



**AYOTTE V. PLANNED PARENTHOOD OF NORTHERN  
NEW ENGLAND:  
What Will Be Argued and What Is At Stake**

The law at issue in this case requires parental notification before an unemancipated young woman under 18 years of age may have an abortion. The notification requirement may be waived only if a young woman's life is threatened (but even then only under certain circumstances), or if she obtains permission from a judge. The law does not contain any exception for victims of rape, incest, child abuse, or for circumstances in which a young woman's health is threatened.

*The outcome of this case – particularly if it is decided after Justice O'Connor has left the Court – could affect virtually every abortion related case and statute in the country. It is possible, perhaps likely, for the Court to issue a decision that would apply to more than just parental notification/consent laws.*

The Court will consider the following 2 questions:

**1. Must a parental notification law contain an exception to protect young women's health, and how comprehensive must a life exception be to be constitutional?**

- With this case, the Court could eliminate the constitutional requirement of an exception to protect women's health, a requirement that was upheld by a 5-4 vote just five years ago.
- Relying on the standard of review set as precedent in *Casey* and *Stenberg v. Carhart*, the lower court found, "A health exception is required at any stage of pregnancy because 'a State may promote but not endanger a woman's health when it regulates the methods of abortion.'"
- In addition both lower courts found that the "life exception" in the law was unconstitutionally narrow. The circuit court affirmed the trial court's decision that the narrow life exception was impossible for doctors to comply with and "is drawn too narrowly to protect minors in need of a life-saving abortion." This issue will also be before the Supreme Court.

**2. What is the standard of review for abortion cases? Is it the standard set forth in *Planned Parenthood v. Casey* or the much stricter standard set forth in a non-abortion-related case (*United States v. Salerno*)?**

- We hope the Court determines that the *Casey* standard prevails, and that all abortion restrictions must contain comprehensive health and life exceptions.
- The *Casey* standard deems a law unconstitutional if in a large fraction of situations an abortion restriction places a substantial obstacle in the path of women seeking abortion.

- The *Salerno* standard requires that there be “no set of circumstances” under which a law could be constitutionally applied in order for it to be struck down.
- Virtually every lawsuit filed against an abortion restriction is a facial constitutional challenge, meaning that the plaintiffs claim that the statute is unconstitutional on its face (i.e., the law constitutes an undue burden). If adopted, the *Salerno* standard would mean that facial challenges to abortion restrictions would be all but eliminated.
- Eliminating facial challenges would mean that individual women or groups of women would have to challenge the constitutionality of abortion restrictions based on their personal circumstance. The more laborious litigation process would result in many women not having access to legal abortion (because they would lack the resources, time, or knowledge necessary to file a lawsuit).