



The Child Custody Protection Act (CCPA): Creating Chaos and Punishing Adolescents

Overview

The Child Custody Protection Act (CCPA) would make it a crime for any person, other than a parent, to knowingly transport a woman under the age of 18 across a state line to obtain an abortion if the minor does not comply with the requirements of the forced parental involvement law of her state of residence.¹ An individual who assists a young woman in violation of this proposed measure faces both civil and criminal liability, including imprisonment for up to one year, fines of up to \$100,000, or both.² The bill would also allow parents to bring civil suits against anyone assisting the young woman. Prosecution may be avoided only if the abortion is necessary to save the life of the minor because of a physical disorder, physical injury, or physical illness.

CCPA discriminates amongst state laws: not every state's parental involvement law will follow a minor from her state of residence to the state where she obtains an abortion. The bill's requirements apply to only those "parental involvement laws" as defined by CCPA. CCPA defines "parental involvement laws" as a law "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" waiving the requirement. CCPA's definition of "parental involvement laws" explicitly excludes state laws that permit, as an alternative, notification to or consent of *any other person*, such as a grandparent or aunt. Therefore, under CCPA, the requirements of "strict" parental involvement laws — those that match the CCPA definition — will be imposed on minors traveling out-of-state with companions and abortion providers in those states. However, CCPA will *not* impose the requirements of a state law that is "broader" than the CCPA definition — such as a law that allows a grandparent to consent to the minor's abortion — on accompanied minors or providers in other states.

CCPA alters the general principles that the laws of one state are not enforceable in another state and that people are required to comply with the laws of the state in which they are located but not the laws of any other state. CCPA would make minors seeking out-of-state abortions who are accompanied by non-parents (i.e. trusted relatives or friends) subject to the laws of the state in which she seeks an abortion *and* the laws of her state of residence. Although the minor herself is exempt from prosecution under CCPA, she must comply with both states' laws or risk federal criminal prosecutions of her companion as well as the abortion provider. Minors' fears of prosecution of those who help them may lead them to travel out-of-state alone, the only certain way to avoid all risk of prosecution. In the alternative, minors may seek illegal abortions in their own state, attempt to self-abort or carry unwanted pregnancies to term. CCPA is an extreme and intrusive attempt to prohibit young women from obtaining safe and legal abortions.

The deceptively titled "Child Custody Protection Act" would:

- **Violate Established Constitutional Principles** of reproductive rights, federalism, the right to travel, the First Amendment and the Equal Protection prong of the Fifth Amendment
- **Create Chaos** for health care providers, in enforcement, and for the young women and persons seeking to assist these women by forcing them to negotiate a maze of state laws

- **Punish Adolescents** by endangering young women who are afraid or unable to discuss their unwanted pregnancies with their parents, potentially forcing them to travel alone to another state or even to seek an illegal abortion

Contents:

| | |
|--|----|
| <u>I. Violating the Constitution</u> | 4 |
| <u>Violating Principles of Federalism</u> | 4 |
| <u>Burdening Young Women’s Access to Abortion</u> | 5 |
| <u>Failing to Provide a Health or an Adequate Life Exception</u> | 6 |
| <u>Hindering the Right to Travel</u> | 6 |
| <u>Violating the First Amendment Right to Associate</u> | 7 |
| <u>Infringing Upon the Equal Protection Prong of the Fifth Amendment</u> | 7 |
| <u>II. Creating Chaos</u> | 9 |
| <u>Chaos for Young Women</u> | 9 |
| <u>Chaos in the Enforcement of CCPA</u> | 9 |
| <u>Chaos for Health Care Providers</u> | 9 |
| <u>III. Punishing Adolescents</u> | 11 |
| <u>Ignoring Geographic and Economic Realities</u> | 11 |
| <u>Legislating Family Dynamics</u> | 11 |
| <u>Discouraging Non-Parents from Helping Young Women</u> | 11 |
| <u>IV. Conclusion</u> | 12 |
| <u>V. Appendix</u> | 13 |
| <u>A. Language of H. R. 476 (2001) as Introduced in the House of Representatives</u> | 13 |
| <u>B. America Speaks Out Against CCPA</u> | 15 |
| <u>C. The Medical Community Speaks Out Against CCPA</u> | 17 |
| <u>Endnotes</u> | 18 |

I. Violating the Constitution

CCPA's radical attempt to limit young women's access to abortion would come at the expense of the right to reproductive choice established in *Roe v. Wade*³ and numerous other established constitutional principles.

The Child Custody Protection Act would unconstitutionally:

- violate principles of federalism
- burden young women's access to abortion
- endanger young women due to its lack of a health exception and an adequate life exception
- hinder the right to travel recognized under the Privileges and Immunities Clause
- compromise the First Amendment right to associate
- infringe upon the Equal Protection prong of the Fifth Amendment

Violating Principles of Federalism

CCPA would violate fundamental principles of federalism and state sovereignty. A core principle of American federalism is that laws of a state apply only within the state's boundaries. CCPA would require some people to carry their own state's laws with them when traveling within the United States. Under CCPA, a minor crossing state lines with a trusted relative or friend would not only be subject to the parental involvement law of the state she has entered, but would be subject to the parental involvement law of her home state, if her home state's law is as strict as the CCPA definition.

Allowing a state's laws to extend beyond its borders runs completely contrary to the state sovereignty principles on which this country is founded. For example, gambling is legal in the state of Nevada, but not in California. Residents of Nevada are prohibited from gambling while in California, while residents of California are permitted to gamble while in Nevada. Forcing California citizens to carry their home state's law into Nevada, thereby prohibiting them from gambling while in Nevada, would be inconsistent with federalism principles. In addition, requiring Nevada officials to monitor California residents and enforce California law within Nevada's borders would be nonsensical. Enforcing different states' laws within a state's borders would be even more ludicrous in the case of abortion — a constitutionally protected right — than it would be in the case of casino gambling, which is not a constitutionally protected activity.

Twenty-seven states and the District of Columbia either have parental involvement laws that do not meet the "strict" definition in CCPA, have parental involvement laws which are not enforced in their state, or have not enacted a parental involvement law. (See State Chart). These laws regarding abortion and minors are treated as second-class laws by CCPA. Within those twenty-seven states and the District, CCPA would impose the requirements of other states, whose laws come within CCPA's definition of parental involvement, on non-resident minors accompanied by a non-parent. Thus, CCPA would displace the laws of those states and the District, representing approximately 58% of the U.S. population, with the laws of the other twenty-three states, representing just 42% of the population. Health care providers would be forced to comply, *within their own state's borders*, with laws that their own state has not adopted and, in some cases, has explicitly rejected. This is an unprecedented Congressional intrusion into what should be an area of state prerogative.

Proponents of CCPA advocate its adoption as a means to promote federalism. However, the explicit aim of CCPA is to supplant the laws of a majority of states with those of a Congressionally-preferred minority. In effect, CCPA would make those state laws that Congress prefers (those requiring "strict" parental involvement) controlling in states with laws that they do not like (those with broader or no parental involvement requirements). This is an unprecedented Congressional intrusion into what has traditionally been an arena in which each state regulates its own citizens.

Burdening Young Women's Access to Abortion

CCPA would unduly burden access to abortion for young women who travel across state lines to obtain services and who choose not to involve their parents. In 1973, the U.S. Supreme Court recognized a constitutional right to choose whether or not to have an abortion in the landmark decision *Roe v. Wade*.⁴ The Court reaffirmed the right to choose in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, holding that restrictions on this right are unconstitutional if they impose an “undue burden” on a woman’s access to abortion.⁵ The right extends to both minors and adults, but the Supreme Court has permitted individual states to restrict the ability of young women to obtain abortions within that state’s borders.⁶

The United States Supreme Court has ruled that states may require parental consent or notification before a minor obtains an abortion in that state, provided the law also provides an “alternative” to parental involvement, such as a judicial bypass procedure, by which a young woman can obtain an abortion without involving a parent.⁷ To obtain a judicial bypass, a young woman must appear before a judge and prove either that she is mature enough to decide whether to have an abortion or that an abortion would be in her best interests.

Thirty-three states enforce parental involvement laws. These laws vary in their requirements, but, absent CCPA, they apply only to minors receiving an abortion within the state. Twenty-three of these states have “strict” laws that fit CCPA’s restrictive definition of a “parental involvement law.” Nine states have parental involvement laws that are “broader” than the definition in CCPA, in that they do not limit the notification or consent requirement to a parent exclusively, but allow involvement of some other adult, such as a grandparent or other relative, clergy member, or counselor. One state has requirements that are more restrictive than, but do not match, the CCPA definition.⁸ Of the remaining seventeen states, ten have enacted parental involvement laws, which are not enforced within the state due to court rulings or Attorney General opinions;⁹ seven states and the District of Columbia have not enacted forced parental involvement laws. (See State Chart).

Under current law, a minor must always meet the requirements of the state in which she is receiving an abortion. Under CCPA, a minor from one of the twenty-three states that has a forced “parental involvement law,” as defined by CCPA, would carry her home state’s law with her when she travels across state lines with a trusted relative or friend to receive an abortion. She would therefore have to meet the requirements of both her home state and the state in which she receives the abortion. If the minor does not comply with her home state’s requirements in the state to which she traveled, the person who assists the minor would face liability, as would the medical professionals who provide the health services. Every minor from a state with a “strict” parental involvement law will be faced with a choice: overcome the extra obstacles created by CCPA or travel alone out of state.

In order to protect a supportive non-parent who is accompanying her from criminal liability, a minor would need to determine both her own state’s law and that of the state in which she is seeking an abortion. CCPA would create an undue burden for these young women by requiring them to comply with multiple state laws. For example, both Minnesota and Pennsylvania have “strict” parental involvement laws under CCPA. Pennsylvania requires that a minor obtain the written consent of one parent.¹⁰ Minnesota requires that a minor provide written notice to both parents at least forty-eight hours prior to having an abortion.¹¹ A minor from Pennsylvania may choose to travel to Minnesota to receive an abortion from a provider close to her extended family. The young woman would need to comply with both states’ forced parental involvement laws — getting the written consent of one parent and providing written notification to the other parent — in order to protect an accompanying non-parent from liability.

If a young woman chooses to obtain a judicial bypass of the parental involvement requirements, she will also face an undue burden under CCPA, as she may need to go to court in two states — her home state and the state in which she seeks the abortion. For example, a Pennsylvania resident traveling to Minnesota with a non-parent to obtain an abortion would have to obtain a judicial bypass in both states because the minor carries Pennsylvania’s “strict” parental involvement law with her wherever she goes. While going to court can be a daunting experience even for adults, minors face additional difficulties in judicial bypass proceedings. It is frightening for many minors

to disclose intimate details of her life to strangers in a formal, legal process. Some minors live in regions in which the local judges never grant bypass petitions, or the closest court that hears the petitions is located hundreds of miles away. Moreover, many young women find it difficult to take time off from school or work in order to appear at a hearing. Going through this process just one time is a burden on minors; doing it two times in two different states would place an unconstitutional undue burden on a young woman's access to abortion.

CCPA would also create an undue burden on minor's access to abortion by deterring trusted relatives and friends from helping a young woman due to fear of criminal and civil liability. Even if some people were willing to take this risk, young women seeking abortions may refrain from seeking advice and assistance for fear of exposing family members, clergy, counselors, or other supportive friends to liability. As a result, young woman may choose to instead travel alone across state lines.

In addition to putting persons who travel with the minor at risk of liability, CCPA places health care providers at risk, thus further unduly burden minors' access to abortion services. Fear of prosecution may lead some clinics, which already face harassment and a myriad of other state regulations, to refuse services to young women.

Failing to Provide a Health or an Adequate Life Exception

The Supreme Court held in *Roe v. Wade*,¹² *Planned Parenthood of Southeastern Pennsylvania v. Casey*,¹³ and *Stenberg v. Carhart*¹⁴ that restrictions on abortion must contain exceptions to allow for abortions necessary to protect both the life and health of the pregnant woman. In another ruling, *Doe v. Bolton*, the Court held that factors including age, emotional state, and psychological status could be considered in defining a woman's well-being and health.¹⁵ Nonetheless, CCPA fails to provide any health exception. Moreover, CCPA provides an inadequate life exception by failing to allow for abortion in cases of a life-threatening mental illness. The failure to include these provisions shows an utter lack of regard for established constitutional law and seriously endangers the health and safety of young women.

Hindering the Right to Travel

CCPA would unconstitutionally regulate interstate travel between *certain* states, for *certain* people and under *certain* conditions. It would make the legality of interstate travel dependent upon the traveler's *state of residency*, the *purpose* of the travel, and the *people with whom* she is traveling.

The right to travel freely between the states is a fundamental right of state citizenship, which is protected by the Privileges and Immunities Clause of Article IV of the Constitution. This includes "the right to be treated as a welcome visitor rather than an unfriendly alien" when traveling between the states.¹⁶ The Supreme Court has held that the Privileges and Immunities Clause "protect[s] persons who enter [a state] seeking the medical services that are available there."¹⁷ Thus, Article IV gives constitutional protection to a minor who travels from her home state to another state to "procure medical services," including, specifically, abortion services (the subject of the Court's 1973 decision in *Doe v. Bolton*).¹⁸ Therefore, a minor transported from, for example, Massachusetts to Maine by a friend or relative for an abortion — as well as the person who accompanies her — has the right to be treated as a "welcome visitor rather than an unfriendly alien."¹⁹

Under CCPA, minors crossing state lines to seek medical services would be subjected to different treatment than minors who seek those services in their home state. Also, minors crossing state lines to seek medical services would be treated differently depending on their state of origin: minors from states without parental involvement laws would be treated as a favored class, while minors from states with "strict" parental involvement laws would face special burdens. Moreover, a minor who traveled alone into a state from a state with a "strict" parental involvement law would be treated more favorably than a minor from the same state who traveled with a non-parent: the lone minor would only need to comply with the law of the state she entered, but the accompanied minor would have to comply with the requirements of the state she entered as well as her home state. CCPA creates a hodgepodge of restrictions on interstate travel and results in the disparate treatment of people based on

their state of residence, thereby violating the rights of citizenship recognized by the Privileges and Immunities Clause of Article IV.

Violating the First Amendment Right to Associate

The First Amendment protects freedom of association through its explicit guarantee of the right to peaceably assemble. This protection includes the rights of individuals, including minors, to come together to advance their rights and interest. To that end, people may “pool their resources” to effectuate both their right to travel and obtain an abortion.²⁰

CCPA would directly attack this right of association by criminalizing the association between a minor and another person for the purpose of effectuating the minor’s right to choose abortion. The right to choose abortion inevitably involves an association between the woman seeking abortion and, at a minimum, the health care provider who will perform the procedure. In some cases, the association may involve pooling of financial resources to pay for the procedure, an association with family and friends to make a decision and effectuate it, and an association with counselors and spiritual leaders, amongst other associations. CCPA would single out one such association — association between a minor and another person who accompanies her across state lines — and criminalize it.

Infringing Upon the Equal Protection Prong of the Fifth Amendment

The Fifth Amendment prohibits Congress from depriving individuals of equal protection of the law.²¹ Equal protection case law prohibits Congress from creating a classification that penalizes the exercise of a constitutional right, except in furtherance of a compelling interest.²² When such a classification is formed, it is subject to strict scrutiny, the highest level of judicial scrutiny. Under strict scrutiny analysis, the government has the burden of establishing that the classification is narrowly tailored and based on the furtherance of a compelling governmental interest. CCPA would impermissibly classify persons based on the exercise of two fundamental rights; the constitutional right to choose abortion and the right to interstate travel, because it is not narrowly tailored nor does it further a compelling governmental interest.

As to the right to reproductive choice, CCPA explicitly classifies among minors being transported across state lines as well as among those persons transporting them: it penalizes only those persons who are assisting minors in exercising their right to abortion. CCPA further classifies, in an arbitrary manner, among persons assisting minors by drawing distinctions based on the minor’s state of residence. However, persons transporting minors across state lines are not penalized by CCPA if the minors are being transported for any of a host of purposes, including a number of other medical procedures far riskier than abortion, or, for example, to exercise the right to marry.

Any claimed interest in effectuating state laws is implemented by CCPA in such a discriminatory fashion that the interest itself can hardly be called compelling, or even legitimate. In addition, even if the purpose of CCPA is to prevent minors from evading *certain* state abortion laws, and even if that interest were legitimate, CCPA is unconstitutionally underinclusive. Because parents are exempt from liability under CCPA, a mother living in Minnesota who drives her daughter to Iowa to avoid Minnesota’s two-parent notice law (and the alternative judicial bypass) would not be punishable under CCPA but any other adult who does so commits a crime.²³ Further, any interest in parental involvement *per se* is not compelling — instead, the Supreme Court has recognized that such interests are at best substantial or significant.²⁴ Were they compelling, they could completely override the minor’s right to abortion — and they cannot.

As to the right to interstate travel, CCPA also impermissibly classifies among both minors and the persons transporting them. The minor’s state of residency determines whether the person transporting her is committing a crime. No other federal statute classifies among interstate travelers based upon their state residency. Indeed, the Court’s decision in *Saenz v. Roe*²⁵ confirms the illegitimacy of classifying based on state of residence. In that case, the Court held that state residency is not a permissible classification among welfare beneficiaries. Surely, if it is unconstitutional for the government to reduce welfare benefits based on state residency, it is similarly

unconstitutional to bar a person from entering a state to exercise a constitutional right based on her state of residency.

II. Creating Chaos

CCPA would create chaos for everyone involved in a minor's abortion decision: the young woman, the supportive individuals on whom she relies, and health care providers. Health care providers would be faced with the task of comparing their own state's laws to the laws of other states and to CCPA's definition of "parental involvement laws" and then, if necessary, making sure that minors had complied with all applicable laws before providing an abortion. Minors will face the increased burden of deciphering these laws in an attempt to protect those caring relatives and friends who assist them.

Chaos for Young Women

CCPA would trap the unwary minor in a chaotic maze of conflicting state laws. Currently, a minor seeking an abortion can expect the health care providers from whom she seeks an abortion to be familiar with their state's applicable legal requirements and the minor can rely on those persons for assistance in understanding how to comply with the law. However, under CCPA, the minor could no longer rely solely on the assistance of the provider in making sure that she and those accompanying her are meeting all applicable legal requirements. Minors in these circumstances would need to determine the law in both her home state and the state to which she is traveling in order to protect those assisting her. This may require contacting clinics in multiple states or researching the applicable forced parental involvement statutes, using the definition specified under CCPA, to determine which laws are applicable.

Chaos in the Enforcement of CCPA

CCPA would create chaos by pitting conflicting state laws against each other and by mandating that the strictest parental involvement laws be met in multiple states. CCPA would require *all* states, even those with no forced parental involvement law, to enforce the parental involvement laws of the twenty-three "strict" states. If CCPA were to become law, states would no longer have control over the applicable laws within their own borders. For example, within a state that does not enforce a parental involvement law, such as New York, some people will be subject to parental involvement laws enacted by legislature of other states, such as Pennsylvania.²⁶ The result would be that laws of one state would be supplanted by decisions made by state legislatures of other states.

Enforcement of CCPA would be chaotic for state and federal officials. In our highly mobile society, minors may arrive in a state from anywhere in the country for the purpose of having an abortion.²⁷ Although violation of CCPA would be a federal — not local — crime, it is likely that complaints of alleged violations will be made to local law enforcement officials. To properly enforce CCPA, law enforcement officials would need to be familiar with the current parental involvement requirements of all fifty states and the District of Columbia, as well as with the CCPA definition of a "parental involvement law." Officials would have to determine the state of residence of the minor and identify any non-parent(s) who accompanied the minor. Obtaining and maintaining familiarity with these numerous laws and allocating the necessary resources to identify individuals who may have violated CCPA would be chaotic for local law enforcement.

Chaos for Health Care Providers

Health care providers who know that a minor has been transported across state lines by a non-parent would also be at risk from a number of complex provisions regarding conspiracy, accomplice and accessory liability.²⁸ Under these provisions, a medical professional that provides services to a minor would be forced to act as an agent of law enforcement by policing waiting rooms for potential violators. The provider would have to determine whether the minor seeking an abortion is from another state; whether she was accompanied across state lines by a non-parent; whether, under CCPA, she is required to comply with the forced parental involvement law of her home state and, if so, whether she did. Of course, the provider will have to determine whether the minor also complied with the parental involvement requirements, if any, of the state in which she is seeking the abortion. If the provider determines that the minor was required to, but did not comply with the law of her home state, the provider must deny services and report the accompanying adult to the authorities or risk liability himself. Thus, to avoid criminal liability, health care providers in every state would need to be familiar with, and be ready to

comply with, numerous state laws, or deny services to any minor who cannot prove she resides in the state where the provider is located.

CCPA would subject health care workers to liability for providing abortions to minors from states with “strict” forced parental involvement laws as defined by CCPA if the minors are transported across state lines by non-parents. Conversely, providers would face no such liability for the provision of abortion services to minors from states with “broader” forced parental involvement laws than those which are defined by CCPA. In this way, CCPA would force providers to treat minors from states without “strict” parental involvement laws as a favored class, while minors from states with “strict” parental involvement laws would face special burdens and maybe even a denial of abortion services.

III. Punishing Adolescents

The deceptively titled “Child Custody Protection Act” would not “protect” minors. By making it more difficult for them to safely access constitutionally protected abortion services, CCPA would punish the very adolescents that it purports to protect. CCPA would punish those young women who decide to seek an abortion in another state by requiring them to comply with laws of multiple states, or to travel alone if they cannot involve their parents. In addition, by mandating communication only with parents, CCPA would punish minors by criminalizing assistance received from close family and friends, clergy or counselors. Finally, CCPA would discourage non-parents from assisting minors in obtaining desired medical care by the threat of criminal penalties.

Ignoring Geographic and Economic Realities

Minors may decide to obtain an abortion outside of their state of residency for a variety of reasons. These young women’s decisions may not be related to the particular laws of a state but may be based on important factors in obtaining any health care services, such as location, recommendations of others, and the proximity of loved ones.

The location of the closest abortion provider may be a factor in deciding where a minor chooses to obtain an abortion. As of 1996, 86% of all counties in the United States did not have an abortion provider.²⁹ Therefore, for some young women, the closest provider may be in a neighboring state.

Minors may also travel to neighboring states based on clinic recommendations or for financial reasons. A minor may receive a recommendation from a trusted individual for a doctor or a clinic that happens to be in a neighboring state. Or varying medical costs may mean that a clinic in a neighboring state provides a more economical option for a minor. If minors are prevented from going out of state for abortions in such situations, they may obtain unsafe, illegal abortions, attempt to self-abort or carry an unwanted pregnancy to term.

Legislating Family Dynamics

Regardless of state mandates requiring disclosure, young women’s parents often are aware of the minor’s decision to have an abortion.³⁰ In addition, whether or not they are required to do so by law, health care providers routinely suggest that a young woman involve her parents if possible. Attempts to legislate family dynamics without considering the differing relationships that exist within families is dangerous and unrealistic.

When young women avoid parental involvement in their abortion decision, the choice is usually well justified.³¹ In families where abusive relationships or other problems prevent good communication between parents and their teenage daughters, state-mandated discussions can exacerbate existing problems. For battered teenagers and incest survivors in particular, forced parental involvement laws increase the risks in an already dangerous situation. Even in the best of circumstances, candid communication about sexuality and reproductive issues may not take place in families. Generally, mandatory notification and consent requirements are not an effective means of encouraging more open discussion and can actually damage relations among family members.

CCPA is not designed to enhance communication between minors and their parents. Rather, CCPA seeks to deter young women from obtaining a safe and legal abortion, thus forcing them to act alone, seek risky alternatives within their state of residence or to carry unwanted pregnancies to term.

Discouraging Non-Parents from Helping Young Women

CCPA also fails to recognize the importance of other family members and trusted adults in a young woman’s life. The law ignores the fact that many young women involve adults, other than their parents, whom they trust and to whom they are close in their decisions to seek an abortion. These adults can include: grandparents, siblings, or other extended family members; clergy, teachers, social workers, or other counselors; and supportive friends. CCPA would preclude a minor from receiving assistance from these supportive adults in traveling across state lines for an abortion or risk exposing them to criminal liabilities, including jail time and fines. CCPA could lead to the arrest of clergy and grandmothers who are looking out for the best interests of the young women they care about.

IV. Conclusion

The deceptively titled “Child Custody Protection Act” would create chaos and punish young women by restricting their access to abortion services. The bill would violate the federal constitution, in particular by contravening principles of federalism and infringing the rights to reproductive choice, interstate travel, and freedom of association. CCPA does not “protect” minors. CCPA does not foster family communication. CCPA’s sole purpose is to punish caring relatives and friends and abortion providers who seek to provide guidance and support to minors seeking abortions. Consequently, CCPA will force many young women to travel alone, seek risky alternatives, or carry unwanted pregnancies to term.

SEPTEMBER 2001

V. Appendix

A. Language of H. R. 476 (2001) as Introduced in the House of Representatives **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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Child Custody Protection Act.’

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

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

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

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

‘**Sec. 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.'

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

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

B. America Speaks Out Against CCPA

Newspapers from across the country recognize CCPA as an attempt to block young women from exercising their constitutionally protected right to obtain an abortion. These editorials also recognize that this legislation attempts to ban abortions at the cost of American constitutional tradition and principles.

The New York Times, June 30, 1999

A Cruel Scheme to Curb Abortion

“Don’t be misled by the label. The benignly titled “Child Custody Protection Act” . . . is in fact a cold-hearted piece of legislation that would jeopardize the health of desperate young women seeking abortions and potentially imprison adults who help them. The bill also flouts the Constitution Apart from undermining the constitutional right to an abortion, the legislation violates the right of citizens to travel freely and to be treated as “a welcome visitor rather than an unfriendly alien” when entering another state -- a right recently upheld by the Supreme Court in a California welfare case In addition, the bill could result in legal chaos as Federal prosecutors try to figure out the interaction between this new Federal statute and a host of different parental notification laws in the states. Lawmakers on both sides of the aisle and the abortion debate should join to defeat this misguided proposal. . . .”

St. Louis Post Dispatch, July 5, 1999

Locking Up Grandma

“If the House of Representatives really was trying to protect young women seeking abortions, it would not have passed the Child Custody Protection Act [during the 106th Congress].

The bill would make it harder for young women with abusive parents to obtain a safe and legal abortion If, on the other hand, the purpose of the House was to make abortions even more difficult to obtain, then the bill makes perfect sense Most members of Congress are voting for these bills with one goal in mind — stopping abortion”

The Courier Journal, July 2, 1999

Punishing Helpers

“THE ASSAULT on abortion rights continued . . . as the U. S. House voted [in the 106th Congress] to make it a crime for a non-parent to accompany a minor to receive an abortion in a state that does not require parental consent.

This latest action by House Republicans has been touted as a protective Measure How unfortunate that the writers of the bill have chosen to hide behind a pro-family stance to cover their real intent, which is to make abortion for many young, vulnerable women nearly impossible. . . . [T]he horror stories of women unable to receive safe, legal abortions are not so far behind us that we should force today’s young women back into those same life-threatening predicaments.”

The Washington Post, July 28, 1998

The Abortion Legislation

“. . . The Child Custody Protection Act does not seem, on its face, to be a particularly extreme piece of antiabortion legislation The bill, however, is considerably dicier than it initially appears. Abortion foes know that they could not pass a national law requiring parental notification or consent. And this backdoor effort to approximate that goal has serious problems that should trouble even those who don’t oppose state laws requiring parental involvement in minors’ abortions.

The central problem with the proposal is that it causes restrictive state laws to follow residents in their travels outside of their home state and then has the federal government prosecuting people for activity that is lawful in the

locations in which it takes place. The right to travel between states is constitutionally protected, abortion rights similarly are guaranteed and it is legal in many states to accompany a minor to an abortion clinic without telling her parents. It is, therefore, hard to fathom how it could be a crime to cross state lines in helping a minor obtain an abortion.”

Pittsburgh Post Gazette, August 1, 1998

Run For The Border; State Lines Mean Nothing In Congress' Anti-Abortion Zeal

“One of the keystones of the American federal system is that, so long as they comply with the U.S. Constitution and its Bill of Rights, states can enact criminal laws of their own choosing

That is, of course, unless Congress decides to turn the federal system on its head and ban people from helping a minor cross state lines to get an abortion”

The News & Observer, July 28, 1998

Congress Crosses the Line

“. . . [C]ongress does not- and should not - have the power to follow residents across state lines to enforce laws that don't apply in neighboring jurisdictions. After parental consent, what would be next?

The ability of individual states to determine their own laws, within certain limits, is fundamental to our way of government. The inappropriately named Child Custody Protection Act would establish a dangerous precedent that could damage that tradition and would be ripe for abuse.”

Star Tribune, July 13, 1998

Antiabortion Bill: Don't Make Adult Helpers Criminals

“. . . Concocted by the formidable antichoice movement, this “Protection Act” is one more in a long, tiresome series of legislative efforts to chip away at a woman's right to choose. They cannot dismantle *Roe vs. Wade* directly, so they go to the states, or target doctors or clinics. They harass women outside medical facilities; they try to block FDA approval of the abortion pill RU-486, which is widely used in Europe. Now they want to intimidate friends and family members out of helping young women consider all of their options when faced with an unwanted pregnancy”

St. Petersburg Times, June 9, 1998

Abortion Politics

“Republicans in Congress have recently been under tremendous pressure from conservative religious activists to move on their legislative priorities. That explains why a particularly dangerous anti-abortion measure, the Child Custody Protection Act of 1998 (S. 1645/H.R. 3682), is on a fast track through Congress

This legislation is not about promoting families or parental rights. It's about stopping young women from exercising their right to abortion.”

C. The Medical Community Speaks Out Against CCPA

The American medical community opposes forced parental involvement laws on the grounds they pose dangers to the health and well-being of young women. CCPA would exacerbate the problems posed by such laws by delaying access to abortion services and requiring young women to travel alone to obtain an abortion. CCPA could lead to a new generation of back alley abortions for those young women who are determined to end their pregnancies.

American Medical Association (AMA)

“With respect to parental involvement when minors seek an abortion, the AMA believes that the following guidelines constitute good medical practice: (1) Physicians should ascertain the law in their state on parental involvement . . . (2) Physicians should strongly encourage minors to discuss their pregnancy with their parents . . . (3) Physicians should not feel or be compelled to require minors to obtain consent of their parents before deciding whether to undergo an abortion. The patient — even an adolescent — generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate. (4) Physicians should try to ensure that minor patients have made an informed decision Minors should be urged to seek the advice and counsel of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers, or the clergy.”

(Council on Ethical and Judicial Affairs; Report H; House of Delegates Meeting; June 1992)

The American Academy of Pediatrics (AAP)

“The AAP reaffirms its position that the rights of adolescents to confidential care when considering abortion should be protected. Genuine concern for the best interests of minors argues strongly against mandatory parental consent and notification laws. Although the stated intent of mandatory parental consent laws is to enhance family communication and parental responsibility, there is no supporting evidence that the laws have these effects There is evidence that such legislation may have an adverse impact on some families and that it increases the risk of medical and psychological harm to the adolescent. Judicial bypass provisions do not ameliorate the risk.”

(The Adolescent’s Right to Confidential Care When Considering Abortion (RE9614); American Academy of Pediatrics, Policy Statement; Vol. 97, Number 5; May 1996, pp 746-751)

American Medical Women's Association (AMWA)

“We feel that abortion is a decision that should be reached between patients and physicians, and we believe that forced parental involvement will have a negative impact on the doctor-patient relationship.”

(Letter from AMWA president Clarita E. Herrera to Congresswoman Ros-Lehtinen expressing opposition to H.R. 1218; April 22, 1999)

American Public Health Association (APHA)

“Confidential family planning and primary care services are necessary for adolescents and teenagers to receive immediate quality medical treatment. Fear of parental knowledge or abuse often deters adolescents from seeking family planning services and medical care.”

(Fact Sheet: Parental Consent for FamilyPlanning; <http://www.apha.org/legislative/factsheets/fs10.htm>)

Endnotes

- ¹ Child Custody Protection Act, H.R. 476, 107th Cong. (2001). CCPA passed the House of Representatives in both the 105th and 106th Congress, but failed in the Senate. The measure has been reintroduced in the House of Representatives during the 107th Congress.
- ² Any individual, minor or adult, except the young woman seeking an abortion, could be liable under the Act.
- ³ 410 U.S. 113 (1973).
- ⁴ Id.
- ⁵ 505 U.S. 833 (1992).
- ⁶ Hodgson v. Minnesota, 497 U.S. 417 (1990); Bellotti v. Baird, 443 U.S. 622, 644-45 (1979).
- ⁷ See Planned Parenthood of Southeastern PA v. Casey, 505 U.S. 833 (1992); Ohio v. Akron Center for Reproductive Health, 497 U.S. 502 (1990); Bellotti v. Baird, 443 U.S. 622 (1979); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).
- ⁸ In 2001, Oklahoma enacted OK HB 1727 (2001), a new section of law to be codified in Okla. Stat. tit. 63, § 1, art. 7 of the Oklahoma Statutes, which states that “[a]ny person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.” The law imposes a requirement that an abortion provider obtain “parental consent or knowledge” before performing an abortion on any minor, without exceptions for emancipated minors, consent from legal guardians, or a mechanism by which a minor can obtain a court waiver of the requirement.
- ⁹ These ten states have enacted forced parental involvement laws, but the enforcement of those laws has been permanently or preliminarily blocked by a federal or state court order or Attorney General opinion, based on challenges to the law under the federal or a state constitution.
- ¹⁰ 18 PA. CONS. ANN. § 3206 (West 2000).
- ¹¹ MINN. STAT. § 144.343 (2000).
- ¹² 410 U.S. 113, 164-165 (1973).
- ¹³ 505 U.S. 833, 879 (1992).
- ¹⁴ 530 U.S. 914, 938 (2000).
- ¹⁵ 410 U.S. 179, 200 (1973).
- ¹⁶ Saenz v. Roe, 526 U.S. 489, 500 (1999).
- ¹⁷ Doe v. Bolton, 410 U.S. 179, 200 (1973).
- ¹⁸ Id.
- ¹⁹ Saenz v. Roe, 526 U.S. 489, 500 (1999).
- ²⁰ See Colorado Republican Campaign Committee v. FEC, 518 U.S. 604, 637 (1996).
- ²¹ This prohibition on Congress acts in the same manner in which the Fourteenth Amendment prohibits the State from violating equal protection of the law. See Bolling v. Sharpe, 347 U.S. 497 (1954).
- ²² Romer v. Evans, 517 U.S. 620, 631 (1996).
- ²³ MINN. STAT. § 144.343 (2000); IOWA CODE § 135L.1, *et seq.* (2000); See Greater New Orleans Broadcasting Ass’n Inc. v. United States, 527 U.S. 173, 190 (1999) (striking federal statute regulating advertising about gambling because it was “so pierced by exemptions and inconsistencies that the Government cannot hope to exonerate it”); Hodgson v. Minnesota, 497 U.S. 417, 455 (1990).
- ²⁴ See generally, Planned Parenthood of Southeastern PA v. Casey, 505 U.S. 833 (1992); Ohio v. Akron Center for Reproductive Health, 497 U.S. 502 (1990); Bellotti v. Baird, 443 U.S. 622 (1979); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).
- ²⁵ Saenz v. Roe, 526 U.S. 489 (1999).
- ²⁶ New York has no forced parental involvement law. Pennsylvania requires a minor under the age of 18 who is seeking an abortion to obtain written consent from one parent, legal guardian or person standing *in loco parentis*. A minor may obtain an abortion without parental consent only if she obtains a court order exempting her from the requirement. 18 PA. CONS. ANN. § 3206 (West 2000).
- ²⁷ Minors travel to other states for a variety of reasons, including: referrals to a doctor or clinic in another state, family or loved ones in another state, economic barriers in one state, proximity to a clinic in another state. See *infra*, Section IV.
- ²⁸ As a proposed addition to the federal Criminal Code, CCPA would be read with other provisions of the Code, including conspiracy, accomplice liability and accessory liability. Attempts to amend CCPA to limit the scope of liability to the principal who commits the offense were repeatedly rejected by the bill’s sponsors during the 105th and 106th Congresses.
- ²⁹ Stanley K. Henshaw, Induced Abortion in the United States, 30 Fam. Plan. Persp. 263 (Nov./Dec. 1998).
- ³⁰ See, e.g., Stanley K. Henshaw & Kathryn Kost, Parental Involvement in Minors’ Decisions, 24 Fam. Plan. Persp. 196, 206 (Sept./Oct. 1992).
- ³¹ See, e.g., Council on Ethical and Judicial Affairs, American Medical Association, Mandatory Parental Consent to Abortion, 269 JAMA 82, 84 (1993); Stanley K. Henshaw & Kathryn Kost, Parental Involvement in Minors’ Decisions, 24 Fam. Plan. Persp. 196, 20 (Sept./Oct. 1992).