LEADING PUBLIC HEALTH, CHILD WELFARE, AND DRUG TREATMENT ORGANIZATIONS AND EXPERTS ASK APPEALS COURT TO OVERTURN CONVICTIONS OF TRACY WARD AND RHONDA SMITH

Texas Association of Obstetricians and Gynecologists; American Society of Addiction Medicine; National Association of Alcoholism and Drug Abuse Counselors, Inc; National Council on Alcoholism and Drug Dependence; National Coalition on Child Protection Reform; National Latina Institute for Reproductive Health:

Treating Pregnant Women Who Experience Drug Dependencies
As If They Are Drug Dealers Will Undermine Health of Children and Women.

Texas—More than 20 leading state and national public health, child welfare, and drug treatment organizations and experts (full list below) asked the Seventh Court of Appeals of Texas to overturn the convictions of Yolanda Ward and Rhonda Smith because they are not authorized by Texas law and because they violate well-established consensus in the medical community that such prosecutions are irrational, ineffective, and counterproductive. Ms. Ward and Ms. Smith were charged and convicted of Delivery of a Controlled Substance to a Child, based on the claim that they used an illegal drug while pregnant. Under the lower court’s interpretation of the State’s drug delivery statute, pregnant women who continue their pregnancies to term in spite of a drug problem are drug dealers who may be subject to 20 years imprisonment.

Jeff Blackburn, JD of Amarillo, Texas, Bernadette Hoppe, MA, JD, and Lynn Paltrow, JD, Counsel from National Advocates for Pregnant Women are representing these organizations as amici curiae (friends of the court). In a brief (written argument to the court) these organizations and individuals explained that the problems posed by drug use during pregnancy are serious public health issues but condemn the arrest and prosecution of pregnant women because drug dependency is a disease not a crime, because such prosecutions are likely to deter pregnant women from seeking prenatal care and treatment for drug and alcohol addiction that is beneficial to them and their children, and because such punitive approaches have no proven benefits for the
health of children. The amicus brief was filed in support of a motion to overturn the convictions filed by Ms. Ward and Ms. Smith’s legal counsel Larry Cunningham and Joe Dawson.

Jeff Blackburn, who is representing these organizations, said “These cases should never have been filed in the first place. There is overwhelming medical opposition to this kind of arrest and clear Texas state law and precedent against it.”

“The prosecutors in this case are sending a dangerous message to pregnant women with drug problems: if you continue to term you will be arrested as a drug dealer,” said Lynn Paltrow, Executive Director of the National Advocates for Pregnant Women.

On September 2, 2003, the District Attorney Rebecca King of Potter County, Texas, sent a letter to all physicians practicing in Potter County to announce her new and unique interpretation of Texas law. She stated that, based on a newly enacted Texas statute, Senate Bill 319 (hereafter SB 319) that defines an “individual” as a “human being who is alive, including an unborn child at every stage of gestation from fertilization until birth” any “[d]elivery of a controlled substance or marihuana to a child is now a second degree felony, regardless of the amount delivered.” As a result, she asserted that doctors in Potter County had a “legal requirement [to] report a pregnant woman who is using or has used illegal narcotics during her pregnancy.”

As a direct consequence of this letter doctors at Northwest Texas Hospital began collecting evidence against their patients and turning it over to the police and district attorney’s office. Patients were then arrested and charged with Delivery of a Controlled Substance to a Child. Ms. Ward and Ms Smith were among the first to be arrested and prosecuted under this unprecedented interpretation of state law.

While their cases were proceeding, Texas State Legislator Ray Allen, chair of the House Correction Committee and sponsor of SB 319, responded to District Attorney King’s clear misinterpretation of the law by seeking an official interpretation from the Attorney General, Greg Abbott. In the letter, Representative Allen made clear that the bill was never intended to mandate such violations of healthcare provider-patient confidentiality.

David Schneider, MD, a professor at the University of Texas Health Science Center at San Antonio and Chair of the Public Health Commission of the American Academy of Family Physicians, says that this kind of case will interfere with physician/patient confidentiality. “One of the things that physicians and their patients rely upon is patient confidentiality. That kind of trust is broken when patients know that physicians are required to report patient behavior to the authorities. As a result of this kind of requirement, women will stop seeking necessary medical care, including drug treatment,” he said. “We will have more drug addicted babies, babies born with lower birth weights and stillbirths. This is not going to help women or their children.”
On January 5, 2005, Attorney General Greg Abbott responded to the request and concluded that “[T]he Penal Code’s definition of “individual” does not apply to offenses under [the disputed law, and furthermore] a physician is not obligated to report a pregnant patient’s use of a controlled substance as child abuse under Family Code section 26 1.101 (b).”

Before the Attorney General Abbott issued his opinion, Ms. Ward and Ms. Smith pled guilty to Delivery of a Controlled Substance to a Child, while maintaining their right to appeal the legality of the original charges. Conviction for Delivery of a Controlled Substance to a Child carries a sentence of 2 to 20 years.

Since the opinion, the current District Attorney for Potter County, Randall Sims, has refused to confess error in the cases that grew out of District Attorney King’s unauthorized interpretation of the law and failed to seek reversals of Ms. Ward and Ms. King’s convictions.

Ms Ward and Ms. Smith have appealed their convictions and have challenged the wholly unprecedented application of the State’s drug delivery law to pregnant women in relation to the fetuses they carry.

Silvia Henriquez, executive director of the National Latina Institute for Reproductive Health, noted that the first two women arrested under the unprecedented interpretation of the law were African-American and says that women of color will be disproportionately affected by this law. “Instead of prosecuting pregnant drug users, we should be working together to develop policy solutions that decrease poverty, increase access to prenatal care, and improve the health of mothers and babies.”

Organizations:

American Association for the Treatment of Opioid Dependence
The American College of Nurse-Midwives
American Society of Addiction Medicine
Association of Women Psychiatrists
Baron Edmond de Rothschild Chemical Dependency Institute of Beth Israel Medical Center
Finding Common Ground
Harm Reduction Coalition
The Hygeia Foundation, Inc
Institute for Health and Recovery
The International Center for Advancement of Addiction Treatment
National Association of Alcoholism and Drug Abuse Counselors, Inc
National Association of Nurse Practitioners in Women’s Health
National Coalition for Child Protection Reform
National Council on Alcoholism and Drug Dependence
National Latina Institute for Reproductive Health
The National Latina Health Organization
National Perinatal Association
Our Bodies Ourselves
Physicians for Human Rights
Physicians for Reproductive Choice and Health
Texas Association of Obstetricians and Gynecologists
Women's Health and Family Planning Association of Texas

Individuals:

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