

Allegheny Reproductive Health v. Pennsylvania Department of Human Services (2024). Justice Donohue authored majority opinion.

Holding: Applying *Edmunds*, balancing test, the Court determined that (1) the Equal Rights Amendment (ERA) requires strict scrutiny for sex-based discrimination, (2) the Pennsylvania Constitution protects a fundamental right to reproductive autonomy, and (3) Article I, Section 26 requires neutrality in the exercise of rights. Accordingly, it **overruled** *Fischer* and **remanded** the case to the Commonwealth Court for strict scrutiny review of the Coverage Exclusion.

Background: The appeal arose from a Commonwealth Court order dismissing a petition by abortion providers challenging Sections 3215(c) and (j) of the Pennsylvania Abortion Control Act finding that Providers lacked standing to bring the case. Pennsylvania's Medicaid program pays for childbirth but not abortions, except in cases of rape, incest, or to save the mother's life. Providers, suing on behalf of Medical Assistance patients, alleged that the "Coverage Exclusion" violated the Pennsylvania Constitution's Equal Rights Amendment (Article I, § 28) and equal protection provisions (Article I, §§ 1, 26; Article III, § 32). They argued that the law discriminated based on sex, singled out poor women, and coerced indigent women into carrying pregnancies to term, while also harming providers who had to absorb costs and devote resources to patients who could not pay. DHS relied on *Fischer* and challenged standing. The *Fischer* Court upheld the Coverage Exclusion against equal protection and Equal Rights Amendment challenges, finding it constitutional. Several public officials tried intervened.

Analysis: (1) **Equal Rights Amendment (ERA) challenge.** Applying the *Edmunds* test, the Court reviewed the text, history, related state cases, and policy considerations of the Pennsylvania ERA. It concluded that the Coverage Exclusion—funding childbirth but not abortion—creates sex-based distinctions because only women can become pregnant, and the Exclusion disfavors those who choose abortion. Rejecting *Fischer*'s "penalty" approach, the Court held that the ERA requires **strict scrutiny** whenever a law discriminates on the basis of sex. (2) **Fundamental Right to Reproductive Autonomy.** Applying the same *Edmunds* test, the Court concluded that the Pennsylvania Constitution secures a **fundamental right to reproductive autonomy**, encompassing both the choice to have an abortion and to carry a pregnancy to term. **Equal Protection (Article I, Section 26).** Applying the *Edmunds* test the Court interpreted Section 26 more broadly than the federal Equal Protection Clause. The Court found the text required government neutrality. As a matter of policy and stare decisis, the Court found *Fischer*'s "penalty" framework unworkable and overruled it. The Court concluded that the Coverage Exclusion expresses a preference for childbirth over abortion, violating Section 26's neutrality mandate. Because reproductive autonomy is a fundamental right, the exclusion triggers **strict scrutiny**.

Justice Wecht (concurrence):

- Agreed that the funding exclusion was unconstitutional.
- Stressed that abortion restrictions are always sex discrimination
- Urged addressing abortion under other constitutional theories (like the 13th Amendment or Privileges or Immunities) to protect rights in the future.

Justice Todd (partial concurrence & dissent):

- Agreed the Providers had standing and the legislators did not have standing to intervene.
- Disagreed with Majority holding that Coverage Exclusion violated Pennsylvania Constitution.
- Disagreed with the majority's decision to overrule *Fischer* finding it binding precedent that controlled. Found not "special justification" to overrule *Fischer*.
- Disagreed that the case concerned abortion rights but instead concerned funding choices.

Justice Dougherty (partial concurrence & dissent):

- Agreed the Providers had standing and the legislators did not have standing to intervene.
- Agreed that there was "special justification" to overrule *Fischer*.
- Argued the majority's opinion went too far by declaring abortion a fundamental right
- Would have remanded the case to the Commonwealth Court to consider to Provider's constitutional claims.
- Cautioned the Court against "seizing the opportunity" to resolve such a major question without full lower-development.

Justice Mundy (partial concurrence & dissent):

- Like Justice Todd, argued the case did not concern abortion but concerned funding choices
- Further argued that *Fischer* controlled and should not have been overruled. As such the funding exclusion should stand.