Written Statement of the American Civil Liberties Union

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Submitted to the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution

Hearing on: H.R. 2299, the "Child Interstate Abortion Notification Act"

March 8, 2012

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide, dedicated to protecting the principles of freedom and equality set forth in the Constitution and in our nation's civil rights laws, we thank you for giving us the opportunity to submit this statement for the record on the so-called Child Interstate Abortion Notification Act (CIANA), H.R. 2299. We oppose CIANA and we urge the Subcommittee and the Committee to set the bill aside and not let it advance out of committee.

The ACLU has a long history of defending reproductive freedom. We have participated in nearly every critical case concerning reproductive rights to reach the Supreme Court, and we routinely advocate in Congress and state legislatures for policies that promote access to reproductive health care. In particular, the ACLU has advocated on behalf of teens. We work to ensure that young women have access to safe, confidential counseling, contraception and abortion care. At stake are young women's lives, safety, health and dignity.

CIANA, better described as the "Teen Endangerment Act," would impose a mandatory parental notification requirement on young women who need abortion services in a state where they do not reside, and it lacks any exception to protect a teen's health – in clear violation of Supreme Court precedent. The bill would make it a federal crime for a person other than a parent – including a grandparent, aunt or uncle, sibling, or clergy member – to help a teen travel to another state to obtain abortion care, unless the teen had already fulfilled the requirements of her home state's teen abortion restrictions.

H.R. 2299 would force doctors, under the threat of federal criminal prosecution, to comply with a hopelessly complex legal scheme mandating that an out-of-state teen's parents be notified of her decision to have an abortion. It would also place onerous burdens on teens. In some circumstances, a teen seeking an abortion must comply with two states' abortion restrictions. In others, the most vulnerable teens are left without even the option of going to court to obtain permission from a judge rather than inform parents who may be abusive.

Taken as a whole, H.R. 2299 would deny young women in difficult situations the assistance of trusted adults, endanger their health, and violate their constitutional rights.

I. This bill will not create good family communication where it does not already exist.

Even in the absence of any legal requirement, the parents of most young women who seek abortions are aware of their decisions.[1] Those young women who choose not to involve their parents usually have valid and compelling reasons for making that decision. Many young women do not involve a parent because they fear family violence, or are afraid of being forced to leave home.[2] As the Supreme Court has acknowledged, "[m]ere notification of pregnancy is frequently a flashpoint for battering and violence within the family. The number of battering incidents is high during the

[1] Amanda Dennis, Stanley K. Henshaw, Theodore J. Joyce, Lawrence B. Finer, & Kelly Blanchard. The Guttmacher Institute, *The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review* at page 3 (2009), a*vailable at* http://www.guttmacher.org/pubs/ParentalInvolvementLaws.pdf.

[2] Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Family Planning Perspectives 196, 207 (1992).

pregnancy and often the worst abuse can be associated with pregnancy."[3] For example, in Idaho, a 13-year-old sixth-grade student named Spring Adams was shot to death by her father after he learned she planned to end a pregnancy he had caused.[4]

H.R. 2299's limited exceptions provide no safety net for the most vulnerable teens. The bill's "exception" for teen victims of certain forms of abuse only applies if the young woman "declares in a signed written statement that she is the victim of abuse." This "exception" ignores the painful reality that most abused teens are too ashamed or too afraid to report the abuse. Moreover, because the bill requires the doctor to notify the authorities of the abuse before the abortion is performed, many teens will not report the abuse for fear that their parents will discover the abortion. As Justice O'Connor aptly stated in *Hodgson v. Minnesota*, an "exception to notification for minors who are victims of neglect or abuse is, in reality, a means of notifying the parents."[5] Moreover, "[t]he combination of the abused minor's reluctance to report sexual or physical abuse . . . with the likelihood that invoking the abuse exception for the purpose of avoiding notice will result in notice, makes the abuse exception less than effectual."[6]

This bill could force some teens to take desperate and drastic measures. A teenager facing an unintended pregnancy is already in crisis. Teenagers who are unwilling or unable to tell a parent about an unintended pregnancy sometimes resort to self-induced abortion or illegal abortion with tragic results. For example, Becky Bell, an Indiana teenager, died from an illegal abortion because she couldn't bear to tell her parents about her pregnancy and thus could not comply with Indiana's teen abortion law.[7]

II. This bill second guesses families' decisions.

H.R. 2299 would also undercut functional families by second-guessing their decisions. The bill requires at least a 24-hour waiting period and written notification, with no medical emergency exception. This may also be the case where a parent accompanies his or her daughter to an out of-state abortion provider. The bill provides an exception only where the parent presents "documentation showing with a reasonable degree of certainty that he or she is in fact the parent of the minor." There is no indication of what sort of documentation (e.g., a birth certificate, medical records, multiple forms of documentation) would or would not suffice to obtain a "reasonable degree of certainty." Given that violation of this section can result in criminal penalties, it is likely that institutions may interpret the documentation required exceedingly narrowly, preventing families from acquiring the medical care they've decided is best.

In such cases, this requirement will act as a built-in mandatory delay, imposing logistical and financial hardships on functional families who are trying to support their daughters. Even in a health

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[3] *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 889 (1992).
[4] Judith Warner, *When the Parents Can't Know*, N.Y. TIMES, Jul. 29, 2006, at A13; Margie Boule, *An American Tragedy*, OREGONIAN, Aug. 27, 1989, at E01.
[5] 497 U.S. 417, 460 (1990) (O'Connor, J. concurring) (noting that an abuse report "requires the welfare agency to immediately 'conduct an assessment;'" if the "agency interviews the victim, it must notify the parent of the fact of the interview" and the parent has the right to access the investigation record).
[6] *Id*.
[7] Rochelle Sharpe, *Abortion Law: Fatal Effect?*, Gannett News Service, Nov. 27, 1989; *60 Minutes* (CBS television broadcast, Feb. 24, 1991).

emergency, this bill could rob a parent of his or her ability to authorize immediate care. For example, in many places, the nearest abortion provider is in a neighboring state. Indeed, only 13 percent of counties in America have an abortion provider.[8] If a parent and daughter traveled to a hospital across state lines for emergency abortion care, this bill could require a doctor to wait 24 hours before providing that care if the parent hadn't traveled with sufficient documentation.

III. This bill would criminalize compassion.

This bill would impose federal criminal penalties on any non-parent who helps a young woman cross certain state lines to obtain an abortion if she has not first complied with her home state's abortion law. If passed, this legislation would criminalize caring, responsible behavior on the part of adults – including a teen's grandparent, sibling, or clergy member – concerned with a young woman's well-being. It would deter trustworthy adults and professionals from helping a young woman to obtain an out-of-state abortion no matter what the circumstances. The bill provides no exception for cases in which a young woman's health would be harmed if medical care were delayed in order for her to comply with her home state's and the provider state's abortion statutes. It thus creates a barrier to safe, timely medical care and endangers young women's well-being.

IV. This bill endangers young women's health.

H.R. 2299 does not contain any exception whatsoever to protect a young woman's health. It would thus bar a teen from obtaining a medically necessary abortion unless she is able to comply with the bill's tangled requirements. Navigation of the bill's provisions will delay needed medical care and could further endanger a teen's health. Although some teens are permitted under the bill to seek court permission rather than inform their parents, this process can take several days – time that is precious during a health crisis. Other teens are denied even the option of court approval. For these teens, parental notification under the bill can take up to 96 hours or more, a delay that can place a young woman with health problems in serious jeopardy.

The Supreme Court has made clear that any parental restriction on abortion must contain an exception to protect the health of a minor. In *Planned Parenthood v. Casey*, for example, the Court held that all abortion regulations must contain a valid medical emergency exception, "for the essential holding of *Roe* forbids a state to interfere with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health."[9] The lack of such a health exception renders the bill dangerous and unconstitutional.

V. The bill places burdensome requirements on some teens and leaves others with no options.

Some teenagers must travel out of state to obtain an abortion, either because the closest abortion facility is located in a neighboring state or because there is no in-state provider available at their stage of pregnancy. Others, such as college students, may be living in a state temporarily, but are legal

[8] Rachel K. Jones, Mia R. S. Zolna, Stanley K. Henshaw & Lawrence B. Finer, *Abortion in the United States: Incidence and Access to Services, 2005*, 40 Persp. on Sexual & Reprod. Health 6 (2008), *available at* http://www.guttmacher.org/pubs/journals/4000608.pdf (last visited Oct. 13, 2010).
[9] 505 U.S. 833, 880 (1992). *See also Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320, 327 (2006).

residents of another state. H.R. 2299 would create a patchwork system of parental notification mandates that would impose extra hurdles on some teens and leave others with no options.

Under the bill's provisions, some teens would have to comply with two states' teen abortion laws. For example, a teenager who travels with assistance from Missouri to Kansas for an abortion must comply with both Missouri's law and Kansas's law. A young woman who is unable to involve her parents in her abortion decision, and thus pursues a court waiver, must therefore obtain a judicial bypass in both her home state and the provider's state before she can obtain the abortion care she needs.

Paradoxically, the bill would deny other young women the option of obtaining a court waiver at all. The bill takes away the option of going to court for those teens who live in a state without an enforceable teen abortion restriction, and who seek an abortion in another state that either does not have an enforceable teen abortion law or has a law that does not meet the bill's standards for such a law.[10] In these situations, the minor's home state has no waiver system in place and the bill does not permit use of another state's waiver system. Accordingly, the teen will not be able to obtain an abortion until the doctor provides notice of the abortion to one of her parents. The bill thus makes parental involvement mandatory for these teens with absolutely no option for a court bypass. Courts have made clear that such a scheme is constitutionally impermissible.[11]

VI. The bill imposes hopelessly complex and burdensome requirements on doctors.

Under the threat of civil and criminal penalties, the bill would require doctors to make "reasonable" efforts to provide in-person, written notice to an out-of-state teen's parents. It provides no guidance to help a physician know what efforts suffice as "reasonable" to track down a parent in another state to provide this in-person written notice. This requirement places extremely burdensome demands on doctors. Because many communities do not have abortion providers, women often have to travel to a neighboring state to obtain an abortion; thus, doctors or their agents could routinely be forced to travel hundreds of miles out of state in order to comply with the bill's notification mandate.

Moreover, because the bill operates differently depending on a teen's state of origin, it would require health care providers to be familiar with the legal regimes of all 50 states and to understand the interaction between these varying legal regimes and the local state laws of the provider. The bill would thus impose an onerous system of Byzantine complexity on doctors, any misunderstanding of which could result in prison time.

VII. This bill violates constitutional principles of federalism.

This bill conflicts with core constitutional principles of federalism – principles reaffirmed by the Supreme Court in its landmark ruling *Saenz v. Roe*.[12] The Constitution protects the right of every individual to travel freely from state to state and, when visiting another state, not to be treated as a

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[10] *See* Child Interstate Abortion Notification Act of 2011, H.R. 2299, 112th Cong. § 2432 (d)(4) (2011) (defining a "law requiring parental involvement in a minor's abortion decision" for purposes of H.R. 2299).
[11] *See Belotti v. Baird*, 443 U.S. 622 (1979); *Hodgson v. Minnesota*, 497 U.S. 417, 420 (1990); *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 510 (1990).
[12] 526 U.S. 489 (1999).

foreigner. As the Supreme Court held in *Saenz*, "[A] citizen of one state who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the 'Privileges and Immunities of Citizens in the several States' that he visits."[13] The Supreme Court has previously applied this principle in the context of restrictive abortion laws. In *Doe v. Bolton*, the Court held that, because the Privileges and Immunities Clause "protect[s] persons who enter [other states] seeking the medical services that are available there," a state must make abortions available to visitors on the same legal terms under which it makes them available to residents.[14]

In violation of these essential principles of federalism, this bill would treat a young woman who travels to a state, or who resides in a state temporarily (such as a college student), differently than a teen living in that state. For example, because New York does not have a law restricting teen abortions, a young woman living in New York need not notify her parents in order to obtain an abortion. However, a teen who travels into New York, or who temporarily resides in New York, is saddled with an entirely different legal scheme: she must either obtain a court bypass from her home state or, if no bypass is available, be subject to the bill's mandatory notice requirements. The federal bill thus would discriminate against teenagers within the same state on the basis of their state of origin and would deprive teens of their right to travel to engage in conduct legal in another state.[15]

The Constitution also protects the right of each state to enforce its own laws within its territorial boundaries. Yet, this legislation supplants states' decisions to include reasonable alternatives to parental notice in their abortion statutes, or not to restrict young women's access to abortion at all, by imposing a federal notification requirement on certain (but not all) teens seeking abortion care in that state.

This bill conflicts with the fundamental nature of our federal scheme, and should, therefore, concern anyone who respects the integrity of the American constitutional system.

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Because H.R. 2299 would both endanger vulnerable teens and violate their constitutional rights, the ACLU vigorously opposes its passage and urges members of the committee to set the bill aside and not let it advance out of committee.

[13] 526 U.S. at 501.
[14] 410 U.S. 179, 200 (1973); *see also Saenz*, 526 U.S. at 502 (Privileges and Immunities Clause "provides important protections for non-residents who enter a State... to procure medical services...").
[15] *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).