



Written by [Jack Kenny](#) on February 25, 2014

High Court Rejects Appeal: Arizona Must Fund Planned Parenthood

The U.S. Supreme Court Monday rejected without comment an appeal from the state of Arizona of a ruling by a panel of the 9th Circuit Court of Appeals that requires the state to [include Planned Parenthood](#) as recipients of payments for patient care under the state's Medicaid program. The circuit court ruling, handed down last August, struck down an Arizona law that prohibited public funds from going to Planned Parenthood or other agencies that perform abortions.



Both Arizona and federal law ban the use of public funds for abortions that are not medically necessary to protect the life or health of the mother. But the state's Whole Women's Healthcare Funding Prioritization Act required that the funds be spent at healthcare facilities where comprehensive healthcare for women does not include abortion. Justin Olson, the Mesa Republican who sponsored the 2012 legislation, argued that money that goes to Planned Parenthood for other services frees up other money to the fund the agency's abortion procedures.

Medicaid, a healthcare program for the poor, is funded primarily by federal dollars. Arizona, as part of its participation in the program, provides family planning services for needy women. The federal government provides funding for 90 percent with the state paying the remaining 10 percent, the *Arizona Sun* [reported](#).

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The 9th Circuit Court ruled the state law violates a federal statute requiring that physicians whom states have qualified for Medicaid, based on a state legislature's rational policy decisions, may not be excluded from funding. Arizona's petition to the Supreme Court argued the circuit court misinterpreted the reference to "qualified" in the "choice criterion" provision of the law to mean that states may not exclude any physicians who simply have "professional competence."

"The [9th Circuit] panel's interpretation of the term 'qualified' renders the choice criterion provision pointless and redundant," according to the petition filed in *Betlach v. Planned Parenthood Arizona*. "If 'qualification' is a matter of licensure and competence, then the choice criterion serves no purpose because Arizona's existing licensure and oversight provisions already limit a Medicaid recipient's choice to 'qualified' providers." The 9th Circuit ruling followed the reasoning and ruling by the 7th Circuit court in a similar case, the petition stated:

The Ninth Circuit has now followed the Seventh Circuit's erroneous lead in *Planned Parenthood of Indiana, Inc. v. Commissioner of Indiana State Department of Health ...* by construing the federal Medicaid statute's choice criterion provision in terms of who is "qualified" to render Medicaid services based on professional competence, rather than in terms of who is qualified to participate as a Medicaid provider based on a state legislature's rational policy decisions. The panel's decision



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fundamentally alters the choice criterion provision. Consequently, it creates an enforceable right where none exists ... and encroaches upon state sovereignty under the Tenth Amendment.

Review by the Supreme Court is necessary, petitioners claimed, because “the Ninth Circuit’s interpretation, now embraced by two federal circuit courts, strips the States of their prerogative to rationally administer their respective state Medicaid programs as they see fit.”

The state law “reflects a public policy preference for childbirth over abortion and gives effect to Arizona’s justifiably strong interest in recognizing the inherent difference of abortion from other medical procedures,” argued Tom Horne, the state’s attorney general. Bryan Howard, president of Planned Parenthood Arizona, said the legislation was political interference with the healthcare choices by women. Howard hailed the court’s decision as “a victory for Arizona women and their families.”

Stephen Aden senior counsel with the conservative advocacy group Alliance Defending Freedom and special assistant to Horne in defending the Arizona law, expressed his disappointment in an email to LifeNews: “Taxpayers should not be forced to subsidize the work of abortionists,” Aden wrote. “Arizona should be free to enforce its public interest against the taxpayer funding of abortion and in favor of the best health care for women, which is what this law sought to do. We are disappointed that the Supreme Court did not decide to weigh in on that principle.”



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