



Pennsylvania Supreme Court Rules in Favor of State's Abortion Providers in Critical Abortion Rights Case

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PENNSYLVANIA – January 29, 2024: This morning, the Pennsylvania Supreme Court ruled in favor of the state's abortion providers and delivered a huge victory in *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*.

The Court [ruled](#) Pennsylvania's abortion providers could challenge the Pennsylvania ban on Medicaid coverage for abortion as sex discrimination under the Equal Rights Amendment and as a violation of the Equal Protection provisions of the Pennsylvania Constitution. In doing so, the court overruled the decades-old precedent that foreclosed such a challenge.

"The Court gave our clients an enormous victory this morning," **said WLP co-executive director Susan J. Frietsche**, who argued the case before the Pennsylvania Supreme Court with constitutional law professor David S. Cohen and WLP attorney Christine Castro. "We are still determining next steps, but we are confident the Medicaid abortion ban will be consigned to the scrapheap of history very soon."

"Today's decision is a landmark victory for reproductive freedom," **said Planned Parenthood Federation of America president and CEO Alexis McGill Johnson**. "With abortion under attack across the country, Pennsylvania continues to be a beacon of hope. Planned Parenthood Federation of America applauds the advocates and providers, including our Pennsylvania affiliates, who fought tirelessly for this win."

Two Justices of the Court 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 by this case. The two Justices who found a right to abortion spoke eloquently about its connection to privacy: "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."

"Even though a majority of the Court didn't hold there is a fundamental right to abortion in Pennsylvania," **said David S. Cohen, constitutional law professor at Drexel Kline School of Law**. "This issue will come back to the Court in the future, and we now have a great building block to accomplish that goal."

From the Court's majority opinion: "We take seriously the express recognition of the right to equality of the sexes under the law and the magnitude of this special protection against the denial or abridgment of rights under the law based on sex contained in our Equal Rights Amendment... Thus, a challenge to a law as violative of Section 28 begins with the premise that a sex-based distinction is presumptively unconstitutional. It is the government's burden to rebut the presumption with evidence of a compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy. The judicial inquiry will be searching, and no deference will be given to legislative policy reasons for creating sex-based classifications. Given these parameters, we acknowledge that few, if any, sex-based conferrals of benefits or burdens will be sustainable."

The Court also ruled for the providers on two procedural issues. The Court ruled Pennsylvania’s abortion providers can bring cases on behalf of their patients, and the self-selected group of House and Senate Republicans who sought to be “intervenor” cannot join as parties to the case.

“We are grateful to our clients, heroic abortion providers who are providing critical patient care to patients while in court fighting for the patients they couldn’t see because they were being denied care under a cruel political barrier that targets low-income Pennsylvanians,” **said WLP senior staff attorney Christine Castro.**

Thank you to our lead *amicus* supporters New Voices for Reproductive Justice and 22 reproductive justice organizations, National Health Law Program, National Women's Law Center, Members of the Democratic Caucuses of the Pennsylvania House and Senate, ACLU and Professors Seth Kreimer and Robert Williams, numerous medical organizations and medical professionals (Obstetrical Society of Philadelphia, Philadelphia County Medical Society, the Midwife Center for Birth & Women's Health, Physicians for Reproductive Health, Medical Students for Choice, and individual healthcare providers), faith-based organizations (National Council of Jewish Women, Catholics for Choice, Pennsylvania Religious Coalition for Reproductive Justice, Reconstructing Judaism, Religious Coalition for Reproductive Choice, Unitarian Universalist Church of the Restoration), and ERA Project.

Litigation documents can be found [here](#).

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