

Stuart v. Camnitz (2014)

In *Stuart v. Camnitz*, the United States Court of Appeals for the Fourth Circuit affirmed the decision of a North Carolina District Court that declared a controversial ultrasound mandate for abortions unconstitutional in 2014. The ultrasound mandate was a part of the Woman's Right to Know Act introduced in North Carolina in 2011, which placed several restrictions on abortion care providers in the state. If enforced, the ultrasound mandate would have required physicians to perform an ultrasound on every patient before an abortion and simultaneously describe the resulting image of the fetus regardless of whether the woman wanted to hear the description. The District Court ruled the mandate an unconstitutional violation of physicians' free speech rights. The Fourth Circuit Court's decision to affirm the District Court's ruling established that the state could not compel healthcare providers to recite what the court called state ideology to patients against their medical judgment, which broke with precedent set by prior rulings by the Fifth and Eighth Circuit Courts in similar cases.

The Woman's Right to Know Act in North Carolina placed several restrictions on the practice of abortion in the state, including a mandatory waiting period requirement and informed consent requirements physicians must fulfill with their patients before they can perform an abortion. The ultrasound mandate was the fifth listed component of the informed consent procedure that the Woman's Right to Know Act required physicians to undergo with patients before an abortion. The Woman's Right to Know Act's ultrasound mandate required physicians to display the image from the ultrasound in the woman's line of sight and to describe the dimensions and characteristics of the woman's fetus to her as they were performing the ultrasound. The ultrasound mandate includes a phrase that allows the woman to avert her eyes or refuse to listen to the description of the image, but the physician is still compelled to deliver the speech and display the image regardless of the woman's wishes. The mandate did not include exceptions for victims of rape or incest. At the time of the Women's Right to Know Act's passage in 2011, physicians were already required in North Carolina to perform an ultrasound before performing an abortion in order to find out the age of the fetus.

Beverly Perdue, the governor of North Carolina at the time, vetoed the Woman's Right to Know Act in North Carolina because of its ultrasound mandate in 2011. Perdue criticized the bill as a dangerous intrusion into the confidential relationship between physician and patient and argued that elected officials should not impose their own ideological agendas on physicians. The North Carolina General Assembly overrode Perdue's veto in July 2011, and the Women's Right to Know Act was set to go into effect in October of that year.

In September 2011, the American Civil Liberties Union, or ACLU, along with Planned Parenthood, the Center for Reproductive Rights, and other self-described pro-choice organizations filed a lawsuit on behalf of several physicians and their patients challenging the Woman's Right to Know Act on several grounds, including the ultrasound mandate. The case was first heard in 2011 in the United States District Court for the Middle District of North Carolina. before being appealed in 2014 to a higher regional court, the Fourth Circuit Court of Appeals, and petitioned to be heard by the United States Supreme Court in 2015. The case lists the names of several physicians, such as Gretchen S. Stuart, and abortion providers who brought the lawsuit on behalf of themselves and their clients as opponents of the Women's Right to Know Act. Several officials of the state of North Carolina, including the president of the North Carolina Medical Board and the state attorney general were supporters of the Women's Right to Know Act.

The name of the case evolved several times as it moved through the courts to reflect changes in the

leadership of the North Carolina Medical Board and other state agencies. In 2011, district court judge Catherine Eagles presided over *Stuart v. Huff*, Stuart being the first abortion provider listed as an opponent of the Women's Right to Know Act and Janice E. Huff being the president of the North Carolina Medical Board, or NCMB, at the time. In October 2011, Eagles issued a preliminary injunction blocking the ultrasound mandate from going into effect on the grounds that it violated physicians' first amendment right to free speech. The District Court continued to hear arguments for and against the ultrasound mandate and then Eagles ruled the mandate unconstitutional in 2014 and blocked it from going into effect. Paul Camnitz, the president of the NCMB at the time, led the proponents of the ultrasound mandate in appealing the decision to the Fourth Circuit Court. The court ruled in December 2014 in the case *Stuart v. Camnitz* to uphold the District Court ruling blocking the ultrasound mandate from going into effect. The state of North Carolina then petitioned the Supreme Court to review the case in *Walker-McGill v. Stuart* in 2015, Cheryl Walker-McGill being the NCMB president at the time, but the Supreme Court declined to take the case and gave no reason as to why.

The District Court heard arguments for *Stuart v. Huff* on 17 October 2011. When pro-choice organizations first challenged the Women's Right to Know Act on behalf of abortion providers and patients, the Act's supporters in the legislature and throughout the state argued that the ultrasound mandate would encourage more women to carry pregnancies to term and protect women's emotional health. Republican legislator Paul Stam argued that the ultrasound mandate would have the best chance of changing abortion practices in the state. The director of the Catholic Diocese of Raleigh's Pro-Life office, headquartered in Raleigh, North Carolina, argued that the ultrasound mandate was good for women because women who do not see the ultrasound image may regret undergoing the procedure afterwards, and the ultrasound requirement offers them the opportunity to change their minds.

The state of North Carolina, represented by Huff, argued that the state had three compelling reasons to keep the ultrasound mandate. Those reasons were to protect the psychological welfare of the patient, to prevent women from being coerced into having abortions, and to express the state's preference for the life of what they called the unborn. State officials argued that the compelled speech and display of the ultrasound mandated by the Women's Right to Know Act should be evaluated according to whether it placed an undue burden on the woman's right to receive an abortion.

Stuart and the other abortion providers argued that the ultrasound mandate, especially the requirement that physicians describe the ultrasound regardless of whether or not the woman wishes to hear about it, violated the First Amendment right to free speech of physicians by forcing them to recite state-mandated information regardless of their medical judgment. Stuart and the other opponents to the Women's Right to Know Act argued that the compelled speech and actions required by the ultrasound mandate should be evaluated to examine its constitutionality and relevance to a compelling government interest. They also argued that certain parts of the Women's Right to Know Act were too vague or confusing to be permissible and that the ultrasound mandate was not related to a legitimate government goal. They requested that the court block multiple parts of the Women's Right to Know Act, including the ultrasound mandate.

On 25 October 2011, judge Eagles issued a preliminary injunction that blocked the section of the Women's Right to Know Act containing the ultrasound mandate from going into effect on the grounds that it may have violated the First Amendment. A preliminary injunction is a rare measure that courts take to keep a law that is still being debated in the courts from going into effect before judges hear all the arguments for and against it. In her opinion, Eagles held that the opponents of the Women's Right to Know Act were most likely going to succeed in arguing their claim that the ultrasound mandate violated the First Amendment rights of physicians. However, she wrote that the abortion providers were not likely to succeed in arguing that several other parts of the Women's Right to Know Act were too vague, and thus only blocked the ultrasound mandate while the rest of the law went into effect. Eagles sided with the abortion providers and held that the defenders of the Women's Right to Know Act did not prove that the ultrasound mandate furthers a compelling government interest in regulating healthcare. Eagles found that the ultrasound mandate's speech and display requirements did not advance any of the government interests that the state officials had brought forth, and therefore that the First Amendment argument against the ultrasound mandate was likely to succeed. The ACLU and Planned Parenthood both called Eagles' decision a temporary

victory.

Eagles heard further arguments from both sides in the case and ultimately ruled the ultrasound mandate unconstitutional on 17 January 2014. In her opinion, Eagles restated her earlier claim that the ultrasound mandate amounted to the state compelling healthcare providers to speak the state's non-medical ideological message discouraging abortion and encouraging unwilling women to undergo pregnancy and childbirth. Furthermore, Eagles argued, the proponents of the ultrasound mandate failed to explain how it would advance the state's interest in regulating healthcare, especially since the quality of informed consent is not improved in any way if the woman avoids seeing the images or hearing the description of the ultrasound. Eagles argued that even without the ultrasound mandate and the specific informed consent requirements of the Women's Right to Know Act, physicians would provide that same information to women who asked for it under existing state informed consent laws. The ultrasound mandate, then, raised the question of whether states could require physicians to provide information regardless of the patient's preference and without consideration of whether the patient was at risk of significant psychological harm if she were to hear the information. The ultrasound mandate was thus blocked from going into effect with Eagles' decision.

Eagles' ruling in *Stuart v. Huff* elicited strong responses from both opponents and supporters of the Women's Right to Know Act. Opponents of the Women's Right to Know Act, including the ACLU, the Center for Reproductive Rights, and Planned Parenthood, called Eagles' ruling a victory. Jennifer Rudinger, executive director of the ACLU of North Carolina, stated that the ruling protected women and physicians from what she described as the ideological agenda of extremist lawmakers. At the time of the ruling, defenders of the Women's Right to Know Act argued that the ultrasound mandate provided crucial information to women, especially, they claimed, because the decision to have an abortion is irreversible. The president of North Carolina Right to Life, Barbara Holt, compared the ultrasound mandate to speech requirements imposed on airlines and cigarette manufacturers for safety reasons and argued that the required information must be given by the physician even if the recipient finds it unnecessary or upsetting. After Eagles issued her ruling, Camnitz led representatives of the state of North Carolina to appeal her decision to a higher court, the Fourth Circuit Court of Appeals, in the case *Stuart v. Camnitz*.

In the case *Stuart v. Camnitz*, the Fourth Circuit Court of Appeals affirmed the District Court's ruling that the ultrasound mandate violated physicians' First Amendment right to free speech. James Harvie Wilkinson III, one of the judges of the Fourth Circuit Court at the time of the decision, wrote the court's opinion. Wilkinson held that the speech and display requirement of the ultrasound mandate did constitute compelled speech and that the state went well beyond what other states had previously required to ensure informed consent. Wilkinson held that the state's intent was clearly to discourage patients from receiving abortions or at least cause patients to reconsider their decision and pointed out that the state officials freely admitted that intent in their arguments. Wilkinson argued that the speech and display requirement of the ultrasound mandate could be considered compelled speech because physicians were required to say something they would not otherwise say. Wilkinson stated that the compelled speech could have an adverse effect on the patients as well because they may not be able to clearly distinguish that the speech is the state's message and not the individual physician's message. Even though the information regarding the dimensions and characteristics of the fetus may be medically accurate, Wilkinson argued, the context in which the speech is delivered still makes it ideological.

Particularly, Wilkinson pointed to the fact that the informed consent conversation required by the ultrasound mandate would happen while the woman was in a particularly vulnerable position. Wilkinson drew attention to the fact that informed consent conversations typically take place in neutral locations while the patient is fully clothed, but during the informed consent conversation required by the ultrasound mandate, the woman would only be partially clothed and in the middle of an invasive examination. Wilkinson argued that in such a stressful situation, the woman is especially vulnerable, and her judgment is altered or impaired, and that because the physician has to provide the information even if she averts her eyes, the ultrasound mandate directly contradicts the principle of patient autonomy. Wilkinson held that the information the physician was required to provide was not relevant to the risks of the medical procedure but instead conveyed what he described as

the full weight of the state's moral condemnation to the patient.

In the written opinion, Wilkinson acknowledged that the Fourth Circuit Court's decision broke with precedent established by the Fifth and Eighth Circuit Courts in similar cases. The Fifth Circuit Court had previously upheld a similar ultrasound mandate in Texas that abortion providers in Texas challenged on the grounds of the first amendment in the 2011 case *Texas Medical Providers Performing Abortion Services v. Lakey*. A district court judge in Texas had struck down the Texas ultrasound mandate, which was similar to the North Carolina requirement, when the law was initially passed, but the Fifth Circuit Court reversed that decision and declared the ultrasound requirement constitutional. The Eighth Circuit Court case, *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, had to do with a South Dakota law that compelled physicians to tell patients that abortion increased their risk of suicide as part of the informed consent process. The district court in South Dakota initially blocked the suicide advisory provision, but the Eighth Circuit Court reversed the district court decision and declared the suicide advisory provision constitutional. In contrast, the Fourth Circuit Court affirmed the North Carolina district court ruling and declared that the compelled speech and display ultrasound requirement was unconstitutional.

The Fourth, Fifth, and Eighth Circuit Court cases all dealt with compelled speech and physicians' rights. Judges on both the Fifth and Eighth Circuit courts drew mainly from the cases *Planned Parenthood v. Casey* and *Gonzales v. Carhart* to support their rulings. In *Planned Parenthood v. Casey*, the Supreme Court ruled that states could regulate abortion providers as long as those regulations did not impose an undue burden on a woman's right to choose abortion. The Supreme Court also upheld in *Planned Parenthood v. Casey* that the state does not impose an undue burden in requiring physicians to provide truthful, nonmisleading, and relevant medical information to patients before an abortion. In *Gonzales v. Carhart*, the Supreme Court upheld that states are allowed to play a significant role in regulating physicians and medical professionals. Thus, both the Fifth and Eighth Circuit courts ruled that the compelled speech cases each court considered did not impose an undue burden on a woman's right to have an abortion and did not violate physicians' rights.

Wilkinson argued in his decision that the Fifth and Eighth Circuit Courts read too much into *Planned Parenthood v. Casey* and *Gonzales v. Carhart* in their decisions and that neither Supreme Court case implied that abortion providers forfeited their first amendment rights to such an extent. Wilkinson argued that although in *Planned Parenthood v. Casey* the Supreme Court justices found an instance of compelled speech to be constitutional, the Supreme Court's decision on that compelled speech provision could not be applied to all compelled speech provisions equally. Wilkinson also argued that even if a particular regulation such as the ultrasound mandate does not impose an undue burden on patients, the regulation can still impose a burden on physicians by violating their free speech rights. Wilkinson ends his written opinion by affirming the decision of the district court and concluding that the ultrasound mandate in the North Carolina Women's Right to Know Act violated the first amendment.

After Wilkinson issued the Fourth Circuit Court's decision, the then president of the NCMB Walker-McGill led supporters of the ultrasound mandate in petitioning the Supreme Court to review the case. The petition called on the Supreme Court to resolve the discrepancy between the lower Circuit Courts. They argued that the case was significant because the Fourth Circuit ruling rejected the other courts' analysis and interpretations of *Planned Parenthood v. Casey* and *Gonzales v. Carhart*. Furthermore, twenty-four states at the time had some form of an ultrasound requirement, and several of those requirements were similar to the one at issue in North Carolina. Walker-McGill and other state officials argued that the Fourth Circuit Court's decision would make assessing the constitutionality of other ultrasound provisions in the future difficult because it came to a different conclusion than the Fifth and Eighth Circuits. Walker-McGill and the state officials argued that reviewing the North Carolina case would be an opportunity for the Supreme Court to provide guidance to lower courts on how they should address future challenges under the first amendment to state regulations on the medical profession. Finally, the state officials offered their own opinion to the Supreme Court, arguing that the Fourth Circuit was wrong in concluding that the ultrasound mandate violated physicians' first amendment free speech rights.

Stuart and the other healthcare providers listed in the case filed a brief with the Supreme Court

opposing the state officials' petition and urging the justices not to accept the case. In their brief, the healthcare providers directly challenged the reasons stated in the petition. They argued that there was no conflict between the Fourth Circuit and the Fifth and Eighth Circuits because, as Wilkinson described in his decision, the North Carolina law was different in several ways from both the Texas law and the South Dakota law and was also evaluated by different standards. The fact that Wilkinson had defined the ultrasound mandate in the North Carolina law as unprecedented further supported the idea that it was fundamentally different from the Texas and South Dakota laws in the view of the healthcare providers. The healthcare providers also argued that even though the North Carolina state officials identified twenty-four states with ultrasound mandates, most of those states' requirements did not resemble the North Carolina ultrasound mandate and were not likely to be challenged on first amendment grounds. Thus, they argued, the Fourth Circuit ruling was not likely to cause conflict in future cases. Finally, the healthcare providers expressed their view that the Fourth Circuit was correct in ruling that the ultrasound mandate violated physicians' free speech rights.

In June 2015, the Supreme Court refused to accept the case. The justices gave no reason for their refusal, though justice Antonin Scalia noted that he disagreed with the decision not to review the case. With the Supreme Court's refusal to hear the case, the ultrasound mandate of the North Carolina Women's Right to Know Act was prevented from going into effect. Planned Parenthood welcomed the Supreme Court's decision, with president Cecile Richards stating that the ultrasound mandate was misguided and would have promoted bad medicine across North Carolina. Nancy Northup, then president of the Center for Reproductive Rights, also praised the Supreme Court's decision, stating that physicians must be free to give patients their best medical judgment without imposition by lawmakers advancing their agenda. Supporters of the ultrasound mandate disapproved of the Supreme Court's decision not to review the case. Steven H. Aden, then senior counsel for the Alliance Defending Freedom, expressed the organization's disappointment with the Supreme Court's decision and argued that the ultrasound mandate would have ensured women could give their fully informed consent before receiving an abortion. The executive director of the North Carolina Values Coalition, a self-described conservative and pro-life organization, opposed the Supreme Court's decision, stating that the ultrasound mandate was valuable and the regulations it imposed were modest.

Although the Supreme Court declined to review the North Carolina ultrasound mandate in *Walker-McGill v. Stuart*, the justices had been considering at the time whether to accept cases challenging abortion restrictions in Mississippi and Texas. Abortion rights organizations challenged both laws in hopes of preventing the Mississippi law from closing the only abortion clinic in that state and stopping the Texas law from closing all but eight abortion clinics in that state. Those cases and other cases involving restrictions on abortion providers have since put pressure on both the Supreme Court and lower courts to more explicitly define what constitutes an undue burden on a woman's right to choose an abortion. The ruling in *Stuart v. Camnitz* that North Carolina's ultrasound mandate was unconstitutional exemplifies the ambiguity on a national level concerning which restrictions on abortion providers are permissible.

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