



## Colautti v. Franklin

439 U.S. 379 (1979)

**Country:** United States

**Region:** Americas

**Year:** 1979

**Court:** Supreme Court

**Health Topics:** Health care and health services, Informed consent, Medical malpractice, Sexual and reproductive health

**Human Rights:** Right to due process/fair trial, Right to privacy

### Facts

The Respondents, a licensed obstetrician and several non-profit organizations, brought suit claiming that Â§ 5(a) of the Pennsylvania Abortion Control Act of 1974 (the Act) was unconstitutionally vague.

Section 5(a) of the Act required every person who performed or induced an abortion to have made a determination, based on "experience, judgment or professional competence," that the fetus was not viable. If the determination made was that the fetus was viable, or if there was "sufficient reason to believe that the fetus may be viable," then that person was required to exercise the same care to preserve the fetus' life and health as would be required in the case of a fetus intended to be born alive. The person performing the abortion was required to use the abortion technique which provided "the best opportunity for the fetus to be aborted alive so long as a different technique [was not] necessary in order to preserve the life or health of the mother." Section 5(d) of the Act also imposed a penal sanction for a violation of Â§ 5(a).

The District Court upheld the Respondent's claim and this appeal followed.

### Decision and Reasoning

The Court held that the viability determination requirement and the standard of care requirement in Â§ 5(a) were unconstitutionally vague. The Court declared that greater statutory precision was required before the State could subject a physician to possible criminal sanctions.

Firstly, it found the wording of the phrase "sufficient reason to believe that the fetus may be viable" was subjective and ambiguous as to when the physician's duty to the fetus arose. The Court stated that it was unclear whether, in order to activate the duty to the fetus, there must be "sufficient reason" from the perspective of the judgment, skill, and training of the attending physician, from the perspective of a cross section of the medical community, or from the perspective of a panel of experts.

Secondly, the Court held that the distinction between "is viable" and "may be viable" did not fit with the of viability set forth in *Roe v Wade*, 410 U.S. 113 (1973) and in *Planned Parenthood v Danforth*, 428 U.S. 52 (1976). The Court suggested that the phrase "may be viable" "carve[d] out a new time period during pregnancy when there [was] a remote possibility of fetal survival outside the womb, but [when] the fetus ha[d] not yet attained the reasonable likelihood of survival that physicians associate[d] with viability."

Thirdly, the Court held that the vagueness of the viability determination requirement was compounded by the fact that Â§ 5(d) subjected the physician to strict criminal liability. The Court declared that by directing the physician to determine whether the fetus was viable or may be viable the statute was "little more than a trap for those who act[ed] in good faith." It noted that "a statute imposing strict civil and criminal liability for an erroneous determination of viability, could have a profound chilling effect on the willingness of physicians to perform abortions near the point of viability in the manner indicated by their best medical judgment."

Finally, the Court held that the standard of care provision was impermissibly vague because it created uncertainty as to whether it permitted "the physician to consider his duty to the patient to be paramount to his duty to the fetus, or whether it require[d] the physician to make a trade-off between the patient's health and increased chances of fetal survival."

The Court held that the determination of viability and the choice of an appropriate abortion technique was a

matter for medical judgment and required that adequate discretion be afforded to the physician. The Court reached its decision based on *Roe v. Wade*, *Planned Parenthood v. Danforth*, and *Doe v. Bolton*, 410 U.S. 179 (1973).

### Decision Excerpts

“Viability is reached when, in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside the womb, with or without artificial support. Because this point may differ with each pregnancy, neither the legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability—be it weeks of gestation or fetal weight or any other single factor—as the determinant of when the State has a compelling interest in the life or health of the fetus. Viability is the critical point. And we have recognized no attempt to stretch the point of viability one way or the other.” 439 U.S., pp. 388-89.

“In the face of [] uncertainties, it is not unlikely that experts will disagree over whether a particular fetus in the second trimester has advanced to the stage of viability. The prospect of such disagreement, in conjunction with a statute imposing strict civil and criminal liability for an erroneous determination of viability, could have a profound chilling effect on the willingness of physicians to perform abortions near the point of viability in the manner indicated by their best medical judgment.” 439 U.S., p. 396.

“Consequently, it is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus, or whether it requires the physician to make a “trade-off”™ between the woman's health and additional percentage points of fetal survival. Serious ethical and constitutional difficulties, that we do not address, lurk behind this ambiguity. We hold only that where conflicting duties of this magnitude are involved, the State, at the least, must proceed with greater precision before it may subject a physician to possible criminal sanctions.” 439 U.S., pp. 400-01.

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)