for the purpose of facilitating behavior that is lawful in the state where it is undertaken; (3) the principal targets are likely to be adult and teenage relatives and friends of young women seeking abortions; (4) the proof of the critical elements in these cases generally will have to come through either the defendant or the minor, both of whom would be extraordinarily problematic witnesses; (5) state privacy laws concerning medical records and the exist-

Continued

IV. H.R. 3682 IS LIKELY UNCONSTITUTIONAL

By imposing substantial new obstacles and dangers in the path of a minor seeking an abortion, H.R. 3682 also raises a number of serious, if not fatal, constitutional concerns. *Planned Parenthood* v. *Danforth,*[23] held that pregnant minors have a constitutional right to choose whether to terminate a pregnancy. Although this constitutional right is not unlimited—for example, under certain circumstances a state may require parental notification or consent, so long as an appropriate judicial bypass provision is provided[24]—it appears that the right is abrogated under H.R. 3682.

One of the principal problems is that in states which don't allow minors to obtain abortions even where parental consent is obtained, or which provide for no judicial bypass,[25] the proposed legislation could operate to completely shut off a minor's constitutional right to obtain an abortion. This is inconsistent with the Supreme Court's decision in *Hodgson* v. *Minnesota,*[26] which held that a two-parent notification requirement without a bypass mechanism would fail to serve "any state interest with respect to functioning families." The Justice Department has written:

> [The proposed legislation] would appear to be unconstitutional as applied to a minor seeking an out-of-state abortion, where the law of the state in which the minor resides lacks a constitutionally sufficient mechanism for satisfying that state's notice or consent requirements when an abortion is to be performed out of state. In such cases the provision would have the effect of deterring or preventing minors (particularly those who cannot drive) from obtaining out-of-state abortions even when, for example, a minor's parents in the "parental consent" state would have provided consent, or the minor would have been able to obtain a judicial bypass, had mechanisms for manifesting such consent or obtaining such a bypass for an out-of-state abortion been available.[27]

In addition, the legislation would appear to operate unconstitutionally by requiring a double consent requirement in cases where both the minor's state of residence and the state in which the minor seeks to have the abortion performed have parental notice laws. Here again, this appears to serve no governmental interest and therefore appears to violate *Hodgson.* The Department of Justice has further written:

---

ence of certain state privileges will slow the investigation of these crimes; and (6) the bill would entail the substantial outlay of substantial federal resources.

[23] *Planned Parenthood of Cent. Mo.* v. *Danforth,* 428 U.S.52, 74 (1976).

[24] See, e.g., *Hodgson* v. *Minnesota,* 497 U.S. 417, 450 (1990) (holding that a two-parent notice requirement without a judicial bypass was unconstitutional where it "disserv[ed] the state interest in protecting * * * the minor" because it "proved positively harmful to the minor and her family."); *Belotti* v. *Baird,* 443 U.S. 622, 643 (1979) (holding that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained); *Planned Parenthood* v. *Casey,* 505 U.S. 833, 899 (1992) (a state may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided that there is adequate judicial bypass procedure).

[25] For example, Colorado's statute allowed for no judicial bypass. See *Foe.* v. *Vanderhoof,* 389 F.Supp. 947 (D.Colo. 1975).

[26] 497 U.S. 417, 450 (1990).

[27] Justice Department Letter, supra note 1, at 5–6.

> [If the proposed legislation] were construed to require satisfaction of the parental involvement requirements of the minor's state or residence as well, then in many cases the federal statute would, in effect, require a minor who would need or want assistance in crossing state lines to satisfy parallel parental consent or notification laws in both the state of residence and the state in which she seeks the abortion. Such duplication would seem to serve little or no legitimate governmental interest, just as the requirement of the second parent's notification without an opportunity for bypass failed to do so in *Hodgson.*[28]

Unfortunately, when Mr. Scott offered an amendment which would have eliminated the possibility of a two-state consent requirement, the Majority voted it down on a party line vote.

Finally, we would note that in addition to these clear cut constitutional problems, others have observed that the bill may well violate other constitutional requirements. For example, the ACLU has written that the bill conflicts with federalism principles and the constitution's privileges and immunities clause,[29] and that the bill also contains an inadequate life exception and lacks any health exception, in possible abrogation of *Roe* v. *Wade* and its progeny.[30] (When Rep. Watt offered an amendment to add a health requirement, it was defeated by the Majority.) Harvard Law Professor Laurence Tribe has also opined that the legislation violates the Constitution in at least three ways—"it violates constitutional principles of federalism," it imposes "an 'undue burden' upon the right to choose an abortion" and "it lacks a required emergency exception for circumstances where the health of the pregnant minor would require travel across state lines for an abortion."[31]

CONCLUSION

This legislation does nothing to make abortion less necessary, only more dangerous. H.R. 3682 will not accomplish its policy purposes of encouraging parental involvement and takes the wrong approach to the problem of teenage pregnancy. It does nothing to increase teen awareness of the dangers of premarital sex. The bill

---

[28] Justice Department Letter, supra note 1, at 7.

[29] The ACLU pointed to cases such as In *Shapiro* v. *Thompson,* 394 U.S. 618, 629 (1969), which recognized that "the nature 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;" and *Toomer* v. *Witsell,* 334 U.S. 385, 395 (1948), which held that the Privileges and Immunities Clause "was designed to insure a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." Further, *Doe* v. *Bolton,* 410 U.S. 179, 200 (1973), applied these principles in the context of restrictive abortion laws, holding that the Privileges and Immunities Clause "protect[s] persons who enter [other states] seeking the medical services that are available there." Statement of American Civil Liberties Union, "S. 1645/ H.R. 3682 Threatens the Well-Being of Young Women" ("ACLU Statement"). See also, Department of Justice Letter, supra note 1, at 9 ("H.R. 3682 raises novel and important federalism issues").

[30] *Planned Parenthood* v. *Casey,* 505 U.S. at 833, 880 (1992), held that all abortion regulations must contain a valid medical emergency exception, "for 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." Yet, H.R. 3682 only provides an exception to its penalties when the abortion is "necessary to save the life of a 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 pregnancy itself." See ACLU Statement, id.

[31] Letter from Laurence H. Tribe to Members of the Senate Judiciary Committee at 1 (June 23, 1998).

does nothing to resolve the problems of dysfunctional families where children cannot confide in their parents or fear physical harm when they do. The bill does nothing to actually stop a teenager from obtaining an out of state abortion, other than making the trip more dangerous.

We are disappointed that the majority has held steadfast in its efforts to create an overbroad and confusing criminal and civil liability scheme that will lead to family members suing family members and throwing grandparents, step-parents and doctors in jail for the crime of providing responsible assistance to young women in need. Because H.R. 3682 is a burdensome attack on the rights and well being of young women, we dissent from this legislation.

JOHN CONYERS, Jr.
BARNEY FRANK.
CHUCK SCHUMER.
HOWARD L. BERMAN.
JERROLD NADLER.
BOBBY SCOTT.
MELVIN L. WATT.
ZOE LOFGREN.
SHEILA JACKSON-LEE.
MAXINE WATERS.
MARTY MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
STEVEN R. ROTHMAN.

○