

ALLEGHENY REPRODUCTIVE HEALTH CENTER v. PA DEPT. OF HUMAN SERVICES

On January 29, 2024, the Pennsylvania Supreme Court issued a complex ruling that represents a landmark legal victory for Pennsylvania abortion providers and a step closer to reproductive freedom for Pennsylvanians.

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 Pennsylvania abortion providers filed a lawsuit challenging the state statute that bans abortion coverage through the Pennsylvania Medicaid program in Commonwealth Court on January 16, 2019.

BACKGROUND

Why we challenged Pennsylvania's Medicaid ban on abortion coverage:

- Though abortion is legal in Pennsylvania, people have inadequate and inequitable access due to Pennsylvania's enforcement of many abortion restrictions opposed by medical experts.
- The Medicaid ban is the biggest obstacle to abortion access in Pennsylvania and explicitly targets people already oppressed at the intersections of gender, race, and class.
- Robust research has found denying abortion care due to lack of resources undermines public health and poses a range of serious harms.

We filed *ARHC v. PA DHS* to:

- Eliminate Pennsylvania's Medicaid ban on abortion coverage
- Overrule *Fischer*, the legal precedent established in 1985 that not only upheld the Medicaid ban but also stopped our state Equal Rights Amendment from applying to situations involving unique physical characters related to sex, which effectively locked state court doors to challenging abortion restrictions as sex- and gender-based discrimination
- Restore and reinvigorate our state Equal Rights Amendment
- Ask the Court to explicitly articulate reproductive autonomy as a fundamental right protected by the Pennsylvania Constitution

THE RULING

The Supreme Court of Pennsylvania overturned the 1985 *Fischer* precedent.

- The Court overturned *Fischer*, which opens our state court doors to challenging the Medicaid ban—and other abortion restrictions—as sex- and gender-based discrimination in violation of our state constitutional rights.
- Overturning *Fischer* represents a sea change in the legal framework for challenging abortion restrictions in Pennsylvania.

By overturning *Fischer*, the Supreme Court of Pennsylvania restored and reinvigorated our state Equal Rights Amendment.

- Adopted in 1971, the Pennsylvania ERA states: “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.”
- Overruling *Fischer* restores the full promise of our state ERA by allowing the ERA to apply to abortion restrictions.

The Pennsylvania Medicaid ban is still in effect - for now.

- The Court declared the Medicaid ban “presumptively unconstitutional” under the new legal framework established by overturning *Fischer*. Then the Court remanded the case back down to Commonwealth Court for that court to apply the new framework.

What the Supreme Court of Pennsylvania said about explicitly articulating reproductive autonomy rights protected by the Pennsylvania Constitution:

- A majority of the Court did not hold that reproductive autonomy is a fundamental right protected by the Pennsylvania Constitution but signaled they might do so if and when the question returns to the court.
- Two (out of five) Justices hearing the appeal explicitly stated that our state constitution “secures the fundamental right to reproductive autonomy, which includes a right to decide whether to have an abortion or to carry a pregnancy to term.”
- A third Justice called that opinion “incredibly insightful,” but decided that resolving that question was not required at this time.
- The two Justices who found a right to abortion spoke eloquently about its connection to privacy and personal autonomy: “Whether or not to give birth is likely the most personal and consequential decision imaginable in the human experience. Any self-determination is dependent on the right to make that decision.”

The Supreme Court of Pennsylvania held that abortion providers have standing to sue on behalf of their patients.

- Standing is the legal term for the right to participate in a case by demonstrating a sufficient connection to and harm from the law or action being challenged.
- The Court affirmed that our clients, a group of freestanding abortion providers in Pennsylvania, can bring constitutional challenges on behalf of their patients, as has been legal practice for decades.
- Depriving pregnant people of the ability to challenge abortion restrictions by eliminating abortion providers’ ability to sue on their behalf is an explicit goal of the anti-abortion movement.

The Supreme Court of Pennsylvania ruled that anti-abortion Pennsylvania legislators could not intervene in the case.

- Intervention refers to when a third party seeks to join a lawsuit by arguing they have a personal stake in the case.
- A group of 19 anti-abortion state Senators and 8 anti-abortion state Representatives were allowed to intervene in this case by Commonwealth Court.
- The Supreme Court disagreed, rejecting the anti-abortion lawmakers as intervenors and asserting they “have no interest greater than the ordinary citizen.”
- In their request to intervene, the anti-abortion Representatives threatened to punish Pennsylvanians by eliminating funding for contraception if the Medicaid ban is deemed unconstitutional. We will closely watch for any indication that they will act on this threat.