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Justice Talking Radio Transcript

The Supreme Court Tackles Abortion: A Look at Mandatory Parental Involvement Laws
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In a New Hampshire case challenging a law requiring parental notification for an abortion, the hotly contested issue is again before the United States Supreme Court. Join us on this edition of Justice Talking as we talk about whether a teenager has the right to have an abortion without her parents' involvement or without going before a judge to get permission.

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MARGOT ADLER: From NPR, this is Justice Talking.

UNIDENTIFIED FEMALE: Oh, wouldn't it be wonderful for everyone if we could eliminate abortion all together? I think everyone would be happy if that were the case.

UNIDENTIFIED MALE: If my girls need to have an abortion and they don't feel like they can talk to me I'd want them to be able to safely get a good safe procedure.

UNIDENTIFIED FEMALE: Parents aren't always around. Parents aren't always willing or able to certify and they're always those cases where the family is in fact dysfunctional and notifying the parent puts the teens at risk.

UNIDENTIFIED FEMALE: If you already know in your mind that you're going to have an abortion, then I really don't think that you're going to go and tell everybody because there is a shame to it.

MARGOT ADLER: I'm Margot Adler. Today we'll be talking about teenagers' access to abortion and whether parental involvement laws help or hurt teens and their families. Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Abortion is one of the most contentious issues in America today. While abortion is legal in the United States there are a number of limits placed on access to abortion. In some states women have to wait 24 hours after talking with a counselor before receiving an abortion. Most states require some kind of parental involvement when a young woman requests an abortion.

On today's Justice Talking we'll focus on these parental involvement laws. One such law is being argued in the Supreme Court this term and challenges New Hampshire's parental notification law. Californians just voted down a proposition which would require parental notification. In the show we'll hear two reports, one about a young woman in Texas who had to go to a judge to get an abortion, and another about an organization in California working to provide alternatives to abortion. We'll also hear a pro-choice advocate and a pro-life advocate debate this thorny issue. And we'll hear two commentaries, one from a pro-life journalist and one from a pro-choice activist. Neither is happy with the strategies being used by their fellow advocates.

But first, to help us get a sense of how these laws work and what people think of them, I called a journalist who has written extensively on abortion. Cynthia Gorney is a professor of journalism at U.C. Berkeley's Graduate School of Journalism, and author of *Articles of Faith: A Front Line History of the Abortion Wars*. She joins me from the campus of U.C. Berkeley. Welcome, Cynthia.

CYNTHIA GORNEY: Thanks. Nice to be with you.

MARGOT ADLER: Cynthia, give us some background on parental involvement laws. When did these types of laws start being passed?

CYNTHIA GORNEY: Well, the laws themselves began to be passed almost the week after *Roe v. Wade* came down in January of 1973. Legislators in states that were really distressed by *Roe v. Wade* which is to say states in which abortion was illegal in 1973 until the Supreme Court said that was no longer possible, began kind of rushing to the books to figure out what they could possibly do to contain this new right that seemed to them to be outrageous. And they wrote all kinds of different regulations, one of them being parental notice or parental consent.

So over the last 30 years there have been repeated efforts by the states to get parental involvement laws approved. And what the court has done in the intervening years has essentially said that yes, a state may require some sort of parental consent or notification, some kind of parental involvement and in general that law must contain what is shorthanded as judicial bypass—which basically means a young woman who feels that it

is really not in her best interest to notify a parent generally because she's afraid of abuse or being thrown out of the house or because there is an incest situation can go to a judge and request permission from that judge to get around the parental involvement requirement.

MARGOT ADLER: In other words a waiver.

CYNTHIA GORNEY: So she can go ahead and have the abortion. Exactly.

MARGOT ADLER: Now how many states have some kind of parental involvement laws?

CYNTHIA GORNEY: The last reliable tally that I saw said that there were 34 states that now had applicable parental involvement requirements.

MARGOT ADLER: Now looking at these laws—there are a broad range of them—why don't you briefly tell us the difference. In other words, there's parental involvement and there's parental consent—how do they differ from state to state?

CYNTHIA GORNEY: Sure. If you want to call it easiest to hardest, they go from, for example, the law that was tested out here in California and was recently voted down, which would have required that one parent be notified by a clinic 48 hours before the abortion was to take place. There were various mechanisms that were part of that law. There had to be certified mail. There had to be some sort of proof that the parent actually received the notification. But then at least theoretically the parent had no subsequent right to deny the abortion.

Of course the opponents to that law said that's silly because as soon as the parent finds out, parents have all kinds of ways of forcing a 17-year-old or a 15-year-old to do things. So that's one parent notification, which is sort of the low end of the spectrum. And on the high end, I believe it is, North Dakota has a law requiring two-parent consent. And consent of course is different from notification, consent means the parent has to affirmatively say yes, I think this is okay.

MARGOT ADLER: How do most Americans feel about parental involvement laws? I know the polls show that most Americans favor them.

CYNTHIA GORNEY: Yeah, the polls are pretty consistent on this. And I don't know exactly how the questions are worded, but everybody from both sides of the aisle, if you will, on this issue seems in agreement that if you ask Americans whether they think parents ought to be involved in some fashion by law in the minor's abortion decision, they will say yes. Now what a clinic director will tell you by way of response there is those are people answering polling questions imagining an essentially healthy and intact family.

And everybody agrees that a young woman under the age of 18 ought to involve at least one of her parents in making this big decision in her life. There's no debate socially about that. The question is whether it is effective or right to have state mandates for that

kind of communication given the number of girls who are coming out of families where things really aren't working, where there's no faith in the parents, where there's serious fear that the girl is going to get thrown out on the street or whether there's some kind of an abuse situation going on.

And those directors will say I'm sorry this judicial waiver alternative just doesn't cut it when you're talking about a scared, pregnant 16 year old kid.

MARGOT ADLER: Cynthia, you've studied abortion, you're written about it, you've written about parental notification. Is this a pro-life versus pro-choice issue for most people or do many parents simply want a say in what happens to their kids?

CYNTHIA GORNEY: That's a very hard question to answer simply. It is certainly a pro-life/pro-choice issue in the sense that if you are a strongly pro-life person, you start out believing that for a young woman to make this decision is a really bad thing that will cause her grief and pain for many, many years to come. And for that reason it's terribly important to have a parent involved so that at minimum the parent can be supportive and I guess ideally the parent can talk her out of it.

For a person who doesn't believe that an abortion is necessarily a grief and pain-inducing experience in a woman's life, this is a more complicated issue. Anybody who has a child or has a daughter knows that you want to know about the big things that are going on, and one of the arguments commonly raised in favor of parental involvement laws is, for goodness sake, around here a kid has to have the parent's permission to get ears pierced or to get a tattoo. This is a much more medically serious business.

And so you will find, I think, a lot of people who feel strongly that abortion should be legal, who feel strongly that it is a woman's right to do it, who waiver an awful lot on this question. And I think for the voters of California here it really does turn on finally the issue of whether you can mandate it for families that really aren't working anyway.

MARGOT ADLER: Thank you so much for talking with me Cynthia.

CYNTHIA GORNEY: Thank you.

MARGOT ADLER: Cynthia Gorney is a professor of journalism at U.C. Berkeley's Graduate School of Journalism and author of *Articles of Faith: A Front Line History of the Abortion Wars*.

MARGOT ADLER: In many states, teens who don't want to or can't talk to their parents about getting an abortion have to go before a judge to get a waiver. Independent producer Reese Urlich takes us through that process and tells us about one young woman's experience.

DOCTOR ROSALES: (Phone ringing) Planned Parenthood, Golden Gate.

REESE URLICH: Dr. Ann Foster Rosales, chief medical officer, walks me through the San Francisco Planned Parenthood clinic, which offers a variety of women's health services, including abortion. Security is tight.

DOCTOR ROSALES: We have to take it seriously. I mean, we got a bomb threat. We have domestic terrorists in this country.

REESE URLICH: Dr. Foster Rosales has supported a woman's right to choose to have her baby or have an abortion for as long as she can remember.

DOCTOR ROSALES: This was an issue of choice for women and that whatever choice they made was fine but I remember having strong feelings about that even as a preteen or a teen. I'm not sure where that came from other than from a sense of embracing social justice at a very early age.

REESE URLICH: Dr. Foster Rosales and many other health professionals strongly oppose laws requiring parental notification or consent for abortions. She says such laws only delay access to proper medical care as teens are forced to deal with red tape and the courts.

DOCTOR ROSALES: And that results in delayed access to prenatal care should the young woman choose to continue her pregnancy. It results in a delay to the eventual pregnancy termination care should she choose to ultimately terminate the pregnancy. And from a public health point of view and from a medical point of view, that's not safe.

REESE URLICH: Dr. Foster Rosales says a study by the University of California Medical Center indicates 61 percent of minors seeking an abortion do notify a parent and those who don't oftentimes have an abusive situation at home or don't even have a home.

DOCTOR ROSALES: It assumes some Ozzie and Harriet family—very middle class, white-style 1950s family that simply does not exist.

REESE URLICH: Heather, a teen living in Houston, Texas, faced that problem when she sought an abortion at age 16. She asked that we only use her first name.

HEATHER: I don't know where my dad was, like I haven't known where my dad is since I was little. And I didn't know where my mom was either, but I found out not too long ago that she had been in jail.

REESE URLICH: Texas had required parental notification and recently implemented a parental consent law. Because Heather couldn't locate her parents she had to find an attorney to take her case before a judge. She says the process was humiliating.

HEATHER: You have to tell all these strangers your business and what if they say no, like some complete stranger has total control over you, you know they can make or break the rest of your life. It was, like, nerve wracking.

REESE URLICH: I asked what she would have done if a judge had turned down her request.

HEATHER: I probably would have been devastated, like depressed and just ... I don't know ... it would have been bad. I was going to try to just go somewhere else, like to another state.

REESE URLICH: Anecdotal reports from abortion providers in New Mexico say there has been an increase in the number of Texas teens seeking abortions. Critics say notification laws neither improve communication with parents nor lower the abortion rate. As for Heather, she says the decision to have an abortion was right for her.

HEATHER: I don't have any regrets at all, because if I hadn't done what I did I wouldn't be able to do the things that I do now. I wouldn't be able to help the people that I've helped. I wouldn't be able to graduate high school. I wouldn't be able to have the job that I have now. I probably wouldn't be able to go to college.

REESE URLICH: Heather has been accepted at college and will enter next fall. For Justice Talking I'm Reese Urlich, San Francisco.

MARGOT ADLER: Coming up, teenagers tell us whether they think their parents should be involved in their decision to have an abortion.

UNIDENTIFIED FEMALE: I don't want to tell my parents because I'm afraid of what they'd say and what they'd think of me.

MARGOT ADLER: And my conversation with two opposing advocates about these laws and whether they protect or endanger young women. Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show we're talking about what kind of access a teenager should have to abortion services. Should a 15 year old girl be able to get an abortion without her parents' knowledge? Most states have laws requiring some kind of involvement from parents. We'll hear from some parents later in our show, but we also wanted to find out what teens think about this issue. So we asked some 15 and 16 year old girls whether they think a teen should legally have to tell her parents if she wants to have an abortion.

UNIDENTIFIED FEMALE: No. I don't think that I should have to let my parents know, because in some situations kids may not be able to talk openly with their parents and their

parents might not want to give consent. Their parents might want them to have the child. And if I feel like I'm not ready to take on the responsibility of a child I don't think that I should be forced to.

UNIDENTIFIED FEMALE: Oh, yeah, the parents should have the right to know what their child is doing, that they're, like, getting pregnant. They should actually know that because that's their child.

UNIDENTIFIED FEMALE: I don't want to tell my parents because I'm afraid of what they'd say and what they'd think of me.

MARGOT ADLER: A group of young women from an after-school theater program at Planned Parenthood of Southeastern Pennsylvania. Pennsylvania's law requires women under 18 to get permission from a parent before having an abortion. To talk about parental involvement laws around the country we have two advocates joining us. Cathy Ruse is a senior fellow for legal studies for the Family Research Council, a Christian advocacy organization. She is also the former chief spokesperson on human life issues for the U.S. Catholic Bishops. She joins us from a studio in Arlington, Virginia. Welcome, Cathy.

CATHY RUSE: Thank you, glad to be here.

MARGOT ADLER: Also with me is Louise Melling, director of the Reproductive Freedom Project at the American Civil Liberties Union. She oversees nationwide litigation programs as well as legislative efforts in Congress and the state legislatures. She joins us from a studio in New York City. Welcome Louise.

LOUISE MELLING: Thank you so much. I'm delighted to be here.

MARGOT ADLER: Now let's talk about the New Hampshire law that's being challenged in the Supreme Court. Louise, can you tell us about that law and what's at stake in your view.

LOUISE MELLING: What's at stake here really is the ability, specifically, vis-à-vis New Hampshire, for teens to be able to get care that they need to prevent harm in the context of a medical emergency. The broader question of course is whether abortion laws have to have an exception to protect women's health. The New Hampshire law, a law that requires a doctor to notify a parent and then delay an abortion for 48 hours after notifying a parent—there is no exception in that law in those cases where there is a medical emergency that would pose a serious risk to the teen's health. There is no dispute in the case that there are situations where a pregnancy will endanger the health—even in a period as short as 48 hours there is a risk of infertility, infection, kidney and liver damage. So what's at issue here is the ability of doctors to be able to go forward and take care of our daughters' health.

MARGOT ADLER: Cathy, what's your own worst fear about having the New Hampshire law struck down, if it is?

CATHY RUSE: First this case goes well beyond New Hampshire. And everyone really knows that. This case will have a great impact on parental involvement laws throughout this country. There are approximately 44 states have some form of parental involvement law. All of those laws are at risk by what may happen in this case. What is being sought is a health exception for a parental involvement law. Now, the Supreme Court has never required a health exception for a notification law. And the court's definition of health is so broad that it would cover much more than serious conditions, it would cover emotional, familial and the woman's age, and that's a quote from the Supreme Court. So that means that if emotions, family status, and age become automatic exceptions for a secret abortion, which is what a health exception would do, then no parent will ever have the right to be involved in their child's abortion decision. And that's bad law and that's bad policy.

MARGOT ADLER: Do you think, Louise, that the decision in New Hampshire, if let's say, the law is struck down, would threaten parental involvement laws in all states?

LOUISE MELLING: No, not at all. And I just want to clarify—right now what we have are laws that have been in effect for over 30 years. And those laws almost uniformly include an exception for those occasions where the delay mandated by the law would cause serious risk to a teen's health.

MARGOT ADLER: Louise Melling of the ACLU's Reproductive Freedom Project.

If a doctor has to wait 48 hours before giving an abortion under the New Hampshire law, I'll start with Louise, why would that waiting period be a problem?

LOUISE MELLING: Because as the evidence in the case showed, there are circumstances, there are medical conditions such that a delay of 48 hours or less can put a teen or a woman at serious risk of infertility, liver damage, and kidney damage. These are serious conditions. And there are two things that are significant, you know, when we think of that type of harm. One is there wasn't a dispute that those conditions exist in the case.

MARGOT ADLER: Is being pregnant that dangerous. I mean, I don't understand that?

LOUISE MELLING: Fortunate for most of us being pregnant isn't that dangerous, but in some cases—and you know many of us know people for whom this has happened—in some cases the pregnancy sort of goes awry and there are serious medical conditions.

MARGOT ADLER: Cathy, do you want to respond?

CATHY RUSE: I do want to respond. If there are health issues involved, that is even more reason that the teenager's parents should be brought in, because it's the parents who have the girl's medical history at hand, they know whether there may be some serious medical

contraindication from surgery. If there are health issues at stake, that is all the more reason to get parents involved. And look, under the New Hampshire law the notice provision is waived if the parents certify in writing that they've been notified and that they, in other words, obviously are not objecting to the abortion.

So if there is some health need, if it is medically necessary notify the parents, the parents are not going to want their child to undergo a health risk. They are going to want what's best for the child. That's what this law presumes. And that in fact is what the Supreme Court, in the Casey decision, based approval of parental involvement laws on. I quote: "These laws are based on the quite reasonable assumption that minors will benefit from the consultation with their parents and that children do not often realize that their parents have their best interests at heart."

LOUISE MELLING: I think that there is no question that we would all want to talk to a doctor before a serious procedure. What's at issue here though is a delay period. Parents aren't always around. Parents aren't always willing or able to certify. And there are always those cases where the family is in fact dysfunctional and notifying the parent puts the teens at risk.

MARGOT ADLER: Cathy, is the pregnancy the health risk or the abortion?

CATHY RUSE: Well that's a very good question. It seems that my colleague is focusing on one end of the equation. The abortion itself of course can present possible physical and psychological health risks that a state may properly take into consideration when deciding whether or not to have a parental involvement law. One colleague of mine had a secret abortion at 16 because she didn't want her parents to know she'd been sexually active. That is a common reason cited for seeking a secret abortion.

What followed for my colleague was 18 years of emotional fall-out from abortion—self-destructive behavior, alcohol abuse, an inability to bond with her other children. She regards aborting her child at 16 as the single worse decision she ever made. And if her parents had been notified, they may have been able to help her make a better decision. And this is not one isolated case. There's a website called afterabortion.com, a pro-choice website nevertheless set up for women to talk to each other to help them cope with the aftermath of their abortions.

MARGOT ADLER: On the other hand, Louise, you would say that there are probably, for every woman who has such an experience, there are other women who basically don't have a big experience about it at all.

LOUISE MELLING: Yeah, and I think what's also important when we talk about communications and what Cathy was talking about, which is family communications, are essential. You do want your daughter to come to you, you do want your daughter to talk to you. But what a parental involvement law does is really sort of shift the focus. Laws can't create good family communications.

MARGOT ADLER: Cathy how do you legislate good family relationships and communication? I mean, so many parents and teens aren't even talking to each other.

CATHY RUSE: Well, the law recognizes the teen's diminished capacity to act on her own in many respects and in many areas. Going on a field trip, you can't take a child on a field trip without the parent's permission. You can't give a child an aspirin at school without the parent's permission. I mean, minors are not seen as having the full panoply of rights. And that is properly so. They do have a diminished capacity. This is nothing new. They can't make financial transactions that are binding. They can't enter a valid will by themselves. So to say that they ought to be able to get a secret abortion without their parents' involvement, that there ought to be one exception to this whole treatment of children under the law and that ought to be abortion does not make any sense.

MARGOT ADLER: In a number of states both parents have to give consent for a minor to get an abortion. And that of course brought up the notion that there are so many single parent families. What about families where one parent is missing? What about families where they don't know who the father is, or the father is dead, or the mother is missing? What do you do in those kinds of cases? Louise?

LOUISE MELLING: In those kind of cases, right, you have laws like that in Minnesota, you have laws like that in Mississippi. In those kinds of cases what happens is either the teen needs to go to court or the teen goes to court with the one parent who is there usually to sort of ask for permission for the abortion to go ahead, even without involving the second parent. But what I think your question raises is sort of the real world consequences of parental involvement laws. There is a whole host of compelling reasons why that's an example of how the government forcing communication just doesn't really make sense, and in fact hurts the family that exists.

CATHY RUSE: You know, it's odd to frame it as government forcing communication. Look, no one can operate on your child without your consent, no matter whether the child wants the operation or not, unless there is an emergency. It just doesn't happen today. And people understand that.

MARGOT ADLER: Let me ask you something Cathy. Isn't it true that you can have a baby, which I guess would mean that you can have a caesarean, without parental consent?

CATHY RUSE: In cases of emergency, absolutely surgery can be performed because the parents' consent is presumed or assumed, so that would be an emergency situation. But when it is not an emergency—and that is what we're talking about—no one's disputing emergency situations. What we are disputing is not non-emergency situations. And in that situation, to say that parents have no rights to be involved and children have no right to the benefit of the people who care about them most is unreasonable.

MARGOT ADLER: Louise?

LOUISE MELLING: Medical emergencies are at issue. In fact, medical emergencies are at issue in the Supreme Court, so with respect to what Cathy just said is at issue, the very question right now is whether in the context of a parental involvement law in a medical emergency a doctor can be forced to delay, at risk to the teen's health. Cathy's been using some examples and I just want to use one from a state where I was involved where we challenged a law where teens were required to notify a parent before seeking an abortion.

The injunction didn't take effect immediately, and the very first teen who under the state law was required to notify her parent called the clinic within the next week and said she was now living in a car. She notified her mother; she was kicked out of the house; her mother struck her and took away her money. That's what's at issue here. There are some families where the communication just isn't sound and where it's not safe to make the teen turn to the parent.

And there is nothing in the absence of a law that takes away parents' rights or stops parents from talking to their children or from asking them about sex, from counseling them about sex and creating communications.

MARGOT ADLER: Coming up we'll have more of our conversation with Louise Melling and Cathy Ruse. But first, independent producer Reese Urlich takes us to a Catholic mass in Woodland, California where one woman is working to give women an alternative to abortion.

CHRISTINE SIPPERLY: Good morning, my name's Christine Sipperly. I'm on the board of directors for Sacramento Life Center.

REESE URLICH: This Sunday morning at a mostly working class mass in rural California, Christine Sipperly describes how her organization helps provide pregnant women with alternatives to abortion. They encourage the women to keep the child or give it up for adoption. And they give advice on how the girls should tell their parents about the pregnancy. Later Sipperly welcomes me into her large 70 year old home near the University of California, Davis campus.

The house sports a giant peace symbol on the chimney and signs supporting Proposition 73, a California constitutional amendment on the ballot that would have required notification of one parent prior to an abortion for a girl under 18. The proposition was defeated on November 8th by a margin of 53 to 47 percent. Sipperly says parental notification laws are necessary because many teens don't tell their parents. If the parents are abusive or the teen has another legitimate reason, she says the law allows the teen to make her case before a judge.

CHRISTINE SIPPERLY: In the other states where there is parental notification, they have the forms right there at the clinics and they serve as her advocate and they help her access the

judge. So the argument that well, a 15-year-old is not going to know how to access the judicial system, is ridiculous.

REESE URLICH: Sipperly and other supporters of Proposition 73 see the issue of parental notification as one step in a bigger battle against abortion and contraception.

CHRISTINE SIPPERLY: Oh, wouldn't it be wonderful for everyone if we could eliminate abortion all together? I think everyone would be happy if that were the case. Well, I'm a Catholic and I'm opposed to contraception in general because of the contraceptive mentality. Sexuality is a good thing. It was created by God. We're basically giving our children a message that they're not in control of their sexual behavior.

REESE URLICH: Sipperly says it's important for the community to provide viable alternatives for pregnant teens. Walking upstairs Sipperly says that she sometimes provides rooms for pregnant girls who need temporary housing.

CHRISTINE SIPPERLY: And this is where Danielle stayed.

REESE URLICH: Danielle Mannix, about to be a single mom at age 22, faced many of the same problems as girls under 18. She didn't want an abortion but says if she had decided to get one she wouldn't have told her parents.

DANIELLE MANNIX: If you already know in your mind that you're going to have an abortion then I really don't think that you're going to go and tell everybody because there is a shame to it.

REESE URLICH: Even after deciding to keep her baby, Mannix waited a month to tell her parents who had been divorced when she was young.

DANIELLE MANNIX: And my mom's a very strong-hearted woman, so it wasn't the easiest thing to sit down with her and tell her. I was quite scared. And then my dad—it was a little bit longer because we were going through a rough time.

REESE URLICH: Mannix says she supports laws to require parental notification as a way to bring families together. Parental notification laws, says Sipperly, are a part of a fight against what they call a "culture of death" that includes abortion and contraception. She says 50 years from now history will justify their actions.

CHRISTINE SIPPERLY: We may be looking back at these days and saying do you really mean to say that in the late 20th century women were killing their children before they were born? How could that have possibly ever happened?

REESE URLICH: At the church mass, Christine Sipperly finishes her talk about the culture of death. In an unusual display, the parishioners broke out in applause.

CHRISTINE SIPPERLY: Thank you so much for letting me come and speak to you this morning. (Applause)

REESE URLICH: For Justice Talking, I'm Reese Urlich from Davis, California.

MARGOT ADLER: Coming up, more of our debate on parental involvement laws for teens seeking an abortion. And later in the show we'll learn more about what Supreme Court nominee Samuel Alito thinks about women's rights. Don't go away.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. We've heard from some young people about what they think of parental involvement laws. Now let's hear what some parents think when it comes to their teenager having an abortion.

UNIDENTIFIED FEMALE: Children are under our care as minors, at least up until the age of 18. And we need to be able to administer good health for them. And if they go off and have abortions, we don't know what's going on with their bodies. So we have to be able to supervise after a procedure like that. So because we are their primary care givers until at least the age of 18, we should be able to know.

UNIDENTIFIED MALE: If my girls need to have an abortion and they don't feel like they can talk to me I'd want them to be able to safely get a good safe procedure, get themselves out of trouble.

UNIDENTIFIED FEMALE: If you are a minor, your parents are still responsible for you until you are at least 18 years old.

UNIDENTIFIED MALE: I think the parents should be notified immediately.

UNIDENTIFIED FEMALE: I wouldn't want a young woman to not have access to an abortion, a safe abortion, because otherwise she's liable to go to somebody that isn't safe.

MARGOT ADLER: Some parents in Philadelphia sharing their views on whether their daughter should have to tell them if she wants an abortion. With me to talk about parental involvement laws for minors are Louise Melling, director of the ACLU's Reproductive Freedom Project, and Cathy Ruse, a senior fellow for legal studies at the Family Research Council.

There are some people who consider themselves pro-choice who also support parental involvement laws. And there are some in the pro-choice movement who say parental involvement laws are just a tactic by pro life people to limit access to abortion. Cathy, are these laws a stepping stone to overturning Roe v. Wade or not?

CATHY RUSE: Well, they've been around for a long time and they've been upheld for I think over 20 years now in the Supreme Court. So if they are a stepping stone we're not stepping anywhere. They've just been around and they've just been helping parents be involved in their children's abortion decisions. Look, it is a response to the idea that abortion is in a category by itself under the law. We reject that idea, because the law routinely requires parental involvement in any medical decision really, even as little as getting an aspirin from the school nurse. The idea is whether or not abortion should be exempt from that. And the answer that 44 states have given is no, parents ought to be involved.

MARGOT ADLER: Louise, do you think these laws are a stepping stone to overturning *Roe v. Wade*?

LOUISE MELLING: I think these laws are definitely an effort to restrict access and they have made it more difficult for teens in many jurisdictions to get abortions or to get them without delay or without harm. Teens need to know that there is a confidential safe way that they can seek the care. It's so important that the teen have a safe place to go.

MARGOT ADLER: Last question. I'd like to ask you both what you think will happen in the Supreme Court with the New Hampshire case. I'll start with you, Cathy.

CATHY RUSE: Well, the Constitution does not require a health exception to otherwise valid abortion law. And the Supreme Court has never imposed such requirements outside laws banning abortion such as the ban on partial birth abortion. And in fact, the Court has reviewed parental notification statutes that do not have a health exception and the Court has upheld those. In particular in the *Hodgson vs. Minnesota* case.

So I think you know it's hard to predict with the court, you really never know. And you really never know when it comes to abortion because they can decide to do their own thing and make all our predictions fail. But if I had to predict I would say that there's a good chance that this New Hampshire law will be upheld. However if it's not and if the court decides that a broad health exception is required for every parental involvement law, then we've got big changes on our hands. And we've got abortion providers whose decision that a child will be emotionally aided by an abortion trumping the right of parents to be involved in an abortion decision. And that will be a disaster.

MARGOT ADLER: Louise, what do you think will happen?

LOUISE MELLING: I don't know what will happen but I know what's at stake. What's at stake here is whether abortion laws have to have an exception to protect teens as well as women from medical emergencies. Again, there's no dispute in this case that the delay of 48 hours could cause permanent harm to health, including infertility for teens. I can't see any reason why we would ever want our court to say anything other than that no law should compromise our health, no law should compromise our daughters' health.

And that's what the Court has said before, that's what the Court has said in Casey when it looked at a 24 hour delay and a waiting period when it looked at the delay at issue in the parental consent law, when it looked at harm to women's health in its most recent decision. Over and over the Court has said you can't, when you pass a law, compromise someone's health. And we hope that the court will do so again here.

MARGOT ADLER: We have to wrap up this conversation. I want to thank both of my guests. First, Cathy Ruse from the Family Research Council, thank you so much for coming on the show.

CATHY RUSE: You're most welcome.

MARGOT ADLER: And I'd also like to thank Louise Melling from the ACLU's Reproductive Freedom Project. Thank you so much for being here.

LOUISE MELLING: Thank you.

MARGOT ADLER: Because the debate over abortion has become so polarized we thought it would be interesting to hear two commentaries, one pro-choice, one pro-life. But neither commentator is happy with how advocates on their side are addressing the issue of abortion. Frances Kissling is the president of Catholics for a Free Choice. She has been a vocal proponent of reproductive freedom for women around the world for more than 35 years. Here is her challenge to the pro-choice movement.

FRANCES KISSLING: Some 40 years ago the ethicist Daniel Callahan noted that no county where abortion was then legal was happy with their laws. The same is true today for the U.S., where abortion politics have become stale and unsatisfactory. A small minority of Americans want abortion to be totally illegal, a comparable minority long for the unrestricted right articulated in Roe. The majority of Americans want abortion to be legal but restricted. They want some sense of social constraints in place, some way of believing that abortion is being taken seriously.

Abortion proponents find this desire difficult to understand. We have had the law on our side, and so our discourse is concentrated on getting the right politicians elected, on going into court to preserve the court finding of Roe, and on countering the anti-abortion movement's focus on the fetus with a focus on the women. This leaves little room to acknowledge that adolescents are in need of their parents' help, that abortion in later stages of pregnancy is deeply troubling, and that the prevention of unintended pregnancy is a critical element of a responsible personal life as well as a social value.

Poor Hillary Clinton was pilloried by some in the pro-choice movement when she called abortion a tragic choice. Her husband was derided for saying that it should be safe, legal and rare. Advocates of legal abortion claim that such talk denigrates women who have abortions. Now most pro-choicers think that having sex without using birth control is

morally irresponsible and dumb. But political correctness prevents us from so saying. We might hurt some women. Such schizophrenic thinking! On the one hand we claim women are moral agents capable of making good decisions. On the other we fear they will fall apart if we express our values about responsibility.

In the current climate of the American obsession with moral values, and on its own terms, such an approach is doomed to failure. For me it lacks moral nuance that permeates almost all other areas of moral decision-making, and it ignores the feelings women themselves have about abortion. Some women feel only relief following an abortion. Others feel some sadness, sadness perhaps of that which could not be. Both views need to be respected.

If the pro-choice movement is to win the hearts and minds of most Americans who believe abortion should be legal but regulated, that abortion is a serious business which involves both respect for women's lives and for the value of developing fetal life, then the pro-choice culture must change. And we must acknowledge the multiple values at stake in every abortion decision. And we must work more diligently to prevent need for abortion, because we love women so much we do not want them to need to make this incredibly difficult choice.

MARGOT ADLER: Francis Kissling is president of Catholics for a free choice.

Joe Feuerherd is the Washington correspondent for the National Catholic Reporter. In his commentaries and columns he has made clear his opposition to legalized abortion. But he also has a few criticisms of the pro-life movement.

JOE FEUERHERD: It's hard to remember given the politics of the past 35 years, but abortion was not always a partisan issue. Now positions have hardened. Democrats, particularly those with national ambitions are by and large pro-choice. Republicans, especially those with an eye on the White House, are pro-life. The predictable result is partisan stalemate and direct mail fundraising operations that put millions into the coffers of partisans, not to mention approximately 1.3 million legal abortions each year in this country. That number should be unacceptable to anyone who bears the pro-life label.

The politics of abortion causes strange distortions. Such groups as the National Right to Life Committee, for example, have sold out millions of grassroots, pro-life activists by casting their lot completely with the Republican party, by taking the party's money, by donating almost exclusively to Republican candidates, and by engaging in inter-party squabbles over such issues as campaign finance reform that have absolutely nothing to do with abortion.

Religious groups, including some Catholic bishops have contributed to these distortions. Last election a handful of high profile bishops threatened to deny democratic presidential candidate John Kerry communion because of his pro choice stance. While such Republican Catholics as California Governor Arnold Schwarzenegger and New York Governor George Pataki got a pass. The result of this partisanship is that the pro-life

movement is subverted. For example, Congress is now considering legislation that could result in 300,000 fewer low-income Americans receiving food stamps. Given that most abortions are sought by unmarried low-income women with rational concerns about how they will provide for their child, a reasonable argument can be made that such cuts are not pro-life. But that is not an argument that you will hear from anti-abortion groups beholden to a political party that favors such cuts.

Unable to address the demand side of the abortion equation, the social conditions which drive women to choose the procedure, the partisan pro-lifers focus exclusively on the supply side, the laws that make abortion legal. The course of power of the state, the law, is one way to regulate behavior. And pro-life advocates would be remiss if they didn't use the legislature and courts. But there are other tools, social spending and such outreach programs as crisis pregnancy centers among them, that do not get the support they deserve from those who call themselves pro life.

And then there is the most important element of all in a democracy, persuasion. Abortion, one pro-life activist told me recently, should not be just illegal, but unthinkable.

MARGOT ADLER: Joe Feuerherd is the Washington correspondent for the National Catholic Reporter.

MARGOT ADLER: Last week I spoke with Constitutional lawyer Larry Tribe about Supreme Court nominee Judge Samuel Alito. Here is the second part of our conversation.

Welcome Larry.

LAWRENCE TRIBE: Very good to be here, Margot.

MARGOT ADLER: In a recent op-ed in the Boston Globe you seemed to say that more important than asking Judge Alito what his position is on Roe v. Wade or states rights is to look at what you call "the window through which Alito gazes at the social world." And so as you look at that social world what do you see?

LAWRENCE TRIBE: Well in Alito's case, first of all, I've only begun to sample it, and there are thousands of pages yet to be looked at. But I see a fixation on a very traditional conception of social and gender roles that is not always sensitive to realities that were evident even to as conservative a jurist as Chief Justice Rehnquist, in a case that bothers me quite a bit, a case in which Judge Alito wrote an opinion holding that Congress does not have the power to compel states to provide family medical leave to their employees.

The opinion that he wrote really paid no attention to something that was decisive in Chief Justice Rehnquist's opinion not long afterward in a virtually identical case, upholding the power of Congress. That is, the question was whether or not this is an example of

Congress's enforcement of the equal protection clause of the 14th Amendment. And the very fact that there are stereotyped roles for men and women that assume without much thought that the woman is the primary family caregiver and that the man is going out in the world to earn a living generates a distinct difference in the impact on men and women of a policy by state governments or any other large entity not to give certain forms of family medical leave.

MARGOT ADLER: And you're sort of saying that perhaps his world view does not admit to that kind of gender discrimination.

JOE FEUERHERD: Well he takes it as sort of a natural baseline that of course women are going to be staying at home by and large and men are going to be going out and earning a living. That's not the fault of the states, and therefore Congress doesn't have any particular power to remedy it. Likewise he suggests that in another case, a rather famous one that involves the power of a state to require spousal notification by a married woman in the event that she chooses to have an abortion...

MARGOT ADLER: This is Planned Parenthood vs. Casey?

JOE FEUERHERD: Right, the very case in which the U.S. Supreme Court reaffirmed the core principles of *Roe v. Wade*. In the opinion he wrote, he simply took it as a given that the husband has the kind of interest in the matter which makes it not particularly burdensome for a woman to have to notify the husband. My point about that isn't that it gives me a sense that he's going to come out to the right of O'Connor on abortion, although he might. My sense, rather, is that of a piece with these other cases in which, borrowing not from the underlying principles of the Constitution itself or the broad aspirations of the framers but rather from a particular social vision of the appropriate or natural roles of men and women, he has a view or appears to have a view of the powers of Congress and of the limits of state authority, vis-à-vis the individual, that would freeze into place as though it were somehow part of our Constitutional destiny, the power imbalance between men and women or perhaps other social groups.

MARGOT ADLER: Larry Tribe, thanks so much for talking with me.

LAWRENCE TRIBE: Thank you.

MARGOT ADLER: Larry Tribe is a constitutional scholar and is the Carl M. Loeb professor at Harvard University. That's it for today's show. One note: Executive Producer Kathryn Kolbert represented Planned Parenthood in the 1992 Supreme Court case, *Planned Parenthood vs. Casey*. She did not participate in the writing, editing or taping of this show.

Let us know what you think about the issues raised by today's Justice Talking. Do you think pregnant teenagers should have to tell their parents if they want to get an abortion? You can share your thoughts at justicetalking.org. There you can also listen to past

shows and learn more about parental involvement laws. I hope you'll tune in next week,
I'm Margot Adler.
