



SisterSong Women of Color Reproductive Justice Collective v. Kemp (11th Cir.)

Topics Covered: Reproductive Health & Abortion

Issue

The issue in this case is whether a Georgia law (House Bill 481), which (a) forbids abortions when a fetal heartbeat is detectable and (b) requires that a fetus be deemed a “natural person” or a “human being” for purposes of all Georgia statutes that use the word “person” or “human being,” is constitutional.

AMA Interest

The AMA opposes any government regulation or legislative action that interferes with clinical encounters between a patient and physician without a compelling and evidence-based benefit to the patient, a substantial public health justification, or both. Early termination of pregnancy is a medical matter between the patient and physician.

Case Summary

A collective of reproductive health care clinics filed suit claiming that Section 4 of House Bill 481 violates the Due Process Clause of the Fourteenth Amendment, in that heartbeats can be detected in fetuses before the fetus becomes viable. Thus, House Bill 481 prohibits abortions in non-viable fetuses, in violation of a woman’s right of privacy as recognized in *Roe v. Wade* and other Supreme Court decisions.

The suit further alleges that Section 3 of House Bill 481 violates the Due Process Clause, because it is unconstitutionally vague. The plaintiffs argue that the Georgia statutes use the terms “person” and “human being” hundreds of times, in both civil and criminal laws. It would be impossible for pregnant women and physicians to know what actions are forbidden or required, and thus they would not know how they could comply with the various laws. For example, a pregnant woman with an eating disorder could be deemed guilty of child cruelty. Likewise, if a physician found that a pregnant woman was living with an abusive partner, he might (or might not) have to report that finding to a law enforcement agency as child abuse or be guilty of a misdemeanor.

On cross-motions for summary judgment, the trial judge found in the plaintiffs’ favor, declared House Bill 481 unconstitutional, and enjoined its enforcement. The defendants have appealed to the Eleventh Circuit. The case has been stayed pending the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*.

Litigation Center Involvement

The Litigation Center, along the Medical Association of Georgia, ACOG, and other organizations, filed a brief in support of the plaintiffs and their challenge to HB 481.

Eleventh Circuit Court of Appeals Brief