

Planned Parenthood v. Danforth (1976)

On 1 July 1976, the US Supreme Court decided in the case *Planned Parenthood v. Danforth* that provisions of a Missouri law regulating abortion care were unconstitutional. That law, House Bill 1211, restricted abortion care by requiring written consent for each abortion procedure from the pregnant woman as well as written consent of the woman's husband if she was married, or the written consent of her parents if she was unmarried and younger than eighteen. House Bill 1211 also required that physicians make efforts to preserve the lives of aborted fetuses. Following the passage of House Bill 1211 in 1974, two physicians and Planned Parenthood of Central Missouri challenged the law. Following the decisions by several lower courts, the US Supreme Court ruled on the case. The US Supreme Court struck down parts of a law that violated the US Constitution and the prior court case *Roe v. Wade*, and in doing so, they expanded access to abortion care in the US.

Prior to *Planned Parenthood v. Danforth*, the US Supreme Court in Washington, D.C., had legalized abortions in the US with their decision in the 1973 case *Roe v. Wade*. In *Roe v. Wade*, the Court ruled that states could not place undue restrictions on women's access to abortions within the first trimester of pregnancy. But the Supreme Court did not define the term undue restriction, and many states passed laws to regulate abortion care. On 14 June 1974, Missouri governor Kit Bond signed House Bill 1211 into law, which regulated abortions performed in the state.

Three days after House Bill 1211 was signed into law, two physicians and Planned Parenthood of Central Missouri challenged the law in court. Planned Parenthood of Central Missouri was a not-for-profit organization that maintained a clinic for abortion providers in Columbia, Missouri. David Hall was a physician who supervised abortion care at the Planned Parenthood clinic, and Michael Freiman was a physician who performed abortions at several hospitals in St. Louis, Missouri. Together, they brought the case against the state of Missouri on behalf of all physicians who provided abortion care in Missouri and on behalf of women seeking abortion care in Missouri. Attorney general for Missouri, John C. Danforth, as well as circuit attorney of the city of St. Louis, J. Brendan Ryan, defended Missouri in the case.

Planned Parenthood, Hall, and Freiman filed the case in the US District Court for the Eastern District of Missouri in St. Louis. Three judges heard and decided the case, William Hedgcock Webster, Harris Kenneth Wangelin, and Roy Winfield Harper. Attorney Frank Susman argued for Planned Parenthood and the two physicians, while Danforth and another St. Louis circuit attorney, John F. White, argued for the state of Missouri.

During the case, Susman, the physicians and Planned Parenthood challenged several portions of House Bill 1211. First, they disputed the law's definition of viability. In *Roe v. Wade*, the US Supreme Court had ruled that abortions were legal only if done before fetuses were viable, which they defined as capable of having a meaningful life outside the womb. House Bill 1211 stated that a fetus was viable if it could live outside the womb indefinitely, naturally or with artificial assistance. Susman argued that the law's definition of the term viable, particularly the word indefinitely, meant that a fetus who had any sort of life, however brief, outside the womb was viable. He claimed that such a vague definition would make any abortion a crime. He pointed out that some fetuses had a short heartbeat or gasped in a breath after being removed from the womb, which would mean they were therefore alive for a short time outside the womb. Susman argued that such a definition violated women's rights to abortions as established in *Roe v. Wade*.

Susman argued that several other requirements of House Bill 1211 singled out abortion from other medical procedures. House Bill 1211 required women seeking abortions to give written consent to

signify they were fully informed and were not being coerced into getting abortions. The law also required written consent from the husbands of married women seeking abortions, or written consent from the parents of unmarried minors seeking abortions. Susman, on behalf of abortion providers, claimed that Missouri law did not require those consent forms for other medical procedures, and so House Bill 1211 was applying more burdens to individuals seeking abortion care than to individuals seeking other kinds of medical care. He also claimed that the requirements placed burdens on women seeking abortions in the first trimester of pregnancy, which violated the US Supreme Court decision in *Roe v. Wade*.

Susman also argued against two requirements of the bill that regulated what happened to fetuses that survived the abortion procedure. House Bill 1211 required physicians to make all reasonable efforts to sustain the life of a fetus that survived an abortion and to treat the fetus as though it was delivered through conventional means. The law stipulated that if a physician did not do so, and the fetus died, the physician would be guilty of manslaughter. Susman and his clients challenged the constitutionality of that requirement. They also challenged House Bill 1211's requirement that surviving fetuses become wards of the state, as if their parents had abandoned them. The law stated that the parents of fetuses that survived abortion would no longer have any rights over the fetus because the act of choosing to get an abortion meant they had given up parental rights.

Additionally, Susman argued against two House Bill 1211 requirements that applied to physicians and their offices. First, he challenged the prohibition of saline amniocentesis after the first trimester of pregnancy. Saline amniocentesis was a technique used to induce abortions in which a physician withdrew the fluid surrounding the fetus in the womb and replaced it with a saline solution. The procedure terminated the fetus and induced labor in the pregnant woman to evacuate the fetus. During the legislative history of House Bill 1211, the Missouri legislature had claimed that the procedure was less safe than other methods that induce abortion. Susman argued that such a ban restricted physicians' rights to practice medicine and exercise their medical judgment.

Finally, Susman and his clients challenged the recordkeeping practices House Bill 1211 required. According to the law, the state's division of health provided forms for physicians to fill out when they performed an abortion. Those forms reported maternal health and life data, which the state would use for statistical purposes. The law mandated that the physicians' offices keep the forms for seven years. Susman argued that the extra forms might impose a burden on women seeking abortion care, violating women's rights to access abortion care without undue burdens.

Danforth, in defense of the state law, argued that House Bill 1211 was constitutional and ensured women made well-considered decisions. He claimed that requiring the woman's written consent ensured that she had carefully considered her decision to receive an abortion. At some abortion clinics, he stated, women received no guidance from physicians about the procedure, and so written consent verified that they understood their decision. Danforth also argued that the parental consent requirement ensured that parents participated in the care of minors considering abortions, as parents were most likely to love and support them.

The three judges at the District Court decided the case on 31 January 1975. Harper wrote the decision of the court in his opinion, while Webster wrote another opinion that agreed with some parts of the court's decision and disagreed with others. In total, the court let stand all sections of House Bill 1211 except for the section that required physicians to care for the life of a fetus as if the physician had delivered the fetus through conventional means.

For the first challenged section, the definition of viability, Harper wrote that House Bill 1211 defined viability nearly the same as the US Supreme Court had in *Roe v. Wade*. Further, he wrote that it was not the role of the courts or legislators to determine a fixed point at which a fetus became viable. He stated that different fetuses became viable at different points in the pregnancy. Therefore, he and the other judges determined that physicians were the proper individuals to identify a viable fetus, given such discrepancies. House Bill 1211's definition of viability, Harper claimed, afforded physicians the flexibility to exercise their medical judgment. Therefore, the judges let the definition stand.

Harper also addressed the requirement for written consent in his opinion. Harper wrote that the court had decided that the written, informed consent of women seeking abortions was permissible

because all other medical procedures required written, informed consent of the patient. The judges also determined that because marriage had been regulated in the past, including marriage licenses, and because the state had a compelling interest in supporting marriages and marital harmony, they deemed that spousal consent for abortion was also permissible. Similarly, Harper wrote, because the state had an interest in protecting the lives and safety of children and because parental consent was required for other medical procedures, parental consent for abortions was permissible as well.

The three judges also examined the requirement that living fetuses be reported to the state as abandoned children and that physicians keep records of the abortions provided. The court decided that it was not an undue burden for physicians to report the birth and for judges to decide if the aborted fetus was, in fact, an abandoned child. The three judges also ruled that the recordkeeping requirements provided medical data essential to advancement in medicine. Because of that, and because the records were kept confidential and only for statistical purposes, the requirement did not restrict abortion care and so was constitutional.

In addition, the judges decided that it was legal to prohibit saline amniocentesis after the first trimester. Harper noted that testimony had shown that the procedure could be dangerous to women's health. He also noted that the US Supreme Court recognized states' rights to regulate abortion procedures after the first trimester with regard to women's health. Because of those two rulings, he wrote, the Missouri legislature had the power to ban the procedure to encourage physicians to use safer methods of abortion after the first trimester.

However, when considering House Bill 1211's requirement that physicians care for the lives of fetuses as if they had been born, the judges decided that the requirement was too broad. House Bill 1211 required that fetuses aborted during any point in pregnancy, including the first trimester, had to be cared for by physicians as though conventionally delivered. But, as Harper wrote, saving the lives of fetuses aborted before the end of the first trimester violated women's right to terminate their pregnancies during the first trimester, as established in *Roe v. Wade*. The judges determined that because House Bill 1211 failed to exclude the first trimester from the requirement that physicians care for aborted fetuses, the requirement violated the Supreme Court's decision in *Roe v. Wade* and therefore had to be struck down. That was the only section struck down by the court.

Another of the judges on the panel, Webster, wrote a different opinion on the case. He agreed that written consent of the woman seeking an abortion was constitutional, but he disagreed on all other points. He wrote that the spousal and parental consent requirements were unconstitutional because neither spouses nor parents had the legal power to prevent an abortion. He deemed that neither the state's interest in women's health nor in marriage trumped the individual's right to an abortion and that the requirements placed undue restrictions on access to abortion, a violation of *Roe v. Wade*. Regarding saline amniocentesis, Webster questioned the ban, noting that House Bill 1211 illegalized the procedure used in seventy-five percent of second and third trimester abortions, even though the alternative procedures were more damaging to women's health. Finally, Webster wrote that the labeling of surviving aborted fetuses as abandoned was unconstitutional. House Bill 1211 stipulated that if a fetus survived an abortion procedure, the parents of the fetus had no parental rights over it because they had demonstrated that they did not want the fetus and had therefore abandoned it. Webster argued against that stipulation, stating that there were many reasons to seek abortions and not all of them indicated that the women wanted to abandon their fetuses.

Following the district court's decision, Planned Parenthood and the two Missouri physicians appealed the case to the US Supreme Court. The US Supreme Court accepted the case and heard oral arguments on 23 March 1976. Nine Justices heard the case, Harry A. Blackmun, Potter Stewart, Lewis F. Powell, Byron R. White, Warren E. Burger, John Paul Stevens, William Brennan, Chief Justice William Rehnquist, and Thurgood Marshall.

Susman again argued for Planned Parenthood, Hall, and Freiman on behalf of abortion providers in Missouri. He stated that the US Supreme Court had decided in 1973 that the rights to abortions were equal to the rights to bear children. He claimed that since *Roe v. Wade* legalized abortion in the US, unsafe abortions had decreased by fifty percent, maternal mortality had decreased by eighty percent, and illegitimate births had decreased as well. He went on to argue that the district court's decision to leave in place House Bill 1211 restricted the rights established in *Roe v. Wade*, noting

that the Missouri district court was the only court to have upheld legislation restricting abortions since 1973.

During his oral arguments for the US Supreme Court, Susman restated many of his arguments made to the Missouri district court. Susman reiterated that House Bill 1211's viability definition was so vague that it could restrict abortions. He stated that the standard for viability should stem from a high likelihood the fetus would survive, not a slim possibility. Susman then restated his reasons from the district court for arguing against the patient, spousal, and parental written consents required by House Bill 1211.

After Susman made his arguments, Danforth again argued the case for the state of Missouri. He asked whether the state still had the power to regulate certain areas it had traditionally regulated. Those areas included marriage, the protection of minors against their own immaturity, and the regulation of professions to ensure public health. He noted that there were state regulations requiring spousal consent for medical procedures, such as adoption and sterilization, which would change the nature of a family, as he argued abortion did. He also claimed that minors did not have the maturity to make informed decisions about abortions and that Planned Parenthood's facilities did not provide appropriate physician-patient counseling. Finally, Danforth argued that the prohibition of saline amniocentesis did not violate *Roe v. Wade*, as it was only prohibited by House Bill 1211 after the first trimester. *Roe v. Wade* only protected women's rights to abortions in the first trimester. Also, he claimed that other methods were safer and therefore aligned better with the state's interest in protecting women's health. In that way, Danforth argued that the Missouri bill in no way violated constitutional rights.

The US Supreme Court delivered its opinion on 1 July 1976. Justice Blackmun wrote the opinion of the Court, which was in favor of Planned Parenthood and the two Missouri physicians, while several other justices wrote other opinions that agreed and disagreed with the Court's. In the Court's opinion, Blackmun wrote that Planned Parenthood and the physicians had standing, or legal reasons, to challenge all sections of the law except for the one about declaring surviving fetuses as wards of the state. He stated that physicians did not have any legal reasons to challenge that section of the law, as it did not affect them, and so the Court did not make a decision on the constitutionality of that requirement.

On the issue of the definition of viability, the US Supreme Court agreed with the district court decision. For the challenged definition of viability, the Court ruled that it did not conflict with the definition provided in *Roe v. Wade*. In the case *Roe v. Wade*, the US Supreme Court defined viability as the potential for the fetus to live outside the pregnant woman's womb with or without artificial aid, while House Bill 1211 defined viability as the potential for the fetus to live indefinitely outside the womb with or without artificial aid. House Bill 1211's definition, Blackmun wrote, maintained the flexibility of the definition in *Roe v. Wade* and did not restrict women's access to abortion care.

The US Supreme Court also agreed with the district court about the requirement for informed consent, recordkeeping, and physician care of surviving fetuses. The Justices ruled that requiring a woman's informed, written consent was constitutional. Blackmun wrote that the decision to have an abortion was a serious one and that the state had a compelling interest in ensuring that a woman seeking one was aware of the significance of her decision. With regard to recordkeeping, the Justices decided that the requirements of House Bill 1211 were constitutional because the data gathered could help protect women's health and that it was valuable for the medical community. Finally, the Supreme Court agreed with the district court judges that it was unconstitutional to require physicians to treat surviving fetuses as if they had been born and to expend all efforts to preserve their lives.

However, beyond agreeing with those points, the US Supreme Court largely overturned the district court's ruling. The justices ruled that requiring spousal consent for an abortion was unconstitutional. Blackmun noted that a state could not give a spouse power to veto an abortion during the first trimester because the state did not have that right in the first place. *Roe v. Wade* prevented any undue restrictions on access to abortions in the first trimester. Similarly, the Supreme Court decided that requiring parental consent was unconstitutional. Blackmun wrote that a state could not require blanket parental consent for all minors seeking abortions.

The Justices also decided that prohibiting saline amniocentesis during second and third trimesters was illegal. Blackmun claimed that the law was arbitrary and did not protect maternal health. In fact, he said, prohibiting the procedure made abortions in the second and third trimesters more dangerous. Blackmun's opinion, and the decision of the court, invalidated many aspects of House Bill 1211, leaving only the requirements for individual informed consent and recordkeeping.

Though the opinion Blackmun wrote was the majority opinion of the Court, other Justices wrote their own opinions to add further thoughts or reasoning to the rulings or to state how they disagreed with the majority's opinion. Stewart wrote a concurring opinion, which meant he agreed with the Court's decision but wanted to write more on it, and Powell joined Stewart's opinion, meaning he agreed with it. Stewart largely parroted the majority opinion on the points about consent. But he did write to clarify the implications of the viability definition. Stewart wrote that House Bill 1211's definition of viability had no significance when put into practice. All it required was for the physician to produce a certification of non-viability. It did not punish a physician for being wrong about a fetus's viability, Stewart claimed, and therefore did not have any serious effects on the administration of abortion care.

Justice White wrote an opinion that Justices Burger and Rehnquist joined and that agreed in part and disagreed in part with the majority's opinion. White, Burger, and Rehnquist disagreed with the majority opinion on the points of spousal and parental consent, saline amniocentesis, and preservation of surviving fetal life. For spousal consent, White wrote that the husband did have an interest in the life of the fetus that was not outweighed by the woman's right to bear or not bear children. He concluded that the spousal consent requirement should be legal. Also, he claimed, parental consent protected minors' rights to decide whether or not to get abortions because parental advice could help them determine that not getting abortions was better for them. The state, he said, could require parental consent as a way to protect minors from decisions that were not in their own best interest. Additionally, White stated that in the case of saline amniocentesis, there was no evidence that women in Missouri would be unable to get abortions without the procedure. He claimed other methods were available and were becoming more common.

For the requirement that the physician work to preserve fetal lives, White interpreted the law to mean that if a physician determined that a fetus could survive outside the womb, that physician must perform the abortion in such a way as to ensure the fetus does survive. If the physician determined that the fetus could not survive any abortion procedure, White continued, then the physician did not have a duty to exercise care for the fetus's life. In that way, White said, the requirement was constitutional, as the state's interest in protecting fetal lives outweighed the women's rights to abortions. White, Burger, and Rehnquist agreed with the rest of the decisions made by the Court.

Finally, Stevens wrote his own opinion that agreed in part and disagreed in part with the majority opinion. He gave an opinion in two areas. First, he stated that the parental consent requirement was consistent with the decision in *Roe v. Wade*. He claimed that the state had an interest in protecting minors from making poor decisions, especially because the consequences of abortions were profound. Also, he stated, not all parent-child relationships were the same, meaning not all parents would prevent their children from receiving abortions. Stevens claimed that for some minors, parental counseling would help them come to the best decision and that requiring parental consent was a way to make that happen.

Secondly, Stevens recorded his thoughts on the ban on saline amniocentesis. He stated that saline amniocentesis was the most used form of abortion after the first trimester in Missouri. He noted that when House Bill 1211 went into effect, banning that procedure after the first trimester, no abortions after twelve weeks took place in Missouri. He took that to mean prohibiting the procedure restricted access to abortion, which was not permissible under the decision made in *Roe v. Wade*. In that way, Stevens agreed with the majority decision to remove the ban on saline amniocentesis.

In sum, the US Supreme Court upheld House Bill 1211's definition of viability and its recordkeeping requirements. The Court struck down the requirement to get spousal consent for a married woman's abortion or parental consent for a minor's abortion. It also struck down the ban on saline amniocentesis and the requirement that physicians work to preserve the life of an aborted fetus.

The US Supreme Court's decision in *Planned Parenthood v. Danforth* influenced other court cases

dealing with abortion rights. In the US Supreme Court case *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court relied on the *Danforth* decision to strike down laws in Pennsylvania similar to Missouri House Bill 1211. The Pennsylvania law required women to notify their spouses and minors to get one parent's consent before receiving an abortion. The Court cited the *Danforth* decision to rule those two requirements unconstitutional, though it upheld the requirement that women give written consent for the procedure, as it had in *Danforth*.

Sources

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