



Wollschlaeger v. State of Florida (11th Cir.)

760 F.3d 1195 (11th Cir. 2014)

Topics Covered: Physician-Patient Communications

Issue

The issue in this case is whether a state law that restricts physicians' communications regarding their patients' firearm ownership violates the First Amendment.

AMA Interest

The AMA encourages its members to reduce firearm morbidity and mortality by asking their patients about household firearms and educating their patients about the dangers such firearms may pose. The AMA opposes laws that restrict physicians from discussing firearms safety with their patients.

Case Summary

Florida enacted the Firearms Owner's Privacy Law (FOPL), which prohibits health care providers from (i) intentionally recording information concerning firearm ownership in a patient's medical record if the information is not relevant to the patient's medical care or safety or the safety of others; (ii) asking a patient whether he or she owns a firearm unless the information is relevant to the patient's medical care or safety or the safety of others; (iii) discriminating against a patient based solely on firearm ownership; and (iv) unnecessarily harassing a patient about firearm ownership. Violation of the law constitutes grounds for discipline under the Florida licensure statutes.

Three physicians and the Florida chapters of the American Academy of Pediatrics, the American Academy of Family Physicians, and the American College of Physicians sued several Florida government officials to prevent enforcement of the FOPL. The suit, organized and effectively prosecuted by the Brady Center to Prevent Gun Violence, alleged that FOPL violated the rights of free speech between physician and patient guaranteed under the First and Fourteenth Amendments of the United States Constitution.

The trial court found that certain sections of the Firearms Owner's Privacy Law interfered with physicians' right of free speech, and the judge entered a summary judgment which prohibited enforcement of the invalid portions of the law. The State of Florida appealed to the Eleventh Circuit.

On July 25, 2014, a panel of the Eleventh Circuit, by a split decision, seemingly held that physician communications with patients were entitled to only minimal, "rational basis" protection under the First Amendment. As a result, physicians could be required to tailor their patient communications to further a state's political agenda, so long as the state could advance a

minimally rational basis for its restrictions on the physicians' communications. Thus, FOPL was deemed facially constitutional, and the lower court was reversed.

However, the same Eleventh Circuit panel, on its own volition, filed two subsequent decisions to substitute for its initial ruling (which it had withdrawn without public notice). The panel both times reached the same result as it had in the July 25, 2014 apparent ruling, but with more discussion of the legal precedents that apply to First Amendment cases of this nature.

Finally, pursuant to a petition by the plaintiffs, the Eleventh Circuit ordered that the case be reheard *en banc*. This means that all of the non-senior status judges sitting on the Eleventh Circuit will make the final ruling. Briefing for the rehearing *en banc* has been completed, and oral argument was heard on June 21, 2016.

AMA Involvement

The AMA organized a coalition of several national specialty medical societies as amici and wrote and filed an *amicus* brief in the Eleventh Circuit, in support of the physician plaintiffs as part of the initial appeal. The AMA also wrote and filed an *amicus* brief in support of the (moot) 2014 petition for rehearing *en banc*. The AMA wrote and filed an *amicus* brief in support of the petition for rehearing *en banc* of the July 28, 2015 ruling.

United States Court of Appeals for the Eleventh Circuit brief (original panel)

United States Court of Appeals for the Eleventh Circuit brief (2014 moot petition for rehearing *en banc*)

United States Court of Appeals for the Eleventh Circuit brief (petition for rehearing of July 28, 2015 ruling)

United States Court of Appeals for the Eleventh Circuit brief (in support of the plaintiffs at rehearing *en banc*)