



Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services

Background, Legal History, Litigation Roles

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A group of abortion providers who provide 95% of abortions in Pennsylvania is challenging Pennsylvania's ban on Medicaid coverage of abortion in a case called *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*.

For decades, Pennsylvania law has discriminatorily targeted low-income women by banning state Medicaid coverage of abortion in violation of the Pennsylvania Constitution.

The case was initially filed in the Commonwealth Court of Pennsylvania in January 2019. After a loss at Commonwealth Court, the case will appear before the Supreme Court of Pennsylvania—the only state court with the authority to overrule *Fischer v. Department of Public Welfare*, the erroneous decision that allowed the ban on Medicaid coverage of abortion care to go into effect in 1985.

Arguments in *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* will take place at 9:30 AM on October 26 at the City-County Building in Pittsburgh. Audio will be live-streamed [here](#).

Central Claims

The central claims of this lawsuit are that Pennsylvania's ban on Medicaid coverage of abortion ban violates the Equal Rights Amendment and equal protection provisions of the Pennsylvania Constitution.

Specifically, petitioners seek a court order requiring the Pennsylvania Department of Human Services to comply with the state Constitution by covering abortion through Medicaid, a court order declaring abortion is a fundamental right under the Pennsylvania Constitution, and to overrule the 1985 Pennsylvania Supreme Court decision in *Fischer v. Department of Public Welfare*. Petitioners also request the Supreme Court of Pennsylvania reverse the Commonwealth Court's improper rulings regarding standing and intervention.

Legal History

1976: The Hyde Amendment is attached to the federal budget. The Hyde Amendment bans federal funds from covering most abortion care through Medicaid. Medicaid, however, is a joint federal-state program. States retain the right to cover abortion care under Hyde. Currently, 17 states cover abortion through their Medicaid program.

1982: Pennsylvania enacts the Abortion Control Act of 1982, banning Medicaid funds from covering abortion care except in narrow circumstances. The ban was challenged in court and enjoined from taking effect pending litigation. This is referred to as the “coverage ban” in litigation documents.

1985: Pennsylvania’s coverage ban was upheld by the state Supreme Court in *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985). However, this lone precedential ruling was unsoundly reasoned and replete with legal error. Legal and factual developments since *Fischer* have further eroded its legitimacy.

January 16, 2019: Represented by attorneys from the Women’s Law Project; law professor David S. Cohen; Planned Parenthood Federation of America; and the private law firm Troutman Pepper LLP, a group of non-hospital-based abortion providers in Pennsylvania filed a lawsuit challenging the state statute that bans abortion coverage through the Pennsylvania Medicaid program. The providers in the case provide about 95% of all abortions performed in the Commonwealth of Pennsylvania. The case was filed in Pennsylvania Commonwealth Court.

April 17, 2019: A group of Pennsylvania House Republicans and a separate group of Pennsylvania Senate Republicans filed applications in the Commonwealth Court of Pennsylvania requesting to “intervene” in the case. In their papers to the court, the lawmakers threatened to punitively withhold funding for contraception if the Court finds Pennsylvania’s coverage ban unconstitutional.

January 2020: The intervention request was granted.

May 15, 2020: The abortion providers filed their first brief detailing their full argument regarding how Pennsylvania’s coverage ban is unconstitutional and highlighting extensive research that demonstrates failing to fund abortion care harms women, particularly women of color. *Amici Curiae* New Voices for Reproductive Justice, National Health Law Program, Pennsylvania Religious Coalition for Reproductive Justice, and members of the Democratic Caucuses of the Pennsylvania House and Senate filed briefs supporting petitioners.

March 26, 2021: Commonwealth Court of Pennsylvania ruled against the providers. This step cleared the way to argue before the Supreme Court of Pennsylvania — the only court with the power to overturn the 1985 precedent that approved the coverage ban. Commonwealth Court also determined that abortion providers cannot challenge abortion restrictions on behalf of their patients. This ruling on the legal doctrine of “standing” defies well-established precedent from U.S. courts and every other state court going back decades. Judge Ellen Ceisler dissented from the portion of the ruling regarding standing.

October 13, 2021: The abortion providers and *amici curiae* filed briefs with the Supreme Court of Pennsylvania asking the court to overturn the 1985 precedent, restore Medicaid funding for abortion care, and declare abortion a fundamental right under the state constitution.

December 13, 2021: Pennsylvania and intervenors filed initial briefs with the Supreme Court of Pennsylvania. Supplemental briefing was filed on August 18, 2021.

October 26, 2022: Women’s Law Project attorney and interim co-director Susan J. Frietsche and law professor David S. Cohen will argue on behalf of petitioners before the Supreme Court of Pennsylvania.

Glossary / Litigation Roles

Attorneys/Counsel: Attorneys who filed the lawsuit on behalf of Pennsylvania abortion providers: Women’s Law Project; Drexel Law professor David S. Cohen; Planned Parenthood Federation of America; and the private law firm Troutman Pepper LLP.

Petitioners/appellants: The non-hospital abortion providers in Pennsylvania who filed the lawsuit.

Affiant/Supporter: People who submitted affidavits testifying to their experience and perspective related to the case:

- Terry-Ann Thompson, Ph.D., Ibis Reproductive Health
- Sarah Noble, MD, MPH, Board-certified psychologist based in Pennsylvania
- Courtney Schreiber, MD, MPH, Division Chief and Medical Director at the Perelman School of Medicine, University of Pennsylvania
- Colleen Heflin, Professor of Public Administration and International Affairs and a Senior Research Associate in the Center for Policy Research at the Maxwell School of Citizenship and Public Affairs at Syracuse University
- Elicia Gonzales, Executive Director, Women’s Medical Fund

Intervenors: People or organizations who want to participate in a case because they believe the outcome may affect their rights or duties. In this case, intervenors are a group of Republican members of the Pennsylvania House of Representatives and a group of Republican members of the Pennsylvania Senate.

Amici Curiae: People and organizations who aren’t parties to the case but filed briefs outlining their personal or professional insight and perspective on the relevant issues. More than 40 organizations signed on as *amici* supporting petitioners in this case.