

Testimony of  
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UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

Senator Jeff Sessions, Presiding

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Professor Teresa Stanton Collett\*

Good afternoon Mr. Chairman, Members of the Committee, and other distinguished guests. My name is Teresa Stanton Collett and I am a professor of law at the University of St. Thomas School of Law in Minneapolis, Minnesota.

I am honored to have been invited to testify on Senate Bill 851, the "Child Custody Protection Act" (the "Act"). My testimony represents my professional knowledge and opinion as a law professor who writes on the topic of family law, and specifically on the topic of parental involvement laws. It also represents my experience in assisting legislators across the country in evaluating parental involvement laws during the legislative process and defending parental involvement laws in the courts. I have served as a member of the Texas Supreme Court Subadvisory Committee charged with proposing court rules implementing the judicial bypass of parental notification in that state. I appeared before the House Judiciary Committees in 1998 and 2001 to testify in support of predecessors to S. 851, and I continue to support the passage of the Child Custody Protection Act. My testimony today is not intended to represent the views of my employer, the University of St. Thomas, or any other organization or person.

It is my opinion that the Child Custody Protection Act will significantly advance the legitimate health and safety interests of young girls experiencing an unplanned pregnancy. It will also safeguard the ability of states to protect their minor citizens through the adoption of effective parental involvement statutes.

While the primary focus of my testimony will be on the reasons for and effect of parental involvement laws, it is important at the outset of my testimony to emphasize that this proposed legislation does not establish a national requirement of parental consent or notification prior to the performance of an abortion on young girls who lack sufficient maturity to determine whether abortions are in their best interest. It does not attempt to preempt, interfere with or regulate any purely intrastate activities related to the procurement of abortion services. Rather the modest aim

of this Act is to protect the right of each state to determine the level of parental involvement required prior to the performance of an abortion on any of state's minor citizens.

### Parental Rights to Control Medical Care of Minors

The United States Supreme Court has described parents' right to control the care of their children as "perhaps the oldest of the fundamental liberty interests recognized by this Court." In addressing the right of parents to direct the medical care of their children, the Court has stated:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is "the mere creature of the State" and, on the contrary, asserted that parents generally "have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations." Surely, this includes a "high duty" to recognize symptoms of illness and to seek and follow medical advice. The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.

It is this need to insure the availability of parental guidance and support that underlies the laws requiring a parent is notified or gives consent prior to the performance of an abortion on his or her minor daughter. The national consensus in favor of this position is illustrated by the fact that there are parental involvement laws on the books in forty-four of the fifty states. Only six states in the nation have not attempted to legislatively insure some level of parental involvement in a minor's decision to obtain an abortion.

Of the forty-four states that have enacted laws, eight statutes have been determined to have state or federal constitutional infirmities. Therefore the laws of thirty-six states are in effect today. Ten of these states have laws that empower abortion providers to decide whether to involve parents or allow notice to or consent from people other than parents or legal guardians. These laws are substantially ineffectual in assuring parental involvement in a minor's decision to obtain an abortion. However, parents in the remaining twenty-six states are effectively guaranteed the right to parental notification or consent in most cases.

### Widespread Public Support

There is widespread agreement that as a general rule, parents should be involved in their minor daughter's decision to terminate an unplanned pregnancy. This agreement even extends to young people, ages 18 to 24. To my knowledge, no organizations or individuals, whether abortion rights activists or pro-life advocates, dispute this point. On an issue as contentious and divisive as abortion, it is both remarkable and instructive that there is such firm and long-standing support for laws requiring parental involvement.

Various reasons underlie this broad and consistent support. As Justices O'Connor, Kennedy, and Souter observed in *Planned Parenthood v. Casey*, parental consent and notification laws related to abortions "are based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their

best interests at heart." This reasoning led the Court to conclude that the Pennsylvania parental consent law was constitutional.

Out of respect for the time constraints of this committee, I will limit my remarks to examining two of the benefits that are achieved by parental involvement statutes: improved medical care for young girls seeking abortions and increased protection against sexual exploitation by adult men.

#### Improved Medical Care of Minor Girls

Medical care for minors seeking abortions is improved by parental involvement in three ways. First, parental involvement laws allow parents to assist their daughter in the selection of the abortion provider.

As with all medical procedures, one of the most important guarantees of patient safety is the professional competence of those who perform the medical procedure. In *Bellotti v. Baird*, the United States Supreme Court acknowledged the superior ability of parents to evaluate and select appropriate healthcare providers.

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 latter 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.

Historically, the National Abortion Federation has recommended 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 the doctor have admitting privileges at a local hospital not more than twenty minutes away from the location where the abortion is to occur in order to insure adequate care should complications arise. These recommendations were deleted after they were introduced into evidence in malpractice cases against abortion providers. Notwithstanding this change in the NAF recommendations, a well-informed parent seeking to guide her child is more likely to inquire regarding these matters than a panicky teen who just wants to no longer be pregnant.

Second, parental involvement laws 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 medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.

Abortion providers, in turn, have the opportunity to disclose the medical risks of the procedure to the adult who can advise the girl in giving her informed consent to the surgical procedure. Parental notification insures that the abortion providers inform a mature adult of the risks and

benefits of the proposed treatment, after having received a more complete and thus more accurate medical history of the patient.

The third way in which parental notification will improve medical treatment of pregnant minors is by insuring that parents have adequate knowledge to recognize and respond to any post-abortion complication that may develop. While it is often claimed that abortion is one of the safest surgical procedures performed today, the actual rate of many complications is simply unknown because there is no coordinated national effort to collect and maintain this information.

Notwithstanding this failure by public health authorities, abortion providers have identified infection is one of the most common post-abortion complications. The warning signs of infection typically begin within the first forty-eight to ninety-six hours after the abortion and can include fever, pain, pelvic tenderness, and elevated white blood count. Caught early, most infections can be treated successfully with oral antibiotics. Left untreated, it can result in death.

Similarly post-operative bleeding after an abortion is common, and even where excessive can be easily controlled if medical treatment is sought promptly. However, hemorrhage is a one of the most serious post-abortion complications and should be evaluated by a medical professional immediately. Untreated it can result in the death of the minor.

Experts often characterize a perforated uterus is a "normal risk" associated with abortion. This complication also can be easily dealt with if detected early, but lead to serious consequences if medical help is not sought promptly.

Many minors may ignore or deny the seriousness of post-abortion symptoms or may lack the financial resources to respond to those symptoms. This is because some of the most serious complications are delayed and only detected during the follow-up visit; yet, only about one-third of all abortion patients actually keep their appointments for post-operative checkups. Absent parental notification, hemorrhaging may be mistaken for a heavy period and severe depression as typical teenage angst.

### Increased Protection from Sexual Assault

In addition to improving the medical care received by young girls dealing with an unplanned pregnancy, parental notification will provide increased protection against sexual exploitation of minors by adult men. National studies reveal "[a]lmost two thirds of adolescent mothers have partners older than 20 years of age." 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." Other studies have found that most teenage pregnancies are the result of predatory practices by men who are substantially older.

A survey of 1500 unmarried minors having abortions revealed that among minors who reported that neither parent knew of the abortion, 89% said that a boyfriend was involved in deciding or arranging the abortion (and 93% of those 15 and under said that a boyfriend was involved).

Further, 76% indicated that a boyfriend helped pay the expenses of the abortion. Clearly, a number of young girls who obtained abortions without their parents' knowledge were encouraged to do so by a sexual partner who could be charged with statutory rape. Secret abortions do nothing to expose these men's wrongful conduct. In fact, by aborting the pregnancy abusive partners avoid the public evidence of their misconduct and are licensed to continue the abuse. Parental notification laws insure that parents have the opportunity to protect their daughters from those who would victimize their daughters further.

Abortion providers are reluctant to report information indicating a minor is the victim of statutory rape. Failure to report may result in the minor returning to an abusive relationship. For example, a Planned Parenthood affiliate in Arizona was found civilly liable for failing to report the fact that the clinic had performed an abortion on a twelve-year-old girl who had been impregnated by her foster brother. The abortion provider did not report the crime as required by law and the girl returned to the foster home where she was raped and impregnated a second time. Or consider the case of the Connecticut ten-year old girl impregnated by a seventy-five year old man. The child was examined by two physicians who failed to report the sexual abuse to public authorities, as required by Connecticut law. Furthermore, by failing to preserve fetal tissue the abortion providers may make effective prosecution of the rape impossible since the defendant's paternity cannot be established through the use of DNA testing.

States adopting parental involvement laws have come to the reasonable conclusion that secret abortions do not advance the best interests of most minor girls. This is particularly reasonable in light of the fact that most teen pregnancies are the result of sexual relations with adult men, and many of these relationships involve criminal conduct. Parental involvement laws insure that parents have the opportunity to protect their daughters from those who would victimize their daughters again and again and again. The Child Custody Protection Act would insure that men cannot deprive these minors of this protection by merely taking the girls across state lines for abortions.

### Effectiveness of Judicial Bypass

In those few cases where it is not in the girl's best interest to disclose her pregnancy to her parents, state laws generally provide the pregnant minor the option of seeking a court determination that either involvement of the girl's parent is not in her best interest, or that she is sufficiently mature to make decisions regarding the continuation of her pregnancy. This is a requirement for parental consent laws under existing United States Supreme Court cases, and courts have been quick to overturn laws omitting adequate bypass.

In the past opponents of the Child Custody Protection Act have argued that its passage would endanger teens since parents may be abusive and many teens would seek illegal abortions. This is a phantom fear. Parental involvement laws are on the books in over two-thirds of the states, some for over twenty years, and there is no case where it has been established that these laws led to parental abuse or to self-inflicted injury. Similarly, there is no evidence that these laws have led to an increase in illegal abortions.

It often asserted that parental involvement laws do not increase the number of parents notified of their daughters' intentions to obtain abortions, since minors will commonly seek judicial bypass

of the parental involvement requirement. Assessing the accuracy of this claim is difficult since parental notification or consent laws rarely impose reporting requirements regarding the use of judicial bypass. The Idaho parental consent law enacted in 2000 is one of the few exceptions to this general rule. Based upon the reporting required under that law, less than five percent of the abortions obtained by minors were pursuant to a judicial bypass in 2002. According to the Idaho Department of Health, sixty-four minors were reported as obtaining abortions. Sixty-one of these abortions were performed after obtaining parental consent and three abortions were pursuant to judicial bypass of parental involvement.

Obtaining comparable information in states having parental involvement laws with no mandatory reporting requirement is difficult. State agencies often will not accumulate such information absent a legislative mandate. Nonetheless, it is safe to say that the use of judicial bypass to avoid parental involvement varies significantly among the states.

## Conclusion

By passage of the Child Custody Protection Act, Congress will protect the ability of the citizens in each state to determine the proper level of parental involvement in the lives of young girls facing an unplanned pregnancy.

Experience in states having parental involvement laws has shown that, when notified, parents and their daughters unite in a desire to resolve issues surrounding an unplanned pregnancy. If the minor chooses to terminate the pregnancy, parents can assist their daughters in selecting competent abortion providers, and abortion providers may receive more comprehensive medical histories of their patients. In these cases, the minors will more likely be encouraged to obtain post-operative check-ups, and parents will be prepared to respond to any complications that arise.

If the minor chooses to continue her pregnancy, involvement of her parents serves many of the same goals. Parents can provide or help obtain the necessary resources for early and comprehensive prenatal care. They can assist their daughters in evaluating the options of single parenthood, adoption, or early marriage. Perhaps most importantly, they can provide the love and support that is found in the many healthy families of the United States.

Regardless of whether the girl chooses to continue or terminate her pregnancy, parental involvement laws have proven desirable because they afford greater protection for the many girls who are pregnant due to sexual assault. By insuring that parents know of the pregnancy, it becomes much more likely that they will intervene to insure the protection of their daughters from future assaults.

In balancing the minor's right to privacy and her need for parental involvement, the majority of states have determined that parents should know before abortions are performed on minors. This is a reasonable conclusion and well within the states' police powers. However, the political authority of each state stops at its geographic boundaries. States need the assistance of the federal government to insure that the protection they wish to afford their children is not easily circumvented by strangers taking minors across state lines.

The Child Custody Protection Act has the unique virtue of building upon two of the few points of agreement in the national debate over abortion: the desirability of parental involvement in a minor's decisions about an unplanned pregnancy, and the need to protect the physical health and safety of the pregnant girl. I urge members of this committee to vote for its passage.

Thank you, Mister Chairman, for allowing me the time to appear before the committee and to extend my remarks in the form of this written testimony.