I. INTRODUCTION

Sound the alarm! There's a national emergency. It seems that teenage women are engaging in sexual intercourse and some of them are getting pregnant. Worse yet, some teenage women are actually electing to have an abortion. Thankfully, Congress is aware of the crisis and is currently taking steps to address this pressing issue. In fact, the House of Representatives has passed a bill that directly impacts this most important issue. The Child Custody Protection Act ("CCPA") will criminalize the act of transporting a minor across state lines in order to obtain an abortion. This bill is intended to work in conjunction with state laws that already exist.

These state laws generally require that a minor seeking an abortion gain the consent of her parents or the courts in order to have an abortion. Both the proliferation of state laws and the emergence of a

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1. Throughout this comment, unless noted otherwise, teenage women refers to women age 15 to 19 years old.


4. See Child Custody Protection Act, H.R. 3682, 105th Cong. (1998) (prohibiting the taking of minors across state lines in order to avoid state laws that require parental involvement in abortion decisions).

5. See id.

6. See id.

7. See id. (stating that the act of knowingly transporting a minor across state lines to obtain an abortion in order to avoid a state statute can result in a fine or imprisonment for a term not longer than a year).

8. See id. (supporting state laws by outlawing the transportation of minors across state lines to obtain an abortion, therefore, forcing pregnant teenage girls to comply with the law of their state). The impetus of the Act was to shore up state parental involvement statutes by outlawing the only remaining method available to pregnant teenage girls in states with parental involvement statutes: fleeing to another state to obtain an abortion without the interference of a

9. See H.L. v. Matheson, 450 U.S. 398 (1981) (involving a challenge to a Utah statute that required a physician to notify the parents of a pregnant minor who was seeking an abortion); Bellotti v. Baird, 443 U.S. 622 (1979) (reviewing a Massachusetts statute that required a pregnant teenager to obtain the consent of her parents or the approval of a judge in order to have an abortion); see also J. Shoshanna Ehrlich & Jamie Ann Sabino, A Minor's Right to Abortion – The Unconstitutionality of Parental Participation in Bypass Hearings, 25 NEW ENG. L. REV. 1185,
new effort to enact a federal statute that will limit teenage girls' access to abortion would lead one to believe that teens are getting pregnant in ever increasing numbers, and are thus having abortions in increasing numbers. However, a recent report from the Centers for Disease Control and Prevention ("CDC") indicates that the birth rate among girls ages fifteen to nineteen has declined.\textsuperscript{19}

The current congressional effort to limit a minor's access to an abortion seems to be part of a general preoccupation with the sexual activity of adolescent girls and the tendency to blame them for a variety of problems facing our nation.\textsuperscript{11} This general preoccupation has also led to the enactment of statutes in several states that require parental notification and to the Supreme Court's modification and approval of these statutes.\textsuperscript{12} In light of the recent data regarding the declining teenage birthrate, this pervasive preoccupation is troublesome.\textsuperscript{13} Furthermore, the effort to pass the Child Custody Protection Act is problematic, as such an effort is part of the larger trend to limit access to abortion for both women and teenage girls.\textsuperscript{14} Given the frequency with which groups have asked the Supreme Court to review state parental notification statutes, it is likely that a federal statute that prohibits the transportation of minors across state lines for the purpose of obtaining an abortion will be challenged.\textsuperscript{15}

\textsuperscript{19} See \textit{TEENAGE BIRTHS}, supra note 2, at 2 (finding that national teenage birthrates have declined since 1991).

\textsuperscript{11} See \textit{Deborah Jones Merritt, Ending Poverty by Cutting Teenaged Births: Promise, Failure and Paths to the Future}, 57 \textit{OHIO ST. L.J.} 441, 441 (1996) (proposing that policymakers have held teenage childbearing as the cause of many societal ills such as "poverty, childhood deprivation, and intergenerational disadvantage").

\textsuperscript{12} See \textit{Catherine Grevers Schmidt, Where Privacy Fails: Equal Protection and the Abortion Rights of Minors}, 68 N.Y.U. L. REV. 597, 613 (1993) (proposing a link between a preoccupation with the sexuality of adolescent girls and the enactment of statutes that impact their sexual behaviors). Historically, a woman's ability to reproduce has been used to justify laws that oppressed her. \textit{Ibid}.

\textsuperscript{13} See \textit{TEENAGE BIRTHS}, supra note 2, at 2 (postulating that the general preoccupation with the sexual behavior of teenage girls has lead to a persistent effort to regulate this behavior via legislation).

\textsuperscript{14} See \textit{Charlene Carres, Legislative Efforts to Limit State Reproductive Privacy Rights}, 25 \textit{FLA. ST. U. L. REV.} 273, 276-78 (1998) (discussing the constitutional right to an abortion and the privacy right to abortion under the Florida constitution).

\textsuperscript{15} See O'Shaughnessy, supra note 9, at 1732 (noting that the Supreme Court has heard cases involving parent involvement statutes ten times since 1976). Given the frequency with which groups have challenged state statutes, and the number of times groups have asked the
Part II discusses the data regarding the declining teenage birthrate. Part III establishes the framework for the Child Custody Protection Act by reviewing the emergence and proliferation of state parental notification statutes. Part IV considers the constitutionality of the Act in the context of previous Supreme Court decisions. Part V details the history and application of the CCPA. Part VI proposes legislation that seeks to preserve the national decline in the teenage birthrate. Finally, Part VII concludes that the right to privacy and the right to abortion access should be extended to all women, regardless of age.

II. DATA ON DECLINING TEENAGE BIRTHRATES

According to CDC statistics, the teenage birthrate declined during the 1990s. Recent data indicates that during the period of 1991 through 1996, the nationwide teenage birthrate fell sharply. In fact, the birth rates for teenagers ages fifteen to nineteen years old dropped 12.4 percent from 1991 to 1996, falling from 62.1 births per 1000 teenage youths to 54.4. Only Puerto Rico and Guam experienced an increase in the teenage birthrate.

The trend in declining teenage birthrates is not a new phenomenon. Between 1960 and 1975 the birthrate among
teenagers ages fifteen to nineteen years old dropped from 91 births per 1000 in 1960 to 55.6 births per 1000 in 1975. Furthermore, the rate of teenage pregnancy continued to decline between 1975 and 1985, with the teenage birthrate falling from 55.6 births per 1000 in 1975, to 51 births per 1000 in 1985.

A. Differences in the Statistics by Age and Race

In analyzing the birthrate statistics, it is important to consider the differences that emerge in relation to the factors of age and race. In those states with higher Hispanic and African American populations, the overall teenage birthrate is higher than the teenage birthrate in states with low Hispanic and African American populations, thus implying higher birthrates among these minority populations. Furthermore, an important distinction arises among different age groups: the birthrate among teenagers between the ages of eighteen and nineteen was more than double the rate for teenagers between the ages of fifteen and seventeen.

B. Behavioral Differences in the Last 20 Years

The teenage birthrates of the 1990s and those of the 1970s bear interesting differences when scrutinized. Early in the 1970s, the teenage birthrate was higher than today’s birthrate; however, a greater number of the 1970s teens who were giving birth were married. Fewer of today’s teens are getting married, and of those who are married, fewer are choosing to have children when

light of Congressional efforts to enact legislation aimed at addressing teen pregnancy. Id.

See id. at 117 n.3 (stating that the birthrate for teenage females from 15 to 19 years old decreased by 35.4 births per 1000 between 1960 and 1975).

See id. at 117 n.4.

See id.

See RECENT DECLINES, supra note 17, at 4-5 (highlighting the differences that arise in teenage birthrates when focusing on various factors).

See RECENT DECLINES, supra note 17, at 4-5 (discussing a direct correlation between the Hispanic and African-American teenage state population and the teenage birthrate of states).

See RECENT DECLINES, supra note 17, at 2 (noting the different rates in teen pregnancies between the younger teens, 15 to 17 years old, and the older teens, 18 to 19 years old).

See RECENT DECLINES, supra note 17, at 3 (stating that in 1994, the birthrate for 18 to 19 year olds was 91.4 per 1000, whereas the birthrate for 15 to 17 year olds was 37.6 per 1000).

See RECENT DECLINES, supra note 17, at 1 (detailing statistical points of interest concerning teenage pregnancy).

See RECENT DECLINES, supra note 17, at 1 (enumerating the differences in the teenage marriage and birth rates between the years 1970 and 1994). In 1970, 14 percent of teenagers ages 15 to 19 were married; however, among the same age group in 1994, only 5 percent were married. Id.
compared with the teens of the early 1970s. Although there has been a decline in the birthrate among married teens, the birthrate among unmarried teens has continued to rise since the early 1980s.

Experts attribute the decline in the teenage birthrate to several factors. First is the relatively stable percentage of teenage girls who are either sexually active or experienced, coupled with the increasing use of both condoms and longer-acting contraceptives. Second, according to Dr. Claire Broome of the CDC, "the fact that fewer teens are getting pregnant shows that teens are accepting responsibility for their sexual behavior to a greater extent by abstaining from sex or using contraceptives more effectively." Third is the increase in state abortion laws concerning teens. In states that have enacted liberal abortion statutes, the teenage birthrate fell significantly.

III. STATE STATUTES REQUIRING PARENTAL INVOLVEMENT

A. Overview of State Statutes

The task of drafting parental involvement legislation to meet the many requirements set forth in existing and emerging Supreme Court abortion decisions is not simple. The considerations that must be weighed are often difficult to reconcile when a state endeavors to place limitations on a teenage woman's access to abortion. Not only must the minor's right to abortion and the

31. See Recent Declines, supra note 17, at 1 (highlighting the differences in pregnancy rates among married teenagers from 1970 to 1994). While in 1994 the birth rate of teenage women between the ages of 15 to 19 was 388 per 1000, the birthrate among the same group in 1970 was 444 per 1000. Id.

32. See Recent Declines, supra note 17, at 2 (noting the change in the birthrate of unmarried teenagers from 1970 to 1994). Among unmarried teenagers between the ages of 15 to 19, in 1970 the birthrate was 22 per 1000 and by 1994 the birthrate had increased to 46 per 1000. Id.

33. See U.S. Said Teen Pregnancy Rates Declining, Health Letter on the CDC, July 13, 1998, available in 1998 WL 8783402 (discussing the recent statistics published by the CDC regarding the decrease in the teenage birthrate and providing statements of CDC personnel and Secretary of Health and Human Services Donna Shalala regarding this decrease).

34. See id. (elaborating on the implied reasons for fewer teen pregnancies).

35. See Merrit, supra note 11, at 447 (stating that liberal abortion laws correspond to lower birth rates).

36. See Merrit, supra note 11, at 447 (noting that when the state of New York amended its abortion laws in 1970 to create a more liberal legislative scheme, the birthrates among white minors fell over 14 percent while the birthrate among African-American minors fell over 18 percent).

37. See Satsie Veith, Note, The Judicial Bypass Procedure and Adolescents' Abortion Rights: The Fallacy of the "Maturity" Standard, 23 Hofstra L. Rev. 453, 455 (1994) (reciting the many criteria that must be incorporated into a statute that seeks to require a minor seeking an abortion to involve her parents in the decision making process).

38. See id. at 455 (discussing the requirements for obtaining an abortion that state
parents' right to control their child's actions be balanced against another, but also these rights cannot be unduly burdened by any legislation offered by the state. Two basic types of parental involvement statutes have emerged: parental notification statutes and parental consent statutes.

1. Parental Notification Statutes

Parental notification statutes are less intrusive than parental consent statutes. This type of statute only requires that a parent be notified that his or her minor daughter intends to have an abortion and does not provide a statutory mechanism to prevent the minor from obtaining an abortion. In fact, under this statutory scheme, parental or judicial consent is not necessary for a minor to obtain access to an abortion. Even though there is no statutory provision for a parent to prevent his or her minor child from obtaining an abortion, the simple act of notification enables parents to place significant pressure on their minor daughter to decide not to seek an abortion, if that is the parents' desire. While state statutes must also contain a bypass procedure wherein the minor can gain access to an abortion without notifying a parent, this procedure is burdensome and causes additional delays.

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39. See O'Shaughnessy, supra note 9, at 1735 (noting the difficulties present in parental involvement statutes).
40. See Schmidt, supra note 12, at 603 (distinguishing parental consent statutes from parental notification statutes and the parties' corresponding rights under these legislative schemes).
41. See Schmidt, supra note 12, at 603 (noting that parental notification statutes are less intrusive in that parents are not granted the authority to stop their daughter from obtaining an abortion).
42. See Schmidt, supra note 12, at 603 (establishing the primary distinction between parental notification statutes and parental consent statutes).
43. See Schmidt, supra note 12, at 603 (explaining the significant difference between this statutory scheme and that of consent statutes in that this scheme allows a pregnant teenager a greater degree of autonomy to decide to seek an abortion).
44. See Schmidt, supra note 12, at 603 (acknowledging that while parental notification statutes do not impart veto power upon the parents of a pregnant minor in terms of abortion decisions, the act of notifying a parent may result in a de facto veto of the minor's decision).
45. See, e.g., Lambert v. Wicklund, 520 U.S. 292, 297 (1997) (holding that a Montana statute requiring a judge to consider if the notification itself is in the minor's best interest is valid and consistent with prior Supreme Court decisions); Bellotti v. Baird, 443 U.S. 622, 643-44 (1979) (ruling that parental involvement statutes must contain a judicial bypass procedure that allows a judge to consider the minor's maturity and best interests in deciding whether to permit the minor access to an abortion without parental involvement).
46. See Schmidt, supra note 12, at 605 (discussing the delays that result from statutes requiring judicial bypass and the anxiety experienced by those teenage women who are forced to undergo such procedures).
The period of time between parental notification, or a judicial decision waiving the notification requirement, and the point at which the abortion procedure is carried out can further complicate an already difficult situation.\(^4\) For example, abortions performed later during the pregnancy create greater health risks for the pregnant minor and are often a greater financial burden.\(^8\)

One state that has enacted a parental notification statute is Georgia.\(^49\) As evidenced by the Georgia statute, this statutory scheme does not force a minor to gain the consent of a parent or guardian in order to obtain an abortion.\(^50\) Instead, the statute requires that a parent or guardian receive adequate notice that his or her minor

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\(^4\) See Schmidt, supra note 12, at 604 (detailing the complications that may arise by delaying a minor’s access to abortion). A delay in the performance of an abortion may force a risky and more expensive late term abortion procedure. Id.

\(^8\) See Schmidt, supra note 12, at 604 (explaining that late term abortions create a greater financial burden due to the complications often encountered during these procedures).

\(^49\) See GA. CODE ANN. § 15-11-112 (1998) (providing a statutory requirement in Georgia for notification of a parent or guardian when an unemancipated minor seeks an abortion). The statute provides in pertinent part:

(a) No physician or other person shall perform an abortion upon an unemancipated minor under the age of 18 years unless:

(1) (A) The minor seeking an abortion shall furnish a statement, signed by a parent, guardian, or person standing in loco parentis and such minor, stating that such parent, guardian, or person standing in loco parentis is the lawful parent or guardian of such minor, and that such parent, guardian, or person standing in loco parentis, has been notified that an abortion is to be performed on such minor; or

(B) The physician or an agent gives at least 24 hours’ actual notice, in person or by telephone, to a parent, guardian, or person standing in loco parentis of the minor, of the pending abortion and the name and address of the place where the abortion is to be performed; provided, however, that, if the person so notified indicates that he or she has been previously informed that the minor was seeking an abortion or if the person so notified has not been previously informed and he or she clearly expresses that he or she does not wish to consult with the minor, then in either event the abortion may proceed immediately; or

(C) The physician or an agent gives written notice of the pending abortion and the address of the place where the abortion is to be performed, sent by regular mail, addressed to a parent, guardian, or person standing in loco parentis of the minor at the usual place of abode of the parent, guardian, or person standing in loco parentis. Unless proof of delivery is otherwise sooner established, such notice shall be deemed delivered 48 hours after mailing. The time of mailing shall be recorded by the physician or agent in the minor’s file. The abortion may be performed 24 hours after the delivery of the notice; provided, however, that, if the person so notified indicates that he or she has been previously informed that the minor was seeking an abortion or if the person so notified has not been previously informed and he or she clearly expresses that he or she does not wish to consult with the minor, then in either event the abortion may proceed immediately . . . .

Id.

daughter is seeking an abortion.\textsuperscript{51} The Georgia statute requires a physician to provide notification of a minor’s intent to obtain an abortion in person, by telephone, or by regular mail.\textsuperscript{52} In the event that the physician provides notification in person or by telephone, the physician must notify the parent at least twenty-four hours in advance.\textsuperscript{53} If the physician provides notification through regular mail, the statute deems the notification delivered forty-eight hours after the physician placed it in the mail.\textsuperscript{54} In either event, the statute requires at least an additional twenty-four hour waiting period to obtain the abortion.\textsuperscript{55} By statute, the physician must wait twenty-four hours after the delivery of a written notification to perform the abortion.\textsuperscript{56} This statute, however, does not provide parents with the ability to veto a minor’s decision to obtain an abortion.\textsuperscript{57} Rather, the statute provides a parent with notice of the minor’s decision and with an opportunity to discuss the decision if they so choose.

2. Parental Consent Statutes

Parental consent statutes are more restrictive and require parental consent before a minor may obtain an abortion, unless the minor gains the approval of a court to proceed with the operation.\textsuperscript{58} States enacted parental consent statutes soon after \textit{Roe v. Wade},\textsuperscript{59} and the Supreme Court subsequently reviewed these laws.\textsuperscript{60} The Supreme Court’s early decisions regarding parental consent statutes expressed concern that parents could veto a minor’s decision to seek an abortion under some legislative schemes.\textsuperscript{61} The Court held that a state statute that “imposes a special-consent provision, exercisable by a person other than the woman and her physician, as a prerequisite to a minor’s termination of her pregnancy and does so without a sufficient justification for the restriction . . . violates the strictures of

\begin{itemize}
\item \textsuperscript{58} See Schmidt, supra note 12, at 603 (noting the nature of parental consent statutes and the requirement associated with this type of statute that prevents a minor from obtaining an abortion without either her parent’s consent or a judicial bypass procedure).
\item \textsuperscript{59} 410 U.S. 113 (1973).
\item \textsuperscript{60} See, e.g., Planned Parenthood v. Danforth, 428 U.S. 52, 75 (1976) (striking down a state statute that granted parents veto power over their daughter’s decision to seek an abortion).
\item \textsuperscript{61} Id. at 74.
\end{itemize}
Because it is unconstitutional to grant one or both parents veto power over their daughter’s abortion decision, the Court in Bellotti v. Baird ("Bellotti II") held that state statutes of this type must provide for a procedure that allows the minor access to an abortion without her parent’s consent or knowledge.

Even though some state statutes contain guidelines to assist parents in reaching a decision regarding their minor daughter’s access to abortion, parents have, on occasion, based their decisions upon criteria far removed from the best interests of their daughter.

Indiana, for example, has a parental consent statute. This statute, in keeping with prior case law, provides a mechanism by which a minor can terminate her pregnancy without obtaining the consent of a parent. A pregnant teen seeking an abortion in Indiana can avoid obtaining a parent’s consent in one of two ways. First, the pregnant

62. Id. at 75.
64. See Bellotti v. Baird, 443 U.S. 622, 643-44 (1979) (establishing the judicial bypass procedure). The judicial bypass procedure is discussed in detail in the Case Law portion of this comment, infra Part IV.C.
65. See Schmidt, supra note 12, at 603 nn.45-46 (citing cases in which parents based their consent decision upon religious beliefs and a desire to punish their daughter).
66. IND. CODE § 16-34-2-4 (1998) (prohibiting minors from obtaining an abortion without the consent of a parent or guardian). The statute provides as follows:
   (a) No physician shall perform an abortion on an unemancipated pregnant woman less than eighteen (18) years of age without first having obtained the written consent of one (1) of the parents or the legal guardian of the minor pregnant woman.
   (b) A minor:
      (1) who objects to having to obtain the written consent of her parent or legal guardian under this section; or
      (2) whose parent or legal guardian refuses to consent to an abortion;
   may petition, on her own behalf or by next friend, the juvenile court for a waiver of the parental consent requirement under subsection (a).
   (c) A physician who feels that compliance with the parental consent requirement in subsection (a) would have an adverse effect on the welfare of the pregnant minor or on her pregnancy may petition the juvenile court within twenty-four (24) hours of the abortion request for waiver of the parental consent requirement under subsection (a).
   (d) The juvenile court must rule on a petition filed by a pregnant minor under subsection (b) or by her physician under subsection (c) within forty-eight (48) hours of the filing of the petition. Before ruling on the petition, the court shall consider the concerns expressed by the pregnant minor and her physician. The requirement of parental consent under this section shall be waived by the juvenile court if the court finds that the minor is mature enough to make the abortion decision independently or that an abortion would be in the minor’s best interests.

68. See id.
teen can petition the juvenile court herself to obtain a waiver of the requirement for parental consent. Second, a physician who believes that obtaining parental consent is either not in the minor's best interest or that it would adversely affect the pregnancy may request a waiver of the parental consent requirement on behalf of the pregnant minor. In either case, the Indiana statute requires the juvenile court to rule on the petition for a waiver within forty-eight hours, thus reducing the likelihood of complications due to delay. When considering the request for a waiver, the statute instructs the Indiana juvenile court to determine if the minor is sufficiently mature to independently decide to terminate her pregnancy.

IV. CASE LAW

The case law addressing state parental involvement abortion statutes is riddled with difficult questions and answers. The issues that weigh in the balance are not easy for courts to reconcile. On the one side, there is the right of parents to exercise authority over their children and, on the other side, there are the privacy rights of minors, coupled with their right of access to abortion. Over twenty years of case law concerning parental notification and consent statutes provides a better understanding of the criteria necessary for a state statute to pass constitutional muster.

69. See IND. CODE § 16-34-2-4(b) (1998).
70. See IND. CODE § 16-34-2-4(c) (1998).
72. See id.
73. See O'Shaughnessy, supra note 9, at 1737 (noting the difficulty courts have had weighing the issues involved in parental notification statutes, such as the right of parents to supervise their children, the right of women to obtain an abortion, and the state's right to protect the welfare of its citizens).
74. See O'Shaughnessy, supra note 9, at 1737; see also Schmidt, supra note 12, at 603 (proposing that parental involvement statutes have a significant impact on minors and are tantamount to the denial of access to abortion on the part of minors); Leonard Berman, Note, Planned Parenthood v. Casey: Supreme Neglect for Unemancipated Minors’ Abortion Rights, 37 HOW. L.J. 577, 603 (1994) (asserting that courts should grant minors the authority to obtain an abortion without parental involvement); Michael Grimm, Comment, American Academy of Pediatrics v. Lungren: California’s Parental Consent to Abortion Statute and the Right to Privacy, 25 GOLDEN GATE U. L. REV. 463, 504-05 (1995) (arguing that parental consent statutes endanger minors’ physical and emotional well being and injure parent-child relationships).
75. See O'Shaughnessy, supra note 9, at 1737-1750 (discussing the history of the case law concerning parental involvement statutes).
A. Planned Parenthood v. Danforth

In 1976, the Supreme Court heard arguments in *Planned Parenthood v. Danforth* regarding a Missouri statute that required a minor to gain parental consent before she could obtain an abortion. In *Danforth*, two physicians and Planned Parenthood sought declaratory and injunctive relief relative to a state statute that limited access to abortions for both married women and minors. In addition to requiring spousal consent for married women, the statute provided that no abortion could be performed during the first trimester except: "[w]ith the written consent of one parent or person in loco parentis of the woman if the woman is unmarried and under the age of eighteen years, unless the abortion is certified by a licensed physician as necessary in order to preserve the life of the mother."

Due to the timing of the passage of the Missouri statute, *Danforth* was one of the first cases to address parental consent statutes. The Missouri legislature passed and the Governor approved the parental consent statute less than two years after *Roe*. Furthermore, the statute included a provision that made the statute effective immediately upon approval of the Governor. Planned Parenthood of Central Missouri and two Missouri doctors challenged the statute only three days after it became effective.

A three-judge panel of the district court upheld the statute, with the exception of a specific line that required Missouri physicians to provide throughout the pregnancy "that degree of professional skill, care and diligence to preserve the life and health of the fetus" that "would be required . . . to preserve the life and health of any fetus intended to be born." The district court denied the plaintiffs' request for injunctive relief.

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76. 428 U.S. 52 (1976).
77. Id.
78. See id. at 84 (citing the Missouri statute in controversy 1974 Mo. Laws 1211).
79. See id. at 74 (holding that a state does not have the authority to grant a third party the right to veto a decision regarding abortion).
81. See id. at 84 (citing section 3(4) of the Missouri statute in controversy).
82. Id. at 56.
83. Id.
84. See id. (noting that the statute became effective immediately because it contained an emergency clause).
86. Id. at 59.
87. Id. at 60.
The Supreme Court disagreed and held that under *Roe* a state cannot delegate to a spouse the power to veto a woman’s decision to obtain an abortion during the first trimester when the state itself does not have such a right. Utilizing the same rationale, the Court held that provisions requiring a minor to gain the consent of an adult other than the physician violates *Roe*. The *Danforth* Court stated that “[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.” The Court, however, left room for future courts to find parental involvement statutes constitutional where they relate to a “significant state interest.”

**B. Bellotti v. Baird**

The Supreme Court’s decisions in *Danforth* and *Bellotti I* are closely related, and share some procedural history. Not only do these cases share the same dates of argument and decision, they also share the Court’s concern that the challenged state statutes each create a parental veto. The primary issue in *Bellotti I* was whether the Federal District Court for the District of Massachusetts should have abstained from rendering a decision regarding the constitutionality of a parental consent statute until after the state courts had addressed the constitutionality of the statute first. In

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88. See id. at 69 (citing *Roe v. Wade*, 410 U.S. 113 (1973)).
89. See id. (citing *Roe*, 410 U.S. at 165).
91. Id. at 75 (concluding that while minors may have constitutional rights, legislation that may impact these rights will not run afoul of the Constitution if it promotes a significant state interest).
94. See *Bellotti I*, 428 U.S. at 132 (holding that the District Court, which had invalidated the statute in question as unconstitutional, should have certified to the Massachusetts Supreme Judicial Court appropriate questions concerning the meaning of the 1974 statute and the procedure it imposes).
95. Id. at 147; *Danforth*, 428 U.S. at 52. The parties argued both cases on the same day, March 23, 1976, and the court decided them both on the same day, July 1, 1976. Furthermore, these cases share a concern that the statutes create a parental veto power over abortion decisions made by a minor pregnant woman and her physician. *Bellotti I*, 428 U.S. at 151; *Danforth*, 428 U.S. at 74.
96. See supra notes 76-91, and accompanying text (discussing the *Danforth* decision).
97. See *Bellotti I*, 428 U.S. at 146-47 (holding that the District Court should have abstained from making a determination regarding the constitutionality of a state statute because the state courts had not yet had an opportunity to hear the matter themselves). The Massachusetts statute (Mass. Acts and Resolves 1974, c. 706, S1, amended MASS. GEN. LAWS ANN. ch. 112, by adding §§ 12H-12R) provided that:
Bellotti I, the Supreme Court held that the district court should have abstained from determining the constitutionality of the statute and certified to the Massachusetts Supreme Judicial Court questions regarding the subject statute. Consequently, the Court vacated the district court's decision and remanded the case back to the district court.

On remand, the District Court for the District of Massachusetts certified nine questions to the Supreme Judicial Court of Massachusetts that focused on particular portions of the statute.

If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents [to an abortion to be performed on the mother] is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient.

Id. at 134-35.

98. Id. at 151-52.

99. Id.

100. See Bellotti II, 443 U.S. 622, 629 n. 9 (1979) (focusing on chapter 112, section 12S of the statute [hereinafter 12S] listing the questions that the district court certified to the Supreme Judicial Court of Massachusetts). These questions were:

(1) What standards, if any, does the statute establish for a parent to apply when considering whether or not to grant consent?
   (a) Is the parent to consider “exclusively . . . what will serve the child's best interests?”
   (b) If the parent is not limited to considering exclusively the minor's best interests, can the parent take into consideration the "long-term consequences to the family and her parents' marriage relationship?"
   (c) Other?

(2) What standard or standards is the Superior Court to apply?
   (a) Is the Superior Court to disregard all parental objections that are not based exclusively on what would serve the minor's best interests?
   (b) If the Superior Court finds that the minor is capable, and has, in fact, made and adhered to an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision is a better one?
   (c) Other?

(3) Does the Massachusetts law permit a minor (a) "capable of giving informed consent" (b) "incapable of giving informed consent," "to obtain [a court] order without parental consultation?"

(4) If the court answers any of question 3 in the affirmative, may the Superior Court, for good cause shown, enter an order authorizing an abortion, (a) without prior notification to the parents, and (b) without subsequent notification?

(5) Will the Supreme Judicial Court prescribe a set of procedures to implement c. 112, [§ 12S] which will expedite the application, hearing, and decision phases of
The Supreme Judicial Court of Massachusetts held in part that the Commonwealth of Massachusetts could not require a minor to gain parental consent before proceeding with an abortion when a court could determine that such consent was not in the minor's best interest. Furthermore, the court held that the statute improperly allowed a judge to reject a minor's decision to seek an abortion when a court has already determined that the minor is capable of providing informed consent. Finally, the court found that the statute was defective because it did not advise parents that they must base their decision regarding consent solely upon the minor's best interest.

Once the Supreme Judicial Court of Massachusetts made a determination regarding the constitutionality of the statute, the District Court for the District of Massachusetts was left to decide if it should attempt to repair the statute. Rather than attempt to repair the statute, that court opted to assume the holding it previously issued regarding 12S, declared the statute unconstitutional and enjoined enforcement of the statute. The attorney general, Francis Bellotti, subsequently appealed this decision, and the Supreme Court once again agreed to review the decision of the lower court.

In Bellotti II, the Supreme Court affirmed the decision of the district court and agreed that, though it satisfied constitutional standards in large part, significant provisions contained in 12S were unconstitutional in two respects. First, one portion of the statute

(6) To what degree do the standards and procedures set forth in c. 112, § 12F (Stat. 1975, c. 564), authorizing minors to give consent to medical and dental care in specific circumstances, parallel the grounds and procedures for showing good cause under c. 112, [12S]? 
(7) May a minor, upon showing of indigency, have court-appointed counsel? 
(8) Is it a defense to his criminal prosecution if a physician performs an abortion solely with the minor's own, valid consent, that he reasonably, and in good faith, though erroneously, believed that she was eighteen or more years old or had been married? 
(9) Will the court make any other comments about the statute which, in its opinion, might assist us in determining whether it infringes on the United States Constitution?

Id.

101. See id. at 632 (citations omitted).
102. Id.
103. See id. (concluding that such an omission constituted "formal overbreadth").
104. Id. at 632-33.
106. Id.
107. See id. at 651 (noting that, though the statute satisfies constitutional standards in large part, section 12S falls short of constitutional standards).
held unconstitutional was the provision that allowed for judicial consent for an abortion to be withheld even when the minor had been found to possess the requisite maturity to make the decision to seek an abortion. A second unconstitutional portion of the Massachusetts statute was a provision that required a minor seeking an abortion to discuss her intention with her parents in every instance. In affirming the lower court's decision, which found unconstitutional, the Court articulated a judicial bypass procedure that must be included in state statutes which seek to regulate a minor's access to abortion.

The Court held that the statute could not force a minor to consult her parents when she seeks an abortion. Instead, statutes which regulate a minor's access to abortion procedures must allow the minor to appear before a court without having to first notify her parents. In this appearance, if the minor is able to demonstrate that she is duly informed of the risks associated with the procedure, and that she possesses the requisite maturity to make an independent decision to seek an abortion, then the court must allow her to proceed with the procedure without the notice or consent of her parents. However, if she is not able to demonstrate the requisite maturity to make an independent decision, she can still show that an abortion is in her best interest. Only when the minor also fails in this regard can the court properly withhold consent to proceed with the operation and force the minor to gain the consent of her parents.

C. H. L. v. Matheson

In a continuing movement toward limiting a minor's ability to obtain an abortion without the involvement of parents and further

108. Id.
109. Id.
110. See Bellotti II, 443 U.S. at 647 (detailing the "judicial bypass" procedure which allows a pregnant minor to obtain an abortion without consulting her parents).
111. See id. (opining that young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and access to courts).
112. See id. (noting that going to court is up to the minor).
113. Id.
114. Id. at 647-48.
115. See Bellotti II, 443 U.S. at 648 (commenting that the court "may decline to sanction the abortion," indicating that even if the minor fails to meet the maturity and best interest tests, the court still has the option to allow the abortion).
establishing the necessity of the judicial bypass procedure, the Supreme Court upheld a Utah statute\(^\text{117}\) that required a physician to notify, if possible, the parents of a minor who is seeking to have an abortion.\(^\text{118}\) In Matheson, an unmarried pregnant minor, who was a dependent of her parents, sought the advice of her physician in terminating her pregnancy.\(^\text{119}\) While her physician agreed that an abortion was in the minor's "best medical interest" he insisted on notifying her parents before performing the abortion.\(^\text{120}\) The minor, however, believed that her interests would be better served by undergoing the procedure without notifying her parents.\(^\text{121}\) In pursuit of this interest, the minor filed an action in the District Court of Utah seeking a declaratory judgment finding the statute unconstitutional and an injunction prohibiting the enforcement of the statute.\(^\text{122}\) The district court upheld the statute, and on appeal the Supreme Court of Utah unanimously upheld the statute.\(^\text{123}\)

The statute in question required parental notification when a minor child intended to obtain an abortion,\(^\text{124}\) whereas, the statutes before the Court in Danforth\(^\text{125}\) and Bellotti II\(^\text{126}\) both required the consent of one or both parents. Consequently, the problems noted by the Court in both Danforth and Bellotti II concerning state statutes

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\(^\text{117}\) Id. at 399 (citing UTAH CODE ANN. § 76-7-304 (1974)). The statute provided:

To enable the physician to exercise his best medical judgment [in considering a possible abortion], he shall:

1. Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,
   - Her physical, emotional and psychological health and safety,
   - Her age,
   - Her familial situation.

2. Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor or the husband of the woman, if she is married.

UTAH CODE ANN. § 76-7-304 (1974).

\(^\text{118}\) See H. L. v. Matheson, 450 U.S. 398 (1981) (upholding UTAH CODE ANN. § 76-7-304 (1974)).

\(^\text{119}\) Id. at 399.

\(^\text{120}\) See id. at 401 (stating that the physician refused to perform the abortion because of the statute).

\(^\text{121}\) See id. (stating that the appellant desired an abortion "for her own reasons").

\(^\text{122}\) Id.

\(^\text{123}\) See H. L. v. Matheson, 450 U.S. 398 (1981) (the latter court holding that the statute serves "significant state interests[. . .] that are present with respect to minors, but absent in the case of adult women").

\(^\text{124}\) See UTAH CODE ANN. § 76-7-304 (1974).


that gave one or both parents the power to veto their daughter's decision to seek an abortion, were not present.\(^\text{127}\) The statute circumvented the consent issue by requiring only that parents be notified, if possible, and by not requiring that the minor seeking the abortion gain the consent of one or both parents.\(^\text{128}\)

In *Matheson*, the Supreme Court ultimately upheld the statute finding that although "the requirement of notice to parents may inhibit some minors from seeking abortions [such possible inhibition] is not a valid basis to void the statute as applied to appellant and the class properly before us."\(^\text{129}\) The Court further held that the statute served an important state interest of protecting potential life and that the statute was narrowly drawn to serve this legitimate state interest.\(^\text{130}\)

**D. Planned Parenthood v. Casey\(^\text{131}\)**

Like cases before it, *Planned Parenthood v. Casey*\(^\text{132}\) involved a challenge to a state statute before the statute even took effect.\(^\text{133}\) In *Casey*, five abortion clinics, and a physician representing himself as well as a class of physicians, filed suit seeking a judgment declaring that five provisions of the Pennsylvania Abortion Control Act of 1990\(^\text{134}\) were unconstitutional and sought injunctive relief enjoining enforcement of the statute.\(^\text{135}\) The district court held this Act unconstitutional and granted injunctive relief, thus enjoining enforcement of the statute.\(^\text{136}\) The court of appeals reversed part of the lower court's decision by declaring the provision requiring notification of a woman's husband unconstitutional, while upholding the remaining provisions in the statute.\(^\text{137}\)

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\(^\text{127}\) See *Matheson*, 450 U.S. at 408-09 (explaining differences between *Bellotti II* and *Matheson*); see also *Danforth*, 428 U.S. at 74; *Bellotti II*, 443 U.S. at 632.


\(^\text{129}\) *Matheson*, 450 U.S. at 413.

\(^\text{130}\) *See id.* (assuring that the statute "does not violate any guarantees of the Constitution").


\(^\text{132}\) *Id.*

\(^\text{133}\) *Id.* at 845.

\(^\text{134}\) 18 PA. CONS. STAT. §§ 3203, 3205, 3206, 3207(b), 3209, 3214(a), and 3214(f) (1990).


\(^\text{136}\) *Id.*

\(^\text{137}\) *See id.* (upholding the other four provisions which: (1) mandate that a woman seeking an abortion give her informed consent prior to the procedure and that she is provided with certain information 24 hours before the procedure; (2) require informed consent of one parent if the woman seeking the abortion is a minor, with the availability of judicial bypass; (3) define medical emergency to excuse compliance with the foregoing requirements; and (4) delineate requirements for certain reporting procedures for facilities providing abortions).
In *Casey*, the Supreme Court reaffirmed its decision in *Roe*, but held that the undue burden test—rather than the strict trimester framework—should apply when evaluating restrictions to abortion before viability. After reaffirming *Roe*, the Court proceeded to overturn the part of the Pennsylvania statute that required a woman seeking an abortion to gain the consent of her spouse before proceeding with the operation. The Court upheld a provision of the statute that required minors seeking an abortion to obtain the informed consent of one parent. The Court held that “[a] State may require a minor seeking an abortion to obtain the consent of a parent or guardian, provided that there is an adequate judicial bypass procedure.”

The petitioners argued, however, that the consent provision contained in § 3206 was invalid because it requires informed consent. In ruling on this argument, the Court held that informed consent “[c]annot be considered a substantial obstacle to obtaining an abortion, and, it follows, there is no undue burden.”

*Casey* further established the power of state legislatures to require the consent of a parent when a minor seeks an abortion so long as there is a judicial bypass procedure. Furthermore, this case expanded the validity of the consent requirement in that a minor can, not only be forced to gain the simple consent of a parent before obtaining an abortion, but can also be forced to gain the informed consent of a parent. This case limits abortion rights for both minors and adults in two regards. First, the Supreme Court endorsed the power of state legislatures to require informed consent.

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139. *Casey*, 505 U.S. at 876 (stating that the undue burden standard is appropriate for reconciling the state’s interest with the woman’s liberty interests). The Court also reaffirmed in *Casey* that viability is the key to triggering state interest, whether occurring at 28 weeks, 23 to 24 weeks, or even earlier. *Id.*

140. See *id.* at 898 (declaring that women do not lose their constitutionally protected liberty when they marry).

141. *Id.* at 899.

142. *Id.*

143. *Id.*

144. See *Planned Parenthood v. Casey*, 505 U.S. 833, 883 (1992) (articulating the constitutionality of informed consent provisions in abortion statutes under the “undue burden” test). The Court reasoned that “[b]ecause the informed consent requirement facilitates the wise exercise of [the right to terminate a pregnancy free of undue interference by the State], it cannot be classified as an interference with the right *Roe* protects.” *Id.* at 887.

145. *Id.* at 899.

146. See *id.* (giving as an example of informed consent, the waiting period, which may allow parent and child to discuss the consequences of the decision).

147. *Id.*
type of consent requires more parental involvement because parents are required to meet with medical personnel to be apprised of the necessary information so that informed parental consent can be granted. Second, by abandoning the trimester framework originally established under Roe, and adopting the undue burden test in its place, the Court cleared the way for legislatures to place restrictions on abortion during the first trimester given that the restriction is not an undue burden.

E. Lambert v. Wicklund

In one of its most recent decisions regarding parental involvement statutes, Lambert v. Wicklund, the Supreme Court reviewed a Montana statute which included a waiver of the notice requirement that differs from the judicial bypass procedure articulated in Bellotti II. Both physicians who perform abortions and other members of the Montana medical community immediately challenged this varied construction of a judicial bypass procedure. In their complaint, they sought a judicial finding that the statute was unconstitutional and requested injunctive relief enjoining enforcement of the statute.

The District Court for the District of Montana found the statute to be unconstitutional because sections 50-20-212(4)-(5) were

149. See Casey, 505 U.S. at 876 (providing for an undue burden test rather than the complete ban on restrictions on abortion provided for under Roe, thus enabling the enactment of statutes that place restrictions on the access to abortion if such restrictions do not create an undue burden).
151. Id.
152. See id. at 1173 (citing MONT. CODE ANN. § 50-20-212 (1995)). The relevant portions are as follows:

(4) If the court finds by clear and convincing evidence that the petitioner is sufficiently mature to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement without the notification of a parent or guardian.

(5) The court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent or guardian if the court finds, by clear and convincing evidence, that:

there is evidence of a pattern of physical, sexual, or emotional abuse of the petitioner by one or both parents, guardian, or a custodian; or

the notification of a parent or guardian is not in the best interests of the petitioner.


154. Id.
155. Id.
too narrow.\textsuperscript{156} This court held that the judicial bypass procedure required that the waiver of notice was authorized "whenever 'the abortion would be in the minor's best interest,' not just when 'notification would not be in the minor’s best interests.'"\textsuperscript{157} The court of appeals upheld the decision of the district court.\textsuperscript{158}

While the Court in \textit{Bellotti II}\textsuperscript{159} first explicated the criteria of the judicial bypass procedure, the Court in \textit{Lambert}\textsuperscript{160} held that a court can waive a state notice requirement if there is clear and convincing evidence that the minor is mature enough to make the decision independently, if there is evidence that the minor is a victim of "physical, sexual, or emotional abuse"\textsuperscript{161} by a parent or guardian, or that the notification is not in the minor’s best interest.\textsuperscript{162} Unlike prior Court decisions, the decision in \textit{Lambert} held that a court can consider the minor’s best interests in relationship to both the abortion and to the notification of a parent.\textsuperscript{163} Thus this decision expands the rights of a minor seeking to obtain an abortion after previous Court decisions limited those rights.\textsuperscript{164}

\textbf{F. Summary of Cases}

The result of the Supreme Court cases addressing parental involvement statutes is that the rights of pregnant minor women have been given greater definition and have been narrowed in relation to the rights of pregnant women who have reached the age of majority.\textsuperscript{165} While the first decisions defined parental power in terms of the limitations of governmental power, later decisions shaped judicial mechanisms that allow minors to rely on a court’s authority to permit them access to abortion procedures without either

\begin{enumerate}
\item \textsuperscript{156} \textit{Id.}
\item \textsuperscript{157} \textit{Id.}
\item \textsuperscript{158} \textit{Lambert}, 117 S. Ct. at 1170.
\item \textsuperscript{159} \textit{Bellotti II}, 443 U.S. 622, 632 (1979).
\item \textsuperscript{160} \textit{Lambert}, 117 S. Ct. at 1170.
\item \textsuperscript{161} \textit{See id.} (quoting the Montana statute that creates a judicial bypass to the state’s parental notification statute).
\item \textsuperscript{162} \textit{Id.}
\item \textsuperscript{163} \textit{Compare Bellotti II}, 443 U.S. at 113 (restricting minor's access to abortion), \textit{with} Planned Parenthood v. Casey, 505 U.S. 833 (1992) (finding a Pennsylvania statute requiring consent of one parent when a minor wishes to have an abortion), \textit{and} H.L. v. Matheson, 450 U.S. 398 (1981) (upholding a Utah statute that required parental notification when a minor seeks an abortion).
\item \textsuperscript{164} \textit{See cases cited supra} note 163.
\item \textsuperscript{165} \textit{See Schmidt, supra} note 12, at 603 (relaying the difficulties minors face when confronted with the decisions regarding pregnancy).
\end{enumerate}
As a result, these decisions have made the lives of many pregnant minors more difficult. The decisions, however, also established a mechanism to avoid potentially vindictive and abusive parental action when seeking a parent's permission to obtain an abortion. While the judicial bypass procedure may provide a way around obtaining parental consent, many pregnant minors may be fearful of seeking the assistance of attorneys and the court. While the Supreme Court is willing to weigh the impact of domestic violence on a married woman's decision to seek an abortion, the Court has only recently recognized such criteria as abuse and neglect when determining whether it is in a minor's best interest to notify her parents when seeking an abortion.

Although the Supreme Court has held that parental involvement statutes are valid and have in fact shaped this area of the law, these statutes may contribute to negative societal trends. In fact, after the enactment of parental involvement statutes in some states, the abortion statistics for minors in the surrounding states increased.

166. See Lambert v. Wicklund, 117 S. Ct. 1169, 1170 (1997) (permitting courts to consider whether access to an abortion is in a minor's best interest as to the abortion and to the notification of her parent); Casey, 505 U.S. at 860-61, 877 (holding that an undue burden test applies to restrictions on abortions rather than a complete ban on any restrictions on access to abortion during the first trimester); Matheson, 450 U.S. at 413 (upholding a state statute that requires notification of the parents of a pregnant teenager before permitting the procedure); Bellotti II, 443 U.S. at 647 (establishing the judicial bypass procedure); Planned Parenthood v. Danforth, 426 U.S. 52, 74 (1976) (articulating state powers as related to restricting the vetoing of abortion decisions).

167. See Veith, supra note 37, at 453-57 (discussing the shortcomings and burdensome nature of the judicial bypass procedure). The problems with judicial bypass procedures emerge from their very nature. Id. These procedures seek to make a determination as to maturity on an individual basis, yet judges rarely deny a pregnant teenager access to abortion even if she is found to be immature. Id. at 458. In addition, judicial bypass procedures cause a fearful pregnant teenager to be even more fearful. Id. at 460-61. These procedures require a teenager who is already afraid of revealing her pregnancy to her parents to appear before a court to be granted permission to have an abortion. Id. For a pregnant teenager, the prospect of appearing before a judge who will be attempting to ascertain her level of maturity and who ultimately has the power to deny her access to an abortion is at the very least frightening. Id. Moreover, judicial bypass procedures result in delays which may result in complications during the administration of an abortion. Id. Given that judicial bypass procedures almost always result in the pregnant teen being granted permission to have an abortion and that these procedures cause the teen to be more fearful and experience delays in obtaining an abortion it is unclear why these procedures have become so widespread. Id.

168. See Lambert, 117 S. Ct. at 1169 (overturning a provision in a state statute that required a married woman to obtain the consent of her spouse when seeking an abortion based upon fears of an abusive reprisal while only touching on such concerns related to minors).

169. See Merritt, supra note 11, at 443 (proposing that parental involvement statutes seek to force minors to carry their pregnancies to term and thus fall victim to the many difficulties and complications associated with teenage motherhood).

170. See Bryan Howard, Abortion Consent Presents Hazards, ARIZ. REPUB., Apr. 23, 1998, at B5 (providing statistical support that confirms that becoming a mother during teenage years leads to a lifetime of struggle and difficulties).
Furthermore, there is extensive evidence to suggest that minors who have children are at an extreme disadvantage for the remainder of their lives. In addition, children born to teenage mothers are at a disadvantage when compared to children born to mothers in their twenties.

V. THE CHILD CUSTODY PROTECTION ACT (CCPA)\textsuperscript{173}

On July 15, 1998, the House of Representatives passed House Resolution 3682.\textsuperscript{174} This resolution is intended to supplement statutes that are in place in several states which require that parents

\begin{itemize}
  \item[(1)] GENERALLY. – Except as provided in subsection (b), whoever knowingly transports an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion, and thereby in fact abridges the right of a parent under a law, requiring parental involvement in a minor’s abortion decision, of the State where the individual resides, shall be fined under this title or imprisoned not more than one year, or both.
  \item[(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.
  \item[(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.
  \item[(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.
  \item[(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.
  \item[(d)] CIVIL ACTION. – Any parent who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.
\end{itemize}

\textsuperscript{171} See Schmidt, supra note 12, at 600.
\textsuperscript{172} See Schmidt, supra note 12, at 600 (reporting that teenage mothers are more likely than mothers in their twenties to depend on welfare).
\textsuperscript{174} The resolution amends title 18 of the United States Code, stating in part:

\textbf{OFFENSE. –}

(1) GENERALLY. – Except as provided in subsection (b), whoever knowingly transports an individual who has not attained the age of 18 years across a State line, with the intent that such individual obtain an abortion, and thereby in fact abridges the right of a parent under a law, requiring parental involvement in a minor’s abortion decision, of the State where the individual resides, shall be fined under this title or imprisoned not more than one year, or both.

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

(b) EXCEPTIONS. – (1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

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

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

(d) CIVIL ACTION. – Any parent who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.
or guardians provide consent or are notified of their minor child’s intention to obtain an abortion.175

A. CCPA: The Act

In April 1998, the CCPA was introduced in the House of Representatives. The CCPA proposed to amend title 18 of the United States Code to “[p]rohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions.”176 Prior to this federal proposal, twenty-two states had already enacted laws requiring a minor seeking an abortion to either notify a parent of her intent, or to gain the consent of a parent or judge prior to having an abortion.177 In support of the CCPA, pro-life members of the House of Representatives claim that the Act reinforces the family by encouraging young women who are contemplating an abortion to discuss the matter with their parents.178

1. Legislative History

Congresswoman Ileana Ros-Lehtinen of Florida introduced the CCPA on April 1, 1998.179 On that same day, the bill was referred to the House Committee on the Judiciary.180 The bill was then reported, after being amended, to the Committee on the Judiciary on June 23, 1998.181 After being duly considered by both the Committee on the Judiciary and the Subcommittee on the Constitution, the bill was reported to the House of Representatives via House Report 105-605.182

In its report, the Committee on the Judiciary stated that “H.R. 3682 is designed to protect state laws which safeguard minor girls’ physical and emotional health by ensuring parental involvement in their abortion decision.”183 The report frames the purpose and intent of

176. Id. at 11.
177. See T.R. Goldman, Putting Teeth in Parental Consent Laws, 152 N.J. L.J. 856, June 1, 1998, at 8 (detailing and commenting upon the Child Custody Protection Act and the laws and motivations that gave rise to this legislation).
178. See id. (arguing that parents have a right to be informed about the most intimate decisions of their children, especially those involving medical procedures).
180. See id.
181. Id.
183. Id. at 11.
the bill as protecting pregnant teens from health and safety risks by reinforcing family relationships. Furthermore, the two principal purposes of the Act are to protect the rights of parents to be involved in their daughters' medical decisions and to protect minors' health and safety by encouraging compliance with state parental involvement statutes. The House Report cites several people who testified in favor of the CCPA before the Subcommittee on the Constitution. One person who testified before the subcommittee was Professor Teresa Collett of the South Texas College of Law. In her testimony, Professor Collett voiced her support of the CCPA because transporting a minor in an effort to avoid state parental involvement statutes "interferes with parental authority in the household and with the parental responsibility to direct the rearing of their child." Mothers of teenage women who obtained an out-of-state abortion to avoid a parental involvement statute also testified in support of the bill. These mothers supported the bill primarily because their pregnant teens experienced complications after obtaining an abortion. Throughout the House Report, there are numerous references to physicians as "abortionists" and to the rights of parents, rather than the rights of pregnant teens. Given the tone and language used by the majority in the House Report, it is evident that this Act was written, sponsored and supported by members of the House who are sympathetic to and supportive of the pro-life movement.

Ultimately, the House bill passed by a vote of 276 to 150 on July 15, 1998. Once passed by the House of Representatives, the Act was forwarded to the Senate for consideration.

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184. Id. at 12.
185. See id. at 13 (explaining that when parents are not involved, the health risks suffered by minor girls significantly increase).
187. Id. at 12.
188. Id.
189. See id. at 13 (relating the testimony of one mother of a minor girl who reported how her 12-year-old daughter was provided alcohol, raped, and then taken out of state by the rapists' mother for an abortion).
190. See id. at 14 (describing the physical examination of a 13-year-old girl whose abortion had been incompletely performed and who "required surgery to repair the damage done by the abortionist").
191. See H.R. Rep. No. 105-605, at 11 (1998) (stating that one of two major goals of the legislation is "to protect the rights of parents to be involved in the medical decisions of their minor daughters").
192. See Bill Summary and Status for the 105th Congress, H.R. 3682, supra note 179 (providing details related to actions taken in relation to the Child Custody Protection Act).
193. See Bill Summary and Status for the 105th Congress, H.R. 3682, supra note 179.
The Senate, however, was considering their own version of the CCPA.\textsuperscript{194} Senator Abraham introduced the Senate version of the CCPA on February 12, 1998.\textsuperscript{195} After being referred to the Committee on the Judiciary, committee hearings were held on May 20, 1998.\textsuperscript{196} Once committee hearings and mark up sessions were held, the Committee on the Judiciary—by a vote of ten to six—voted in favor of the CCPA and reported it out via Senate Report 105-268.\textsuperscript{197}

\begin{itemize}
\item \textbf{B. Constitutional Conflicts}
\end{itemize}

Even if the CCPA passes, it is unclear whether it will pass Constitutional muster in light of previous Supreme Court rulings. First, the Court’s decision in \textit{United States v. Lopez}\textsuperscript{9} may render the CCPA unconstitutional under the Commerce Clause.\textsuperscript{199} Under \textit{Lopez}, if the Court finds that the CCPA burdens interstate commerce, the Court will apply a balancing test to weigh the minor’s right to abortion access with the burden placed on interstate commerce.\textsuperscript{200} Second, the resolution may violate \textit{Roe}, and would thus be unconstitutional.\textsuperscript{201} Finally, the CCPA may run afoul of the privileges

\begin{itemize}
\item 195. S. 1645, 105th Cong. (1998). The bill provides in part:

(a) OFFENSES. – 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 such individual obtain an abortion, if in fact the requirements of a law, requiring parental involvement in a minor’s abortion decision, in the State where the individual resides, are not met before the individual obtains the abortion, shall be fined under this title or imprisoned not more than one year, or both.

(b) EXCEPTION. – 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.

(c) CIVIL ACTION. – Any parent or guardian who suffers legal harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

\textit{Id.}


\item 197. \textit{Id.} The Senate report contains passages that are identical to the House Report 105-605. \textit{Id.} In fact, it appears that the Senate Committee on the Judiciary heard from the same witnesses as the House of Representative’s Subcommittee on the Constitution. \textit{Id.}

\item 198. 514 U.S. 549 (1995).

\item 199. \textit{See id.} at 559-61 (limiting the ability of Congress to enact legislation under the Commerce Clause).

\item 200. \textit{See id.} at 561-62 (describing the balancing test and its application to interstate commerce).

\item 201. \textit{See Roe v. Wade, 410 U.S. 113 (1973).} The decision in \textit{Roe} established the right of a woman to make decisions regarding abortion without the interference of state or federal
and immunities clause found in Article IV of the Constitution. In addition to the constitutional problems, the CCPA has received sharp criticism from members of Congress. Congresswoman Nita Lowey, for example, argues that "[t]his bill is unnecessary, and it is dangerous. Already, most young women — more than 75%, in fact — involve one or both parents in the decision to seek an abortion."

1. United States v. Lopez

In 1990, Congress passed the Gun-Free School Zones Act (the "Act"), which made it a federal offense to possess a firearm in a school zone. Initially, Lopez was arrested and charged with violation of a Texas State law for possession of a gun. These charges were later dismissed, however, and he was subsequently charged with violation of the Gun-Free School Zones Act. After being charged with violating the federal statute, Lopez was indicted by a federal grand jury for "knowing possession of a firearm at a school zone." After Lopez was indicted, he moved for a dismissal of the charges on the ground that the Gun-Free School Zones Act was unconstitutional because regulation of schools is not within congressional power. The district court, however, denied Lopez's motion, ruling that the Act was a constitutional exercise of congressional power since it regulated activities that affect interstate commerce. Subsequently, the district court found Lopez guilty and

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206. See id.

207. See id. (indicating that Lopez was a 12th grade student who arrived at school carrying a concealed .38 caliber handgun and five bullets).

208. Id.


210. Id. at 551-52. The government's brief argued that "the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population." Id. at 563-64. The government also argued that "violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe."
sentenced him to six-months in jail and two years of probation. Lopez appealed his conviction and again asserted that the Act was unconstitutional in that it exceeded the congressional power to enact legislation under the Commerce Clause. The court of appeals agreed with Lopez and overturned his conviction, finding the Gun-Free School Zones Act invalid because it was "beyond the power of Congress under the Commerce Clause." The Supreme Court affirmed the ruling of the court of appeals holding that "[t]he possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." The Court further stated that the Act "is a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms."

The impact of the holding in Lopez is that the Court reaffirmed the notion that statutes enacted into law by the legislative branch must "substantially affect" interstate commerce. Furthermore, the Court held that a statute that is criminal in nature cannot be made valid by enacting it under the rubric of the Commerce Clause. This decision also prevents the legislative branch from expanding its power beyond that enumerated in the Constitution. Instead, the Supreme Court elected not to expand the power of Congress, and thus affirmed the decision of the court of appeals and held the Gun-Free School Zone Act unconstitutional.

Id. at 564.

211. Id. at 552.

212. See id. (arguing that possession of a gun in a local school zone is in no sense an economic activity that substantially affects interstate commerce).

213. United States v. Lopez, 2 F.3d 1342 (5th Cir. 1993).


215. See id. at 561 (stating that section 922(q) of the Gun-Free School Zone Act is not an essential part of a larger regulation of economic activity unless intrastate activity was also regulated).

216. Id. at 567.

217. See generally id. at 561 n.3.

218. See id. at 567 (stating that to uphold the government's claim, the Court would have had to pile inference upon inference in a manner that would convert congressional authority under the Commerce Clause into a general police power of the sort retained by the states).

219. Id.
2. Balancing Test

The decision in Lopez has a direct impact upon the CCPA currently before Congress. In the CCPA, Congress is attempting to criminalize an act under the guise of the Commerce Clause, even though the practice of transporting a minor across state lines to obtain an abortion does not "substantially affect" interstate commerce as is required by Lopez. The practice of enacting legislation that is constructed under the Commerce Clause "will always engender 'legal uncertainty.'" The Supreme Court has been willing to uphold statutes that regulate commercial transactions when those transactions have been shown to affect interstate commerce. The regulated transaction here, however, is not one that is primarily commercial. Through the CCPA, Congress is attempting to use the Commerce Clause to regulate a right recognized and protected by the Supreme Court. Even though the act of transporting a person across state lines is a commercial activity, it must be shown that the benefit of preventing teen abortion without parental or judicial involvement outweighs the burden placed upon interstate commerce.

221. Id.

222. See Lopez, 514 U.S. at 566 (discussing Justice Breyer's dissent and his assertion that a broad range of activities can be deemed to fall under the purview of Congress through the Commerce Clause).

223. See, e.g., Jones v. Laughlin Steel, 301 U.S. 1 (1937) (finding that the manufacturing operations of a large steel company organized on a national scale and drawing materials from other states had a close and substantial relation to interstate commerce).

224. The act of a private individual transporting a pregnant teenager across a state border to obtain an abortion is not a commercial activity in the same manner that the interstate transportation of individuals by bus, train, and airline companies is commercial. See, e.g., Cleveland v. United States, 329 U.S. 14 (1946) (upholding the constitutionality of the Mann Act, making it an offense to transport in interstate commerce any woman or girl for debauchery, prostitution, or any other "immoral" purpose).


226. See, e.g., Lambert v. Wicklund, 520 U.S. 292 (1997) (upholding judicial bypass provision allowing waiver of notice requirement if notification was not in the minor's best interest); Planned Parenthood v. Casey, 505 U.S. 833 (1992) (reaffirming a woman's right to choose an abortion under Roe and holding further that requiring the consent of one parent before a minor could receive an abortion did not impose an undue burden); H. L. v. Matheson, 450 U.S. 398 (1981) (upholding a state statute that required only that a minor seeking an abortion notify a parent or guardian if possible); Bellotti v. Baird, 443 U.S. 622 (1979) (ruling that a state statute requiring parental consent or judicial approval following parental notification was unconstitutional); Planned Parenthood v. Danforth, 428 U.S. 52 (1976) (holding a blanket parental consent requirement for minors seeking an abortion to be unconstitutional).

3. Edwards v. California

In Edwards v. California, the Supreme Court reversed a lower court's conviction of a man who had violated a state statute making it a misdemeanor to bring or assist in bringing a non-resident indigent person, who was known to be indigent, into the state of California. While Congress has the express authority under Article I, Section 8 of the Constitution to regulate interstate commerce, the powers of individual states to enact legislation that impacts interstate commerce is limited. The Court found the state statute in Edwards unconstitutional because the activity that the state was regulating was beyond its regulatory power. Because the transport of people across state lines is commercial, only Congress can regulate this type of economic activity.

Under Lopez, however, the power of Congress to enact legislation that impacts commercial activity that does not substantially impact interstate commerce is limited. Thus, both Congress and individual states have limited ability to enact legislation that negatively impacts the transportation of people across state lines. Consequently, neither individual states nor Congress can enact legislation either identical or similar to the CCPA without running afoul of the Constitution.

4. Privileges and Immunities

The Constitution provides for the protection of United States citizens to travel from state to state and for the endowment of the same privileges and immunities throughout our country. This provision stands today and has been held to protect a woman's right

228. 314 U.S. 160 (1941).
229. See id. (holding that a state statute that restricts interstate travel is not valid).
230. See id. at 160 (stating that the constitutional limitation upon state power to interfere with interstate transportation of persons is not subject to an exception in the case of paupers).
232. See Edwards, 314 U.S. at 173 (stating that the attempts on the part of any single state to isolate itself from difficulties common to all states is subject to certain boundaries).
233. See id. (holding that the state statute imposed an unconstitutional burden upon interstate commerce).
234. See id. (stating that under the Commerce Clause the power to regulate interstate commerce is confined to Congress).
235. See Lopez, 514 U.S. at 560 (holding that statutes enacted by Congress must substantially affect interstate commerce).
236. Id.
238. U.S. Const. art. IV, § 2; see also Kreimer, Right to Travel, supra note 202, at 916 (characterizing the Privileges and Immunities Clause).
to enter a state different from her residency and be entitled to the
same medical procedures to which a resident would be entitled. 239

In *Doe v. Bolton*, 240 the Supreme Court reviewed a Georgia statute
that required Georgia residency for any woman seeking an abortion
in Georgia. 241 The Georgia statute in question was part of the state’s
criminal code, which provided for circumstances under which
performing an abortion would be a criminal act. 242 The statute was
first challenged when Mary Doe and 23 other individuals, together
with two non-profit corporations, filed a federal action against the
state of Georgia seeking a declaratory judgment that the entire
Georgia statute relating to criminal abortion was unconstitutional. 243
The District Court of Georgia invalidated several portions of the
statute and granted declaratory relief in relation to those invalid
portions. 244 In an effort to have the entire statute invalidated, Doe
appealed the District Court of Georgia’s decision directly to the
Supreme Court. 245

The Supreme Court held that the portion of the Georgia statute
which required the pregnant woman seeking an abortion to be a
Georgia resident was unconstitutional. 246 The Court reasoned that
“the Privileges and Immunities Clause . . . protects persons who enter
other States to ply their trade, so it must protect persons who enter
Georgia seeking the medical services that are available there.” 247

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239. *See* *Doe v. Bolton*, 410 U.S. 179, 200 (1973) (overturning a Georgia statute that
required a person seeking an abortion in that state to be a Georgia resident).
240. *Id.*
241. *Id.*
242. *See id.* at 202-03 (citing GA. CODE ANN. § 26-1202(b)(1)-(2)). The statute provided in
part:

(b) No abortion is authorized or shall be performed under this section unless
each of the following conditions is met:

(1) The pregnant woman requesting the abortion certifies in writing under
oath and subject to the penalties of a swearing to the physician who proposes to
perform the abortion that she is a bona fide legal resident of the state of
Georgia.

(2) The physician certifies that he believes the woman is a bona fide resident of
this State and that he has no information which should lead him to believe
otherwise.

GA. CODE ANN. § 26-1202(b)(1)-(2).
244. *Id.* at 186-87.
245. *Id.*
246. *Id.* at 200.
247. *Id.*
Court further stated that upholding the statute would enable a state to limit medical care to its own citizens.248

5. Violation of Roe

The landmark holding in Roe remains law, despite numerous challenges throughout the years. When this decision was handed down, new rights emerged and were recognized by the highest court in the land. Roe not only changed the way that the rights of women would be viewed, it changed the language of discussions regarding abortion.249 Debates involving abortion usually focus on the notion of viability and the impact of this standard on this decision and later Supreme Court decisions that interpret abortion rights.250 In Roe, the Court held that "[f]or the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician."251 Thus, the right to obtain an abortion during the first trimester is absolute and may not be impinged upon by federal, state or local statutes. After the completion of the first trimester, however, states have the right to regulate or prohibit abortion except when the life of the mother is at issue.252 The Court in Roe ultimately left it to the states to regulate abortion after the first trimester.253

The CCPA seems at odds with the decision in Roe. In Roe the Court defined the right to privacy and subsequent right to obtain an abortion during the first trimester, and left the matter of regulating abortion after the first trimester to the states.254 In the CCPA, Congress confronts the issue of abortion by prohibiting the transport of minors across state lines to obtain an abortion in order to avoid parental and judicial involvement.255 This Congressional resolution appears to regulate an issue that was left to the states to regulate. Consequently, the CCPA appears to be at odds with the Supreme Court's decision in Roe.

250. After Roe, Americans were armed with a new vocabulary and framework with which to debate abortion. Furthermore, given the extreme emotional nature of the opinions of many Americans regarding the Roe decision, it is safe to say that an overwhelming number of Americans have engaged in at least one debate about the merits of the Roe decision.
251. Roe, 410 U.S. at 164.
252. Id. at 164-65.
253. Id.
254. See id. at 164-65 (holding that, due to the viability standard, the abortion decision remains with the pregnant woman and her doctor).
The CCPA\textsuperscript{256} fails in four respects. First, under \textit{Lopez}, the Act
regulates a commercial activity that does not substantially impact
interstate commerce.\textsuperscript{257} Second, under \textit{Edwards}, the Act prohibits a
specific type of interstate travel, which a state cannot regulate and
Congress can only regulate in a limited regard.\textsuperscript{258} Third, under \textit{Doe},
the Act limits medical care in some states to only those pregnant
teens who are residents of that state.\textsuperscript{259} Finally, under \textit{Roe}, the Act
requires that our federal government engage in regulating abortion
when such regulation has already been delegated to the states.\textsuperscript{260}

\section*{VI. PROPOSAL FOR LEGISLATION}

It is not clear what the House of Representatives intended to
accomplish by enacting the CCPA. On the surface, it seems that
Congress was attempting to do what the states cannot do: enact
legislation that prohibits people from transporting minors across
state lines to get an abortion and thus avoid parental involvement
statutes.\textsuperscript{261} Recognizing the shortcomings of having parental
involvement statutes spottily enacted across the nation, and thus
creating opportunities to hop in a car and get an abortion just over
the river, Congress thought they would attempt to fill the
gaps.\textsuperscript{262} What we have, however, are state statutes that trample on the privacy
rights of minor women and a federal resolution that, if enacted into
law, would place a person in jail for helping a woman exercise the
right granted to her in \textit{Roe}.

Why have courts been so willing to recognize and support the right
of an adult woman to obtain an abortion without gaining the consent
of anyone but herself and her physician, but unwilling to recognize

\begin{itemize}
  \item \textsuperscript{256} \textit{Id.}
  \item \textsuperscript{257} \textit{See United States v. Lopez, 514 U.S. 549, 560 (1995)} (determining that legislation must
    "substantially affect" interstate commerce in order to be deemed constitutional).
  \item \textsuperscript{258} \textit{See Edwards v. California, 314 U.S. 160, 172 (1941)} (articulating the scope of
    Congressional authority to regulate interstate travel and the limitations imposed upon states to
    regulate interstate travel).
  \item \textsuperscript{259} \textit{See Doe v. Bolton, 410 U.S. 179, 200 (1973)} (holding that states had to make available
    its services to all citizens because otherwise "a State could limit to its own residents the general
    medical care available within its borders" and this holding would be repugnant to the Court).
  \item \textsuperscript{260} \textit{See Roe v. Wade, 410 U.S. 113, 164 (1973)} (stating that "for the stage subsequent to
    viability, the State in promoting its interest in the potentiality of human life may, if it chooses,
    regulate, and even proscribe, abortion except where it is necessary, in appropriate medical
    judgment, for the preservation of the life or health of the mother").
  \item \textsuperscript{261} \textit{See Edwards, 314 U.S. at 174} (holding that a state statute may not burden interstate
    travel).
  \item \textsuperscript{262} \textit{See Child Custody Protection Act, H.R. 3682, 105th Cong. at § 2 (1998)} (making it a
    crime to "avoid certain laws relating to abortion").
\end{itemize}
this same right for minor women? What is so magical about age eighteen that renders a person suddenly mature enough to have access to medical procedures without the involvement of the state and parents? Furthermore, how different is a seventeen year old woman from an eighteen year old woman? The arbitrariness of the age of majority is puzzling. Perhaps rather than force a minor pregnant woman to seek out the approval of parents and judges when she wants an abortion, parents and courts should be thankful that the minor has realized the extreme disadvantage she and her child would face if she chose to bring the pregnancy to term.\textsuperscript{263}

Given the recent data showing that the teenage birthrate has decreased nationwide,\textsuperscript{264} perhaps Congress should begin work on resolutions that seek to continue this positive trend. It seems only obvious that one way to reduce the number of abortions among teenage women is to reduce the rate at which they are getting pregnant.\textsuperscript{265} Standing in the face of this effort, however, is the seemingly Victorian prejudice held by a majority of members of Congress. Rather than encouraging use of contraceptives and supporting sex education programs, the legislative branch prefers creating new ways to infringe upon the limited rights of minors.

\textbf{A. Support Community Efforts}

The first thing that can be done to continue the positive trend of declining teenage birthrates is for Congress to abandon all current efforts to restrict teenagers' access to abortion. Having done this, Congress should then seek to support community efforts to distribute contraceptives and provide sex education to students in public schools.\textsuperscript{266}

\begin{footnotes}

\textsuperscript{263} \textit{See} Schmidt, \textit{supra} note 12, at 600 (reporting that women who become mothers during their teenage years are more likely to be on welfare and to hold low-paying jobs and, in addition, that the children of teenage mothers are more likely to have lower IQs).

\textsuperscript{264} \textit{See} TEENAGE BIRTHS, \textit{supra} note 2, at 2; \textit{RECENT DECLINES, supra} note 17, at 1 (showing data indicating a decreasing birthrate among teenagers).

\textsuperscript{265} The purpose of the Child Custody Protection Act is to support state laws which either prohibit or limit teenage women's access to abortion. Child Custody Protection Act, H.R. 3682, 105th Cong. (1998). Given the purpose of this federal act and the nature of the state laws that this act seeks to support, it appears that Congress supports efforts to reduce the number of abortions obtained by teenage women. If, in fact, Congress endeavors to reduce the number of abortions among teenage women, then the Child Custody Protection Act may not be the only avenue toward realizing such a goal. Fewer pregnancies among teenagers should result in fewer abortions among teenagers.

\textsuperscript{266} By supporting community based programs aimed at providing sex education and distributing condoms, the costs of developing and implementing identical or similar federal programs would be avoided. In this way, the Congressional effort to reduce teenage abortion would be furthered by funding proactive community programs.
\end{footnotes}
B. Provide Incentives to States

Congress should enact legislation that provides incentives to states that continue to experience declines in the teenage birthrate. Incentives could be in the form of additional funds for public education or increased funding for road projects. Simply offering incentives to states for realizing a decline in teenage birthrates will promote state efforts to ensure that these rates continue to decline. In so doing, both state governments and the federal government can point to these declines as proof that societal ills can be approached proactively. Furthermore, the result of this joint effort will be that abortion remains accessible and safe while also making abortion less frequent.

C. Mobilize Executive Agencies

Finally, agencies under the executive branch should be charged with developing and implementing programs that are aimed at reducing the teenage birthrate. Executive agencies such as the Department of Health and Human Services (“HHS”) are optimally positioned to impact the teenage birthrate. Given that HHS administers programs covering such areas as the prevention of child abuse and domestic violence and the treatment and prevention of substance abuse, it is not too far fetched an idea that this department could create and administer a program aimed at maintaining and further reducing the teenage birthrate.

267. The type of incentive is not terribly important. Instead, it is important that the federal government create an incentive for states to develop and implement programs that are geared toward furthering the declines in the teenage birthrate.

268. In order to create a single national legal drinking age of 21 years old, the federal government enacted a statute, which required every state to raise its legal drinking age to 21 or risk losing federal highway funds. See 23 U.S.C.A. § 158 (West 1998) (creating a withholding penalty of 10% of federal highway funds if a state fails to comply with the minimum drinking age of 21 years of age). Given the resulting national drinking age of 21 years old, it is clear that Congress has the ability to enact legislation that elicits a desired response from individual states. The issue of reducing teenage birthrates is no different. Congress has the ability to encourage individual states to implement programs that will further reduce the teenage birthrate.

269. Should state governments and the federal government develop programs that actually result in further declines in the teenage birthrate, the most likely result would be a decline in the number of abortions that teenage women obtain. Such programs would not focus on abortion, rather their aim would be to reduce pregnancies among teenage women. Accordingly, the legislative efforts would be aimed at reducing the number of abortions and not creating new obstacles to obtaining abortions. In this way, abortions would be less frequent while remaining safe and accessible.

270. See HHS: What We Do (last revised Jan. 4, 1999) <http://www.hhs.gov/about/profile.html> (describing the primary functions of HHS and the programs and activities it administers).

271. Id.
VII. Conclusion

While it is fortunate that the teenage birthrate is declining, it is important to ensure that these declines continue. Our federal and local governments should seek to capitalize on this positive trend by enacting programs that seek to propel the teenage birthrate further downward. Moreover, the current federal efforts to restrict access to abortion should not further infringe upon the limited rights of minors. Instead, we should abandon the distinctions between adult women and teenage girls, and we should extend the right to privacy and the right to have access to abortion to all women, regardless of age.