



Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services

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In *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* (ARHC v. PA DHS), a group of freestanding Pennsylvania abortion providers challenged the state statute that bans abortion coverage through the Pennsylvania Medicaid program (also known as “Medical Assistance”).

The group of Pennsylvania abortion providers (“provider-appellants”) are represented by attorneys from the Women’s Law Project, law professor David S. Cohen, Planned Parenthood Federation of America, and a private law firm.

Currently, the Pennsylvania Abortion Control Act prohibits the use of Commonwealth funds to cover abortion including in the Medical Assistance program, except for abortions necessary to avert the death of the pregnant woman or to end a pregnancy caused by rape or incest. See 18 Pa. C.S. §§ 3215(c).

Litigation documents can be found on WLP’s website [here](#).

Central Claims & Argument

The central claim of this case is that the state’s Medicaid abortion coverage ban violates the Equal Rights Amendment and equal protection provisions of the Pennsylvania Constitution.

Specifically, the abortion providers 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 explicitly affirming reproductive autonomy rights are protected as fundamental rights under the Pennsylvania Constitution; and
- A court order overruling the 1985 Pennsylvania Supreme Court decision in *Fischer v. Department of Public Welfare*.

Provider-appellants also request the Supreme Court of Pennsylvania reverse the Commonwealth Court’s improper rulings on standing and intervention.

The provider-appellants’ summary of argument can be found on page 9 of [the brief filed to the Supreme Court of Pennsylvania](#):

The coverage ban unconstitutionally discriminates against pregnant women enrolled in Medical Assistance who choose abortion. There is no sex-specific medical care for men that Medical Assistance excludes from coverage. Furthermore, Medical Assistance covers pregnancy and childbirth, but excludes abortion. These discriminatory coverage provisions violate the Pennsylvania Constitution's Equal Rights Amendment and equal protection guarantees.

Case Timeline

- 1982: Pennsylvania enacted the Abortion Control Act, banning Medicaid from covering abortion care except in very narrow circumstances (“the Medicaid ban” or “the coverage ban”)
- 1982: Litigation is filed to challenge the Medicaid ban
- 1985: The Supreme Court of Pennsylvania upholds the Medicaid ban in *Fischer v. Department of Public Welfare*
- January 16, 2019: *ARHC v. PA DHS* was filed in Commonwealth Court
- October 14, 2020: [Oral arguments](#) took place in Commonwealth Court
- March 26, 2021: Commonwealth Court issued a ruling
- October 13, 2021: Provider-appellants filed opening briefs with the Supreme Court of Pennsylvania
- October 26, 2022: Oral arguments took place in the Supreme Court of Pennsylvania

Legal History

1976: The Hyde Amendment was 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. Currently, 17 states cover abortion through their Medicaid program, including neighbor states New Jersey, New York, and Maryland.

1982: Pennsylvania enacted the Abortion Control Act of 1982, banning Medicaid funds from covering abortion care. The ban was challenged in court and enjoined (prevented) 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 a private law firm, a group of non-hospital-based abortion providers in Pennsylvania filed this 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 the Commonwealth Court of Pennsylvania.

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 the brief submitted by Pennsylvania House Republicans, 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 asserting Pennsylvania’s coverage ban is unconstitutional. The brief also highlighted extensive research that proves failing to fund abortion care harms women, particularly Black women and women of color. *Amici Curiae* led by 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: The Commonwealth Court of Pennsylvania ruled against the providers, clearing the way to the Supreme Court of Pennsylvania — the only court with the power to overturn the 1985 precedent that upheld the coverage ban. The 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. Judge Ellen Ceisler dissented from the part of the ruling about 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 abortions, and explicitly affirm reproductive autonomy rights are protected under the Pennsylvania Constitution.

June 24, 2022: The U.S. Supreme Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey* in the *Dobbs* decision, elevating the importance of explicit articulation of reproductive autonomy rights found in state constitutions.

October 26, 2022: *ARHC v. PA DHS* was argued before the Supreme Court of Pennsylvania.

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 a private law firm.

Petitioners/appellants/ “provider-appellants”: The group of non-hospital-based 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, former Executive Director, Abortion Liberation Fund (formerly Women's Medical Fund)

Intervenors: People or organizations who request 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.

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