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**APA Women and Ayotte v. Planned Parenthood**

**Case Summary**

- ***Ayotte v. Planned Parenthood***: Concerns a New Hampshire statute that prevents physicians from performing abortions on minors (under age 18) unless the physician provides at least forty-eight hours of advanced notice to one of the minor's parents. Physicians who do not comply with the statute are subject to civil and criminal penalties.
- **Exceptions to Notice Requirement**: The only exceptions to this notice requirement are when: (1) a minor's parent provides written certification that he/she has been notified; (2) the minor has gone to court and obtained a judicial bypass waiving the notice requirement; (3) or the physician can certify that an abortion is necessary to "prevent the minor's death and there is insufficient time to provide the required notice." The Parental Notification Prior to Abortion Act (the "Act") N.H. Rev. Stat. Ann. §§ 132:24-28 (2003).
- **Lack of Medical Emergency Exception**: The statute contains no exceptions for rape, incest, child abuse or medical emergencies in which the minor may suffer serious health consequences. The delay imposed by the law would pose serious health risks to minors needing immediate abortions, including infertility, spread of infection throughout the body, vision loss, chronic pain, and permanent kidney or liver damage.
- On June 2003, the New Hampshire legislature passed the Act. The law was scheduled to take effect December 31, 2003.

**History**

- **November 17, 2003**: Planned Parenthood of Northern New England, the Concord Feminist Health Center of Portsmouth, and Wayne Goldner, M.D., file a legal challenge in the U.S. District Court for the District of New Hampshire, alleging the law is unconstitutional because, in addition to other things, its lack of a medical emergency exception endangers young women's health.
- **December 29, 2003**: the district court issues an order preventing the law from taking effect because it lacks a medical emergency exception.
- **November 24, 2004**: New Hampshire appeals the case to the U.S. Court of Appeals for the 1st Circuit and, in an unanimous 3-0 vote, the U.S. Court of Appeals affirms the district court's ruling.
- **May 23, 2005**: New Hampshire Attorney General Kelly Ayotte asks the U.S. Supreme Court to review the case and the Court agrees to hear the case during its 2005-2006 term.
- **August 8, 2005**: Ayotte files her brief and the Bush Administration submits friend-of-the-court briefs to the U.S. Supreme Court in support of the law.
- **November 30, 2005**: Oral Arguments before the U.S. Supreme Court scheduled.

**Issues to be Resolved in the Case**

- (1) Was the 1<sup>st</sup> Circuit correct in holding that the law must contain a medical emergency exception for circumstances when the delay will undisputedly put minors' health in serious jeopardy?
- (2) Was the 1<sup>st</sup> Circuit correct in striking the Act in its entirety?

**Why is this Case Important to APA women?**

- **High Rates of Abortion Use**: APA women have one of the highest abortion rates of all minority groups, especially among Chinese American, Korean American, and Thai American women. National data reveal that 35% of pregnancies end in abortion for APA women, the second highest percentage for all racial/ethnic groups, compared to 18% for white women. One study found that between 1994 and 2000, abortion rates fell in the U.S. for all groups except APA women. Therefore, this abortion restriction case will affect APA women utilizing abortion services by opening the door for other states to impose harsher abortion restrictions.
- **High Teen Pregnancy Rates**: High teen pregnancy rates are a reality in the APA community. Most teen pregnancy studies fail to disaggregate rates by ethnic subpopulation, creating the public perception, and furthering the "model minority" belief, that teen pregnancy is not an issue for the APA community. However, one study that disaggregated the data by ethnic subpopulation showed that Laotian teens had the highest teen birth rate in California.

- **Chilling Effect:** Abortion laws like the one in this case, which have few exceptions and require APA teens to notify their parents, increase the likelihood that APA teens will be deterred from seeking safe and timely abortion services. One study found that more than half of young APA women surveyed felt uncomfortable discussing sexual matters with their parents, and more than one third never discussed pregnancy, STDs, birth control, and sexuality in their households.
- **Delay in Abortion Services:** The judicial bypass waiver contained in the statute is an unrealistic option for APA teens who may have trouble accessing and trusting the legal system because of cultural, linguistic, and financial barriers. The delay caused by the lengthy court process increases the risk and cost of late-term abortions. Requiring a minor to delay appropriate care until she can secure a court order—even when it is undisputed that in certain emergencies every minute the patient remains untreated increases her risk of serious damage to her health—is not only unconstitutional, it is inhumane.
- **Health Consequences:** If the state prevails in this case, doctors and individual women would have to risk detrimental health consequences and go to court in a moment of immediate need to seek permission to have an abortion. APA women’s health and access to safe and legal abortions will be compromised.

#### **What Does Legal Precedent Say?**

- ***Roe v. Wade (1973)*:** Forbids a state from interfering with a woman’s choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health.
- ***Planned Parenthood v. Casey (1992)*:** Any regulation that imposes a delay on a woman receiving abortion services must include a medical emergency exception. Absent such an exception, the restriction is an “undue burden”.
- ***Stenberg v. Carhart (2000)*:** the U.S. Supreme Court struck down a Nebraska law that prohibited certain abortions unless necessary to save a woman’s life because the law lacked an exception to preserve the mother’s health.

#### **Relief Sought**

- Plaintiffs are asking the Court to invalidate the Act and leave it to the New Hampshire legislature, if it so chooses, to shape a parental notification law with an emergency exception and define the scope of that exception.
- Including an emergency exception in the law would allow a physician to proceed when it is not possible to notify a parent, or not possible to obtain an immediate written certification waiving the Act’s forty-eight hour waiting period.

#### **Possible Consequences**

- In the last 30 years, legal precedent has held that abortion restrictions must contain exceptions for medical emergencies. This case could unravel decades of legal protection for APA women’s health and significantly alter the ability of APA women and doctors to prevent enforcement of dangerous abortion restrictions. In a line of cases stretching back 30 years, from *Roe v. Wade* to *Stenberg v. Carhart*, the U.S. Supreme Court has consistently held that women’s health must remain the paramount concern whenever lawmakers regulate abortion. The state’s interests and the interests underlying parental involvement in this case do not override the U.S. Constitution’s protection for teens’ health.
- Justice O’Connor cast the deciding vote in the 5-4 *Carhart* decision; her replacement will cast the deciding vote this time. A conservative U.S. Supreme Court will have enough votes to effectively diminish women’s constitutionally protected reproductive choice.

#### **Recommendations for Action**

- Learn more about this important case by visiting <http://www.ayottevplannedparenthood.org>. Familiarize yourself with the issues involved in the case by visiting our website at [www.napawf.org](http://www.napawf.org) and viewing our fact sheets on Abortion and APA Women, Expanding Reproductive Choice for Young APA Women, and Reproductive Health Care and APA Women. For a more detailed summary of the New Hampshire law at issue, see <http://www.prochoiceamerica.org/yourstate/whodecides/states/newhampshire/issue.cfm?issueid=2721>.
- Follow the developments of this case and organize and participate in education forums about the impact that this case will have on the APA women’s community.
- Hold your state and national policymakers accountable and oppose any state and national legislation that threatens to diminish or abolish women’s constitutionally protected reproductive choice and freedom.