

Statement of

The Honorable Jeff Sessions

United States Senator
Alabama
June 3, 2004

Statement of Senator Jeff Sessions
"The Child Custody Protection Act: Protecting Parents' Rights and Children's Lives"
Senate Judiciary Committee
June 3, 2004

Today's hearing will take testimony on "The Child Custody Protection Act", offered by our colleague and friend, John Ensign. I am pleased to be a co-sponsor of the bill.

We will hear both sides of the issue from excellent panels. The proposed legislation deals with a very real problem involving the interstate transportation of minor children for the purpose of abortion in violation of state protected custody rights of parents and the well being of children. It is not about abortion; it is about the custody rights of parents. This legislation will be a step towards defeating the legal loophole that now exists. It is a loophole that cheats parents of their basic right to know about the health concerns of their minor children. This legislation does not expand, or contract existing state laws or appear to contradict Supreme Court precedent involving minor children and abortion. It would simply deal with how to give effect to constitutionally valid parental custody rights in our mobile society.

The Supreme Court made it clear in *Planned Parenthood v. Casey*, a decision that expanded abortion rights, that it is proper for a state to declare that an abortion should not be performed on a minor child unless a parent is consulted. Many states require parental consent before a principal or teacher can hand out an aspirin. And, many states have concluded that to perform an abortion on a minor without parental consent or notice is a very dramatic interference with parents' protected interests. It is the parents, after all, who will have to monitor their daughter's medical condition afterwards. They love the child and want her to have the best care. They have every right to not want some older man, for example who has no real interest in their minor daughter's well-being, making serious health decisions for her without their knowledge.

In my view, the right of parents to be involved in these major decisions is fundamental and ought not be lightly transgressed. State parental consent and notification statutes are a legitimate step to protect basic parental rights.

However, we do not even need to discuss the merits of parental consent legislation, because the issue before us today is not whether states should have such laws. The issue before us today is whether we should allow the circumvention of such constitutional state laws designed to protect parental rights and children's health.

There is direct evidence that third parties are interfering with protected parental rights by taking minor children for the purpose of an abortion from a state where parents have to be notified, to another state that doesn't have that law. This bill would preclude these third parties. This is not a radical or extreme proposal. Rather, it is good policy.

This is the type of legislation that even some pro-choice advocates agree with. Dr. Bruce A. Lucero, a former abortionist from Alabama, has performed 45,000 abortions. He supports this legislation. In a New York Times op-ed, he wrote that "dangerous complications" are more likely to result when parents are not involved in out-of-state abortions.

We will hear evidence today that demonstrates that this issue does not involve a few isolated cases. An attorney for the Center for Reproductive Law and Policy, Kathryn Kolbert, has stated: "There are thousands of minors who cross state lines for an abortion every year and who need assistance from adults to do that." We have seen several examples of abortion clinics which openly place advertisements in the yellow pages in nearby states that have parental consent statutes. These advertisements proudly proclaim: "No parental consent."

Thus, these clinics are openly encouraging the transportation in interstate commerce to evade state laws. It is their policy to encourage this evasion.

Some will argue that this bill is unconstitutional and we will hear testimony on this issue today. But, the Supreme Court has upheld state parental notification and consent laws that this bill would help enforce. The bill does nothing more than prohibit the evasion of constitutional state statutes.

I was a federal prosecutor for nearly 15 years. A long-time federal statute is the Mann Act. Since 1910 the Mann Act has prohibited the interstate transportation of women or girls across state lines for prostitution or other immoral purposes. The constitutionality of the Mann Act has been upheld by the Supreme Court since the early 1900s. Similarly, as a federal prosecutor, I prosecuted in federal court those who transported in interstate commerce stolen motor vehicles. It was not the theft of the vehicle that was the basis for the crime. It was the transportation in interstate commerce of a vehicle that had been stolen. That was the significant part of the offense.

Also, this bill is very narrow in its scope. It does not prohibit interstate abortions. It does not invalidate any state laws. It does not establish a right to parental involvement for residents of any state that does not already have a parental involvement law. It doesn't even attempt to regulate the activities of the pregnant minor herself. It only reaches the conduct of outside parties who wrongfully usurp the rights of parents that are guaranteed by state law.

Some suggest that the bill should be narrowed further, to exempt the interference with parental rights if the interfering adult is a relative of the child. I would disagree with that. This bill would not prevent a minor from seeking counsel from an aunt or grandmother or anyone else. It would only prohibit that aunt and grandmother from violating the rights of parents by secretly driving their daughter to another state for an abortion without consent or notification.

It is the parent or legal guardian's responsibility for the primary care of a child. In the rare circumstances where that would not be appropriate, the bill provides a judicial by-pass.

I have concluded that this bill is constitutional. Still, I look forward to the testimony today, both for and against, as we continue to study this legislation, to identify any flaws that may exist and seek to make it better. I do, however, believe that minor children are being abused through the evasion of state law and that Congress should act to place the responsibility for children's care where that responsibility belongs -- with the parents.