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REPORT
107–397

CHILD CUSTODY PROTECTION ACT

APRIL 11, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 476]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 476) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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99–006

PURPOSE AND SUMMARY

H.R. 476, the "Child Custody Protection Act"(CCPA), has two primary purposes. The first is to protect the health and safety of young girls by preventing valid and constitutional State parental involvement laws from being circumvented. The second is to protect the rights of parents to be involved in the medical decisions of their minor daughters.

To achieve these purposes, H.R. 476 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 1 year.

H.R. 476, introduced by Congresswoman Ileana Ros-Lehtinen, will strengthen the effectiveness of State laws designed to protect children from the health and safety risks associated with abortion. In many cases, only a girl's parents know of her prior psychological and medical history, including allergies to medication and anesthesia. 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. 476, is designed to effectuate State laws which safeguard minor girls' physical and emotional health by ensuring parental involvement in their abortion decisions.

H.R. 476 does not supercede, override, or in any way alter existing State parental involvement laws. Nor does the Act impose any parental notice or consent requirement on any State. H.R. 476 addresses the 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

There is widespread agreement among abortion rights advocates and pro-life advocates that it is the parents of a pregnant minor who are best suited to provide her counsel, guidance, and support as she decides whether to continue her pregnancy or to undergo an abortion. Organizations such as Planned Parenthood, the National Abortion and Reproductive Rights Action League, and the National Abortion Federation all advise pregnant minors to consult their parents before proceeding with an abortion.[1] In addition, the American Medical Association urges physicians to "strongly encourage minors to discuss their pregnancy with their parents" and to "ex-

[1] "Few would deny that most teenagers, especially younger ones, would benefit from adult guidance when faced with an unwanted pregnancy. Few would deny that such guidance ideally should come from the teenager's parents." Planned Parenthood Federation of America, Inc., *Fact Sheets: Teenagers, Abortion, and Government Intrusion Laws*, at http://www.plannedparenthood.org/library/ABORTION/laws.html (last visited Jan. 29, 2002); "Responsible parents should be involved when their young daughters face a crisis pregnancy." National Abortion and Reproductive Rights Action League, *Minors' Issues: Reproductive Choice Issues,* at http://www.naral.org/issues/issues—minors.html (last visited Aug. 30, 2001); "Ordinarily it's a good idea for teens to involve their parents. . . ." National Abortion Federation, *Having An Abortion? Your Guide to Good Care*, at http://www.prochoice.org/default6.htm (last visited Aug. 30, 2001).

plain how parental involvement can be helpful and that parents are generally very understanding and supportive."[2] The AMA continues: "If a minor expresses concerns about parental involvement, the physician should ensure that the minor's reluctance is not based on any misperceptions about the likely consequences of parental involvement."[3]

A total of 43 States have enacted some form of a parental involvement statute.[4] The implementation of seven of these 43 State statutes has been enjoined by courts as violating either Federal or State constitutional protections.[5] Another nine of these 43 State statutes are written merely to encourage the pregnant minor to

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[2] Council on Ethical and Judicial Affairs, American Medical Association, *Mandatory Parental Consent to Abortion*, 269 JAMA 82, 83 (1993) (opposing laws mandating parental involvement on the basis that such laws may expose minors to physical harm, or compromise "the minor's need for privacy on matters of sexual intimacy.")

[3] *Id.*

[4] *See* Ala. Code §§ 26–21–1 to –8 (1992 & Supp. 1999); Alaska Stat. §§ 18.16.010–030 (Michie 1998); Ariz. Rev. Stat. Ann. § 36–2152 (West 1993 & Supp. 1999); Ark. Code Ann. §§ 20–16–801 to –808 (Michie 2000); Cal. Health & Safety Code § 123450 (West 1996 & Supp. 1999); Colo. Rev. Stat. Ann. §§ 12–37.5–101 to –108 (West Supp. 1999); Conn. Gen. Stat. Ann. § 19(a)–601 (West 1997); Del. Code Ann. tit. 24, §§ 1780–1789B (1997); Fla. Stat. Ann. § 390.01115 (West Supp. 2000); Ga. Code Ann. §§ 15–11–110 to –118 (Harrison 1998); Idaho Code § 18–609(6) (1997); 750 Ill. Comp. Stat. 70/1–70/99 (West 1999); Ind. Code Ann. §§ 16–18–2–267, 16–34–2–4 (West 1997); Iowa Code Ann. §§ 135L.1–8 (West 1997 & Supp. 2000); Kan. Stat. Ann. § 65–6705 (1992 & Supp. 1999); Ky. Rev. Stat. Ann. § 311.732 (Michie 1995 & Supp. 1998); La. Rev. Stat. Ann. § 40:1299.35.5 (West 1992 & Supp. 2000); Me. Rev. Stat. Ann. tit. 22, § 1597–A (West 1992 & Supp. 1999); Md. Code Ann., Health-Gen. § 20–103 (1996); Mass. Ann. Laws ch. 112, § 12s (Law. Co-op. 1991 & Supp. 2000); Mich. Stat. Ann. §§ 25.248 (101)–(109) (Law. Co-op. 1999 & Supp. 2000); Minn. Stat. Ann. § 144.343 (West 1998); Miss. Code Ann. §§ 41–41–51 to –63 (1993 & Supp. 1998); Mo. Ann. Stat. §§ 188.015, 188.028 (West 1996 & Supp. 2000); Mont. Code Ann. §§ 50–20–201 to –215 (1999); Neb. Rev. Stat. §§ 71–6901 to –6909 (1996); Nev. Rev. Stat. §§ 442.255–.257 (2000); N.J. Stat. Ann. §§ 9:17A–1 to –1.12 (West 1993 & Supp. 2000); N.M. Stat. Ann. §§ 30–5–1 to –3 (Michie 2000); N.C. Gen. Stat. §§ 90–21.6 to .10 (1999); N.D. Cent. Code §§ 14–02.1 to 03.1 (1997); Ohio Rev. Code Ann. § 2919.12 (Anderson 1996); 18 Pa. Cons. Stat. Ann. § 3206 (West 1983 & Supp. 2000); R.I. Gen. Laws § 23–4.7–6 (1996); S.C. Code Ann. §§ 44–41–30 to –37 (Law. Co-op. 1985 & Supp. 1999); S.D. Codified Laws § 34–23A–7 (Michie 1994 & Supp. 1999); Tenn. Code Ann. § 37–10–301 to –304 (1996 & Supp. 1999); Tex. Fam. Code Ann. § 33.001–.004 (Vernon Supp. 2000); Utah Code Ann. § 76–7–304 (1999); Va. Code Ann. § 16.1–241(D) (Michie 1999 & Supp. 2000); W. Va. Code §§ 16–2F–1 to –8 (1998); Wis. Stat. Ann. § 48.375 (West 1997); Wyo. Stat. Ann. § 35–6–118 (Michie 1999).

[5] *See Planned Parenthood of Rocky Mountain Services Corp.* v. *Owens*, 107 F. Supp.2d 1271 (D. Colo. 2000) (medical emergency exception in parental notice statute impermissibly narrow); *Glick* v. *McKay*, 616 F. Supp. 322, 327 (D. Nev. 1985) (enjoining Nevada's parental notice statute for its failure to ensure that bypass petitions are reviewed "with sufficient expedition to provide an effective opportunity for an abortion to be obtained"), *aff'd*, 937 F.2d 434 (9th Cir. 1991); *American Acad. of Pediatrics* v. *Lungren*, 940 P.2d 797, 800 (Cal. 1997) (parental consent statute violated State constitutional right to privacy); *Planned Parenthood of Central New Jersey* v. *Farmer*, 762 A.2d 620 (N.J. 2000) (parental notification law with judicial waiver violates State constitution); *Zbaraz* v. *Ryan*, No. 84 C 771 (Ill. Supreme Ct. refused to issue rules implementing Ill. Stat.); *Wicklund* v. *State*, No. ADV–97–671 (Mont. Dist. Ct. Feb. 25, 1999) (parental notification law violated State constitution) available at http://www.mtbizlaw.com/1stjd99/WICKLUND—2—11.htm. The New Mexico statute was ruled unconstitutional by the State attorney general. N.M. Ag. Op. 90–19, 1990 WL 509–590. Four States are currently involved in litigation challenging their parental involvement statutes. An Arizona Federal district court upheld the constitutionality of Arizona's parental consent law on August 8, 2001. *See Planned Parenthood of S. Ariz.* v. *Lawall*, No. CV00–386–TUC–RCC (D. Ariz. Filed Aug. 9, 2001). According to news reports, however, enforcement of the law was stayed on September 13, 2001, pending an appeal to the Ninth Circuit Court of Appeals. *See Court Stays "Parental Consent" Abortion Law*, Associated Press, Sept. 15, 2001. The Alaska Supreme Court has reversed a trial court determination that the parental consent law violates the State constitution, and returned the case to the trial court in order to allow the State an opportunity to establish that the law serves a compelling State interest by narrowly tailored means. *See State* v. *Planned Parenthood of Alaska*, 2001 WL 1448754 at *10 (Alaska 2001). A Florida intermediate appellate court has upheld the Florida parental notification law as constitutional. *State* v. *N. Fla. Women's Health and Counseling Service*, Nos. 1D00–1983, 1D00–2106, 2001 WL 111037 (Fla. App. 1 Dist., 2001). The Florida Supreme Court has agreed to review this ruling. *See N. Fla. Women's Health & counseling Service* v. *State*, 2001 WL 402634 (Fla. 2001). A Federal court upheld the consent provisions of Idaho's parental involvement law but struck as unconstitutional two of its provisions, one of which required a minor girl to pursue a judicial bypass in either her home county or the county within which the abortion is to be performed and another requiring doctors to notify a minor girl's parents within 24 hours of performing an emergency abortion on her without having obtained parental consent. See Mark Warbis, *Federal Judge Upholds Law But Strikes Down Some Elements*, Associated Press, Dec. 20, 2001.

consult with her parents, another relative, or another third party designated by statute before she decides to undergo an abortion but do not require the minor to obtain either consent or notice prior to obtaining an abortion.[6] The remaining 27 States require a parent to either be notified of a minor daughter's intention to undergo an abortion or to consent to the performance of an abortion on a minor daughter (subject to judicial bypass procedures).

Despite widespread support for parental involvement laws and clear public policy considerations justifying such laws, however, there exists substantial evidence that they are frequently circumvented by adults who transport minors to abortion providers in States that do not have parental notification or consent laws.[7] The purpose of the CCPA is to curb the interstate circumvention of these laws, thereby protecting the rights of parents and the interests of vulnerable minors. The CCPA is not a Federal parental involvement law; it merely ensures that these State laws are not evaded through interstate activity. As such, it reinforces the policy decisions of those States that have chosen to enact constitutionally-sound parental involvement laws. Parental involvement in the abortion decisions of minor girls will lead to improved medical care for minors seeking abortions and provide increased protection for young girls against sexual exploitation by adult men. The Supreme Court has observed that, "[t]he medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature"[8] and "[i]t seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place."[9] Thus, Federal legislation is warranted due to the scope of the practice of avoiding such laws by transporting minors across State lines and the profound physical and psychological risks of an abortion to a minor.

At hearings during the 105th, 106th, and 107th Congresses, the Subcommittee on the Constitution heard testimony from two moth-

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

[7] An October 3, 2000, nationwide poll conducted by Zogby International found that 66 percent of those surveyed believed that doctors should be "legally required to notify the parents of a girl under the legal age who requests an abortion." Zogby International, *"Associated Television News Announces Bush Overwhelms Gore on Presidential Campaign's Major Public Policy Issues"*, Oct. 8, 2000, PR Newswire 13:17:00. A Kaiser Family Foundation/MTV Survey of 603 people ages 18–24 found that 68% favored laws requiring parental consent prior to performance of an abortion on girls under 18. *Kaiser Family Foundation New National Survey of 18- to 24-year-olds on Hot Button Political Issues*, U.S. Newswire, Oct. 10, 2000, 2000 WL 26849324. A CBS News/NY Times Poll, released Jan. 15, 1998, found that 78% of those polled favor requiring parental consent before a girl under 18 years of age could have an abortion. 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 age 18.

[8] *H.L.* v. *Matheson*, 450 U.S. 398, 411 (1981).

[9] *Planned Parenthood* v. *Danforth*, 428 U.S. 52, 91 (1976).

ers whose daughters were secretly taken for abortions, with devastating consequences. Eileen Roberts testified that her 13-year-old daughter was encouraged by a boyfriend, with the assistance of his adult friend, to obtain a secret abortion.[10] The adult friend drove Ms. Roberts' daughter to an abortion clinic 45 miles away from her home and paid for their daughter to receive the abortion.[11] After 2 weeks of observing their daughter's depression, Ms. Roberts and her husband learned that the young girl had an abortion from a questionnaire they found under her pillow, which their daughter had failed to return to the abortion clinic.[12]

Ms. Roberts' daughter was then hospitalized as a result of the depression, and a physical examination revealed that the abortion had been incompletely performed and required surgery to repair the damage done by the abortionist.[13] The hospital called Ms. Roberts and told her that they could not do reparative surgery without a signed consent form.[14] The following year, Ms. Robert's daughter developed an infection and was diagnosed with having pelvic inflammatory disease, which again required a 2-day hospitalization for antibiotic therapy and a signed consent form.[15] Ms. Roberts and her family were responsible for over $27,000 in medical costs all of which resulted from this one secret abortion.[16]

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.[17] In the words of Joyce Farley, the abortion was arranged to destroy evidence—evidence that her 12-year-old daughter had been raped.[18] 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).[19] Following the abortion, the mother of the rapist dropped off the child in another town 30 miles from the child's home.[20] The child returned to her home with severe pain and bleeding which revealed complications from an incomplete abortion.[21] 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.[22] Fortunately, Ms. Farley, being a nurse, knew this advice was wrong and could be harm-

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[10] *See Child Custody Protection Act: Hearings on H.R. 476 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 107th Cong. (Sept. 6, 2001) (statement of Eileen Roberts).

[11] *See 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.*

[12] *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See Child Custody Protection Act: Hearings on H.R. 3682 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong., (May 21, 1998) (statement of Joyce Farley).

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.*

ful, but her daughter would not have known this.[23] Because of her mother's intervention, Ms. Farley's daughter ultimately received further medical care and a second procedure to complete the abortion.[24]

THE PREVALENCE OF THIS INTERSTATE ACTIVITY

There is no serious dispute regarding the fact that the transportation of minors across State lines in order to obtain abortions is both a widespread and frequent practice. Even groups opposed to this bill acknowledge that large numbers of minors are transported across State lines to obtain abortions, in many cases by adults other than their parents. In 1995, Kathryn Kolbert, then an attorney with the Center for Reproductive Law and Policy (a national pro-abortion legal defense organization), asserted that thousands of adults are helping minors cross State lines to get abortions in States whose parental involvement requirements are less stringent or non-existent: "There are thousands of minors who cross State lines for an abortion every year and who need the assistance of adults to do that."[25] Just last August, New Jersey's *Star-Ledger* reported that Laurie Lowenstein, Executive Director of Right to Choose, an abortion rights advocacy group, stated that she would quit her job to shuttle pregnant young girls to States without parental notification laws if New Jersey enacted a parental notification law.[26] Only Congress, with its constitutional authority to regulate interstate commerce, can curb such flagrant disregard of State laws.

Pennsylvania

Since Pennsylvania's current parental consent law took effect in March 1994, news reports have repeatedly maintained that many Pennsylvania teenagers are going out of State to New Jersey and New York to obtain abortions. In fact, in 1995 the *New York Times* reported that "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, Joan Coombs."[27] Moreover, the *Times* gave accounts of clinics that had seen an increase in patients from Pennsylvania.[28] One clinic, in Cherry Hill, New Jersey, reported seeing a threefold increase in Pennsylvania teenagers coming for abortions.[29] 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.[30]

In the period just prior to the Pennsylvania law taking effect, efforts were underway to make it easier for teenagers to go out of State for abortions. For instance, *Newsday* reported that "[c]ounselors and activists are meeting to plot strategy and printing maps with directions to clinics in New York, New Jersey, Delaware

[23] *See id.*
[24] *See id.*
[25] *Labor of Love is Deemed Criminal*, The National Law Journal, Nov. 11, 1996, at A8.
[26] Jeff Whelan, *McGreevey Reveals Latest Abortion Stance*, The Star-Ledger, Aug. 30, 2001, *available at* http://www.nj.com/news/ledger/index.ssf?elections/ledger/1440ef7.html (last visited on Aug. 30, 2001).
[27] *Teen-Agers Cross State Lines in Abortion Exodus*, N.Y. Times, Dec. 18, 1995, at B6.
[28] *See id.*
[29] *See id.*
[30] *See id.*

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."[31]

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. For example, the March 1999-February 2000 Yellow Pages for Philadelphia, Pennsylvania contain advertisements from three New Jersey abortionists declaring "No Parental Consent Required."[32] A Rockville, Maryland abortionist ran a similar advertisement in the May 1998-April 1999 Yellow Pages for Harrisburg, Pennsylvania. Such advertisements have appeared in telephone directories for Wilkes-Barre and Dallas, Scranton, Clarks Summit, and Carbondale, Bethlehem, Allentown, York, and Erie.

Missouri

In 1997, a study in the *American Journal of Public Health* reported that a leading abortion provider in Missouri refers minors out of State for abortions if the girls do not want to involve their 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 reveals that based on the available data the odds 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, compared to older women, underage girls were significantly more likely to travel out of State to have their abortions.[33]

A 1999 *St. Louis Post-Dispatch* news report confirms that the Hope Clinic in Illinois continues to attract underage girls seeking abortions without parental involvement.[34] A clinic counselor estimates that she sees two girls each week seeking to avoid their home State's parental involvement law. One recent example was a 16-year-old girl from Missouri who had called abortion clinics in St. Louis and learned that parental consent was required before a minor could obtain an abortion. According to the report, the Hope Clinic performed 3,200 abortions on out-of-State women last year, and the clinic's executive director estimates that that number is 45% of the total abortions performed at the clinic. The executive director also estimates that 13% of the clinic's clients are minors.

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 1981, according to a published

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[31] Charles V. Zehren, *New Restrictive Abortion Law*, Newsday, Feb. 22, 1994.

[32] Copies of these advertisements are attached.

[33] *See* Charlotte Ellertson, Ph.D., *Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana*, American Journal of Public Health, Aug., 1997, at 1371.

[34] *See Illinois May Tighten Rules on Abortions For Teens; Parental Consent is Not Required Abortion Bill Targets as Teen Haven For Abortion*, St. Louis Post-Dispatch, Feb. 25, 1999.

study and anecdotal information.[35] A 1986 study published in the *American Journal of Public Health* found that in the 4 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).[36] After the parental consent law was implemented, however, the average jumped to between 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.[37]

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.'"[38]

In April 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.[39]

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 5 months before the parental consent law took effect in June 1993, with data for the 6 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%. . . . However, 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."[40] 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."[41]

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[35] The Massachusetts law was changed in 1997 to require the consent of one parent (or judicial authorization), rather than both parents as previously required.

[36] *See* Virginia G. Cartoof & Lorraine V. Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, American Journal of Public Health, April 1986, at 397.

[37] *See id.* at 398.

[38] *Id.* at 399.

[39] *See* M.A.J. McKenna, *Mass. abortion laws push teens over border*, Boston Herald, April 7, 1991, at A1.

[40] Stanley K. Henshaw, *The Impact of Requirements for Parental Consent on Minors' Abortions in Mississippi*, Family Planning Perspectives, June, 1995, at 121.

[41] *Id.* at 122.

Virginia

Grace S. Sparks, executive director of the Virginia League of Planned Parenthood, predicted in February 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 teenagers who cannot tell their parents . . . will go out of State and have abortions. . . ."[42]

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 dropped 20 percent during the first 5 months that the law was in effect (from 903 abortions during the same time period in 1996 to approximately 700 abortions in 1997).[43] 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.

THE FEDERAL ROLE IN PROTECTING MINORS FROM INTERSTATE TRANSPORTATION IN CIRCUMVENTION OF STATE PARENTAL INVOLVEMENT LAWS

With respect to State laws requiring parental or judicial involvement in minors' abortion decisions, Federal legislation is warranted due to the scope of the practice of avoiding such laws by transporting minors across State lines and the profound physical and psychological risks of an abortion to a minor. The Supreme Court has observed that, "[t]he medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature,"[44] and "[i]t seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place."[45] Parental involvement in such a decision will lead to improved medical care for minors seeking abortions and provide increased protection for young girls against sexual exploitation by adult men.

Improved Medical Care of Minor Girls

The medical care that minors seeking abortions receive is improved when their parents are involved in three ways. First, parental involvement allows parents to assist their daughter in the selection of a competent abortion provider. With all medical procedures, one of the most reliable means of guaranteeing patient safety is the

[42] Lisa A. Singh, *Those Are the People Who Are Being Hurt*, Style Weekly, Feb. 11, 1997.
[43] Ellen Nakashima, *Fewer Teens Receiving Abortions In Virginia*, The Washington Post, March 3, 1998.
[44] *H.L.* v. *Matheson*, 450 U.S. 398, 411 (1981).
[45] *Planned Parenthood* v. *Danforth*, 428 U.S. 52, 91 (1976).

professional competence of the physician performing the procedure. In *Bellotti* v. *Baird*, the United States Supreme Court acknowledged that parents posses a much greater ability to evaluate and select competent healthcare providers than their minor children often do:

In this case, however, we are concerned only with minors who, according to the record, range in age from children of twelve years to 17-year-old teenagers. Even the later are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.[46]

The Court's concern for that ability of minors to distinguish between competent and ethical abortion providers is particularly well justified in States where non-physicians are allowed, by statute, to perform abortions. The National Abortion Federation recommends that patients seeking an abortion confirm that the abortion will be performed by a licensed physician in good standing with the State Board of Medical Examiners, and that he or she have admitting privileges at a local hospital not more than twenty minutes away from the location where the abortion is to occur.[47] A well-informed parent seeking to guide her child is more likely to inquire into the qualifications of the person performing the abortion, and the availability of a physician with local admitting privileges, than an emotionally vulnerable young girl faced with pregnancy.

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

> The medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician. Parents can provide such information for their daughter as well as any pertinent family medical history, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.[48]

Take, for example, the story of Sandra, a 14-year-old girl who committed suicide shortly after obtaining an abortion.[49] Sandra's mother, who learned of her daughter's abortion only after her suicide, sued the abortion provider at which Sandra's abortion was performed, asserting that her daughter's death was due to the failure of the abortion provider to obtain a psychiatric history or monitor Sandra's mental health.[50] The court concluded that Sandra was not insane at the time she committed suicide and, therefore, her actions broke the chain of causation required for recovery.[51] Yet, evi-

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[46] *Bellotti* v. *Baird*, 443 U.S. 622 at 641 n.21 (1979) *(Bellotti II)*.

[47] *See* National Abortion and Reproductive Rights Action League, *Minors' Issues: Reproductive Choice Issues, at* http://www.naral.org/issues/issues—minors.html (last visited Aug. 30, 2001).

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

[49] *See Edison* v. *Reproductive Health Services*, 863 S.W.2d 621 (Mo. App. E.D. 1993).

[50] *See id.* at 624.

[51] *See id.* at 628.

dence was presented that Sandra had a history of psychological illness, and that her behavior was noticeably different after the abortion.[52] If Sandra's mother had been aware of her daughter's abortion, she would have had the opportunity to notify the abortion provider of Sandra's psychological history and steps could have been taken to minimize the psychological effect of the abortion on Sandra's already fragile mental state.

A more complete and thus more accurate medical history of the patient will enable abortion providers to disclose not only medical risks that ordinarily accompany abortions but also those risks that may be specific to the pregnant minor. Parental involvement will provide an adult with the opportunity to advise and assist the girl in giving her informed consent to the procedure.

The third way in which parental involvement will improve medical treatment of pregnant minors is by insuring that parents have adequate knowledge to recognize and respond to any post-abortion complications that may develop.[53] Although it is often claimed that abortion is one of the safest surgical procedures performed today, the actual rate of many of the complications associated with it are simply unknown: "The abortion reporting systems of some countries and States in the United States include entries about complications, but these systems are generally considered to under-report infections and other problems that appear some time after the procedure was performed."[54] Furthermore, women typically have no pre-existing relationship with an abortion provider,[55] which likely accounts for the fact that only about one-third return to the provider for their post-operative exam.[56] Teenagers are even less likely to return for follow-up appointments.[57] This failure to return for post-operative exams precludes discovery of post-abortion complications by abortion providers and subsequent reporting of these complications. Other healthcare providers may be reluctant to report any complications from fear of compromising the secrecy that often surrounds abortions.

It is significant that at least one American court has held that a perforated uterus is a "normal risk" associated with abortion.[58]

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[52] *See Edison* v. *Reproductive Health Services*, 863 S.W.2d 621 (Mo. App. E.D. 1993).

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

[54] Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective* in *A Clinician's Guide to Medical and Surgical Abortions*, 20 (Maureen Paul et al., eds. 1999).

[55] *See State of Florida Department of Health* v. *North Florida Women's Health and Counseling Service*, 2001 WL 111037 at n. 2 (Fla. App. 1 Dist., Feb 9, 2001):

> [E]vidence at trial showed, the physician-patient relationship is often attenuated in the abortion context, almost to the point of non-existence. *Cf. Planned Parenthood* v. *Danforth*, 428 U.S. 52, 91, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) ("It seems unlikely that [the minor] will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place. "). Abortion patients ordinarily see their physicians only once or twice, very briefly. Most of their interaction is with the clinic's staff. Physicians performing abortions often perform several in the space of a single hour. *Id.*

[56] Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective in A Clinician's Guide to Medical and Surgical Abortions,* 20 (Maureen Paul et al., eds. 1999). *Cf.* Richard S. Moon, *Why I Don't Do Abortions Anymore*, Medical Economics 61(Mar. 4, 1985).

[57] *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Health and Welfare*, 2001–2002 Legis. (Vt. 2001)(Nancy Mosher, President and CEO of Planned Parenthood of Northern New England on April 16, 2001)(estimating that two-third of Vermont women keep their follow up appointments, although Ateenagers are notorious for 'no-showing').

[58] *Reynier* v. *Delta Women's Clinic*, 359 So.2d 733 (La. Ct. App. 1978). "All the medical testimony was to the effect that a perforated uterus was a normal risk, but the statistics given by the experts indicated that it was an infrequent occurrence and it was rare for a major blood vessel to be damaged." *Id.* at 738. Frequent injuries from incomplete abortions are discussed in *Swate* v. *Schiffers*, 975 S.W.2d 70, 26 Media L. Rep. 2258 (Tex.App.-San Antonio, 1998) (abor-

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Untreated, a perforated uterus may result in an infection, complicated by fever, endometritis, and parametritis. According to one study, "[t]he risk of death from post-abortion 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."[59] Evidence about these dangers presented at trial persuaded a Florida appellate court to uphold that State's parental notification law:

> The State proved that appropriate aftercare is critical in avoiding or responding to post-abortion complications. Abortion is ordinarily an invasive surgical procedure attended by many of the risks accompanying surgical procedures generally. If post-abortion nausea, tenderness, swelling, bleeding, or cramping persists or suddenly worsens, a minor (like an adult) may need medical attention. A guardian unaware that her ward or a parent unaware that his minor daughter has undergone an abortion will be at a serious disadvantage in caring for her if complications develop. An adult who has been kept in the dark cannot, moreover, assist the minor in following the abortion provider's instructions for post-surgical care. Failure to follow such instructions can increase the risk of complications. As the plaintiffs' medical experts conceded, the risks are significant in the best of circumstances. While abortion is less risky than some surgical procedures, abortion complications can result in serious injury, infertility, and even death.[60]

Young adolescent girls are particularly at risk of certain detrimental medical consequences from an abortion. For instance, there is a greater risk of cervical injury associated with suction-curettage abortions (at 12 weeks' gestation or earlier) performed on girls 17 or younger.[61] Cervical injury is of serious concern because it may predispose the young girl to adverse outcomes in future pregnancies. Girls 17 or younger also face a two and a half times greater risk of acquiring endometriosis following an abortion than do women 20–29 years old.[62]

The particular risks faced by minors upon whom abortions are performed were articulated by Dr. Bruce A. Lucero, an abortionist

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tionist unsuccessful claim of libel against journalist for reports based in part upon one disciplinary order that doctor had failed to complete abortions performed on several patients, and that he had failed to repair lacerations which occurred during abortion procedures) *Cf. Sherman* v. *District of Columbia Bd. of Medicine*, 557 A.2d 943, 944 (D.C. 1989) ("Dr. Sherman placed his patients' lives at risk by using unsterile instruments in surgical procedures and by intentionally doing incomplete abortions (using septic instruments) to increase his fees by making later surgical procedures necessary. His practices made very serious infections (and perhaps death) virtually certain to occur. Dr. Sherman does not challenge our findings that his misconduct was willful nor that he risked serious infections in his patients for money.").

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

[60] *State of Florida Department of Health* v. *North Florida Women's Health and Counseling Service*, 2001 WL 111037 at *6 (Fla. App. 1 Dist., Feb 9, 2001).

[61] *See* Willard Cates, Jr., M.D., M.P.H., Kenneth F. Schulz, M.B.A. & David A. Grimes, M.D., *The Risks Associated With Teenage Abortion*, New Eng. J. of Med., Sept. 15, 1983, at 621–624.

[62] *See* Burkman *et al.*, *Morbidity Risk Among Young Adolescents Undergoing Elective Abortion*, Contraception, vol. 30 (1984), at 99–105.

who performed some 45,000 abortions over the course of his career. Dr. Lucero, who supported the CCPA in 1998, wrote an op-ed for *The New York Times* about his own experience with minor girls seeking abortions. "In almost all cases," Dr. Lucero wrote, "the only reason that a teenage girl doesn't want to tell her parents about her pregnancy is that she feels ashamed and doesn't want to let her parents down."[63] However, according to Dr. Lucero, "parents are usually the ones who can best help their teenager consider her options. And whatever the girl's decision, parents can provide the necessary emotional support and financial assistance."[64] Moreover, Dr. Lucero explained that "patients who receive abortions at out-of-State clinics frequently do not return for follow-up care, which can lead to dangerous complications. And a teenager who has an abortion across State lines without her parents' knowledge is even more unlikely to tell them that she is having complications."[65]

Despite these benefits of better informed selection of abortion providers, improved medical histories, and appropriate post-operative care, opponents of H.R. 476 argue that mandatory parental involvement results in girls delaying their decisions to obtain abortions, thus increasing the risks attendant to the procedure.[66] There is little evidence, however, that parental involvement laws actually result in medically significant delays in obtaining abortions. A study of Minnesota's parental notification law found that, "Regardless [of the reason], the claim that the law caused more minors to obtain late abortions is unsubstantiated. In fact, the reverse is true. For ages 15–17 the number of late abortions per 1,000 women decreased following the enactment of the law. Therefore, an increased medical hazard due to a rising number of late abortions was not realized."[67]

Without the knowledge that their daughters have had abortions, parents are incapable of insuring that their children obtain routine post-operative care or of providing an adequate medical history to physicians called upon to treat any complications that may arise. The first omission may allow complications such as infection, perforation, or depression, to continue untreated. The second omission may be lethal. When parents do not know that their daughter had an abortion, ignorance prevents swift and appropriate intervention by emergency room professionals responding to a life-threatening condition.

Increased Protection from Sexual Assault

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental involvement will provide increased protection against sexual exploitation of minors

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[63] Bruce A. Lucero, M.D., *Parental Guidance Needed*, N.Y. Times, July 12, 1998, section 4, at 1.

[64] *Id.*

[65] *Id.*

[66] *Parental Notification of Abortion: Hearings on H. 218 Before the House Comm. on Judiciary*, 2001–2002 Legis. (Vt. 2001)(Lori Burris, representative of Vermont Academy of Pediatrics)

[67] Rogers, James L., Boruch, Robert F., Stoms, George B. & DeMoya, Dorothy, *Impact of the Minnesota Parental Notification Law on Abortion and Birth*, 81 Amer. J. Pub. Health 294, 297 (Mar. 1991). *Cf.* Ellertson, Charlotte, *Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana*, 87 Amer. J. Pub. Health 1367, 1372 (Aug. 1997) ("Evidence concerning delay is mixed."). *See also id.* at 1374 ("During periods of the laws' enforcement in Minnesota and Indiana, the two states with gestational age at abortion, in-state abortions for minors were probably delayed into the second month of pregnancy, although probably not into the second trimester.").

by adult men. National studies reveal that "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age."[68] 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*."[69] Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.[70]

A 1989 study of coercive sexual experiences among teenage mothers found that of the pregnant teens who had had unwanted sexual experiences, only eighteen percent of the perpetrators were within the victim's age group. Another eighteen percent were three to 5 years older than the victim. Seventeen percent were six to 10 years older, and forty percent were more than 10 years older than their victims.[71] Another study reports that 58 percent of the time it is the girl's boyfriend who accompanies her for an abortion when her parents have not been told about the pregnancy.[72]

Experience suggests that sexual predators recognize the advantage of their victims obtaining an abortion.[73] Not only does an abortion eliminate a critical piece of evidence of the criminal conduct,[74] it allows the abuse to continue undetected.[75] Parental in-

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[68] American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy—Current Trends and Issues: 1998*, 103 Pediatrics 516, 519 (1999).

[69] Mike A. Males, *Adult Involvement in Teenage Childbearing and STD*, 346 Lancet 64 (July 8,1995) (emphasis added).

[70] *See id.* (citing HP Boyer and D. Fine, *Sexual Abuse as a Factor in Adolescent Pregnancy and Child Maltreatment*, 24 Fam. Plan. Perspectives 4 (1992)); *See also* HP Gershenson, et al. *The Prevalence of Coercive Experience Among Teenage Mothers*, 24 J. Interpersonal Violence. 4 (1989), *and* American Academy of Pediatrics Committee on Adolescence, *Adolescent Pregnancy B Current Trends and Issues: 1998*, 103 Pediatrics 516, 516 (1999) ("Younger teenagers are especially vulnerable to coercive and nonconsensual sex. Involuntary sexual activity has been reported in 74% of sexually active girls younger than 14 years and 60% of those younger than 15 years.").

[71] *See* Gershenson at 4.

[72] *See* Stanley Henshaw & Kathryn Post, *Parental Involvement in Minors' Abortion Decisions*, Family Planning Perspectives, Sept./Oct. 1992, at 206.

[73] On June 14, 2000 a 36-year-old Omaha man who impersonated the father of his teenage victim in order to assist her in obtaining an abortion was sentenced to 1½ to 2 years in prison for felony child abuse. *See* Angie Brunkow, *Man Who Said He Was Girl's Dad Sentenced*, Omaha World-Herald (June 14, 2000) at 20. A similar attempt to hide the consequences of statutory rape is reflected in the testimony of Joyce Farley before the United States House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution. *See Child Custody Protection Act: Hearings on H.R. 3682 Before the Subcomm. On Constitution of the House Comm. on the Judiciary*, 105th Congress, May 21, 1998 (statement of Joyce Farley).

[74] *See Commonwealth* v. *Sasville*, 616 N.E.2d 476 (Mass. 1993) (destruction of aborted fetus precluded prosecution for forcible rape of a child under the age of sixteen). *Compare Smith* v. *Com.*, 432 S.E.2d 2 (Va. App. 1993) (prosecution for rape of 14-year-old girl), with Hampton v. State, 1987 WL. 28223 (Ark. App. 1987) (prosecution for incest), *and State* v. *Khong*, 502 N.E.2d 602 (Ohio App. 1985) (prosecutor subject to contempt order for failure to comply with discovery orders).

[75] Dee Dee Alonzo testified before the Texas Senate Human Services Committee in support of Senate Bill 30, the bill enacting the Texas Parental Notification Act. At age sixteen, she was seduced by her high school teacher. When she became pregnant, he persuaded her to have a secret abortion. She went to the clinic alone, obtained the abortion her seducer had paid for, and returned to continue the abusive relationship for another year. Ms. Alonzo testified "No matter what their reaction would have been, they were my parents and they were adults, and they did love me, it would not have been a secret and the man would have been exposed." Testimony of Dee Dee Alonzo, *Hearing on Tex. S.B. 30 Before the Senate Human Servs. Comm.*, 76th Leg., R.S. 4–5 (Mar. 10, 1999) (tapes available from the Senate Staff Servs. Office and content is from private transcripts of those tapes). A similar incident involved another high school student impregnated by her teacher. This is revealed in the settlement related to injuries she suffered during the abortion of her pregnancy. *See Clement* v. *Riston*, No.B–131,033, settlement reported in Jury Verdict Research, Research, LRP Pub. No. 65904 available on Lexis-Nexis; *cf.*

volvement laws insure that parents have the opportunity to protect their daughters from those who would victimize them further.

In short, the physical and psychological risks of abortions to minors are great, and laws requiring parental involvement in such abortions (subject to judicial bypass procedures) reduce that risk. The widespread practice of avoiding such laws through interstate commerce may be prevented only through Federal legislation.

CONSTITUTIONAL ANALYSIS

Constitutional Authority for the Child Custody Protection Act

H.R. 476 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.[76] 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.[77] Under current Supreme Court jurisprudence, Congress can adopt rules concerning interstate commerce, such as this one, for reasons related primarily to local activity rather than commerce itself.[78]

The interstate transportation of minors for the purpose of securing an abortion is, therefore, clearly a form of interstate commerce which the Constitution expressly empowers Congress to regulate.[79] H.R. 476 only regulates conduct which involves interstate movement, activity which the national Government alone is expressly authorized by the Constitution to address.

Federalism and the Child Custody Protection Act

The Federal Government has long exercised its interstate commerce authority to prohibit interstate activity harmful to minors and their families. In 1910, Congress used its Commerce Clause power to enact the Mann Act,[80] which prohibits the interstate transportation of women or minors for purposes of "prostitution or debauchery, or for any other immoral purpose." The Supreme Court upheld the enactment of this law as a constitutional exercise of Congress' power over transportation among the several States. The Court reasoned that if men and women employ interstate transportation to facilitate a wrong, then their right to interstate travel can be restricted.[81]

The United States Constitution created a Federal Government with limited and enumerated powers. All other powers are, as stated in the Tenth Amendment, "reserved to the States respectively,

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Patterson v. *Planned Parenthood*, 971 S.W.2d 439, 447 (Tex. 1998) (Gonzales, J., concurring) (describing the sexual abuse of a young girl that resulted in two pregnancies and two secret abortions).

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

[77] *See, e.g., A.L.A. Schechter 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).

[78] *See United States v. Darby*, 312 U.S. 100 (1941).

[79] U.S. Const., art. I, § 8, cl. 3.

[80] 18 U.S.C. § 2421.

[81] *See Hoke* v. *United States*, 227 U.S. 308 (1913).

or to the people."[82] According to Professor Stephen Presser of the Northwestern University School of Law,[83]

> [t]he Constitution created a Federal Government with limited and enumerated powers, and much of the genius of the document was the means employed for ensuring that the Federal Government did not overwhelm the State and local governments. 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.[84]

H.R. 476 respects this division of authority between the Federal Government and the States in that it does not attempt to regulate or impose policy on the individual States. Rather, H.R. 476 is predicated on the validity of State law and derives its substantive application from State law. According to Professor Presser, "[b]y 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. 476 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."[85] Professor Lino A. Graglia of the University of Texas Law School also testified that H.R. 476 "furthers the principle of federalism" in that it seeks to "reinforce or make effective" State policies that are being transgressed or evaded.[86]

H.R. 476 does not supercede, override, or alter existing State laws regarding minors' abortions. Rather, H.R. 476 uses Congress' authority to regulate interstate activity to protect State laws from evasion. As Professor Presser stated:

> [t]he political processes of each State exist 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

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[82] U.S. Const. amend. X.

[83] Professor Presser testified before the Subcommittee on the Constitution in support of the Child Custody Protection Act (then H.R. 3682) during the 105th Congress, and submitted a written statement in support of the Act (then H.R. 1218) during the 106th Congress.

[84] *See Child Custody Protection Act: Hearings on H.R. 1218 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Congress, May 27, 1999 (statement of Professor Stephen B. Presser, Professor of Law, Northwestern University School of Law).

[85] *Id.*

[86] *See Child Custody Protection Act: Hearings on H.R. 1218 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Congress, May 27, 1999 (statement of Professor Lino A. Graglia, Professor of Law, University of Texas Law School).

> reinforcing Federalism and in reinforcing self-government. It deserves to be enacted.[87]

In short, H.R. 476 does not encroach on State powers, but rather reinforces State powers.

H.R. 476 is not unlike the Mann Act which, before being amended in 1986, made it a crime to transport a woman across State lines "for the purpose of prostitution or debauchery, or for any other immoral purpose."[88] That statute was upheld as applied to the transportation of a person to Nevada for purposes of engaging in prostitution, even though prostitution was legal in Nevada.[89]

A similar provision prohibited the persuading, inducing, enticing, or coercion of a minor girl "to go from one place to another by common carrier . . . with the intent that she be induced or coerced to engage in prostitution, debauchery or other immoral practice."[90] This provision would presumably have prohibited an individual from causing a 15 year old minor to travel from a State in which the minimum age for consensual sex was 16 to a State in which the minimum was 14, in order to have sex with her.

Opponents of H.R. 476 respond to this argument by noting that a violation of the Mann Act is not keyed to the underlying State law. But that distinction is of no significance. The Mann Act flatly prohibited the interstate transportation of women for "prostitution" or for "any other immoral purpose." In the exercise of its commerce power, Congress could similarly prohibit the interstate transportation of minors for abortions without obtaining parental notice or consent, whether or not parental notice or consent is required by State law.[91] Instead, H.R. 476 respects the laws of the various States by only prohibiting the interstate transportation of young girls in order to avoid the laws of States that have chosen to require parental involvement in the abortion decisions of minors.

Moreover, it is important to note that the Mann Act prohibited the interstate transportation of women for "immoral purposes," and the Supreme Court upheld convictions under this provision for those who only transported women across State lines as "mistresses" and "concubines."[92] In upholding the law as a valid exercise of Congress' commerce power, the Court stated that:

> [t]he transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses

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[87] *See Child Custody Protection Act: Hearings on H.R. 1218 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Congress, May 27, 1999 (statement of Professor Stephen B. Presser, Professor of Law, Northwestern University School of Law).

[88] 18 U.S.C.A. § 2421 (1970). As amended, the statute prohibits the knowing transportation of any individual across State lines "with the intent that such individual engage in prostitution, or in any sexual activity for which the person can be charged with a criminal offense, or attempts to do so. . . ." 18 U.S.C. § 2421 (West Supp. 1999).

[89] *See United States* v. *Pelton*, 578 F.2d 701 (8th Cir. 1978).

[90] 18 U.S.C.A. § 2423 (1970).

[91] *See Hoke* v. *United States*, 227 U.S. 308, 323 (1913) (noting, in upholding the constitutionality of the Mann Act, "that Congress has power over transportation 'among the several States;' that the power is complete in itself, and that Congress, as an incident to it, may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations").

[92] *See Caminetti* v. *United States*, 242 U.S. 470, 483 (1917).

> has been frequently sustained, and is no longer open to question.[93]

Just as it was appropriate for Congress to use its constitutional authority to keep the channels of interstate commerce free from "immoral" conduct, so it is also appropriate for Congress to exercise that authority to keep the channels of interstate commerce free from those who transport minors across State lines in order to circumvent State parental involvement laws.

The Mann Act is also not the only example of Federal laws that prohibit interstate activities that might be legal in the State to which the activity is directed. Indeed, as long ago as 1876, Congress "made it a crime to deposit in the mails any letters or circulars concerning lotteries, whether illegal or chartered by State legislatures."[94] A statute to this effect is still in force.[95] Congress later prohibited the transportation of lottery tickets in interstate commerce, whether or not lotteries are legal in the State to which the tickets are transported.[96] That provision was upheld by the Supreme Court in *Champion* v. *Ames*[97] and is still in effect.

The Right to Travel and the Child Custody Protection Act

CCPA's opponents argue that it violates the rights of States to enact and enforce their own laws governing conduct within their territorial boundaries. The simple response to this argument is that CCPA does not attempt to regulate conduct occurring solely within the territorial boundaries of a State. CCPA regulates interstate commerce, and Congress has the exclusive authority to regulate such activity. Moreover, rather than exercising Congress' commerce power to its full extent (i.e., by prohibiting the transportation of minors in interstate commerce for the purpose of obtaining an abortion without parental notice or consent), CCPA will reinforce the choices of States that have chosen to require parental involvement in the abortion decision of minors. The laws of States that do not require such involvement are not affected by CCPA.

Opponents also argue that CCPA violates the rights of residents of each of the United States and of the District of Columbia to travel to and from any State of the Union for lawful purposes. Those opposed to CCPA on these grounds argue that its result is to hold a pregnant minor "hostage" to the laws of her home State. As an initial matter, it does not appear that the Supreme Court has ever held that Congress' power to regulate interstate commerce is limited by the "right to travel." Even assuming, however, that Congress' authority under the Commerce Clause is limited by the right to travel doctrine, the Supreme Court has recognized that the right to travel is "not absolute," and is not violated so long as there is a "substantial reason for the discrimination beyond the mere fact that they are citizens of other States."[98] Congress obviously has a substantial interest in protecting the health and well-being of

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[93] *Id.* at 491.
[94] *United States* v. *Edge Broadcasting Co.*, 509 U.S. 418, 421 (1993).
[95] *See* 18 U.S.C.A. § 1302 (prohibiting the mailing of lottery tickets or letters, circulars, and other materials regarding a lottery).
[96] *See* 18 U.S.C. § 1301.
[97] 188 U.S. 321 (1903).
[98] *Saenz* v. *Roe*, 526 U.S. 489, 502 (1999).

minor girls, and in protecting the rights of parents to raise their children.

Protecting the health and well-being of minor girls and the rights of parents to raise their children are substantial, indeed compelling, reasons for restricting minors from obtaining an abortion without parental involvement. First, young adolescent girls who undergo abortions face a significant chance of suffering from long-term physical and psychological complications. These risks are not shared by older teenage girls who have undergone an abortion. Second, "[c]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society," and that "[p]roperly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter."[99] Thus, "[u]nder the Constitution, the State can properly conclude that parents . . . who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility."[100]

Third, the fundamental rights of minors, including the right to travel, are not equal to those of adults. Although the Court has previously concluded that the fundamental rights of a child are "virtually coextensive with that of an adult,"[101] it also has recognized that "[t]hese rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults."[102] Thus, "the State is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, . . . sympathy, and . . . paternal attention.'"[103]

Based upon this reasoning the Court has allowed States to enact laws that "account for children's vulnerability" and that protect the unique role of parents:

> [T]he Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.[104]

Thus, "[l]egal restrictions on minors, especially those supportive of the parental role may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding."[105] Therefore, a State may properly subject minors to more stringent limitations than are permissible with respect to adults. Examples include laws that prohibit the sale of cigarettes and alcoholic beverages to minors, laws that prohibit the sale of firearms and deadly weapons to minors

[99] *Bellotti* v. *Baird*, 443 U.S. 622, 638 (1979) *(Bellotti II)*.
[100] *Id.* at 639.
[101] *Id.* at 634
[102] *Id.* at 635.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 638–39.

without parental consent, and laws that prohibit third parties from exposing minors to certain types of literature. Equally, Congress may restrict the right of minors to travel across State lines to a greater extent than it may adults.

Roe *v.* Wade *and the Child Custody Protection Act*

In *Roe* v. *Wade*,[106] 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 bars a State from prohibiting abortions under some circumstances. This substantive component of the Due Process Clause, also described in that case as including a "right to privacy," was construed to forbid virtually all State prohibitions on abortion during the first trimester of pregnancy.[107] In *Planned Parenthood* v. *Casey*,[108] 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" requiring a "compelling State interest" in order to be regulated, 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.[109]

H.R. 476 does not place an undue burden upon a woman's right to abortion because it 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. 476 would not make it effective. Therefore, it is unnecessary to ask whether, for example, the "life exception" in Subsection (b) of H.R. 476 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*,[110] many States enacted parental consent or notification statutes requiring minors to notify or seek the consent of their parents before undergoing an abortion. Parental consent laws generally require one or both parents to give actual consent to the minor's decision to have an abortion. Parental notification laws typically require the physician, or

[106] 410 U.S. 113 (1973).

[107] *See Planned Parenthood* v. *Casey*, 505 U.S. 833, 985 (Scalia, J., dissenting).

[108] 505 U.S. 833 (1992).

[109] 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, see id. at 984–995 (Scalia, J., dissenting). 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.").

[110] 410 U.S. 113 (1973).

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*.[111] 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, concluded that such a veto power was unconstitutional.[112] The majority noted, however, that the Court "long has recognized that the State has somewhat broader authority to regulate the activities of children than of adults" and "emphasized" that its holding in the case "does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy."[113]

The Court next addressed State parental involvement laws in *Bellotti* v. *Baird*,[114] remanding 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.[115] The statute returned to the Supreme Court in *Bellotti* v. *Baird (Bellotti II).*[116] *The statute in Bellotti II* required a minor to obtain the consent of her parents or circumvent this requirement through 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.[117] Thus, Justice Powell stated, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society," and that "[p]roperly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter."[118] 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 identical 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."[119] Thus, the plurality sought to design guidelines for a judicial bypass proceeding that allowed States to address these interests.

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[111] 428 U.S. 52 (1976).
[112] *Id.* at 74.
[113] *Id.* at 74, 75.
[114] 428 U.S. 132 (1976).
[115] In doing so the Court recongized minors bear "unquestionably greater risks of inability to give an informed consent." *Id.* at 147.
[116] 443 U.S. 622 (1979).
[117] *See id.* at 651.
[118] *Belloti II,* 443 U.S. at 638.
[119] *Id.* at 634.

In *H.L.* v. *Matheson*,[120] 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. The Court held that a State could require notification of 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."[121]

In *Planned Parenthood Association of Kansas City, Missouri, Inc.* v. *Ashcroft*,[122] the Court found a State law to be constitutional which required a minor to obtain the consent of one of her parents before obtaining 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*,[123] 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 minor's rights by the creation of unnecessary delay.[124] 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*,[125] 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.

Judicial Bypass Procedures

In *Bellotti* v. *Baird*,[126] the United States Supreme Court set forth the basic test by which judicial bypass proceedings pursuant to a parental notice or consent statute must be reviewed. Bypass procedures must 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; or that even if she cannot make the decision by herself, that the "desired abortion would be in her best interests"[127]; be confidential; and be con-

[120] 450 U.S. 398 (1981).
[121] *Id.* at 409.
[122] 462 U.S. 476 (1983).
[123] 497 U.S. 502 (1990).
[124] *See id.* at 514–515.
[125] 497 U.S. 417 (1990).
[126] 443 U.S. 622 (1979) *(Bellotti II)*.
[127] *Id.* at 644.

ducted "with expedition to allow the minor an effective opportunity to obtain the abortion." [128]

Some critics of H.R. 476 argue that it will remove the only viable option available to minors who feel that they cannot tell their parents that they wish to obtain abortions. This argument ignores, however, the available judicial bypass procedures which all valid parental involvement statutes contain. Opponents of H.R. 476 also argue that judicial bypass procedures are too complicated and intrusive to be an effective option for most young girls. Yet, in actuality, judicial bypass proceedings are quite simple and bypasses are easily obtained.[129]

Critics of H.R. 476 also claim that the measure endangers the health of young girls who are forced to travel out of State to obtain abortions because the judges in their home States either refuse to hear judicial bypass petitions or deny them arbitrarily. In support of this argument, the critics cite cases like that of Ms. Billie Lominick, who testified before the Constitution Subcommittee regarding her experience with South Carolina's judicial bypass procedures. According to Ms. Lominick, who assisted her grandson's girlfriend in obtaining an out-of-State abortion, only two judges in the whole State of South Carolina would even hear a judicial bypass petition, and one of those judges, according to Ms. Lominick, would only hear petitions from girls residing in his county.[130]

This argument overlooks the fact that H.R. 476 merely provides assistance in the enforcement of *constitutional* State parental notice and consent laws. If there are only two judges in an entire State willing to hear judicial bypass proceedings, that State's parental involvement laws are likely unconstitutional under Supreme Court precedent which requires the State to provide a minor the opportunity to seek a judicial bypass with "sufficient expedition to provide an effective opportunity for an abortion to be obtained." [131]

This fact is illustrated by the First Circuit's decision in *Planned Parenthood League* v. *Bellotti*.[132] In that case the court held that the plaintiffs could successfully challenge the State's judicial bypass procedures if they could present "proof of 'a systemic failure

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[128] *Id.* Factors that may be considered in determining "immaturity" include work and personal experience, appreciation of the gravity of the procedure, and judgment. *See Hodgson v. Minnesota*, 497 U.S. 417 (1990). Under the "best interests" analysis judges often consider medical risks to the minor as a result of the time, place or type of procedure to be performed, medical risks particular to the girl, evidence of physicial, sexual, or emotional abuse by parents or guardians, and abortion alternatives such as marriage, adoption, and single motherhood.

[129] A survey of Massachusetts cases filed between 1981 and 1983 found that every minor that sought judicial authorization to bypass parental consent received it. *See* 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. *See* 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, 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." Ellen Nakashima, *Fewer Teens Receiving Abortion in Virginia: Notification Law to Get Court Test*, Washington Post (March 3, 1998).

[130] *See Child Custody Protection Act: Hearings on H.R. 1218 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 106th Cong. (May 27, 1999) (statement of Billie Lominick).

[131] *Bellotti* v. *Baird*, 443 U.S. 622, 644 (1979) (plurality opinion).

[132] 868 F.2d 459 (1st Cir. 1989).

to provide a judicial bypass option in the most expeditious, practical manner.'"[133] The court of appeals remanded the case to the lower court so that the plaintiffs' could present evidence that, among other things, judges were "'defacto unavailable' to hear minors' abortion petitions,"[134] and *many* judges were avoided "for reasons of hostility."[135] The Sixth Circuit has also recognized that a constitutional challenge may be brought for a State's systemic failure to provide an expeditious judicial bypass.[136]

Not only must States provide access to judges who are willing to hear judicial bypass petitions, States must also ensure that the judges who do hear bypass petitions render their decisions in an expedited fashion. For example, in *Planned Parenthood of Southern Arizona* v. *Lawall*,[137] the Court of Appeals for the Ninth Circuit struck down an Arizona parental consent statute on the grounds that its judicial bypass provision lacked specific time limits, and was therefore in violation of the *Bellotti II* expediency requirement. The court reached this conclusion even though the Arizona statute stated that such proceedings were to be given priority, and required that "the court shall reach the decision [on a bypass request] promptly and without delay to serve the best interests of a pregnant minor."[138] The court's rationale in adopting a strict interpretation of the Supreme Court's timeliness requirement was that "[o]pen-ended bypass provisions engender substantial possibilities of delay for minors seeking abortions."[139]

The Fifth Circuit employed essentially identical reasoning in striking down a Louisiana judicial bypass procedure having indefinite time limits.[140] The court found that "not only do [the bypass procedures] fail to provide any specific time within which a minor's application will be decided, but they give no assurances (assurances required by *Bellotti II*) that the proceedings will conclude expeditiously."[141]

As these cases illustrate, judicial bypass procedures must be readily accessible and efficient in order to pass constitutional muster. H.R. 476 will only assist in the enforcement of parental involvement laws which meet the relevant constitutional criteria.

This line of cases makes clear that a State may require the consent or notification of 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 sound State parental consent or notification law exists. Thus, the CCPA itself does not independently implicate any constitutional issues associated with parental notification or consent statutes.

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[133] *Id.* at 469 (quoting *Hodgson* v. *Minnesota*, 648 F.Supp. 756, 777 (1986)).
[134] *Id.* at 463.
[135] *Id.* at 461 n.6.
[136] *See Cleveland Surgi-Center, Inc.* v. *Jones*, 2 F.3d 686, 690 (6th Cir. 1993).
[137] 1999 WL 371565 (9th Cir. June 9, 1999).
[138] *Id.* at *4.
[139] *Id.* at *8.
[140] *See Causeway Medical Suite* v. *Ieyoub*, 109 F.3d 1096 (5th Cir. 1997).
[141] *Id.* at 1110–11.

HEARINGS

The Committee's Subcommittee on the Constitution held a hearing on H.R. 476 on September 6, 2001. Testimony was received from the following witnesses: Ms. Eileen Roberts, Mothers Against Minors' Abortions, Inc.; Professor John C. Harrison, Professor of Law, University of Virginia School of Law; Rev. Katherine Ragsdale, Vicar, St. David's Episcopal Church; and Ms. Teresa S. Collett, Professor of Law, South Texas College of Law. Additional material was submitted by Honorable Ileana Ros-Lehtinen (R-FL); Mr. Laurence H. Tribe, Tyler Professor of Constitutional Law, Harvard Unviersity and Mr. Peter J. Rubin, Associate Professor of Law, Georgetown University; Bill and Karen Bell; and the Center for Reproductive Law and Policy.

COMMITTEE CONSIDERATION

On February 7, 2002, the Subcommittee on the Constitution met in open session and ordered favorably reported the bill H.R. 476, by a voice vote, a quorum being present. On March 20, 2002, the Committee met in open session and ordered favorably reported the bill H.R.476 without amendment by a recorded vote of 19 to 6, a quorum being present.

VOTE OF THE COMMITTEE

1. An amendment was offered by Mrs. Waters to prohibit subsection (a) of the Act from applying "if the pregnancy is the result of sexual contact with a parent or any other person who has permanent or temporary care or custody or responsibility for supervision of the minor, or by any household or family member." The amendment was defeated by a rollcall vote of 12 to 16.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Bryant		X	
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Graham			
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	12	16	

2. An amendment was offered by Mr. Nadler prohibiting H.R. 476 from applying "with respect to conduct by a grandparent or adult sibling of the minor." The amendment was defeated by a rollcall vote of 11 to 16.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly			
Mr. Goodlatte		X	
Mr. Bryant			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon			
Mr. Graham		X	
Mr. Bachus		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	11	16	

3. Motion to reconsider the previous question on H.R. 476 was defeated by a rollcall vote of 7 to 16.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Bryant			
Mr. Chabot		X	
Mr. Barr		X	
Mr. Jenkins		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus			
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake			
Mr. Pence			
Mr. Conyers			
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner			
Mr. Schiff	X		
Mr. Sensenbrenner, Chairman		X	
Total	7	16	

4. Final Passage. The motion to report favorably the bill H.R. 476 was agreed to by a rollcall vote of 19 to 6.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Bryant			
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Graham	X		
Mr. Bachus	X		
Mr. Hostettler	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake			
Mr. Pence	X		
Mr. Conyers			
Mr. Frank			
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			X
Ms. Waters		X	
Mr. Meehan			
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin		X	
Mr. Weiner			
Mr. Schiff		X	
Mr. Sensenbrenner, Chairman	X		
Total	19	6	1

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII 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.

Performance Goals and Objectives

H.R. 476 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House is inapplicable.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 476, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 22, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
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. 476, 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, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 476—Child Custody Protection Act.

CBO estimates that implementing H.R. 476 would not result in any significant cost to the Federal Government. Because enactment of H.R. 476 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. 476 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

H.R. 476 would make it a Federal crime to transport a minor across state lines, under certain circumstances, to obtain an abortion without parental notification. 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 any increase in Federal costs for law enforcement, court proceedings, or prison operations would not be significant, however, because of the small number of cases likely to be involved. Any such additional costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 476 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 later spent. CBO expects that any additional receipts and direct spending would be negligible.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

H.R. 476 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 in circumvention of 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 in circumvention of 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 1 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(e) 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 italics and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART I—CRIMES

Chap.		Sec.
1.	**General provisions**	**1**
	* * * * * * *	
117.	**Transportation for illegal sexual activity and related crimes**	**2421**
117A.	***Transportation of minors in circumvention of certain laws relating to abortion***	***2431***
	* * * * * * *	

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

Sec.
2431. Transportation of minors in circumvention of certain laws relating to abortion.

§ 2431. Transportation of minors in circumvention of 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, in force in 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 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.

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MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, MARCH 20, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:50 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

[Intervening business.]

Now, the main event on the schedule today is the markup on the bill H.R. 476, and the Chair recognizes the gentleman from Ohio, Mr. Chabot, to make a motion.

[The bill, H.R. 476, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 476

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2001

Ms. ROS-LEHTINEN (for herself, Mr. BARCIA, Mr. ISTOOK, Mr. PITTS, Mr. BACHUS, Mr. BURTON of Indiana, Mr. CAMP, Mr. CHABOT, Mr. FOSSELLA, Mr. WALSH, Mr. PETERSON of Pennsylvania, Mr. PHELPS, Mr. PORTMAN, Mr. TANCREDO, Mr. RYUN of Kansas, Mr. BAKER, Mr. RILEY, Mr. SHOWS, Mr. NORWOOD, Mr. POMBO, Mr. SHADEGG, Mr. HILLEARY, Mr. HUTCHINSON, Mr. BRADY of Texas, Mr. BURR of North Carolina, Mr. DEMINT, Mr. HOEKSTRA, Mr. HYDE, Mr. MCCRERY, Mr. SHIMKUS, Mr. EVERETT, Mr. KING, Mr. HAYWORTH, Mr. DELAY, Mr. FLETCHER, Mr. OBERSTAR, Mr. SMITH of Texas, Mr. THUNE, Mr. GOODLATTE, Mr. GUTKNECHT, Mr. STEARNS, Mr. CUNNINGHAM, Mr. BUYER, Mr. SCHAFFER, Mr. DEAL of Georgia, Mr. SUNUNU, Mr. TERRY, Mr. CANTOR, Mr. COMBEST, Mr. DIAZ-BALART, and Mrs. JO ANN DAVIS of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Child Custody Protec-
3 tion Act".

4 **SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION**
5 **OF CERTAIN LAWS RELATING TO ABORTION.**

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

8 **"CHAPTER 117A—TRANSPORTATION OF**
9 **MINORS IN CIRCUMVENTION OF CER-**
10 **TAIN LAWS RELATING TO ABORTION**

"Sec.
"2431. Transportation of minors in circumvention of certain laws relating to abortion.

11 **"§ 2431. Transportation of minors in circumvention of**
12 **certain laws relating to abortion**

13 "(a) OFFENSE.—

14 "(1) GENERALLY.—Except as provided in sub-
15 section (b), whoever knowingly transports an indi-
16 vidual who has not attained the age of 18 years
17 across a State line, with the intent that such indi-
18 vidual obtain an abortion, and thereby in fact
19 abridges the right of a parent under a law requiring
20 parental involvement in a minor's abortion decision,
21 in force in the State where the individual resides,
22 shall be fined under this title or imprisoned not
23 more than one year, or both.

1 "(2) DEFINITION.—For the purposes of this
2 subsection, an abridgement of the right of a parent
3 occurs if an abortion is performed on the individual,
4 in a State other than the State where the individual
5 resides, without the parental consent or notification,
6 or the judicial authorization, that would have been
7 required by that law had the abortion been per-
8 formed in the State where the individual resides.
9 "(b) EXCEPTIONS.—(1) The prohibition of subsection
10 (a) does not apply if the abortion was necessary to save
11 the life of the minor because her life was endangered by
12 a physical disorder, physical injury, or physical illness, in-
13 cluding a life endangering physical condition caused by or
14 arising from the pregnancy itself.
15 "(2) An individual transported in violation of this sec-
16 tion, and any parent of that individual, may not be pros-
17 ecuted or sued for a violation of this section, a conspiracy
18 to violate this section, or an offense under section 2 or
19 3 based on a violation of this section.
20 "(c) AFFIRMATIVE DEFENSE.—It is an affirmative
21 defense to a prosecution for an offense, or to a civil action,
22 based on a violation of this section that the defendant rea-
23 sonably believed, based on information the defendant ob-
24 tained directly from a parent of the individual or other
25 compelling facts, that before the individual obtained the

1 abortion, the parental consent or notification, or judicial
2 authorization took place that would have been required by
3 the law requiring parental involvement in a minor's abor-
4 tion decision, had the abortion been performed in the
5 State where the individual resides.

6 "(d) CIVIL ACTION.—Any parent who suffers legal
7 harm from a violation of subsection (a) may obtain appro-
8 priate relief in a civil action.

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

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

13 "(A) requiring, before an abortion is per-
14 formed on a minor, either—

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

17 "(ii) proceedings in a State court; and

18 "(B) that does not provide as an alter-
19 native to the requirements described in sub-
20 paragraph (A) notification to or consent of any
21 person or entity who is not described in that
22 subparagraph;

23 "(2) the term 'parent' means—

24 "(A) a parent or guardian;

25 "(B) a legal custodian; or

1 "(C) a person standing in loco parentis
2 who has care and control of the minor, and
3 with whom the minor regularly resides,
4 who is designated by the law requiring parental in-
5 volvement in the minor's abortion decision as a per-
6 son to whom notification, or from whom consent, is
7 required;
8 "(3) the term 'minor' means an individual who
9 is not older than the maximum age requiring paren-
10 tal notification or consent, or proceedings in a State
11 court, under the law requiring parental involvement
12 in a minor's abortion decision; and
13 "(4) the term 'State' includes the District of
14 Columbia and any commonwealth, possession, or
15 other territory of the United States.".
16 (b) CLERICAL AMENDMENT.—The table of chapters
17 for part I of title 18, United States Code, is amended by
18 inserting after the item relating to chapter 117 the fol-
19 lowing new item:

"117A. Transportation of minors in circumvention of certain laws relating to abortion ..... 2431".

○

Mr. CHABOT. I thank the Chairman for yielding.

There is no serious dispute regarding the fact that minors are routinely transported across State lines.

Chairman SENSENBRENNER. Will the gentleman from Ohio move to report the bill favorably? And then you'll be recognized.

Mr. CHABOT. I do so move, yes.

Chairman SENSENBRENNER. Okay, and the gentleman is now recognized for 5 minutes in support of his motion.

Mr. CHABOT. Thank you.

There is no serious dispute regarding the fact that minors are routinely transported across State lines for the purpose of obtaining an abortion in circumvention of parental involvement laws.

One prominent abortion rights advocated stated that thousands of adults are helping minors cross State lines to get abortions in States whose parental involvement requirements are less stringent or nonexistent.

As recently as last August, another abortion rights advocate voiced her willingness to help pregnant young girls residing in New Jersey to cross State lines in order to obtain an abortion should the State's Legislature pass a parental involvement statute.

Thus, H.R. 476, the "Child Custody Protection Act," would make 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 notification statute.

H.R. 476 is a regulation of interstate commerce that seeks to protect the health and safety of young girls and parents' rights to be involved in the medical decisions of a minor daughter by preventing validly enacted and constitutionally sound State parental involvement laws from being circumvented.

As such, it falls well within Congress's constitutional authority to regulate the transportation of individuals in interstate commerce. There is a solid body of case law that remains unaffected by recent Supreme Court rulings, limiting the reach of Congress' commerce clause authority, which confirms that the authority of Congress to regulate the transportation of individuals in interstate commerce is no longer in question.

For example, the Mann Act, which flatly prohibited the interstate transportation of women for prostitution of for any other immoral purpose was upheld by the Supreme Court, which stated that, under the commerce clause, "Congress has power over transportation among the several States," and characterized this power as being complete in itself, and concluded that incident to this power, Congress may adopt not only means necessary but also means convenient to its exercise, even if it has "the quality of police regulation."

Application of the Mann Act has been upheld relative to the transportation of a person to Nevada, even though prostitution in Nevada is legal.

Federal prohibitions on the transportation of lottery tickets in interstate commerce and placing letters or circulars concerning lotteries in the mail have also been upheld, regardless of whether or not lotteries are legal in the State to which the tickets or letters are transported.

Rather than exercising its full authority under the commerce clause by simply prohibiting the interstate transportation of minors for abortions without obtaining parental notice or consent, H.R. 476 respects the rights of the various States to make these often controversial policy decisions for themselves and ensures that each State's policy aims regarding the issue are not frustrated.

Nothing in H.R. 476 affects the ability of minors residing in States that have chosen not to enact a parental involvement law

or where an parental involvement is currently not enforced from obtaining an abortion without the knowledge of their parents.

At the heart of the debate surrounding the Child Custody Protection Act is a disagreement about whether common-sense legislation should be enacted in order to preserve the health of pregnant young girls and support parents in the exercise of their most basic right.

This debate has already been held in almost all of this Nations' State legislatures, 43 of which have reasonably concluded that parents should be involved in their minor daughter's decision whether or not to obtain abortion.

In upholding the constitutionality of parental notice and consent statutes, the Supreme Court has consistently recognized that during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. This is especially true for young girls seeking an abortion as they face particular physical and psychological risks associated with the procedure.

Parental involvement laws have been enacted after informed political debate, and Congress is well within its authority to ensure that the channels of interstate commerce are not used to frustrate the policy goals of these laws.

I urge my colleagues to approve the legislation, which has been approved twice by this Committee and twice by the Members of the House. The futures of our daughters demand nothing less.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Today's bill is, thankfully, we all know, not going anywhere. This is the third Congress in a row where you've considered it, the third Congress in which, we can be certain, that it will receive no consideration in the Senate, regardless of the party in charge.

It's the third Congress in a row in which this House is simply posturing for the anti-choice extremists.

If passed, however, the big hand of Government, meddling into the most sensitive and often tragic family situations, could do real harm. So, while irritating, this is no laughing matter.

Exporting the ill-considered laws of some States to others, whose citizens see these difficult matters in very different terms, is not an appropriate role for the Federal Government. Were it not for the fact that the consequences of this ill-advised and unconstitutional proposal could cost lives and destroy families, I would be tempted to throw up my hands and say it's not worth wasting the time debating the bill. But we cannot do that. The stakes are too high.

No matter how many times we have to repeat this, I know that both you and I and our colleagues on this Committee feel too strongly about what is at stake here. The lives and futures of young women facing some of life's most difficult situations is a pressing responsibility of this Committee, and so I join my colleagues here today to speak for these young women.

This is a bad bill and should be rejected. Our oath to be faithful to the Constitution demands it. Our respect for the rights of the people of each of the several States demands it. And most of all,

the fates of the young women whose lives would be irreparably harmed by this legislation demand it.

We can and have had honest disagreements about the wisdom of parental consent and notification laws. Many of the Members of this Committee have previously served in our respective State legislatures and have debated this issue as a matter of State law. We're not going to settle that difference of opinion here today.

What we can settle, however, is the question of whether the people of one State should be allowed to set the policy affecting families, abused young people, and the proper role of the State when circumstances are less than ideal, for other States. That is where this bill clearly fails.

In New York, for example, we have rejected this policy, the policy of parental consent, not because we believe that families should not deal with such issues together in a loving environment, but because we recognize that the law must not ignore the fact that the most difficult situations of those young women who do not have safe, loving families to assist them in such trying times.

There is absolutely no reason why a clergy person, such as the priest who testified at our hearing, who assists a young woman who goes from Pennsylvania to a doctor a few minutes away in New York, should face Federal charges. Nor should a grandmother who assists a young woman who has been sexually assaulted by a stepfather spend time in the Federal penitentiary.

While the majority of young women do these make these decisions, and should, in conjunction with their parents, there are cases where they simply cannot.

While the Supreme Court has required that State laws providing for parental consent include a judicial bypass, we all know there are judges out there who will impose their own private religious views on the young women who appear before them and who routinely refuse to grant court permission in any case, no matter how desperate.

Reality, my colleagues, is regrettably messier than the rhetoric in the Congress.

We have decided this issue for ourselves in New York, and other States have decided it both ways. The Federal Government has no business prosecuting people for doing what New York has decided is appropriate and legal in our State. The Federal Government should not seek to allow a State to hold its citizens hostage and to say, "We will prevent you from going to another State to do what is legal in that State, because we don't approve of it in this State."

It seems to me that we hear a lot of rhetoric about Government being at the local level, or the nearest level that is practical, from the other side of the aisle. We hear a lot of rhetoric about the States being able to decide things for themselves. And in this area, they have. And some States have decided to require parental consent or notification laws, and other States have decided not to do so. To empower—to recruit the Federal Government to extend the long hand of one State to imprison its citizens in another State is simply wrong.

The State laws should govern in the State where they are. And who the heck is the Federal Government to say that we so disapprove, we are so morally disapproving of the law of the State of New York, that we will criminally prosecute anybody who helps

someone go to New York to take advantage of its law? That is an insult to the 20 or 25, whatever number, States that have chosen not to require such laws.

The Federal Government should not impose its will in such cases, and to do so is not only an insult to those States, but to every—any conceivable concept of federalism.

Thank you very much.

Chairman SENSENBRENNER. The gentleman's time has expired.

All Members may put opening statements in the record at this point.

Are there amendments?

The gentlewoman from California——

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California—ladies first.

The gentlewoman from California had her hand up.

Ms. WATERS. This is the first time I've known ladies to be first in this Committee, but I'll take it. [Laughter.]

Chairman SENSENBRENNER. A new broom sweeps the floor——

Ms. WATERS. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 476, offered by Ms. Waters. Page 3, after line 19, insert the following: Paragraph (3), the prohibition of subsection (a) does not apply if the pregnancy is the result of sexual contact with a parent or any other person who has permanent or temporary care or custody or responsibility for supervision of the minor, or by any household or family member.

[The amendment follows:]

AMENDMENT TO H.R. 476

OFFERED BY Ms. WATERS

[Page 3, after line 19, insert the following:]

1 ["(3)] The prohibition of subsection (a) does not
2 apply if the pregnancy is the result of sexual contact with
3 a parent or any other person who has permanent or tem-
4 porary care or custody or responsibility for supervision of
5 the minor, or by any household or family member.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Thank you very much.

Mr. Chairman and Members, this is a bill we have seen the past three Congresses, even though it's riddled with problems.

First, I sincerely believe it would pose a risk to young women's health. Second, it is unconstitutional on several levels. Third, it will harm not help communications between pregnant teens and their parents.

I'm going to get right to the meat of this matter. This bill, for example, fails to take into account the very tragic and very real situation of a young girl who has been the victim of sexual contact by a parent, stepparent or other relative or household member. We should all be able to agree that young girl in that situation has the right to chose an abortion. That's exactly what my amendment would do.

Sadly, some pregnancies result from unwanted sexual contact. Adding to that horror is the fact that many families are unable or unwilling to deal with the realties of the situation. A mother may chose not to believe that the child's father or stepfather could have done such a horrible thing. She may even share the child's confidences with the very person who committed the deed, thus potentially putting the child at great risk.

Many of you may know of the tragic case of Spring Adams, a 13-year-old 6th grader from Idaho. She was shot to death by her father after he learned that she was planning to terminate a pregnancy caused by his acts of incest.

My amendment addresses this problem. It provides that the prohibitions of H.R. 476 would not apply when the minor child's pregnancy resulted from sexual contact with a parent, stepparent, custodian or any household or family member. We cannot demand that such a child share her situation with that person.

When the child turns, instead, to a grandparent or adult sibling or boyfriend, we should let her do so. Otherwise, we will find young girls impregnated by relatives or household members seeking to deal with it in anyway they can, whether they do so by traveling alone to another State for the procedure or take care of it through a self-induced or illegal back-alley abortion.

I would urge my colleagues to support this amendment.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I rise in opposition to this amendment. In situations involving incest, it's extremely important that minors who are being abused in this manner bring the abuse to the attention of the authorities as soon as possible.

This amendment would encourage minors not to pursue a confidential judicial bypass hearing during which the abuse may be reported to the court or to seek the assistance of authorities in some other way. In fact, it would encourage the minors to seek out-of-

State abortions and return to the very environment in which the incest occurred.

For that reason, I strongly oppose this amendment and yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I rise to support the Waters amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CONYERS. Members of the Committee, this amendment makes it easier for women who have been impregnated as a result of sexual contact by someone in the family system or someone they've confided in, and it does so by prohibiting prosecutions in cases where a young woman is so impregnated.

Today, a household may be comprised of all kinds of combinations of parents, single parents, stepparents, older siblings. So, under those kinds of circumstances, there's a, I imagine, a feeling of desperation and isolation that could easily develop.

So where abuse already exists, confronting a parent is not a really serious option. Our studies have all shown that abusive and dysfunctional families have a higher incidence of violence when some kind of pregnancy like this occurs. And many can't bear the thought of informing their mother their pregnancy was caused by a father, boyfriend, stepfather or something like that. They know that means they'll be leaving the house soon.

And so going out of State becomes an even more important option. And when that option is taken away, they can sometimes move for dangerous alternatives.

I think the common-sense way to improve this bill, even with its constitutional problems, is to support the Waters amendment.

I yield back.

Chairman SENSENBRENNER. The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. I think this a very important amendment, because I think we all agree that thousands of young women are being transported across State lines every day to get abortions without their parents' knowledge or consent.

Now, if—and I'll accept the fact that many of these women are being impregnated by a stepfather or by, say, a brother or stepbrother in the home. And it would seem that those are very cases where it is absolutely mandatory that we not allow this to go on, because if their stepfather's impregnating them, and I think we all agree that's happening in hundreds of cases, probably every day in this country, they go across State lines, they obtain an abortion, the courts don't find out about it. The young girl comes back, she goes right back into that environment again, she gets pregnant again, she's abused again.

To me, it's very important, in a case like that, that we would say: Go to the court, bring this to the attention of the court, prosecute this person.

If fact, I think by offering this amendment, Ms. Waters is actually—actually, she's actually turned a light on in my mind for another absolutely critical reason to pass this legislation, and that's the fact that we have—and these are people that I think mean

well. They, number one, they—I don't agree with them, but they believe that abortion is a legitimate alternative. But, number two, they're transporting young girls who have been abused by their stepparents or in an abusive family situation across the State line, thinking that's in their best interests, but nothing is being done what's happening at home.

Ms. WATERS. Will the gentleman yield?

Mr. BACHUS. They ought to end up—that's the very cases that ought to—don't we agree that when a young woman——

Ms. WATERS. Will the gentleman yield?

Mr. BACHUS.—is being sexually abused and has had intercourse with the stepfather or by—even by her own blood father, that that is the very case we ought to carry into court and end that foolishness, as opposed to dragging that poor girl across State lines, having her get an abortion, bring her back.

And in many cases, we know that these young girls are having two and three and four abortions. They come back and——

Ms. WATERS. Will the gentleman yield?

Mr. BACHUS.—they end up sterile. They don't have any ability to have children, all because somebody, some do-gooder, decided to intervene, and take what appeared to them to be an easy way out.

Ms. WATERS. Will the gentleman yield?

Mr. BACHUS. That, to me, is the ultimate in child abuse.

Ms. WATERS. Will the gentleman yield?

Mr. BACHUS. And I think my time has expired.

But I think you mean—you meant well by this amendment. But I think you're going to cover up——

Ms. WATERS. You still have time. Will you yield, sir?

Mr. BACHUS.—a lot of tragic cases.

Ms. WATERS. Will you yield?

Mr. BACHUS. This is the very case we absolutely ought to require court intervention in.

Ms. WATERS. If the gentleman will yield——

Mr. BACHUS. I don't know if you'll accept an amendment saying that this absolutely has to go to court.

Ms. WATERS. Will the gentleman yield?

Mr. BACHUS. I'll yield.

Ms. WATERS. Thank you very much.

I know that, you know, you get a little emotional about this, and your reference to just thousands of girls going across the border every day, I think you may be exaggerating it a little bit.

But I want to make the distinction between bringing it to the attention of the courts and the judicial bypass.

Yes, many of these girls will bring it to the attention of the courts for purposes of prosecution. However, it does not mean that that automatically means they get a judicial bypass. These are two separate kinds of court actions.

And so what they would have to have is, they would have to have, as it was mentioned earlier, when there was a discussion about the judicial bypass, that could or could not be granted by a judge. That's one separate action, as opposed to the——

Mr. BACHUS. But we ought to absolutely require, in a case like this, that it go to court. You know, if you have an amendment that says, when this happens, when someone, that there's a question or a charge or even an indication that a stepfather or a brother or

even the blood father of a young girl has committed—has violated our—the laws against rape and incest which are in our county, that they ought to absolutely go to court.

That is the very case that ought——

Ms. WATERS. It's already—you are describing——

Mr. BACHUS.—to be brought before the court in every case.

Ms. WATERS. What you're describing is already——

Mr. BACHUS. And I think you mean—I mean, I really believe that you mean well by this. I understand this. And I believe that the people—I totally disagree with them—but I think when they're taking these young girls—and, I mean, there's plenty of testimony. We all agree that these young women are going across State lines——

Chairman SENSENBRENNER. The gentleman's time has expired.

The question is——

Mr. NADLER. Mr. Chairman?

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you. Mr. Chairman, let me say a couple things about this amendment.

First of all, I think it is wrong to keep using the phrase "transporting someone across State lines." She is going across State lines voluntarily, perhaps desperately. The person accompanying her may be a friend, a grandmother, a clergyman, helping her. This is not the same as someone transporting someone. If she were 5 years old, that might be a different question.

Secondly, on this amendment, the absurdity of not having an amendment like this is evident if you think about the following situation. This says that it does not apply, the prohibition does not apply, if the pregnancy is the result of sexual contact with a parent or any other person who has permanent temporary care or custody. So imagine that the father or the stepfather who has custody or whatever rapes the girl, rapes the young woman, the 16- or 17-year-old young woman. She has to get his written permission—his. Maybe there's no mother present.

She has to get the permission of the rapist, under this bill——

Mr. CHABOT. Will the gentleman yield?

Mr. NADLER. I will not yield.

Mr. CHABOT. Will the gentleman yield?

Mr. NADLER. I will not yield.

Mr. CHABOT. Okay.

Mr. NADLER. Go to court. We know of any number of cases, we've had witnesses, where the judges simply never grant permission. There are plenty of anti-choice judges in this country who won't grant permission. So those don't operate necessarily. They might in some places.

The judicial bypass in some place may operate, in other places won't.

And, by the way, you may have a young girl who was raped by her stepfather or by her father. He doesn't know she's pregnant. If she serves him with a notice of complaint to appear in court or he finds about a court hearing, he knows she's impregnated, she might fear being murdered.

So there are real problems with this. What I'm saying is, under—this amendment simply says—and this will tell us. There are two

possible motives for supporting this bill: one, a sincere concern for these young women; two, a hatred for abortion no matter what and using any smokescreen as an excuse to make it difficult for women to exercise their constitutional right to have an abortion if they choose.

If the motivation is the first, then I can't see how anybody can vote against this amendment, because this says that she doesn't have to get the permission of the rapist. If the motivation is the second, and we don't care about victims of rape, as long as they don't get abortions, then you vote against the amendment. It's very clear.

I yield back.

Mr. BARR. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Georgia, Mr. Barr.

Mr. BARR. Mr. Chairman, I have no idea of what the gentleman that just spoke is talking about.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes to try to tell us.

Mr. BARR. Thank you.

Maybe the Chairman, the distinguished Chairman of the Subcommittee, can enlighten us, because the bill does not say what the gentleman—nor does the amendment say what the gentleman from New York just said.

And I yield to the gentleman from Ohio.

Mr. CHABOT. I thank the gentleman for yielding.

It's inaccurate to say that the young girl would have to get the authorization or approval of the rapist. That's the whole purpose of the judicial bypass procedure. And under the best-interest analysis during a judicial bypass procedure, judges consider evidence or history of physical or sexual or emotional abuse, so that parental notification would not be in the minor's best interests under those circumstance.

So it absolutely inaccurate to say that the young girl would have to get the authorization of the rapist. It's just wrong.

I yield back the balance of my time.

Ms. WATERS. Would the gentleman yield?

Chairman SENSENBRENNER. The time belongs to the gentleman from Georgia, Mr. Barr.

Mr. BARR. I yield back the balance of my time.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. Mr. Chairman, I won't take a full 5 minutes, but if we're going to correct or try to clarify statements, my good friend from Alabama is waving the amendment and saying this is the reason we have to pass the bill, because no one is going to get prosecuted unless we pass the bill.

There's nothing in this amendment that says that someone who's guilty of raping their daughter will not be prosecuted. It doesn't say that at all. It doesn't say that the cops can't investigate it, can't say that a district attorney can't prosecute, can't say that someone won't go to jail.

And I would caution the gentleman from Alabama and others, you know, the pronoun "they" was thrown around a great deal, the

"thousands" being transported. You know, what this comes down to, and I would urge us to kind of keep this in mind, these are individual cases—complex, difficult, gut-wrenching individual cases.

This is not Mayberry. This isn't going to be—you know, I, of course, would like a dynamic where a young woman who becomes pregnant and an unwanted pregnancy sits down with mom and pop and Auntie May, and they sit down and have a freshly baked cherry pie, and they talk about the difficult fix they're in.

But sometimes in these circumstances a person chooses to turn to their member of clergy, to their rabbi or priest, and say, "You know what? I have a difficult problem here. I'm afraid to go to the cops. I'm afraid to go to my local physician who knows my aunt, who knows my mother."

These are complicated things. And so States come up with laws on ways to try to deal with these complicated things. The Supreme Court of the United States has wrestled with this and say, "You know what? Let's not do anything that gets in, in an unreasonable way, gets in the way of a woman exercising her right to protect her health."

I mean, that's what—we're talking about individual cases here. And, yes, in the best case scenario and every case scenario, if someone is guilty of incest, you get on the phone, you call the cops, you have them arrested, you throw them in jail, they never see the light of day again. Of course.

Does the gentleman from Alabama really believe that that's the way it is in the real world, that in every single case where a woman is guilty of sexual—sexual abuse, even if it's her boyfriend or her husband, that she says, "Okay, I'll call up the cops over here, and then I'm going to go exercise my right to a judicial bypass hearing."

I mean, come on. Is there a confused 16-year-old girl who has just been raped by her father or who has been abused by her boyfriend who works in the same school with her uncle who knows somebody, is there a confused person in the world whose first instinct is, "Well, I've got my right to judicial bypass, because the Chairman of the Subcommittee referred to me to section 9 of the bill that has passed seven times and is never going to become law." No.

I mean, these are complicated cases of individual people in agony and in pain. None of us want there to be any abortions. Every one of us wants, in these cases, us to have a family structure just like the one you envision, that someone turns to their mother or father, they talk it out, they come up with some kind of an alternative, and everyone lives happily ever after.

But I think that the laws of the States and the constitutional decisions have been: "You know what? These are difficult judgment calls, and we've come down in this country on the side of giving a woman the right to protect herself, and sometimes it's messy."

These aren't thousands of people being transported. It's not people being piled on a train, going down the tracks to go get these services. These are individual people in difficult, agonizing, individual circumstances.

It's not "they" who are doing it. It's not the do-gooder that's doing it. These are individual priests, rabbis, counselors, school math teachers, friends, neighbors, boyfriends, who are there at a time of

the greatest need for these young girls and offering them help. Sometimes that help is just giving them a ride a few miles down the road to go to a doctor, a physician, who offers them advice and may ultimately offer them the choice of having an abortion.

Do we want to put those people in jail? Those are individual people. Are they really—is our country better putting those people in jail?

I yield back.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, Mr. Coble, seek recognition?

Mr. COBLE. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, I yield time to the gentleman from Alabama.

Mr. BACHUS. Thank you. I'd like to respond to the gentleman from New York. You know, what his argument was and the argument I'm hearing from the other side is, really, the first thing it is, it's an inconsistent argument, because we just heard that we didn't need to take this to the court or the police because this young girl may actually be killed if the father finds out that——

Ms. WATERS. Who said that?

Mr. BACHUS. Someone on the top row said, if she reports it, she might be killed. That was exactly what they said.

And the argument is, you know, if they find out, they may be further abused.

And I've also heard that I think that we all live in Mayberry. Well, let me say this: I authored the domestic violence statute that was passed in Alabama in 1982 that four other States adopted. So, you know, I wasn't living in Mayberry in 1982, when I was in the State Senate, nor am I now.

I think, again, that what—if you say that this will not—that this has nothing to do with people being found out, this amendment, you know, it doesn't say anywhere in the words that it does that. But what it does, it allows boyfriends, as you say, it allows neighbors, it allows preachers, it allows some of the groups that we see in the audience today, whose organizations take these young women across State lines without the knowledge of the father. The stepfather has impregnated them——

Ms. WATERS. What groups? What groups? What groups?

Mr. BACHUS. It's in the testimony here, groups that provide that.

Ms. WATERS. Will the gentleman yield? What group are you talking about?

Mr. BACHUS. Well——

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Ms. WATERS. The gentleman should be able identify the group he's talking about.

Mr. BACHUS. And what you've got here is——

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Mr. BACHUS.—if a boyfriend—if a boyfriend or a neighbor takes these young women who have been impregnated by a stepfather or a brother or even their own father, takes them across State lines

and has an abortion, instead of going to the court, yes, you're covering that up.

And when that young woman goes back, she doesn't go back to Mayberry. She goes back to Hell Street, where she was when here stepfather or her brother or her uncle impregnated her in that home, and where they may be—where the mother may be covering up for the stepfather.

And because she goes across State lines and has an abortion, her real father, because like you said, in America today, we have a lot of divorces, we have a lot of second and third marriages. And in a lot of case, the father may be living in another State; his daughter is living with the stepfather; a stepbrother may impregnate the girl; and that father never receives any notice, because some neighbor or some boyfriend or some preacher, you said, decides that what ought to be done is she ought to be quietly taken across State lines where she has an abortion, as if that takes care of the situation.

She's then going to be quietly brought back, quietly placed in that home again. The court is never going to find out about this.

It's high time that every one of these cases went to the courts. And this idea that, when they go to the courts, that this guy that impregnated this 15-year-old is going to get made and get offended and come after somebody, well, I'll tell you what, I think, you know, I think he'll find about that the—that we'll be coming after him as opposed to coming after this young girl.

Mr. COBLE. Let me reclaim my time and yield back.

Mr. BACHUS. And we had this argument in domestic violence cases. You know, in several States, it wasn't—you know, you didn't have to report. If you beat up your wife, it didn't have to be reported——

Chairman SENSENBRENNER. Did I hear the gentleman from North Carolina try——

Mr. BACHUS.—because they were afraid she'd go back and get beat up again.

Chairman SENSENBRENNER.—to reclaim his time?

Mr. COBLE. I'm reclaiming and yielding back.

Chairman SENSENBRENNER. The question is on the Waters amendment.

Those in favor will say aye.

Opposed, no.

The noes appear to have it.

Ms. WATERS. rollcall.

Chairman SENSENBRENNER. And a rollcall is requested.

Those in favor of adoption of the Waters amendment will, as your names are called, answer aye. Those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

[No response.]

The CLERK. Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.
Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Bryant?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no.
Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
[No response.]
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye.
Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?

Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish to cast or change their vote?
The gentleman from Tennessee, Mr. Bryant.
Mr. BRYANT. I vote no.
The CLERK. Mr. Bryant, no.
Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no.
Chairman SENSENBRENNER. The other gentleman from Tennessee, Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.
Mr. GREEN. Mr. Green votes nay.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Pence.
Mr. PENCE. Mr. Pence votes no.
The CLERK. Mr. Pence, no.
Chairman SENSENBRENNER. Other—the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Other Members who wish to cast or change their votes?

If not, the clerk will report.

The CLERK. Mr. Chairman, there are 12 ayes and 16 nays.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments?

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Mr. Chairman, I have an amendment at the desk——

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. NADLER.—that is designated as amendment 1.

Chairman SENSENBRENNER. Nadler 1.

The CLERK. Amendment to H.R. 476, offered by Mr. Nadler. Page 3, after line 19, insert the following: (3) The prohibition of subsection (a) does not apply with respect to conduct by a grandparent or adult sibling of the minor.

[The amendment follows:]

AMENDMENT TO H.R. 476

OFFERED BY MR. NADLER

Page 3, after line 19, insert the following:

1 "(3) The prohibition of subsection (a) does not apply

2 with respect to conduct by a grandparent or adult sibling

3 of the minor.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

Mr. Chairman, under this bill, if a young girl is impregnated by her stepfather, and the girl's mother, as is sometimes the case, refuses to deal with the horrific reality of the situation, or perhaps the girl's mother is no longer alive or isn't present, an adult sibling or a grandparent who takes the girl across the river from one State to another to secure appropriate counseling and medical assistance, which may include an abortion, would face Federal time and could be sued by the spouse of the perpetrator, even if, in the words of the psychiatric profession, the plaintiff was an enabler.

That is an absurd and pernicious outcome. It virtually guarantees that those adults most able to provide the young woman with assistance, loving members of her close family, could be sent to the Federal penitentiary.

It's hard to believe that my colleagues, whatever their view about abortion or the importance of family involvement, would intend this to be the law, but this is precisely what the bill says. It should not.

This amendment would simply exclude from the penalties of this bill a very small, close group of family members to provide the loving assistance that the proponents of the bill claim to support.

It makes sense and would make an otherwise heartless bill just a little bit more humane.

Mr. Chairman, especially in the situation where a young girl was raped by perhaps the custodial father or stepfather, it's hard to understand—and cannot, obviously, appeal to him for permission, and may not trust the court—indeed, it may a county where the judge has never granted a judicial bypass or announced that he wouldn't grant a judicial bypass ever, as some have.

It's hard to see how you can object to a grandparent or brother or a sister of the person who wants the abortion from accompanying her across a State line.

Now, again, either the motivation of this bill is to encourage—is because of concern with the welfare of the minor—if it is, then this amendment should face no hesitation in being adopted. If the motivation of this bill is, as I suspect it is, simply an attempt to make it as hard as possible—one of a number of bills to make it as difficult as possible for as many women as possible to exercise their constitutional right of choice, to do everything we can within the Constitution, within the Supreme Court interpretation of the Constitution, to undermine the constitutional right of the choice, then you'll vote against the amendment.

But especially where the rape or where the pregnancy was caused by a rape within the family, and so the whole question of a loving consultation doesn't exist—and, again, the gentlemen—some people will say, "Well, the judicial bypass exists for that." In some places, it does. But it takes willful ignorance—willful ignorance—not to notice the fact that, in many places, there is no real judicial bypass available.

Some States, by the way, have very limited judicial bypasses.

In any event, it's hard to see how you can say that a grandparent or brother or sister of the minor is indulging in some—in transporting—it sounds like you're saying they're indulging in some illicit, shameful activity, when they're really helping their family member in a loving way to do something that they believe they really have to do.

So I hope people will vote for this amendment, period.

Thank you. I yield back.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

I rise in opposition to the amendment. Those who want to add these exceptions have a fundamental problem with the underlying State law that only allows parents to grant consent for the medical procedure that's in question here.

The inclusion of these people is a matter for each individual State legislature, not the Congress. The Child Custody Protection Act's purpose is to enforce State laws as they are. Grandparents and adult siblings don't have the authority now to authorize a medical procedure for a minor child.

Thus, we would be carving out an exemption to the fundamental rights of parents, for which another family member seeks to transport their pregnant minor daughter out of State in order for her to obtain an abortion in circumvention of her home State's parental involvement law.

If these individuals are truly interested in the best interests of the pregnant young girl, they will encourage and support her as she takes the difficult step to either inform her parents or guardians about her pregnancy or to pursue a judicial bypass. It's certainly not in the best interests of a pregnant young girl for anyone to assist her in evading the laws of her home State and to secretly transport her miles away from those who love her most in order to undergo a surgical procedure that may have serious medical consequences to her.

For those reasons, I oppose this amendment. I yield back my time.

Ms. JACKSON LEE. Mr. Chairman?

Mr. NADLER. Will the gentleman yield?

Ms. JACKSON LEE. Mr. Chairman?

Mr. NADLER. Will the gentleman yield for a question?

Ms. JACKSON LEE. Mr. Chairman?

Mr. NADLER. Will the gentleman yield for a question?

Mr. CHABOT. I've already yielded back my time.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Okay, the gentlewoman from Texas, Ms. Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. I thank you very much, Mr. Chairman.

I think what should be recognized is the fact that we are hundreds or maybe thousands of miles from any young girl's home, and we are here in the United States Congress, acting upon a law that will impact them.

I rise to support the gentleman's amendment, because I believe if we can intervene in a child's life who has the necessity of dealing with the legal system, then we can likewise intervene and expand the counselors and comforting individuals that may be able to assist that particular child; that, in fact, what we want is in the best interest for that child and the best interest for those who would rise to be supportive.

We don't want them being carried away and imprisoned. And if that be the case, that we are allowing States to proceed accordingly—not by this legislation, this is Federal legislation that is interfering with States' rights, if you will.

And, therefore, I would argue that we can equally provide extra comfort, an extra measure of comfort, by listing those who are in good stead, comforting persons to the child, in this instance, grandparent or sibling—and I will have additional amendment—of the minor, people who they can rely upon in times of trouble.

This makes this a more humane bill. It makes it more reasonable. And it's certainly not contradictory to our already intrusive legislative position that we take today.

I yield back. I yield to the gentleman for a question. Mr. Nadler, I yield.

Mr. NADLER. Thank you.

I wanted to make one comment, and then ask if Mr. Chabot would answer a question.

The comment I'll make, I was struck by——

Chairman SENSENBRENNER. The gentlewoman from Texas has to remain in the room, because the time belongs to her.

The gentleman may proceed.

Mr. NADLER. Thank you.

It struck me, when Mr. Chabot said that limiting the amendment—passing this amendment would violate the State's right of the State which has the parental consent law.

It seems to me what this bill is, is really akin to the Fugitive Slave Act of the 1850's where you're enabling one State in the South, which had slavery, to reach over into another State, New York or Massachusetts, and say, "We want our slave back. That person is a slave here, and Massachusetts cannot grant him or her freedom, because we're going to grab it back. And the Federal Government is going to enforce that."

What you're saying here, with this bill, is that the minor belongs to the State and that if she goes to another State, the Federal Government is going to yank her back so she can't take advantage of the law of the State which she believes is more appropriate to her.

And anybody who helps her is going to go to jail because that State has the right over her because she came from that State, and how dare she try and how dare anybody help her try to go to another State, because the State owns her.

That's what this bill is really about.

But let me ask Mr. Chabot the following question: What would you say, in light of your comment to a moment ago, to a situation in which there is a one-parent family—the mother is dead; the father is the only parent—there's a daughter and a son, let's say. Let's say the father rapes the daughter. Let's say the local judge has never granted a judicial bypass. Let's say he's announced that, because he's an anti-choice candidate; let's say he announced in the last election that he'll never grant a judicial bypass. There are such judges.

So you're faced with a situation—she's faced with a situation that she can't go to her father who impregnated her. She can't go to the judge who has announced he will never grant a judicial bypass. Her brother said—she says to her brother, "Help me go to the neighboring State where I can get an abortion." If we don't pass this amendment, what do you say to that situation, sir?

Mr. CHABOT. Will the gentlelady yield?

Ms. JACKSON LEE. I'm happy to yield.

Mr. CHABOT. I thank the gentlelady for yielding.

The gentleman has set up a hypothetical situation which, in real life, I don't think would happen.

Mr. NADLER. It has happened.

Mr. CHABOT. That would be unconstitutional relative to that judge's handling of that situation.

The judicial bypass procedure is there to protect young girls under difficult circumstances.

And I would argue that, again——

Ms. JACKSON LEE. Reclaiming my time.

Mr. CHABOT.—the whole purpose of this legislation is——

Chairman SENSENBRENNER. The time belongs to the gentlewoman from Texas.

Ms. JACKSON LEE. Reclaiming my time. Reclaiming my time, I yield to the gentleman from New York.

Mr. NADLER. Thank you.

You say the situation couldn't exist; it has existed in certain situations. The judge may be acting unconstitutionally; by the time that gets to the Supreme Court, they baby is 3 years old. Pregnancies don't last for 9 or 10 years, during which this can be litigated through several levels of appeal.

The answer is, without this amendment, the bill puts that young girl at the total mercy of a particular judge, who in many cases, as we know to be the case, will never grant a judicial bypass. We know that that's an illusory remedy, in most cases. And talking about it as if it's always a remedy is simply ignoring the fact.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

The question is on the amendment by the gentleman from New York, Mr. Nadler.

Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. And the gentleman from New York wants a rollcall, correct?

Mr. NADLER. Yes, indeed.

Chairman SENSENBRENNER. Those in favor of the Nadler amendment will, as your names are called, answer aye. Those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Bryant?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Mr. Jenkins?

[No response.]
The CLERK. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye.
Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye.
Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.

The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Any Members who wish to cast or change their vote?
The gentleman from Tennessee, Mr. Jenkins.
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their vote?
If not, the clerk will report.
The gentleman from Virginia, Mr. Goodlatte.
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Chairman SENSENBRENNER. The clerk will try again to report.
The CLERK. Mr. Chairman, there are 11 ayes and 16 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Before the recognizing the person to offer the next amendment, let me give a scheduling heads-up. It is the intention of the Chair to recess the Committee as soon as the bell rings for the next vote. There will then be an hour's debate on the rule, and the Committee will reconvene immediately after the vote on the rule on the budget. So it will be an hour's debate on the rule for a lunch hour or whatever, and we'll come back after the next series of votes and finish this bill.
However, the gentleman from North Carolina, Mr. Coble, would like to ask Members of the Courts Subcommittee to stay at the beginning of this recess for a quick markup on legislation. So when the bell rings, the Chair is going to ask everybody to speed it up, so the Coble Subcommittee can markup and get their bill reported out.
And then we'll come back after the vote on the rule for the budget.
Are there further amendments?

Mr. FRANK. Mr. Chairman?

Mr. SCOTT. Mr. Chairman?

Ms. JACKSON LEE. Amendment——

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. Very briefly.

But I was very struck by the comments from the gentleman from Ohio, and I want to acknowledge what appears to be a consensus that I had not previously thought existed, namely that judicial bypass for a minor is an important constitutional principle.

I had previously thought that there was, on the part of those who would like to make abortion illegal, opposition to the existence of judicial bypass. My recollection is that many of the statutes passed did not allow a judicial bypass, and that was something that many people felt was forced on them by the courts.

So I am particularly struck to hear how often the judicial bypass procedure is invoked in this debate as a saving grace. And I want to say that while some of my colleagues may have come late to the notion of defending the existence of judicial bypass, better late than never.

I yield back.

Chairman SENSENBRENNER. Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 476, offered by Mr. Scott. Page 3, after line 14, insert the following: (2) The prohibition——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

AMENDMENT TO H.R. 476

OFFERED BY MR. SCOTT

Page 3, after line 14, insert the following:

1 "(2) The prohibition in subsection (a) does not apply
2 to owners, operators, employees, or agents of entities that
3 commonly provide public or private transportation to
4 members of the general public including taxicabs, lim-
5 ousines, light rail trains, commuter trains, subways, buses,
6 and airplanes.

Page 3, line 15, strike "(3) and insert "(2)".

Chairman SENSENBRENNER. And the gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, this is the taxicab exemption.

The bill criminalizes anyone who knowingly transports an individual across State lines in order to have an abortion. The way the bill is written, this would include taxicab drivers, limo drivers, the person who sells train tickets or anything else. It also takes—all it takes for—is an individual in question to mention that she is crossing State lines on the mode of transportation in order to have an abortion, and the operator of that mode of transportation will be required to ensure that she's complied—she's in compliance with her home State's parental notification laws or risk prosecution.

Please note that the bill specifically requires intent for the transportation and abortion but does not require knowledge of compliance with the State's parental consent and notification laws. The bill says that you knowingly transport with the intent to obtain an abortion when in fact the parental consent and notification laws are not complied with.

And so, if a teenager in Virginia calls a taxi and asks to go to an abortion clinic in Maryland, and acknowledges during the trip what she intends to do, the taxicab driver, the dispatcher, maybe the taxicab company, are all criminally liable under the bill.

This amendment would exempt the application of the bill to those who are in the business of providing public or private transportation, such as taxicabs, regardless of what information the riders tell them. Those folks have enough to worry about, without

making them criminally liable for transporting an individual who intends to get an abortion.

Now, Mr. Chairman, it's important to note that the bill does not prohibit a teenager from driving herself across State lines to evade parental consent laws. It only prohibits someone from transporting her or accompanying her—whatever "transport" means; it's not defined in the bill.

So I would hope that we will not criminalize the taxicab driver for answering a call and taking someone to where they want to go.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

This amendment is totally unnecessary, because taxicab drivers are not liable under H.R. 476. Subsection (a)(1) allows for the conviction of an individual who knowingly transports a minor across State line "with the intent that such individual obtain an abortion."

Although a taxicab driver may have the knowledge that the minor that he or she is transporting will obtain an abortion as soon as she arrives at her destination, his or her intent is not that the minor obtain an abortion. Rather, it's to transport the minor to her destination of choice, whether it's an abortion clinic or a shopping mall. In other words, the taxicab driver's reason for transporting the minor is to receive the fare, not to ensure that she obtains an abortion.

Thus, a taxicab driver does not have the requisite intent necessary for prosecution under 476, so the amendment is totally unnecessary.

And I yield back the balance of my time.

Chairman SENSENBRENNER. Pursuant to the Chair's prior announcement, the Committee is recessed until immediately after the vote on the rule on the budget.

[Recess.]

Chairman SENSENBRENNER. The Committee be in order.

When the Committee recessed, the bill H.R. 476, a motion to report favorably had been made. The bill was open for amendment at any point. And pending was an amendment by the gentleman Virginia, Mr. Scott, relative to taxi drivers.

Is there further discussion? If not, those in favor of the Scott amendment will say aye.

Opposed, nay.

The aye does not have it, and the amendment is not agreed to.

Are there further amendments to the bill?

If there are no further amendments, without objection, the previous question on the bill is ordered. And we will await for 19 folks to appear, and we will then have a vote on reporting the bill out favorably. Without objection, so ordered.

Those here, please don't leave. And would the staff on both sides get the dragnet out, please?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. It appears that there's still a vote going on. I would hope that we would delay the final gavel until well after the rollcall is closed on the floor.

Chairman SENSENBRENNER. The clerk will be instructed to call the roll slowly.

Can she do that?

Mr. HYDE. Mr. Chairman, that's a motion to adjourn that's pending now, carrying forth the motion, and one that's brought with substance.

Chairman SENSENBRENNER. That's not a motion to adjourn. It's——

Mr. SCOTT. It's a motion to table.

Chairman SENSENBRENNER. It's a motion to table.

Mr. SCOTT. A motion to table the motion to reconsider.

Chairman SENSENBRENNER. Yes. Also quite important.

Mr. SCOTT. Equally important.

Chairman SENSENBRENNER. Yes.

Mark?

Mr. GREEN. I'm not going to leave. [Laughter.]

Chairman SENSENBRENNER. Okay. Short leash time.

Mr. GREEN. I'll be out here.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The previous question has already been ordered on amendments, so the question is on reporting the bill favorably.

Ms. JACKSON LEE. I'd like to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

We have been going through this bill. It's a very important bill. You indicated that we would start this Committee after the vote. The vote is not even closed. We came quickly over here, and I just raise a personal protest for the openness and bipartisanship of this Committee.

I indicated by call to the Committee that I was en route, on the Democratic side, coming through door, which I did. And I can't imagine how, in a manner of seconds, the previous question has been called, and I'm walking through the door.

This is important legislation. Constitutional issues are being raised. And I would hope that there would be a possibility of a Member being able to submit an amendment that she believes would add to the clarification of the constitutional issue——

Chairman SENSENBRENNER. No.

Ms. JACKSON LEE.—and the importance of the issue.

Chairman SENSENBRENNER. The Chair will state that he called the Committee to order. There was a vote on the Scott amendment. A working quorum was present; a working quorum of 13 was present. The Chair then called for other amendments; there were no other amendments that were offered. And the Chair then asked unanimous consent that the previous question be ordered, and there was no objection. And the previous question was ordered pursuant to the unanimous consent agreement.

Mr. SCOTT. Mr. Chairman?

Mr. WATT. Mr. Chairman?
Mr. SCOTT. Mr. Chairman?
Chairman SENSENBRENNER. A reporting quorum is now present.
Mr. SCOTT. Mr. Chairman?
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER. The Committee now returns to the pending, unfinished business upon which the previous question——
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER.—was ordered on H.R. 476.
The question is on the motion to report favorably the bill H.R.——
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER.—476.
For what purpose does the gentleman from North Carolina seek recognition?
Mr. WATT. Mr. Chairman, I move to reconsider the vote on the previous question.
Chairman SENSENBRENNER. The question is, shall the motion ordering the previous question be reconsidered?
Those in favor will say aye.
Opposed, no.
In the opinion of the Chair, the noes have it. The noes have it, and the motion——
Mr. WATT. Mr. Chairman, I ask for a recorded vote on that.
Chairman SENSENBRENNER. The recorded vote is ordered.
The question is on reconsidering ordering the previous question.
Those in favor will, as your names are called, answer aye. Those opposed, no. And the clerk will call the role.
The CLERK. Mr. Hyde?
Mr. HYDE. No.
The CLERK. Mr. Hyde, no.
Mr. Gekas?
[No response.]
The CLERK. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. Goodlatte?
[No response.]
The CLERK. Mr. Bryant?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no.
Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.

Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
[No response.]
The CLERK. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. What is this? Yes.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Yes.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?

[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional Members who wish to record or change their vote?
The gentleman from California, Mr. Issa.
Mr. ISSA. No, Mr. Chairman.
The CLERK. Mr. Issa, no.
Chairman SENSENBRENNER. Other Members who wish to record or change their vote? If there are none, the clerk will report.
The CLERK. Mr. Chairman, there are seven ayes and 14——
Mr. CANNON. Mr. Chairman, how am I recorded?
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.
Mr. CANNON. No.
Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.
Mr. GEKAS. No.
Chairman SENSENBRENNER. The clerk will report again.
The CLERK. Mr. Chairman, there are seven ayes and 16 nays.
Chairman SENSENBRENNER. And the motion to reconsider——
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER.—is not agreed to.
The question is——
Mr. WATT. Parliamentary inquiry.
Chairman SENSENBRENNER. State your parliamentary inquiry.
Mr. WATT. Mr. Chairman, my parliamentary inquiry is this: When the Chair says that the Committee is going to reconvene after a vote, would it be proper for the Chair to reconvene before the vote has closed on the floor, exactly what happened this case, because I came——
Chairman SENSENBRENNER. The Chair will respond that Members had an opportunity to record their votes and to come back.
Mr. WATT. I—I——
Chairman SENSENBRENNER. There were enough Members on both sides of the aisle coming back to provide a working quorum. The Chair did not start the Committee up until we had a working quorum.
The question is now on the motion to report the bill favorably.
Ms. JACKSON LEE. Parliamentary inquiry, Mr. Chairman.
Mr. NADLER. Mr. Chairman, parliamentary inquiry.
Ms. JACKSON LEE. Parliamentary inquiry, Mr. Chairman.
Chairman SENSENBRENNER. The gentlewoman from Texas.
Ms. JACKSON LEE. Let me just, with all due respect, could I—could we get an annunciation of the what the Chairman said? The question of Mr. Watt was, the end of a vote, is it not the closing

of the vote, as opposed to in the midst of the vote. My understanding was——

Chairman SENSENBRENNER. The Chair will——

Ms. JACKSON LEE.—we would reconvene——

Chairman SENSENBRENNER.—respond this way: The Chair has been on this Committee for almost 24 years——

Ms. JACKSON LEE. Yes, sir.

Chairman SENSENBRENNER.—under three Chairman before myself. When the Chair has requested the Members to return immediately after a vote, the lights don't have to go off up on the clock. As soon as a reporting—or, a working quorum is present, the Committee has resumed its sitting.

And there was an amendment that was disposed of. The Chair then said—called for further amendments; there were no further amendments that were offered. The Chair then said, there being no further amendments, without objection, the previous question is ordered; there was no objection to ordering the previous question. So there then was a motion to reconsider ordering the previous question; that was just not agreed to.

So, under the rules, the question is now on whether or not to——

Ms. WATERS. Parliamentary inquiry, Mr. Chairman.

Chairman SENSENBRENNER.—report the bill favorably.

Ms. WATERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. WATERS. Mr. Chairman, I just heard your explanation for why you proceeded with the work of the Committee and cut off the opportunity for amendments. And certainly, you have the gavel and you can do that. However——

Chairman SENSENBRENNER. That's not a parliamentary inquiry.

The Chair has stated that he asked unanimous consent for ordering the previous question, and that has been the standard procedure for as long as I have been around, when we are done with amendments, and the Chair calls for amendments, and nobody seeks to offer an amendment.

The gentlewoman from California's statement is not a parliamentary inquiry.

Ms. WATERS. Well, I have a parliamentary inquiry.

Chairman SENSENBRENNER. Again, there were—there were bipartisan representations present, or people present. Any Member could have objected to ordering the previous question, in which case the previous question was not ordered.

The previous question is ordered, that brings immediately to the vote, the question of reporting the bill favorably.

Those in favor will say aye.

Ms. WATERS. Mr. Chairman, whether you recognize me or not——

Chairman SENSENBRENNER. Those opposed will say——

Ms. WATERS.—it's an abuse of power.

Chairman SENSENBRENNER. Those opposed will say no.

Ms. WATERS. Simply an abuse of power. That's all it is.

Chairman SENSENBRENNER. The ayes appear—the Chair just follows the rules and, you know——

Mr. NADLER. Mr. Chairman, I ask for a recorded vote.

Chairman SENSENBRENNER. The ayes appear to have it. The ayes have it——

Mr. NADLER. Mr. Chairman, I ask for a recorded vote.

Chairman SENSENBRENNER. Without—a recorded vote is ordered.

Those in favor of reporting the bill favorably will vote aye. Those opposed will vote no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye.

Mr. Gekas?

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas, aye.

Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye.

Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Mr. Bryant?

Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Mr. Barr?

Mr. BARR. Aye.

The CLERK. Mr. Barr, aye.

Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye.

Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.

Mr. Graham?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye.

Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye.

Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye.

Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye.

Mr. Issa?

Mr. ISSA. Aye.

The CLERK. Mr. Issa, aye.

Ms. Hart?

Ms. HART. Aye.

The CLERK. Ms. Hart, aye.

Mr. Flake?
[No response.]
The CLERK. Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Mr. Chairman, I am going to vote on this under protest, because of the deliberate——
Chairman SENSENBRENNER. The—the——
Mr. NADLER.—to bring this Committee into session before——
Chairman SENSENBRENNER. The gentleman from New York—the gentleman from New York——
Mr. NADLER.—before—before Members came back, before the vote was concluded on the floor——
Chairman SENSENBRENNER. The gentleman from New York will cast vote——
Mr. NADLER.—when the Chairman knew there were two amendments——
Chairman SENSENBRENNER.—and not debate.
Mr. NADLER.—when the Chair knew there were two amendments to be——
Chairman SENSENBRENNER. The Clerk will continue call the roll.
The CLERK. Mr. Scott?
Mr. NADLER.—to be introduced.
The CLERK. Mr. Watt?
Mr. NADLER. It is an outrage that the minority is denied its two amendments.
The CLERK. Ms. Lofgren?
Mr. NADLER. And if that's the practice in this Committee——
The CLERK. Ms. Jackson Lee?
Mr. NADLER.—it's going to be unpleasant in the few meetings.
Ms. JACKSON LEE. I am to be recorded as present and in protest. I will not vote on this bill, because there has been no opportunity for us to debate this bill fully.
Present and not—and in protest.
The CLERK. Ms. Waters?
Ms. WATERS. And I don't care what the Chairman says. He's abusing power, and he's used his gavel in a manner that I don't expect him to use it in.
Chairman SENSENBRENNER. The gentlewoman——
Ms. WATERS. I don't like it.
Chairman SENSENBRENNER.—from California will——
Ms. WATERS. This side of the aisle does not like it.
Chairman SENSENBRENNER.—cast a vote and——
Ms. WATERS. And we're not going to put up with this.
If you want us to be disruptive, we know how to do that.
And I vote no on the bill.

The CLERK. Ms. Waters, no.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there additional Members in the room who wish to cast or change their vote?
The gentleman from South Carolina?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye.
Chairman SENSENBRENNER. The gentleman from New York, Mr. Nadler.
Mr. NADLER. Mr. Chairman, how am I recorded?
The CLERK. Mr. Nadler is not recorded.
Mr. NADLER. You're sure I'm not recorded?
The CLERK. No, you're not recorded, sir.
Mr. NADLER. Then I'll vote no under protest.
The CLERK. Mr. Nadler, no.
Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.
Mr. WATT. Mr. Chairman, I'm not sure my name was ever called, but if it was, I intended to vote no.
Chairman SENSENBRENNER. How is Mr. Watt recorded?
The CLERK. I don't have a vote for Mr. Watt.
Mr. WATT. I just said, I intended to vote no.
The CLERK. Mr. Watt, no.
Ms. JACKSON LEE. How am I recorded, Mr. Chairman?
Chairman SENSENBRENNER. The gentlewoman from Texas?
The CLERK. Ms. Jackson Lee is a present——
Ms. JACKSON LEE. In protest.
The CLERK.—under protest.
Ms. JACKSON LEE. Thank you.
Chairman SENSENBRENNER. Are there further Members who wish to cast or change their votes?
If not, the clerk will report.
The CLERK. Mr. Chairman, there are 19 ayes and six nays.
Chairman SENSENBRENNER. And the motion to report favorably is agreed to.

All Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

There being no further business to come before the meeting of the Committee, the Committee stands adjourned.

[Whereupon, at 3:54 p.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly dissent from H.R. 476. This legislation will increase health risks to young women who choose to have an abortion, is anti-family, and is very likely unconstitutional. Additionally, the legislation is opposed by a wide variety of groups that remain committed to reducing teenage pregnancy and protecting a woman's right to choose, such as Planned Parenthood, the National Abortion and Reproductive Rights Action League, and the Center for Reproductive Law and Policy, as well as leading organizations of medical professionals concerned with the welfare of pregnant teens.[1]

The "Child Custody Protection Act" would provide civil and criminal penalties for any individual who "knowingly transport[s] 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, in force in a State where the individual resides. . . ."[2] The proposed law would not require that the defendant know that the State's parental involvement law has not been satisfied, or that the defendant intended to aid in its circumvention. Moreover, the legislation contains no exceptions for any close adult relative other than the parents or guardians of the minor. It could conceivably provide prison time for a grandparent, adult sibling, or clergy person and make that individual subject to a civil action by a parent who had raped and impregnated the minor. Furthermore, it would violate fundamental principles of Federalism by applying criminal and civil sanctions based on the law of one State for legal actions taken in a second State. There is no requirement whatsoever that the minor be taken by force or coercion.

This is the third Congress in a row that the House has considered this legislation, despite the failure on the part of any of its proponents to demonstrate that young women are being taken against their wills to other States, or are being coerced into having abortions.[3]

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[1] American Civil Liberties Union, *Memorandum to Interested Persons Regarding the Teen Endangerment Act* (August 30, 2001); American Academy of Pediatrics, American College of Obstetricians and Gynecologists, American Medical Women's Associan, Society for Adolescent Medicine, *Letter to Members of the House of Representatives*, (April 2, 2001); National Abortion and Reproductive Rights Action League, *The "Child Custody Protection Act" Threatens Young Women's Health*, (January 21, 2002); American Medical Association, Council on Ethical and Judicial Affairs, *Report H; House of Delegates Meeting*, (June 1992); American Public Health Association, *The Adolescent Right to Confidential Care When Considering Abortion*, Policy Statement; Vol. 97, No. 5, (May 1996); National Abortion Federation, *Oppose H.R. 476, the "Child Custody Protection Act,"* (2001); Center for Reproductive Law and Policy, *The Child Custody Protection Act (CCPA): Creating Chaos and Punishing Adolescents*, (September 2001).

[2] H.R. 476, Sec. 2(a), creating a new 18 U.S.C. 2431(a)(1).

[3] H.R. 476, 107th Cong. (Feb. 6, 2001), no Senate counterpart; H.R. 1218, 106th Cong. (March 23, 1999), Passed House 270–159 (Roll no 26), placed on Senate Legislative Calendar, No. 203, no further consideration, S. 661, 106th Cong. (March 18, 1999), referred to Judiciary Committee, no further action; H.R. 3682, 105th Cong. (April 1, 1998), Passed House 276–150 (Roll No. 280),

Continued

Contrary to its stated intent, instead of simply facilitating State-required parental consent and notification laws, H.R. 476 will dramatically increase the dangers young women will face in dealing with unintended pregnancies. In fact, the bill contains no prohibitions whatsoever against women traveling across State lines alone to exercise their constitutional right to choose. It will only make it more difficult for them to seek the assistance and guidance of trusted adults such as grandparents, older siblings, aunts, uncles, or clergy. To the extent young women continue to seek the involvement of close family members when they cannot confide in their parents—where, for example, a parent has raped a young woman or where there is a history of child abuse—this bill will criminalize the actions of those caring adults whom the young woman is most likely to depend upon for support. Consequently, this bill encourages young women to act in isolation, putting them at greater risk of physical and psychological harm.

Further, because the bill violates the principles of federalism, restricts a young woman's right to travel, and compels States to treat non-residents differently than residents, it raises very serious constitutional issues.

Finally, we strongly object to the Majority's abuse of power to disenfranchise Members of the Minority by calling the Committee back into session while a vote on the floor was still open, and moving to a final vote on the bill before many Members had returned from the floor. The Majority had been well advised prior to the vote that only two more amendments would be offered and that, in an effort to promote comity and conclude consideration of this bill in a non-dilatory fashion, none of the Minority's other amendments would be offered. Furthermore, in an effort to avoid repetitive debate, the Minority offered no amendments at Subcommittee, holding all such debate for full Committee. In view of our past experience that no amendments have been made in order when the full House considered this bill in the last two Congresses, the actions of the Majority are tantamount to an unjustified and indefensible denial of the right of Members of the Committee to be heard and to speak for the citizens they represent. Many of us expressed at the time our concern that such an abuse of power was a poor response to the efforts of the Minority to work cooperatively with the Majority.

For these and the other reasons set forth herein, we dissent from H.R. 476.

I. H.R. 476 WILL ENDANGER YOUNG WOMEN

Although an abortion is generally very safe, it is still far preferable and safer to permit a trusted friend or family member to drive a woman home from this surgical procedure.[4] Moreover, responsible health care providers do not provide these services unless

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Placed on Senate Legislative Calendar No 559, no further action. S.1654, 105th Cong. (February 12, 1998), Cloture not invoked in Senate Vote 54–45 (Roll No. 282). The House has never made any amendments in order during floor consideration.

[4] 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 86% of counties—home to 32% of women of childbearing age—lack an abortion provider. See Stanley K. Henshaw, "Abortion Services in the United States, 1995 and 1996," Family Planning Perspectives, Vol. 30, No. 6, 262, 266 (Nov/Dec 1998).

they are confident that the patient has someone who will accompany them and assist them following the procedure. Under this bill, 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.

As much as we would prefer the active and supportive involvement of parents in their children's major decisions, it is not always realistic to expect young women to seek parental involvement willingly in the sensitive area of abortion. And where a child is unwilling or unable to seek parental consent, the results can be tragic. The testimony of Bill and Mary Bell before the Constitution Subcommittee is telling in this regard.[5]

The Bells were the parents of a daughter who died receiving an illegal abortion because she did not want her parents to know about her pregnancy, notwithstanding Indiana's parental notice law. A Planned Parenthood counselor in Indiana informed Becky that she would have to 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 she did not even know. Instead of traveling 110 miles away to Kentucky, Becky opted to undergo an illegal abortion close to her home. Tragically, Becky developed serious complications from her illegal abortion that caused her death. It is unlikely that H.R. 476 could have changed this outcome or would have convinced Becky to confide in her parents about her pregnancy. Regrettably, healthy family communication simply cannot be legislated.

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.[6] Enacting this legislation and forcing young women in these circumstances to notify their parents of their pregnancies will only exacerbate the dangerous cycle of violence in dysfunctional families. 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] It is clear that when a young woman believes that she cannot involve her parents in her

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[5] *See* Hearing on H.R. 3682 "The Child Custody Protection Act" before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 105th Cong. 2d Sess., Serial 102, at 17 (May 28, 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 11-year-old from Maryland, who was impregnated by her stepfather, 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 the 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. 476, Vicki could have been federally prosecuted for helping her young niece cope with this pregnancy resulting from incest).

[6] *See* Henshaw at 196.

[7] *See* Maggie Boule, "An American Tragedy," Sunday Oregonian, Aug. 27, 1989.

decision to terminate a pregnancy, the law cannot mandate healthy, open family communication.

We are well aware of proponents' claims that the bill protects minors who cannot obtain parental consent because they have the option to appear before judges and bypass any parental involvement laws. While bypass may have some theoretical benefits, in many cases it is difficult if not impossible for troubled young women to obtain. Some teenagers live in regions where the local judges consistently refuse to grant bypasses, regardless of the facts involved. For example, one study found that a number of judges in Massachusetts either refuse to handle abortion petitions or focus inappropriately on the morality of abortion.[8]

Others 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.[9]

The difficulties in obtaining a judicial bypass were clearly illustrated by Ms. Billie Lominick during her testimony before the Subcommittee on the Constitution. Ms. Lominick was a 63-year-old grandmother who helped a pregnant minor from a physically and sexually abusive household cross State lines to obtain an abortion. Ms. Lominick testified that her assistance was essential because the minor was unable to find any judge in her home State of South Carolina who would hear her judicial bypass petition.[10]

Moreover, reliance on the judicial bypass system as an effective alternative to parental consent understates the intimidating effect of seeking a court-sanctioned abortion. 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 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. Young women's concerns about confidentiality are especially acute in rural areas. For

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[8] *See* Patricia Donovan, "Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions," Family Planning Perspectives, vol. 15, no. 6 (Nov./Dec. 1983): 259. *See also* *Hodgson* v. *Minnesota*, 487 U.S. 417, 476 (1990) (finding that in Minnesota, many judges refuse even to hear bypass proceedings); *In re T.W.*, 551 So.2d 1186, 1190 (Fla. 1989) (describing how a judge in Florida, after denying a bypass petition to a teenage girl who was in high school, participated in extracurricular activities, worked 20 hours a week, and baby-sat regularly for her mother, suggested that he, as a representative of the court, had standing to represent the State's interest when the minor appealed the denial).

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

[10] *See* Hearing on H.R. 1218 "The Child Custody Protection Act" before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 106th Cong. 1st Sess., Serial 16, at 23 (May 27, 1999) (statement of Billie Lominick).

[11] *See* Council on Ethical and Judicial Affairs, AMA, "Mandatory Parental Consent to Abortion," JAMA, vol. 269, no. 1 (Jan. 6, 1993): 83

example, in one case a minor discovered that her bypass hearing would be conducted by her former Sunday school teacher.[12]

The Subcommittee heard testimony from the Rev. Katherine Ragsdale, an Episcopal Priest and Vicar of St. David's Episcopal Church, who discussed the case of a 15-year-old girl who had been raped and had become pregnant. The girl could not go to her father who would have thrown her out of the house, and she had no other family to whom she could turn. Of course, even if she did, this legislation would place those other relatives in legal jeopardy. Although they did not cross State lines, Rev. Ragsdale drove the young woman rather than allowing her to trave several hours alone by bus to and from the procedure. Rev. Ragsdale movingly described the pastoral counseling that she provided to the young woman during the drive. This bill would make criminals of clergy who provided this sort of pastoral care and guidance. Rev. Ragsdale's observations are worth repeating:

> "Mr. Chairman, you talked about all the reasons it is important for a girl to have parental involvement before a medical procedure; and you are absolutely right. And if I thought that this bill would accomplish parental involvement, if I thought it would eliminate the kind of pain Ms. Roberts spoke about, this panel would be even more on balance than it is because I would be on the other side, but it won't do that. This bill isn't about resolving problems. This bill is about punishing people. And while I understand that even the best of us have punitive impulses from time to time, we have no business codifying them. They are venal. They are beneath the dignity of any member of the human family."[13]

The argument has been made by proponents of H.R. 476 that in these situations, when judicial bypasses are not functioning properly, a young woman could seek—and undoubtedly obtain—relief in Federal court. This argument ignores the facts. In *Cleveland Surgi-Center* v. *Jones*,[14] Planned Parenthood and other abortion providers in the Akron area brought suit alleging that Ohio's judicial bypass procedure produced a series of factually incorrect and arbitrary results.[15] Despite the arbitrary nature of the decisions by the juvenile courts in Ohio, the Federal court stated that it was a court of "limited jurisdiction" that could not review the decisions of State courts.[16] The court dismissed the case "because both [the Court of Appeals] and the District Court are without jurisdiction to provide

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[12] *See Memphis Planned Parenthood* v. *Sundquist*, No. 3:89–0520, slip op. at 13 (M.D. Tenn. Aug. 26, 1997); *See also* Tamar Lewin, "Parental Consent to Abortion: How Enforcement Can Vary," N.Y. Times, May 29, 1992, p. A1 (describing how a judge in Toledo, Ohio denied permission to a 17½-year-old woman, an "A" student who planned to attend college and who testified she was not financially or emotionally prepared for college and motherhood at the same time, stating that the girl had "not had enough hard knocks in her life").

[13] Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary on H.R. 476, at 11 (107th Congress, September 6, 2001)(Testimony of Rev. Katherine Ragsdale).

[14] 2 F.3d 686 (6th Cir. 1993).

[15] For example, a nearly 18-year-old minor petitioned for a waiver because she did not wish to discuss the matter with her parents. The juvenile court found that her reluctance to discuss the issue with her parents was, itself, evidence that she was not mature enough to make the decision as to whether to have an abortion. This example demonstrates that, at least for this judge, any minor who sought a bypass rather than discuss the matter with her parent could never obtain one—thereby defeating a central purpose of a judicial bypass.

[16] *See Cleveland Surgi-Center*, 2 F.3d at 691.

plaintiffs with the relief that they seek, namely the review of arbitrary State court decisions."[17] Accordingly, it is not always the case that judicial bypass procedures are meaningful and effective, nor is it the case that, when they are not, the Federal courts will provide relief.

II. H.R. 476 IS ANTI-FAMILY

H.R. 476 is hostile to the well-being of families. Despite proponents' belief that H.R. 476 would enforce parents' right to counsel their daughters, the reality is that it is impossible to legislate complex family relationships. 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 adult, who is very often a relative.[18]

Although the bill excepts parents from criminal and civil liability, even non-parent adults who are helping to raise a child will be swept in by the bill's prohibitions. This is because the exception is excessively narrow and refers only to a parent or guardian; a legal custodian; or a person designated by a State's parental involvement law as a person to whom notification, or from whom consent, is required. The Majority rejected an amendment by Mr. Nadler that would have excepted a grandparent or adult sibling from the bill's penalties. An amendment offered by Mr. Scott would have exempted an innocent common carrier who may have transported the minor was similarly rejected.[19] The Majority also defeated an amendment offered by Ms. Waters that would have granted an exception where a parent or any other person who has permanent or temporary care or custody or responsibility for the supervision of the minor, or any other household member had caused the pregnancy. The absence of such an exception locks victims of incest into requiring consent from the incestuous parent. Other amendments the Minority had prepared could not be offered because of the Chairman's action to cut off debate described above.

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 person who committed rape or incest towards his own daughter is permitted to bring a lawsuit seeking compensation under H.R. 476.

H.R. 476 does nothing to help build open, trusting relationships between family members. The net result will be the exact opposite of the sponsors' intent—weakening family communications and creating suspicion and mistrust among close family members.

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[17] *Id.*

[18] *See* Henshaw, at 207.

[19] H.R. 476, proposed 18 U.S.C. Sec. 2431(e)(2). Of the 33 States with parental involvement laws (not including the 10 States whose laws have been enjoined by the courts or are otherwise not enforceable), 23 have laws that fit H.R. 476's definition of who may assist a minor. Nine States have a broader definition of parental involvement. Only Illinois and South Carolina openly allow consent or notice to a grandparent. *See* "The Child Custody Protection Act: Creating Chaos and Punishing Adolescents," Center for Reproductive Law and Policy, 1 (August 2001); "Who Decides? A State-By-State Review of Abortion And Reproductive Rights," National Abortion Rights Action League, pp. 154-5, (1998). Ohio allows notice to a grandparent, step-parent or adult sibling under certain circumstances.

III. H.R. 476 IS DANGEROUSLY OVER BROAD

Supporters of this bill claim to be targeting predatory individuals who force and coerce a minor into obtaining an abortion. However, the net cast by this bill is far broader and more problematic. The legislation includes a criminal penalty against 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."[20] In other words, this law makes it a *federal crime* to assist a pregnant minor to obtain a *lawful* abortion without requiring any intention to avoid State parental consent laws. Anyone simply transporting a minor—a bus driver, taxi driver, family member or friend—could be jailed for up to a year or fined or both. The same 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.

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 . . ."[21]

The Mann Act, like most other criminal laws, contains a *mens rea* component, that requires that criminally liable individuals have an intention to break the law. A person convicted of possessing stolen property, for example, must know or have reason to know that the property they possess is stolen. H.R. 476 has no such intent requirement and, therefore, imposes strict criminal liability for anyone in violation.[22] Where the Mann Act purports to guard against corruption of minors, a laudable but not constitutionally-protected purpose, H.R. 476 imposes significant restrictions on a constitutionally-protected right to an abortion. Thus, it seems to us that the analogy is at best weak. Moreover, the Mann Act requires that the minor be transported across State lines for the purpose of engaging in an act that is illegal, while this legislation would impose civil and criminal liability for the act of taking a minor across State lines to engage in an activity which is legal in that second State, and constitutionally protected. The analogy is simply inapplicable.

For example, 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 who merely agrees to transport a minor across State lines without any knowledge of any 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.

[20] H.R. 476, proposed 18 U.S.C. Sec. 2431(a)(1).
[21] 18 U.S.C. Sec. 2421.
[22] The affirmative defense available in H.R. 476 does not address this problem.

The civil liability provisions of this bill create a blanket Federal cause of action for a parent who suffers "legal harm" as a result of his or her child being transported across State lines, and 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 being transported across State lines to obtain an abortion. Not only would the civil liability provision subject virtually everyone assisting a minor to civil lawsuits, it would subject everyone else the minor comes in contact with to the rules of discovery.

IV. H.R. 476 IS LIKELY UNCONSTITUTIONAL

By imposing substantial new obstacles and dangers in the path of a minor seeking an abortion, H.R. 476 also raises a number of serious constitutional concerns. First, if enacted, H.R. 476 could violate the rights of States to enact and enforce their own laws governing conduct within their territorial boundaries, as well as the rights of residents of different States to travel to and from any State of the Union for lawful purposes. As Professors Laurence Tribe of Harvard Law School and Peter Rubin of Georgetown University Law Center explained, "[H.R. 476] amounts to a statutory attempt to force this most vulnerable class of young women to carry the restrictive laws of their home States strapped to their backs, bearing the great weight of those laws like the bars of a prison that follows them wherever they go (unless they are willing to go alone)." [23]

One of the fundamental principles of our Federal system is that a State may not project its laws into other States. Crossing the border into another State, which every citizen has a right to do, permits the traveler temporarily to shed her home State's laws regulating primary conduct in favor of the laws of the State that she is visiting. H.R. 476 undermines this principle, and, in essence states that individuals may indeed be bound by the laws of their home States even as they traverse the nation by traveling to other States with very different laws.

Proponents of H.R. 476 attempt to respond to this claim by stating that the legislation actually strengthens federalism, by allowing States to enforce their laws more effectively. However, we have seen no effort by the Majority to empower States to enforce their own gun, gambling, sales tax, or fraud laws against residents who cross State lines to take advantage of the laws of other States. Furthermore, this legislation would actually undermine fundamental principles of federalism by nullifying the policies set by the laws the majority of States in this country that have chosen not to require parental notification and consent in these cases, or that have parental involvement laws less restrictive than the ones incorporated into H.R. 476. Instead we face another shortsighted effort to politicize a tragic family dilemma, while doing nothing to respond to the underlying problem of teen pregnancies or dysfunctional families.

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[23] Memorandum to the Comm. on the Judiciary from Laurence H. Tribe, Ralph S. Tyler Professor of Constitutional Law, Harvard University and Peter J. Rubin, Visiting Associate Professor of Law, Georgetown University, at 2 (September 2, 2001).

The Supreme Court has clearly and consistently held that States cannot prohibit the lawful out-of-State conduct of their citizens, nor may they impose criminal sanctions on this behavior, as H.R. 476 does.[24] The Court reaffirmed this principle in its landmark right to travel decision, *Saenz* v. *Roe*.[25] In its decision, the Court held that, even with congressional approval, California's attempt to impose on recently-arrived residents the welfare laws of their former States of residence was an unconstitutional penalty upon their right to interstate travel.[26] The decision also reaffirmed that the constitutional right to travel under the Privileges and Immunities Clause of Article IV, Sec. 2, provides a similar type of protection to a non-resident who enters a State with the intent eventually to return to her home State.[27] This principle applies to minors' rights to seek an abortion on non-discriminatory terms as well as to welfare benefits. In *Saenz*, the Court specifically referred to *Doe* v. *Bolton*,[28] which held that, under Article IV of the Constitution, a State may not restrict the ability of visiting non-residents to obtain abortions on the same terms and conditions under which they are made available by law to State residents: "[T]he Privileges and Immunities Clause, Const. Art. IV, Sec. 2, protects persons . . . who enter [a State] seeking the medical services that are available there."[29] It also is clear that such protections will flow to minors given that *Planned Parenthood* v. *Danforth*[30] held that pregnant minors have a constitutional right to choose whether to terminate a pregnancy.

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, Professor Tribe and others have opined that the bill also contains an inadequate life exception and lacks any health exception, in possible abrogation of *Roe* v. *Wade* and its progeny.[31] Additionally, the bill may impose an "undue burden" on the right to choose an abortion.[32] The Center for Reproductive Law & Policy also has written that H.R. 476 violates the First Amendment's right to associate as well as the Equal Protection Principle of the Fifth Amendment.[33]

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[24] *See, e.g., Healy* v. *Beer Inst.*, 491 U.S. 324, 336 n.13 (1989) (quoting *Edgar* v. *Mite Corp.*, 457 U.S. 624, 643 (1982) (plurality opinion), (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 197 (1977) "[T]he limits on a State's power to enact substantive legislation are similar to the limits on the jurisdiction of State courts. In either case, 'any attempt directly' to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limit of the State's power.")).

[25] 119 S. Ct. 1518, 1525-1527 (1999) (describing the various components of the right to travel and their constitutional derivations).

[26] *See id.* at 1526-1527.

[27] *See id.*

[28] 410 U.S. 179.

[29] *Id.* at 200.

[30] 428 U.S. 52, 74 (1976).

[31] The ACLU points to *Planned Parenthood* v. *Casey*, 505 U.S. 833, 880 (1992) (holding 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). H.R. 476 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 also* Letter from Laurence H. Tribe to Members of the Senate Judiciary Committee at 1 (June 23, 1998) (hereinafter Tribe Letter).

[32] *See* Tribe Letter.

[33] *See* Statement of the Center for Reproductive Law & Policy In Opposition to the "Child Custody Protection Act," H.R. 1218, June 21, 1999 (stating that H.R. 1218 violates the First Amendment Right to Associate by criminalizing the association between a minor and another person

Continued

CONCLUSION

H.R. 476 does nothing to make abortion less necessary, only more dangerous. It 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 preys on the problems of dysfunctional families where children cannot confide in their parents or fear physical harm when they do. The bill does nothing to stop a teenager from actually 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 isolate children in this way. Because H.R. 476 is a burdensome attack on the rights and well-being of young women, we dissent from this legislation.

JOHN CONYERS, JR.
BARNEY FRANK.
HOWARD L. BERMAN.
JERROLD NADLER.
ROBERT C. SCOTT.
MELVIN L. WATT.
SHEILA JACKSON LEE.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
ROBERT WEXLER.
TAMMY BALDWIN.
ANTHONY D. WEINER.

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for the purpose of effectuating the minor's right to choose abortion and arguing that H.R. 1218 violates the Equal Protection Principle of the Fifth Amendment by impermissibly classifying among minors being transported across State lines as well as among individuals transporting them).