



Written by [Raven Clabough](#) on January 21, 2019

Appeals Court Ruling Marks Pro-life Victory Against Planned Parenthood

Last week, a three-judge panel of the U.S.  Court of Appeals for the Fifth Circuit released an [opinion](#) in *Planned Parenthood of Greater Texas Family Planning and Preventative Health Services, Inc. v. Smith* that presents a significant victory for pro-lifers. The panel lifted an injunction that had blocked Texas officials from cutting Medicaid funding to Planned Parenthood and confirmed the authenticity of the 2015 undercover video released by the Center for Medical Progress (CMP) that prompted the state to cut funding to the abortion giant.

The panel evaluated whether U.S. District Judge Sam Sparks' February 2017 preliminary injunction against Texas that prohibited the state from cutting funding to Planned Parenthood should be upheld. Judge Sparks determined that despite the evidence revealed in the undercover videos released by the Center for Medical Progress that prompted Texas to cut funding to the abortion giant, the state did not present "even a scintilla of evidence" to disqualify Planned Parenthood from Medicaid based on the videos.

But the Fifth Circuit panel disagreed on Thursday, and reversed the preliminary injunction preventing Texas from terminating state Medicaid funding to Planned Parenthood. The three-judge panel determined that Judge Sparks used the incorrect standard of review, vacated Sparks' 2017 preliminary injunction, and remanded the case back to the district court for further review.

According to the *Washington Post*, Judge Sparks is now required to "apply a different standard of review — a much higher one, assessing this time whether Texas's decision to defund Planned Parenthood was 'arbitrary and capricious.'" For Planned Parenthood to prevail, Sparks would have to determine that the state had absolutely no compelling reason to terminate the contract, which is a much more difficult case for the plaintiffs to prove, asserts Seth Chandler, a law professor at the University of Houston.

"I think it's going to be quite difficult for Planned Parenthood to prevail," Chandler said. "The standard the 5th Circuit has set down is one that, given the evidence and the history in this case, and a clear signal from the 5th Circuit in this case, Planned Parenthood is going to be hard-pressed to meet. The \$3.4 million Planned Parenthood receives from Texas pursuant to the Medicaid program is very likely going to go away."

The *Washington Post* notes that the panel's decision comes one month after the Supreme Court maintained a previous ruling by the Fifth Circuit in favor of Planned Parenthood after Louisiana attempted to defund the abortion giant based on CMP's videos because the state failed to specifically cite the videos in writing when it terminated the Planned Parenthood contract. Texas, however, did cite the videos in the state report, and it has made all the difference in this case.



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What's more, the opinion released by the three-judge panel also confirmed that the video footage captured by the Center for Medical Progress was authentic, despite allegations by Planned Parenthood that the videos had been manipulated. The opinion reads:

In fact, the record reflects that [the Texas Health and Human Services Commission's Office of Inspector General] had submitted a report from a forensic firm concluding that the video was authentic and not deceptively edited. And the plaintiffs did not identify any particular omission or addition in the video footage.

In the opinion, Judge Edith H. Jones of the Fifth Circuit accused Sparks of being too "dismissive" of a report by the Texas Health and Human Services Commission's Office of Inspector General that was behind the state's decision to revoke Medicaid funding. According to the report, the video footage captured by the CMP videos revealed that the abortion provider had diverged from "standards of medical ethics."

But Judge Sparks dismissed the report simply because the authors had no background in "reproductive healthcare" (i.e., abortion), which, according to Judge Jones, was unsound judgment.

"[The Office of Inspector General] is the agency that the state of Texas has empowered to investigate and penalize Medicaid program violations," Jones wrote. "The agency is in the business of saying when providers are qualified and when they are not. That the Chief Medical Officer is a surgeon — and not himself an abortion provider — does not mean that he deserves no deference when deciding whether a provider has failed to meet the medical and ethical standards the state requires."

Meanwhile, Planned Parenthood is continuing to claim that the videos released by the Center for Medical Progress were fraudulent, despite the determination by the forensic firm to the contrary.

Planned Parenthood spokeswoman Erica Sackin said in a statement Friday that "it is completely outrageous that officials are using thoroughly discredited, fraudulent videos to try to cut women off from preventive health care, including cancer screenings, HIV testing, and birth control."

Texas Attorney General Ken Paxton said on Friday that Planned Parenthood will be terminated as a Medicaid provider on February 8 when the appeals court issues its mandate to enforce the ruling. That can be delayed further, however, if the abortion provider asks the appeals court to reconsider its ruling or files a motion to stay the mandate.

Yvonne Gutierrez, executive director of Planned Parenthood Texas Votes, said the organization is weighing its options, the *Chicago Tribune* reports.



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