SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE V. GOVERNOR OF GEORGIA: ELEVENTH CIRCUIT UPHOLDS GEORGIA LAW PROHIBITING MOST ABORTIONS AFTER FETAL HEARTBEAT DETECTED FOLLOWING SUPREME COURT RULING IN *DOBBS*

J. MONTY HORN*

In *SisterSong Women of Color Reproductive Justice Collective v. Governor of Georgia*, the United States Court of Appeals for the Eleventh Circuit upheld a Georgia law that prohibits most abortions after a fetal heartbeat is detected.[1] The court based its decision on the United States Supreme Court's recent holding in *Dobbs v. Jackson Women's Health Organization*, where the Court held the "Constitution does not prohibit the citizens of each state from regulating or prohibiting abortion."[2] The Eleventh Circuit also upheld the Georgia law on the grounds that its statutory definition of a "natural person" was not unconstitutionally vague.[3]

In 2019, Georgia enacted the Living Infants Fairness and Equality ("LIFE") Act.[4] The Act prohibits abortions of a "natural person" after a fetal heartbeat is detected but includes a list of enumerated exceptions.[5] The Act's definition of "natural person" includes an unborn child at any stage of development who is carried in the womb.[6]

Following the enactment of the LIFE Act, abortion rights advocacy groups, practitioners, and providers filed a complaint in the United States District Court for the Northern District of Georgia against numerous Georgia state officials in their official capacities.[7] In their

---

* Junior Editor, *Cumberland Law Review*, Candidate for Juris Doctor, May 2024, Cumberland School of Law; Candidate for Master of Business Administration, Samford University Brock School of Business, May 2024; B.B.A. Finance, May 2021, Kennesaw State University.

[1] 40 F.4th 1320, 1328 (11th Cir. 2022). There are enumerated exceptions in the law allowing for abortions occurring after a fetal heartbeat has been detected, including instances such as medical emergencies, the life of the mother, rape, and incest. *See* H.B. 481 § 4(b), 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

[2] 142 S. Ct. 2228, 2284 (2022); *see SisterSong Women*, 40 F.4th at 1325–26.

[3] *See SisterSong Women*, 40 F.4th at 1328.

[4] *Id.* at 1324; *see* H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

[5] *SisterSong Women*, 40 F.4th at 1324; H.B. 481 §§ 3(b), 4(b).

[6] H.B. 481 § 3(e)(2).

[7] *SisterSong Women*, 40 F.4th at 1324.

complaint, the abortionists[8] alleged "the Act's prohibition on post-fetal-heartbeat abortions violated women's substantive due process rights under the Fourteenth Amendment."[9] The abortionists further alleged the Act's definition of "natural person" was unconstitutionally vague on its face.[10] The complaint requested both "preliminary and permanent injunctions restraining the enforcement of the Act, a declaratory judgment that the Act violat[ed] the Fourteenth Amendment, and attorney's fees."[11]

The district court granted the preliminary injunction, finding that the abortionists were likely to succeed on the merits of their claim.[12] The case then proceeded to discovery, after which the parties moved for summary judgment.[13] Here, the abortionists argued their first claim that "the prohibition of pre-viability . . . abortions was unconstitutional under the Fourteenth Amendment as interpreted in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey.*"[14] The state officials countered by arguing the abortionists lacked standing.[15]

Furthermore, the abortionists argued their second claim that "the definition of 'natural person' in the Act was unconstitutionally vague."[16] They reasoned that the redefinition of "natural person" to include the unborn in "the Georgia Code gave rise to 'uncertainty about what actions give rise to criminal and civil liability under numerous' Georgia laws" and that the law did not give them "fair notice" or "explicit standards to apply."[17] In response, the state officials argued that the definition of "natural person" was clear as the statute explicitly provided "that unborn children with detectable heartbeats shall be included in the State's population-based determinations."[18]

The district court granted the abortionists' motion for summary judgment and entered a permanent injunction prohibiting state officials from enforcing the Act.[19] The district court held certain sections of the

---

[8] For sake of clarity and as used in the opinion, the term "abortionists" refers to the plaintiff-appellees and comprises of both the abortion rights advocacy groups, practitioners, and providers.

[9] *SisterSong Women*, 40 F.4th at 1324 (citing H.B. 481 § 4).

[10] *Id.*

[11] *Id.* (citing 42 U.S.C. §§ 1983, 1988; 28 U.S.C. §§ 2201–02).

[12] *Id.*

[13] *Id.*

[14] *Id.*; *see* Roe v. Wade, 410 U.S. 113, 153 (1973); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 845–46 (1992).

[15] *SisterSong Women*, 40 F.4th at 1324.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 1325.

[19] *Id.*

LIFE Act violated the Fourteenth Amendment, reasoning that precedent in *Roe* and *Casey* precluded a state from prohibiting abortions any time prior to viability.[20] The district court further held certain portions of the law were unconstitutionally vague as individuals would be "forced to hypothesize about ways in which their conduct might violate statutes amended by the [Act]."[21]

The state officials appealed, and, with an agreement by all parties, the Eleventh Circuit stayed the appeal pending the Supreme Court decision in *Dobbs*.[22] After the *Dobbs* ruling, the Eleventh Circuit lifted the stay and considered the case.[23] The Eleventh Circuit ultimately reversed the judgment of the district court and held that Georgia's abortion prohibitions were constitutional and that the LIFE Act's definition of "natural person" was not unconstitutionally vague.[24]

Considering if Georgia's pre-viability abortion prohibitions violated the Fourteenth Amendment, the Eleventh Circuit turned to the recent Supreme Court decision in *Dobbs*.[25] In *Dobbs*, the Supreme Court overruled *Roe* and *Casey*, holding the right to an abortion was not "protected by any constitutional provision."[26] Accordingly, as laws regulating abortion are now "entitled to a strong presumption of validity,"[27] the Eleventh Circuit stated that such laws must be sustained if "there is a rational basis on which the legislature could have thought that it would serve legitimate state interests."[28] Because the preservation of life at "all stages of development" is a legitimate state interest, the Eleventh Circuit reversed the district court's ruling and held the LIFE Act did not violate the Fourteenth Amendment.[29]

To succeed on their second claim, the abortionists needed to establish that the definition of "natural person" was unconstitutionally vague by showing "that no set of circumstances exist[ed] under which the Act would be valid."[30] *Indigo Room, Inc. v. City of Fort Myers* requires a law to be "utterly devoid of a standard of conduct so that it

---

[20] *Id.*

[21] *SisterSong Women*, 40 F.4th at 1325 (internal quotation marks omitted).

[22] *Id.*

[23] *Id.*

[24] *See id.* at 1323–24.

[25] *See id.* at 1325–26; Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

[26] *Dobbs*, 142 S. Ct. at 2242.

[27] *Id.* at 2284.

[28] *SisterSong Women*, 40 F.4th at 1326 (internal quotation marks omitted) (quoting *Dobbs*, 142 S. Ct. at 2284).

[29] *Id.* (quoting *Dobbs*, 142 S. Ct. at 2284).

[30] *Id.* at 1327 (internal quotation marks omitted) (quoting Indigo Room, Inc. v. City of Fort Myers, 710 F.3d 1294, 1302 (11th Cir. 2013)).

simply has no core and cannot be validly applied to any conduct."[31] Indeed, "[i]f persons of reasonable intelligence can derive a core meaning from a statute, then the enactment may validly be applied to conduct within that meaning and the possibility of a valid application necessarily precludes facial invalidity."[32]

Attempting to evade this standard, the abortionists argued that prior to *Dobbs*, the Act's definition of "natural person" was unconstitutionally vague due to its "chill[ing] [of] constitutionally protected conduct, namely the provision of an abortion."[33] However, as abortion is no longer constitutionally protected, the Eleventh Circuit dismissed this argument.[34] The abortionists further attempted to bypass the standard set forth in *Indigo* by arguing the definition violated the constitution by burdening both a "physicians' right to pursue their chosen profession of 'providing care for pregnant [women]'" and the "right to procreate."[35] Unwilling to "engage in abortion exceptionalism," the Eleventh Circuit dismissed this argument as *Dobbs* clarified that parties in abortion related cases must be treated equally to parties in other contexts.[36]

Applying the standard set forth in *Indigo*, the Eleventh Circuit held a person of "reasonable intelligence" would understand the Act's redefinition of "natural person" to "expand the definition of person to include unborn humans who are carried in the womb of their mothers at any stage of development."[37] Accordingly, the Eleventh Circuit reversed the district court's ruling and declined to find the Act's definition of "natural person" as unconstitutionally vague.[38]

The Eleventh Circuit's decision in *SisterSong Women* is a byproduct of the Supreme Court's recent decision in *Dobbs*.[39] The Supreme Court explained in *Dobbs* that the "permissibility of abortion, and the limitations, upon it, are to be resolved like the most important questions in our democracy: by citizens trying to persuade one another and then voting."[40] By ruling that abortion is no longer a constitutional right, the Supreme Court simply "return[ed] the issue of abortion to the

---

[31] *Id.* (internal quotation marks omitted) (quoting *Indigo*, 710 F.3d at 1302).

[32] *Id.* (internal quotation marks omitted) (quoting *Indigo*, 710 F.3d at 1302).

[33] *Id.* at 1327 (internal quotation marks omitted).

[34] *SisterSong Women*, 40 F.4th at 1327.

[35] *Id.* (second internal quotation marks omitted).

[36] *Id.* at 1328.

[37] *Id.* (citing *Indigo*, 710 F.3d at 1302).

[38] *Id.*

[39] *See id.* at 1323–24 (showing how "intervening Supreme Court precedent" affected the decision in this case).

[40] *Dobbs*,142 S. Ct. at 2243 (quoting *Casey*, 505 U.S. at 979 (Scalia, J., concurring in part and dissenting in part)).

people's elected representatives."[41] Hence, the decision by the Eleventh Circuit upholding Georgia's LIFE Act manifests the practical effects of the *Dobbs* ruling and exhibits that abortion, which is no longer a constitutional right of an individual, may be regulated by the states.[42]

[41] *Id.*

[42] *See id.* at 1325.