

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

*Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services* is our litigation challenging Pennsylvania's statutory ban on Medicaid coverage of abortion.

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 in January 2019.

In January 2024, the Pennsylvania Supreme Court issued a landmark legal ruling hailed as "the strongest rebuke to Dobbs yet."

- The Court overturned a faulty precedent known as *Fischer*, thereby restoring the Pennsylvania Equal Rights Amendment (PA ERA) and returning the full breadth of the state-based constitutional right to be free from sex-based discrimination to Pennsylvanians for the first time in nearly 40 years.
- 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."
- Restoring the PA ERA opens our state courts to challenging the Medicaid ban and other abortion restrictions as sex-based discrimination in violation of our state constitutional rights.
- The Justices declared the Medicaid ban "presumptively unconstitutional" under the PA ERA.
- The Court then returned the case to Commonwealth Court for that court to apply the new framework.

In February 2025, WLP attorneys argued that Pennsylvania's ban on Medicaid coverage of abortion violates Pennsylvanians' right to be free of sex-based discrimination in Commonwealth Court.

In May 2025, Pennsylvania Attorney General Dave Sunday filed a brief to Commonwealth Court defending the Medicaid ban. WLP attorneys filed a response to this brief.

In June 2025, we were notified that we will be re-arguing the case in Commonwealth Court in September 2025 to enable AG Sunday to present arguments in the case.

### **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."