



## Litigation Challenging Pennsylvania's Medicaid Ban on Abortion Coverage Heads to State Supreme Court

*As the U.S. Supreme Court is poised to revisit Roe, Pennsylvania-based abortion providers seek to protect reproductive rights and expand abortion access in Pennsylvania.*

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PENNSYLVANIA, October 13, 2021 – Today, a group of Pennsylvania-based abortion providers represented by attorneys from the Women's Law Project; law professor David S. Cohen; Planned Parenthood Federation of America; and a private law firm filed their opening brief with the Pennsylvania Supreme Court in the case of *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, asking the Court to strike down the Pennsylvania ban on Medicaid coverage for abortion.

Pennsylvania's Medicaid program has excluded coverage for abortion except in narrow circumstances since 1985, preventing low-income Pennsylvanians from using their insurance for an essential reproductive health service. Overwhelmingly, the people who are most harmed are Black and Latinx, who because of racism and systemic discrimination are more likely to be low-income and use the Medicaid program. This litigation seeks to restore abortion coverage for every person who could become pregnant and is enrolled in the Medicaid program. If it succeeds, Pennsylvania will join the seventeen other states, including neighboring New York and New Jersey, that cover abortion through Medicaid.

"While all eyes are on the U.S. Supreme Court, we must remember that Pennsylvania's Constitution explicitly guarantees equality on the basis of sex and prohibits laws that confer different burdens or benefits on men and women," says **WLP attorney Susan J. Frietsche**. "This case is an opportunity for the Supreme Court of Pennsylvania to put into practice a central promise of our state constitution by ending the discriminatory ban on Medicaid coverage of abortion and affirming the right to safe, legal abortion care."

"For too long, Pennsylvanians enrolled in Medicaid have been forced to find separate funds for abortion — a financial burden that shouldn't exist under a program intended to pay for essential health care. The state's ban on abortion coverage for Medicaid enrollees is blatantly discriminatory against Black and Latinx Pennsylvanians, who due to systemic racism, are more likely to face economic hardship and use public insurance coverage," says **Planned Parenthood Federation of America president and CEO Alexis McGill Johnson**. "Access to constitutionally protected health care should not depend on your income, your race, or your zip code. Planned

Parenthood is proud to join our partners in this fight to make abortion accessible to all Pennsylvanians.”

“This case seeks to restore equitable health care coverage that was lost due to discriminatory political interference from the state,” says **WLP staff attorney Christine Castro**. “The lawmakers who advanced this ban into law clearly declared that, if it was legal, they would’ve forced all Pennsylvania women to carry pregnancies against their will. Instead, they targeted women in poverty, which disproportionately harms Black women, immigrants, and people of color. The ban is cruel, and it’s also unconstitutional under the Pennsylvania Constitution.”

"Health care is a human right, and people deserve the right to decide if and when they want to become pregnant free of stigma. For too long, Pennsylvania's harmful Medicaid ban on abortion coverage has not given Pennsylvanians this freedom," says **Planned Parenthood Pennsylvania Advocates executive director Signe Espinoza**. “We are overdue for a Pennsylvania where health care decisions can be made without systems of oppression interfering. Bottom line, our communities deserve access to care however and whenever they need it."

The central claim in the case is that the state’s Medicaid abortion coverage ban violates the Equal Rights Amendment and equal protection provisions of the Pennsylvania Constitution. In 1985, the Pennsylvania Supreme Court ruled that the coverage ban was constitutional in a case called *Fischer v. Department of Public Welfare*. Petitioners seek a court order overruling the 1985 *Fischer* decision, recognizing abortion as a fundamental right, and restoring Medicaid coverage of abortion.

“The Pennsylvania Supreme Court has a long and proud tradition of reading our state constitution to boldly protect more rights than the U.S. Constitution. We are asking our court to follow this tradition once more in the context of reproductive rights and justice,” said **professor David S. Cohen of Drexel University’s Kline School of Law**.

Eight *amicus curiae* briefs supporting petitioners were filed in the case.

Case documents are available at [www.womenslawproject.org](http://www.womenslawproject.org).

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