Thornburgh v. American College of Obstetricians and Gynecologists

476 U.S. 747 (1986)

Country: United States
Region: Americas
Year: 1986
Court: Supreme Court
Health Topics: Child and adolescent health, Health care and health services, Informed consent, Medical malpractice, Sexual and reproductive health
Human Rights: Right to due process/fair trial, Right to liberty and security of person, Right to privacy

Facts

Respondents, including Pennsylvania physicians, abortion counselors and providers, brought this challenge to provisions of Pennsylvaniaâ€™s Abortion Control Act 1982 (the Act). The Act imposed the following conditions on the provision of abortion services in Pennsylvania:

1.Â Â Â Â The informed consent provision (Â§ 3205) required women to be informed of:

The name of the physician performing the abortion;
The medical risks associated with the procedure and, alternatively, of carrying the child to term;
Possible detrimental physical and psychological effects, and that medical assistance benefits might be available;
The fatherâ€™s responsibility to assist in the childâ€™s support; and
That printed materials were available from the State describing the fetus and listing agencies offering alternatives to abortion.

2.Â Â Â Â The printed information provision (Â§ 3208) required the availability of printed materials, including information about agencies willing to help the mother carry her child to term and assist her after the childâ€™s birth, and a description of the anatomical and physiological characteristics of an unborn child.

3.Â Â Â Â The reporting provision (Â§ 3214) required a report, available for public inspection and copying, to be signed by the attending physician, describing:

The identity of the referring and attending physician;
Personal and demographic information about the woman seeking an abortion;
Explanation of the basis for the judgment that a medical emergency existed or for a determination of nonviability; and
The method of payment used to pay for the procedure. Â

4.Â Â Â Â The determination of viability provision (Â§ 3211) required the physician, after the first trimester, to reportÂ the basis for his determination of nonviability.

5.Â Â Â Â The provision which addressed the degree of care required in post-viability abortions (Â§ 3210(b)) required a physician performing a post-viability abortion to exercise the degree of care required to preserve the life and health of any unborn child intended to be born, and to use the abortion technique that would provide the best opportunity for the unborn child to be aborted alive unless it would present a significantly greater medical risk to the pregnant woman's life or health.

6.Â Â Â Â The second physician provision (Â§ 3210(c)) requiredÂ that a second physician be present during an abortion when viability was possible. This physician was to take all reasonable steps necessary to preserve the child's life and health.

The Supreme Court spent considerable time in its judgment discussing whether it had appellate jurisdiction, but ultimately reviewed the constitutionality of the aforementioned six provisions.

Decision and Reasoning

The Court held that the six abovementioned provisions of the Act were unconstitutional. It stated that â€œStates are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies.â€• The Court held that all the provisions â€œwholly subordinate[d] constitutional privacy interests and concerns with maternal health in an effort to deter a woman from making a decision that, with her physician, [was] hers to make.â€• The Court declared that â€œfew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman's decision whether to end her pregnancy.â€•

Informed consent

The Court held that the informed consent provision provided women with â€œthe antithesis of informed consentâ€•; it stated that the provision was â€œdesigned not to inform the womanâ€™s consent but rather to persuade her to withhold it altogether.â€•

The court emphasised that the rigid requirement for a specific body of information to be provided in all cases was inappropriate and potentially destructive of the physician-patient relationship. It explained that being told information about fetal characteristics may be cruel for a patient with a life-threatening pregnancy, and that a victim of rape should not have to hear about an unidentified perpetratorâ€™s responsibility to support the child should she continue the pregnancy to term.

Printed materials

The Court held that the printed materials provision infringed upon the exercise of the physicianâ€™s proper professional judgment, and intruded upon the private dialogue between the woman and her physician.

Reporting and determination of viability

The Court held that the reporting and determination of viability provisions raised the possibility of identification, public exposure and harassment of women and thus endangered the exercise of the right to terminate a pregnancy.

Degree of care required in post-viability abortions

The Court held that the language of the provision could only be interpreted as unconstitutionally requiring â€œthe mother to bear an increased medical risk in order to save her viable fetusâ€• in post-viability abortions.

Second physician requirement

The Court held that the second physician requirement did not provide a medical emergency exception and thus did not exhibit the requisite intent to protect women whose lives were at risk.

Decision Excerpts

â€œThe States are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies. Appellants claim that the statutory provisions before us today further legitimate compelling interests of the Commonwealth. Close analysis of those provisions, however, shows that they wholly subordinate constitutional privacy interests and concerns with maternal health in an effort to deter a woman from making a decision that, with her physician, is hers to make.â€•Â 476 U.S., p. 759.

â€œThe printed materials required by Â§Â§ 3205 and 3208 seem to us to be nothing less than an outright attempt to wedge the Commonwealth's message discouraging abortion into the privacy of the informed-consent dialogue between the woman and her physician. The mandated description of fetal characteristics at 2-week intervals, no matter how objective, is plainly overinclusive. This is not medical information that is always relevant to the woman's decision, and it may serve only to confuse and punish her and to heighten her anxiety, contrary to accepted medical practice.â€• 476 U.S., p. 762.

â€œ[T]he listing of agencies in the printed [] form presents serious problems; it contains names of agencies that well may be out of step with the needs of the particular woman and thus places the physician in an awkward position and infringes upon his or her professional responsibilities. Forcing the physician or counselor to present the materials and the list to the woman makes him or her in effect an agent of the State in treating

the woman and places his or her imprimatur upon both the materials and the list.â€• 476 U.S., p. 762-63.

â€œAll this is, or comes close to being, state medicine imposed upon the woman, not the professional medical guidance she seeks, and it officially structures â€” as it obviously was intended to do â€” the dialogue between the woman and her physician.â€• 476 U.S., p. 763.

â€œThe requirements . . . that the woman be informed by the physician of â€˜detrimental physical and psychological effectsâ€™ and of all â€˜particular medical risksâ€™ compound the problem of medical attendance, increase the pa anxiety, and intrude upon the physician's exercise of proper professional judgment. This type of compelled information is the antithesis of informed consent. That the Commonwealth does not, and surely would not, compel similar disclosure of every possible peril of necessary surgery or of simple vaccination, reveals the anti-abortion character of the statute and its real purpose.â€• 476 U.S., p. 764.

â€œPennsylvania's reporting requirements raise the specter of public exposure and harassment of women who choose to exercise their personal, intensely private, right, with their physician, to end a pregnancy. Thus, they pose an unacceptable danger of deterring the exercise of that right, and must be invalidated.â€• 476 U.S., p. 767-68.

â€œWe necessarily conclude that the legislature's failure to provide a medical-emergency exception in Â§ 3210(c) was intentional. All the factors are here for chilling the performance of a late abortion, which, more than one performed at an earlier date, perhaps tends to be under emergency conditions.â€• 476 U.S., p. 771.