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Case Brief

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Gomez:
The Minnesota Supreme Court
Abortion Funding Decision

This case brief describes the December 15, 1995 Minnesota Supreme Court decision in the abortion funding case *Doe v. Gomez*, No. CX-94-1442 (1995). This case brief summarizes the decision in the case, describes the facts of the lawsuit, and presents the legal issues decided by the Minnesota Supreme Court and the rationale for the court's decision on each issue. The final section briefly identifies the arguments raised by the dissent.

Contents

The Decision	2
The Lawsuit	3
The Issues Decided in <i>Gomez</i>	3
The Dissent	7

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The Decision

In *Gomez*, the Minnesota Supreme Court considered the constitutionality of Minnesota statutory provisions that restrict publicly-funded abortion coverage under Medical Assistance (MA)¹ and General Assistance Medical Care (GAMC)² to three limited circumstances.³ The Minnesota Supreme Court ruled that the challenged provisions are unconstitutional and upheld a district court's order enjoining their enforcement.⁴

The supreme court held that the privacy right guaranteed by the Minnesota Constitution encompasses a woman's fundamental right to terminate her pregnancy. The court also held that the challenged funding provisions, which permit the use of public funds for birth-related services but prohibit the use of public funds for certain abortion-related services, impermissibly infringe on that fundamental privacy right.

Specifically, the court held that the state of Minnesota "cannot refuse to provide abortions to MA/GAMC-eligible women when the procedure is necessary for therapeutic reasons."⁵

¹ Medical Assistance (MA), Minnesota's Medicaid program, is a joint federal/state program providing certain health care services to low-income persons who meet the eligibility requirements.

² General Assistance Medical Care (GAMC) is a state funded program that pays for certain health care services for Minnesota residents whose income and resources are insufficient to cover their health care expenses and who are not eligible for MA or other health care programs.

³ The statutory provisions at issue prohibit the use of public funds to pay for abortions unless: (1) the abortion is medically necessary to prevent the death of the mother based on the signed written statement of two physicians; (2) the pregnancy is the result of a rape which is reported within 48 hours after the victim becomes physically able to report the rape; or (3) the pregnancy is the result of incest which is reported to a law enforcement agency. Minn. Stat. §§256B.0625, subd. 16, 256B.40, 261.28, 393.07, subd. 11, and Minnesota Rules, parts 9505.0220 (q), and 9505.0235, subp. 2.

⁴ Justice M. Jeanne Coyne dissented and Justice Edward Stringer took no part in the opinion. For a summary of the arguments raised by Justice Coyne in her dissent, see p. 7.

⁵ *Doe v. Gomez* No. CX-94-1442 at 25 (1995). The court did not define the term "therapeutic."



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The Lawsuit

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In 1993, plaintiffs⁶ filed a lawsuit against the Minnesota Commissioner of Human Services and Hennepin, Ramsey, and St. Louis counties, alleging that the abortion funding provisions in Minnesota law relating to the MA, GAMC, and County Poor Relief programs violate several provisions of the Minnesota Constitution. The plaintiffs sought both a declaration that the challenged provisions violate the Minnesota Constitution and an injunction prohibiting their enforcement.

Both the plaintiffs and the state made cross-motions for summary judgment. On June 16, 1994, the Hennepin County District Court issued an order in favor of the plaintiffs. The district court struck the challenged statutory provisions as unconstitutional and permanently enjoined their enforcement.⁷

On June 23, 1994, the State moved for a stay of enforcement of the judgment and for a suspension of the injunction. On July 5, 1994 the district court denied both motions. The state then filed a notice of appeal and a petition for accelerated review on July 6, 1994. The supreme court granted the State's petition for accelerated review on July 29, 1994. The supreme court issued its decision upholding the district court's order on December 15, 1995.

The Issues Decided in Gomez

Although the district court found that the challenged provisions violate both the privacy and equal protection provisions of the Minnesota Constitution, the Minnesota Supreme Court in its majority opinion did not address the equal protection arguments and instead limited its analysis and holding to whether the statutes violate a constitutionally protected right of privacy. To determine whether the right of privacy provisions of the Minnesota Constitution are violated by the statutes, the court analyzed and resolved the following issues.

⁶ The group of plaintiffs in this case included: women eligible for MA and GAMC who had sought abortions for health reasons; Jane Hodgson, M.D., a physician who provides abortion services; Pro-Choice Resources, an organization that provides loans and grants to low-income women seeking abortions; and several clinics providing abortion services, including Women's Health Center of Duluth, Midwest Women's Health Center, and Meadowbrook Women's Clinic. *Id.* at 3-4, n. 2.

⁷ *Doe v. Steffen*, No. MC 93-3995 (Hennepin County D. Ct. Minn. June 16, 1994). The court enjoined the enforcement of Minn. Stat. §§256B.0625, subd. 16, 256B.40, 261.28, 393.07, subd. 11, and Minnesota Rules, parts 9505.0220(q) and 9505.0235, subp. 2. When this case was initiated, Natalie Hass Steffen was the Commissioner of Human Services. The title of the case has since been changed to reflect the name of the current Commissioner of Human Services, Maria Gomez.

Issue: Is a woman's right to decide whether to terminate her pregnancy a fundamental right and therefore protected by the right of privacy under the Minnesota Constitution?

Decision: The court concluded that the right of privacy under the Minnesota Constitution encompasses a woman's right to decide to terminate her pregnancy.

Rationale: In arriving at its decision, the court noted that the United States Supreme Court has explicitly recognized a right to privacy guaranteed under the United States Constitution and that the Minnesota Supreme Court similarly has recognized a right of privacy guaranteed under the Minnesota Constitution.⁸ In addition, the United States Supreme Court in *Roe v. Wade*⁹ determined that the right of privacy under the United States Constitution encompasses a woman's fundamental right to decide to terminate her pregnancy free from burdensome governmental interference.

Until the *Gomez* case, the Minnesota Supreme Court had not directly addressed whether the right of privacy under the state constitution encompasses a woman's right to decide to end a pregnancy. The Minnesota Supreme Court had, however, examined the parameters of the right of privacy in other contexts.

In *Jarvis v. Levine*,¹⁰ the Minnesota Supreme Court held that the forcible administration of neuroleptic medications (major tranquilizers) in non-emergency situations without prior judicial approval violates a patient's right of privacy under the Minnesota Constitution. The court stated that the right of privacy "begins with protecting the integrity of one's own body and includes the right not to have it altered or invaded without consent."¹¹ The court reasoned in *Gomez* that a woman's decision whether to terminate a pregnancy is the type of intimate, profound, and personal decision concerning the integrity of one's body that is consistent with the court's characterization of the kind of decision that is protected by the right of privacy. Thus, the court concluded, a woman's right to decide to terminate a pregnancy is a fundamental right.

⁸ See *Griswold v. Connecticut*, 381 U.S. 479 (1965); *State v. Gray*, 413 N.W.2d 107 (Minn. 1987).

⁹ 410 U.S. 113 (1973).

¹⁰ 418 N.W. 2d 139 (Minn. 1988).

¹¹ *Id.* at 148. The Minnesota Supreme Court also considered the parameters of the right of privacy under the Minnesota Constitution in *State v. Gray*, 413 N.W.2d 107 (Minn. 1987). In that case, a defendant was charged with violating a criminal sodomy statute by engaging in sex with a male prostitute in exchange for money. The court considered whether the sodomy statute as applied to the acts of the defendant unconstitutionally violated the right of privacy under the Minnesota Constitution. The court declined to characterize the actions at issue as "private sexual conduct" and instead considered whether there exists a fundamental right to engage in sodomous acts within a sex for compensation relationship. The court did not recognize a fundamental right of privacy which protects those who engage in commercial sex and held that the sodomy statute as applied in that case did not violate the right of privacy under the Minnesota Constitution. *Gray* at 114.

Issue: Do the challenged provisions infringe upon the right of privacy?

Decision: The court concluded that the challenged statutes constitute an infringement on the fundamental right of privacy under the Minnesota Constitution, thus construing the right of privacy under the state constitution to be broader than the privacy right under the United States Constitution.

Rationale: The court deemed critical to its analysis on this issue its position that the right of privacy under the Minnesota Constitution "protects not simply the right to an abortion, but rather it protects the woman's decision to abort."¹² The court concluded that any legislation infringing on a woman's "decision-making process" concerning an abortion violates this fundamental right.¹³ The court found that the state's offer to fund birth-related services and its refusal to fund certain abortion-related services infringed upon that "decision-making process" because the court could not "say that an indigent woman's decision whether to terminate her pregnancy is not significantly impacted by the state's offer of comprehensive medical services if the woman carries the pregnancy to term."¹⁴

In so holding, the Minnesota Supreme Court construed the right of privacy under the state constitution to provide broader protection than is provided by the United States Constitution. The United States Supreme Court has ruled that neither federal Medicaid law nor the United States Constitution requires states to fund all abortions in their Medicaid programs.¹⁵

The United States Supreme Court in *Harris v. McRae* held that a legislative funding ban on abortion does not infringe on a woman's right to choose an abortion under the United States Constitution. The Minnesota Supreme Court departed from that decision by deciding that under the Minnesota Constitution the lack of public funding for abortions does infringe upon the right to choose.¹⁶ The Minnesota court declined to adopt the distinction established in *McRae* that government action creating an obstacle to abortion impermissibly infringes on the right of privacy but that government action that fails to remove a preexisting barrier (indigence) does not. The Minnesota court further pointed out that a substantial majority of

¹² *Gomez*, No. CX-94-1442 at 23.

¹³ *Id.*

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 17-18 (citing *Harris v. McRae*, 448 U.S. 297, 316-17 (1980); *Beal v. Doe*, 432 U.S. 438, 447 (1977); and *Maher v. Roe*, 432 U.S. 464, 474 (1977)).

¹⁶ *Gomez*, No. CX-94-1442 at 21.

other state courts that have addressed this issue have also departed from *McRae* in interpreting their own constitutions.¹⁷

The Minnesota court stated that this case was "one of those limited circumstances in which we will interpret our constitution to provide more protection than that afforded under the federal constitution."¹⁸ The court noted that Minnesota has a long tradition of "affording persons on the periphery of society a greater measure of government protection and support than may be available elsewhere."¹⁹

Issue: Do the statutes withstand "strict scrutiny" which requires, for the statutes to be constitutional, that they must promote a compelling state interest that justifies their infringement on a fundamental right?

Decision: The court concluded that the challenged statutes do not withstand strict scrutiny and must be invalidated.

Rationale: Because the court had determined that the abortion funding provisions in the Minnesota statutes infringe on the fundamental right of privacy, the court applied the strict scrutiny standard of review under which the state must show a compelling interest in the statute's restrictions. The court noted that under federal constitutional law, the state's interest in protecting potential human life does not become compelling until after the fetus becomes viable. The court concluded that "because the challenged provisions apply at all stages of pregnancy, including prior to viability, they do not withstand strict scrutiny, and thus must be invalidated."²⁰

¹⁷ *Id.* at 19. See *Right to Choose v. Byrne*, 450 A.2d 925 (N.J. 1982); *Committee to Defend Reprod. Rights v. Myers*, 625 P.2d 779 (Cal. 1981); *Moe v. Secretary of Admin. and Fin.*, 417 N.E.2d 387 (Mass. 1981); *Doe v. Maher*, 515 A.2d 134 (Conn. Super. Ct. 1986); *Planned Parenthood Ass'n, Inc. v. Department of Human Resources of the State of Or.*, 663 P.2d 1247 (Or. Ct. App. 1983), *aff'd* on other grounds, 687 P.2d 785 (Or. 1984); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 446 S.E.2d 658 (W. Va. 1993); *Doe v. Wright*, No. 91-CH-1958 (Ill. Cir. Ct. Dec. 2, 1994); *New Mexico Right to Choose v. Danfelser*, No. SF-95-867(C) (N.M. Dist. Ct. filed July 3, 1995); *Jeannette R. v. Ellery*, No. BDV-94-811 (Mont. Dist. Ct. May 22, 1995). Three state courts, however, have found no state constitutional violation in prohibiting state funding of abortion. See *Hope v. Perales*, 634 N.E.2d 183 (N.Y. 1994); *Doe v. Department of Social Serv.*, 487 N.W.2d 166 (Mich. 1992); *Fischer v. Department of Pub. Welfare*, 502 A.2d 114 (Pa. 1985)..

¹⁸ *Gomez*, No. CX-94-1442 at 21.

¹⁹ *Id.* at 22.

²⁰ *Id.* at 25.

The Dissent

The dissenting opinion by Justice Coyne argued that the Minnesota abortion funding statutes do not violate the Minnesota Constitution. The dissent stated that the qualified right of a woman to decide whether to terminate her pregnancy is not at issue in this case. The dissent argued that the issue to be decided is instead whether a woman's right to decide whether to terminate her pregnancy includes the right to compel the state to fund her decision.²¹

The dissent stated that there is "a very significant difference between a right to decide to terminate a pregnancy by abortion without fear of criminal complicity and a right to compel the state to pay for the abortion."²² The dissent noted that citizens have a variety of constitutional rights, but there are typically no "entitlements to governmental financial aid" to exercise those rights.²³

The dissent argued also that the decision of government funding of abortion is properly a matter for the legislature to decide and that the majority ignores precedent on this subject.²⁴ The dissent concluded that even though a court may disagree with a political decision, it should not exercise what is properly a legislative function.

²¹ *Id.* at D-10.

²² *Id.* at D-3.

²³ *Id.* at D-8.

²⁴ The dissent noted an earlier case in which the Minnesota Supreme Court stated that the issue of taxpayer funding of abortions should "be decided by the legislature where everyone can have his say." *Id.* at D-7 (quoting *McKee v. Likins*, 261 N.W.2d 566, 578 (Minn. 1977)).

