

City of Akron v. Akron Center for Reproductive Health (1983)

In the 1983 case *City of Akron v. Akron Center for Reproductive Health* the US Supreme Court ruled that certain requirements of the city of Akron's "Regulation on Abortion" ordinance violated women's rights to abortions. Despite the legalization of abortion in the 1973, with the US Supreme Court case *Roe v. Wade*, individual states passed legislation regulating certain aspects of abortion. The city of Akron, Ohio, passed legislation in 1978 that regulated when and where abortions could be conducted, the consent process leading up to abortions, and the disposal of fetal remains after abortions. In a six to three ruling, the Court argued provisions of the city of Akron's ordinance were unconstitutional. The Court's opinion in *City of Akron v. Akron Center for Reproductive Health* reaffirmed the ruling in *Roe v. Wade* that states could not unduly restrict women's access to abortions.

In 1973, in the case *Roe v. Wade*, the US Supreme Court ruled that women's rights to privacy, guaranteed by the Fourteenth Amendment to the US Constitution, included rights to abortion. In that case, a Texas woman challenged Texas abortion laws that criminalized abortion if conducted for any non-medical purpose. The US Supreme Court ruled that women had rights to abortions for non-medical reasons. However, they also decided that women's rights to have abortions were balanced against the state's interest in regulating abortions to promote women's health and wellbeing. For that reason, states could legally pass laws regulating certain aspects of the abortion procedure if they had a compelling, or justifiable, state interest to do so.

In February of 1978, the city of Akron, Ohio, enacted Ordinance No. 160-1978, "Regulation of Abortions," for which any violation was a criminal misdemeanor. Though the ordinance had seventeen parts, the US Supreme Court reviewed the constitutionality of only five of the regulations. The first of the five contested requirements stipulated that all abortions during the second trimester be performed in a hospital. Two of the regulations dealt with consent, prohibiting physicians from performing abortions on an unmarried minors under the age of fifteen without parental consent or a court order and requiring the attending physician to give specific information to all patients prior to receiving their consent. That information included fetal development, adoption options, and potential abortion complications. Another regulation required a twenty-four hour wait period between when women consented to abortions and when women could receive the abortions. The final contested requirement mandated that fetal remains be disposed of in a humane and sanitary manner, although the law did not define humane and sanitary methods. The ordinance went into effect on 1 May 1978.

On 19 April 1978, three corporations who ran abortion clinics in Akron, as well as a physician who performed abortions at one of those clinics, filed a lawsuit challenging the ordinance in the US District Court for the Northern District of Ohio in Akron. The district court called that group the Akron Center for Reproductive Health, Inc., et al. That group was represented by Stephan Landsman, Dennis Haines, Patricia Roberts, Wayne Hawley, Gordon Beggs, Janet Benshoof, Robert App, and Patricia Vance. Akron Center for Reproductive Health, Inc., et al., hereafter referred to as Akron Center for Reproductive Health, brought their case against the city of Akron. Akron's mayor, director of public health, and police prosecutor joined the city of Akron. That group was represented by James Bickett, David Umbaugh, Robert Destro, James Bopp, and Alan Segedy. On 26 April 1978, physicians Francois Sequin and Patricia Black submitted a petition to join the side of the city of Akron. The district court granted them the ability to participate in the trial only in the capacity of parents of unmarried minor daughters capable of having children.

On 22 August 1979, the US District Court for the Northern District of Ohio reviewed and ruled on the case Akron Center for Reproductive Health, v. City of Akron. The district judge, Leroy John Contie, issued the ruling. The Akron Center for Reproductive Health argued that the Akron ordinance violated their right to provide abortions in Akron, Ohio. In addition, they argued that the regulations violated women's constitutional rights to choose and receive abortions. Contie stated the Akron Center for Reproductive Health had legal standing to challenge eight requirements in the city ordinance as those regulations directly applied to their specific abilities of providing abortions. However, he ruled that the ordinance as a whole could not be challenged by the Akron Center for Reproductive Health, as they could not prove that all sections hindered their ability to provide abortions.

In continuing his decision, Contie deemed several of the seventeen parts of the Akron ordinance unconstitutional. Those requirements included necessitating biannual, warrantless inspections of clinics by Akron's Department of Public Health, receiving informed consent from parents for minors, humanely disposing of fetal remains, and informing patients about adoption, fetal development, and risks of abortion. The district court ruled that the inspections requirement violated the Fourth Amendment to the US Constitution, which protects US residents against unreasonable searches and seizures from the government. In his ruling, Contie stated that the requirement of informing parents and receiving their consent for all minors seeking an abortion allowed parents to overrule the informed decision of a competent minor. Regarding the fetal remains disposal requirement, the district court voided the regulation for its vagueness. In addition, Contie ruled that a state could not stipulate what exact information physicians should tell women seeking abortions, as different women's cases required different information.

In contrast, Contie ruled the following as constitutional: the requirements for record keeping at abortion facilities, abortion after-care medical instructions, physician disclosure of pregnancy and abortion risks, and a twenty-four hour waiting period. The district court concluded that the first three regulations followed standard medical practices and therefore did not infringe on physicians' abilities to perform abortions. Contie stated that the twenty-four hour waiting period furthered the state's interest in ensuring that women had time for careful consideration of the abortion.

The Akron Center for Reproductive Health appealed the ruling of the district court in 1981 to the Sixth Circuit US Court of Appeals in Cincinnati, Ohio. In the appeals case, the Akron Center for Reproductive Health argued that the district court failed to closely analyze the city of Akron ordinance and had not required the city of Akron to prove how specific regulations promoted the state's interest. On 12 June 1981, the Court of Appeals decided the case. Pierce Lively, a circuit court judge, wrote the majority opinion.

The Court of Appeals for the Sixth Circuit first reviewed the regulation requiring abortion providers to receive consent from parents of minors seeking an abortion. In defense of the requirement, the city of Akron argued that they were responsible for protecting parents' rights to help their children make decisions. In contrast, the Akron Center for Reproductive Health claimed that the requirement placed an undue burden on minors seeking abortions. The appeals court agreed that the state could require parents to be informed, but disagreed with the requirement to receive the consent of the parents for minors.

The appeals court next ruled on the requirement that physicians provide their patients with specified information and receive their consent after describing the risks of pregnancies and of abortion procedures. The court agreed with the district court that states could not legally specify what type of information physicians should tell patients. The appeals court also ruled unconstitutional the requirement that physicians disclose the risks of the abortion procedure. They argued that there was no compelling state interest for requiring physicians to be the ones to obtain consent when in fact many clinics employed non-physicians to educate women prior to abortions.

Subsequently, the appeals court reviewed the requirements for a twenty-four hour wait period, hospitalization of second trimester abortions, and disposal of fetal remains. The court reversed the original decision regarding the twenty-four hour wait period by ruling that states did not have the power or a medical justification to make the regulation. The court next addressed the requirement for abortions after the first trimester to be conducted in hospitals. In opposition to the requirement,

the Akron Center for Reproductive Health argued that the requirement unduly burdened women, as hospitals were more expensive and less convenient than clinics. However, the court affirmed the constitutionality of the requirement and cited the federal court case *Gary-Northwest Indiana Women's Service, Inc. v. Bowen* (1980), in which the US District Court for the Northern District of Indiana ruled a similar restriction was constitutional. The final restriction addressed by the court pertained to the disposal of fetal remains. The court invalidated the regulation due to its vagueness.

After the appeals court decision, the city of Akron, the Akron Center for Reproductive Health, and the interveners of the case filed three separate petitions for certiorari, which are petitions for the US Supreme Court, in Washington, D.C., to review the case. However, the Supreme Court granted only those of the Akron Center for Reproductive Health and the city of Akron.

On 30 November 1982, the US Supreme Court heard oral arguments for the case. American Civil Liberty Union (ACLU), headquartered in New York City, New York, cooperating attorney Stephan Landsman argued on behalf of the Akron Center of Reproductive Health. Attorneys Rex E. Lee and Alan G. Segedy argued on behalf of the city of Akron.

On 15 June 1983, the US Supreme Court decided the case *City of Akron v. Akron Center for Reproductive Health*. Justice Lewis Powell wrote the Court's majority opinion. Justices Harry Blackmun, William Brennan, Warren Burger, Thurgood Marshall, and John Stevens joined Powell in the majority opinion. Justice Sandra Day O'Connor wrote a dissenting opinion, Justices William Rehnquist and Byron White joined O'Connor's dissenting opinion.

In his majority opinion, Powell addressed five of the stipulations in the city of Akron ordinance. He first discussed the requirement for the hospitalization of abortions conducted after the first trimester. In the Supreme Court case, the Akron Center for Reproductive Health argued that the provision deterred women from seeking an abortion as it made it more difficult and expensive to receive abortions. Powell compared the prices of a hospital visit, which cost nine hundred dollars, to a clinic visit, which cost three to four hundred dollars, to demonstrate the increased expense. In response, the city of Akron argued that although the burden on women may be significant, the state had a legitimate interest in protecting women's health. In its ruling, the Supreme Court ruled that second trimester abortions could be performed safely in clinics due to advances in the dilation and evacuation procedure, an abortion method involving the dilation of the cervix and surgical evacuation of the contents of the uterus. The Court argued that the state could not necessitate the procedure to take place in costlier settings without placing an undue burden on women's rights to terminate their pregnancies. Therefore, the Court decided that the regulation for the hospitalization of second trimester was unconstitutional.

Powell next addressed the requirement mandating parental consent for minors under the age of fifteen seeking an abortion. The Court ruled that Akron could not characterize all minors as immature when deciding to abort a pregnancy, nor should the city decide that an abortion would never be in the best interest of a minor without parental consent. For that reason, the Court deemed that regulation unconstitutional.

Powell next discussed the regulation detailing what information physicians were required to tell pregnant women seeking abortions. The Court ruled unconstitutional the provision requiring physicians to inform each pregnant woman about the status of her pregnancy, the fetus's development, and the possible date of viability. The requirement also directed physicians to discuss the physical and emotional complications resulting from pregnancies and potential resources for contraception, adoption, and childbirth. In its ruling, the Court characterized the required information as attempting to persuade women to not have abortions rather than simply to provide information. The Supreme Court, in accordance with both lower courts, ruled that the State did not have the right to decide what exact information should be provided to women. They stated that physicians should be able to provide information to each woman based on their medical judgment and each woman's unique situation. Therefore, the Court ruled that the regulation unconstitutionally violated women's rights to seek abortions.

Powell concluded by discussing the regulations requiring twenty-four-hour wait periods and humane disposal of fetuses after abortions. The city of Akron argued that the wait period allowed each woman to reflect on her decision to get an abortion. The Akron Center for Reproductive Health

claimed that the wait period increased the cost of abortions, as the women had to return to the hospital again the next day. In addition, the Akron Center for Reproductive Health argued that scheduling delays often resulted in the passage of more than twenty-four hours, which could cause health risks. The Court decided that the wait period placed an unnecessary burden on the women seeking an abortion. Regarding the disposal regulation, the city of Akron argued that the regulation prevented physicians from throwing aborted fetuses into garbage piles. The Court deemed the provision unconstitutional since it did not explicitly describe what represented humane and sanitary disposal.

Justice O'Connor published a dissenting opinion. In her dissenting opinion, O'Connor asserted that the Court's use of trimesters when analyzing abortion regulations led to conflicts between protecting individual rights and the interest of the state. She reasoned that technological advancements made the distinction between trimesters unclear. O'Connor argued that the trimester approach should not be used in analyzing abortion regulations and that the interests of the State in protecting the health and welfare of the woman should be present during the entire pregnancy and not just during certain trimesters. For that reason, she stated that her dissent from the majority opinion stemmed from her disagreement with the way the Court analyzed the regulations of the Akron Ordinance.

Furthermore, in her dissenting opinion O'Connor asserted that the provision requiring hospitalization did not pose an undue burden on women seeking abortions. She stated that no evidence existed showing that local hospitals would not use the dilation and evacuation method, or that the hospitalization would cost more than any clinic would if the clinics costs were increased by imposed regulations. O'Connor also argued that the provision requiring parental consent for minors was constitutional by noting that the state court would not compel judges to notify the parents of a mature minor if the notification was not in the minor's best interest. Regarding the provisions requiring physicians to disclose certain information and a twenty-four hour wait period, O'Connor reasoned that neither posed undue burden. She claimed that physicians should provide women with enough information to decide and that those physicians could waive the waiting period for emergencies. Finally, O'Connor disagreed with the majority's opinion that the provisions of the ordinance dealing with the disposal of fetuses after abortion procedures were vague and therefore invalidated. Justices Rehnquist and White joined O'Connor's dissenting opinion.

The US Supreme Court decided in *City of Akron v. Akron Center for Reproductive Health* that certain requirements of the Akron ordinance were unconstitutional. Those requirements included a twenty-four hour wait period, parental consent, mandating disclosure of certain information during the informed consent process, specifications for fetal remains disposal, and hospitalization for second trimester abortions. However, in 1992, *Planned Parenthood v. Casey* established new abortion precedents, rendering obsolete many of the protections established in *City of Akron v. Akron Center for Reproductive Health*.

Legal scholar Peter Prieto cites *City of Akron v. Akron Center for Reproductive Health* as being one of the first cases to question the constitutionality of requirements for second trimester abortions to be conducted in hospitals. According to scholar Helen Knowles, *City of Akron v. Akron Center for Reproductive Health* involved assessing how to balance the interests of states over women's rights to privacy and choice to have abortions. In his decision, Powell reaffirmed *Roe v. Wade's* ruling that women had constitutional rights to abortions. In combination with the significance of Powell's ruling, Knowles asserts that O'Connor's dissenting opinion has also been cited regarding judgments of undue burden in future abortion cases.

Sources

1. *Akron Center for Reproductive Health v. City of Akron*, 479 F. Supp. 1172 (N.D. Ohio 1979). https://scholar.google.com/scholar_case?q=akron+v+akron&hl=en&as_sdt=4,60,111,126,356&case=14356745613017490707&scilh=0 (Accessed June 5, 2017).
2. *Akron Center, ETC. v. City of Akron*, 651 F.2d 1198 (6th Cir. 1981). https://scholar.google.com/scholar_case?q=akron+v+akron&hl=en&as_sdt=4,60,111,126,356&case=1409126348

- 8533342631&scilh=0 (Accessed June 5, 2017).
3. Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1983). https://scholar.google.com/scholar_case?q=akron&hl=en&as_sdt=806&case=7944230995323582140&scilh=0 (Accessed June 5, 2017).
 4. "Akron v. Akron Center For Reproductive Health." Oyez. <https://www.oyez.org/cases/1982/81-746> (Accessed October 30, 2017.)
 5. Gary-Northwest Indiana Women's Services v. Bowen, 496 F. Supp. 894 (ND Indiana 1980). [https://scholar.google.com/scholar_case?case=6879019708312066734&q=Gary-Northwest+Indiana+Women%27s+Services+v.+Bowen,+496+F.+Supp.+894+\(ND+Indiana+1980\).+&hl=en&as_sdt](https://scholar.google.com/scholar_case?case=6879019708312066734&q=Gary-Northwest+Indiana+Women%27s+Services+v.+Bowen,+496+F.+Supp.+894+(ND+Indiana+1980).+&hl=en&as_sdt) (Accessed June 5, 2017).
 6. Knowles, Helen. "City of Akron v. Akron Center for Reproductive Health." The U.S. Justice System: An Encyclopedia. Santa Barbara: ABC-CLIO. 2011.
 7. Planned Parenthood of Southeastern Pennsylvania v. Casey. 505 U.S. 833 (1992). https://scholar.google.com/scholar_case?q=casey&hl=en&as_sdt=806&case=6298856056242550994&scilh=0 (Accessed June 9, 2016).
 8. Prieto, Peter. "City of Akron v. Akron Center for Reproductive Health, Inc.: Stare Decisis Prevails, but for How Long." University of Miami Law Review 38 (1983): 921-37. <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=2229&context=umlr> (Accessed June 5, 2017).
 9. Regulations of Abortion, Akron Codified Ordinances, Ch. 1870 (1978).
 10. Roe v. Wade, 410 US 113 (1973). https://scholar.google.com/scholar_case?q=roe+v+wade&hl=en&as_sdt=806&case=12334123945835207673&scilh=0 (Accessed March 28, 2017).