

Testimony by former Lieutenant Governor Loren Leman
Senate HESS Committee Hearing on SJR 4
March 16, 2021 at 1:30 pm

Vice Chairman Hughes, and members of the Senate HESS committee,
Thank you for inviting me to testify. Although at least four of you know me quite well, for the record I'm Loren Leman. I reside in Anchorage. I represented parts of west, Downtown and northwest Anchorage in the Legislature for 14 years, and served as Lieutenant Governor for four years. I support SJR 4 as an important step to restore to the people of Alaska and their legislators the ability to set policy on abortion. Sadly, that authority has been usurped for more than two decades by Alaska courts.

This is my story of a 23 year journey defending the rights of parents to be involved in the lives of their minor daughters. Although this effort has been disrupted and delayed, I'm not defeated, and I'm not giving up.

In 1997, I sponsored SB 24 to enable the State to enforce a law on the books since 1970 that required a doctor to obtain parental consent before performing an abortion on a girl under 18 years of age. An opinion issued by Attorney General Avrum Gross later that decade said that the law was unenforceable because of a U.S. Supreme Court ruling requiring that state parental involvement laws allow minors to seek a waiver in court—this is commonly known as a judicial bypass. So for many years the State ignored enforcing the parental consent law.

The bill I introduced added a judicial bypass provision – in full compliance with the rulings of the U.S. Supreme Court. At the time, that Court had most recently issued a 9-0 decision in a case from Montana, saying in effect, “Don’t send us any more of these cases—we have already told you, we approve parental involvement statutes with these provisions.” Even Justice Ruth Bader Ginsburg joined this decision. SB 24 passed the Legislature with supermajority support – enough to override a veto from then-Governor Tony Knowles.

But before the law could take effect, Planned Parenthood challenged it in court. The Parental Consent Act was tied up in court for 10 long years. I was extremely disappointed when the Alaska Supreme Court, in a divided 3 to 2 decision, struck it down. One of the dissenting voices, respected Justice Bud Carpeneti from Juneau, expressed my thoughts when he wrote:

“...this court’s rejection of the legislature’s thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature’s role in expressing the will of the people...”

In the majority opinion, Justice Dana Fabe allowed in clear language that a law that is less restrictive, such as requiring only parental notification, would be acceptable.

Taking the Court at its word, a bill to do this was introduced in the Legislature, but it was not advanced through committee. So I joined with two other Alaskans, one was Senator Costello, to sponsor a voter initiative to pass a law requiring parental notice.

Compared to the Legislature, an initiative is a far more tedious and expensive process. However, hundreds of Alaskans volunteered their time, gathering more than 45,000 signatures to place this measure on the 2010 ballot. More than 56 percent of Alaska's voters approved Ballot Measure 2. In most Alaskan elections, that would be considered a landslide.

Planned Parenthood once again challenged the law. Superior Court Judge John Suddock upheld the law, relying on the Supreme Court's assurance that a parental notification law would be considered constitutional. But shockingly, when the voter-approved law reached the Supreme Court years later, four justices ignored their previous commitment and struck it down. They produced what was, in my opinion, 64 pages of legal nonsense to justify their position. The one very cogent dissenting opinion was from then-Chief Justice Craig Stowers who wrote:

"I cannot see how the court can reach these results under our standard of review for constitutional questions: 'adopting the most persuasive rule of law in light of precedent, reason, and policy.'"

Justice Stowers is correct. Based on "precedent, reason, and policy" the Court's rulings defy comprehension. I conclude that on this topic, the decisions of a majority of Supreme Court justices are driven not by the law, but by personal ideology.

That is a big problem. You as legislators make public policy decisions influenced by your values and life experiences. You earned that right by winning an election. But unelected judges never earned that right. And when they exceed their authority, they deserve an aggressive response from the people protected by our constitution. That's us. Passage of SJR 4 will allow Alaskans to weigh in again.

I understand that abortion is a sensitive topic. However, this resolution by itself doesn't change abortion law. Rather, it restores to elected leaders, and the people of Alaska, the proper role of setting abortion policy. That power has been taken away from us, and we are living with the bad results every day. SJR 4 is a step in the right direction to correct that, and when passed by the Legislature and the voters of Alaska, will invite considerably more discussion on what type of protections we want for parents and their children. I hope to participate in that discussion.

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