

HAB?

87-1431      timely/response

Lanzaro v. Monmouth County Correctional Institutional  
Inmates

Cert to CA3 (Higginbotham, Mansmann concurring, Rosenn)

This case concerns the rights of women prisoners to have abortions that are not medically necessary. Petr in this case is the Monmouth County Sheriff; rspts are the inmates of a correctional institution in the county. Prior to initiation of this suit, the County provided abortions that were medically necessary to inmates. The County did not provide access to or funds for abortions that were purely elective (i.e., not medically necessary). (Inmates seeking such abortions must obtain a court order to be released on their own recognizance and must then make their own arrangements to have an abortion.) Rspts brought a class action challenging this policy. The DC granted rspts' motion for a preliminary injunction, and the CA affirmed most of the DC's order. The CA held that rspts had shown a probability of success in their litigation because the county regulations regarding abortion interfered with the inmates' constitutional rights and had no legitimate penological justification. The CA stated that petr must take further steps to accommodate the reproductive rights of petr. In addition, and independent of the above analysis, the CA held that the denial of elective abortions to inmates constitutes a breach of the duty to attend to inmates'

medical needs and therefore contravenes the Eighth Amendment. In this part of the analysis, the CA strongly suggested that the county must assume the cost of providing inmates with elective abortions in order to comply with the Eighth Amendment. Quite honestly, I think that although all of this decision is well-intentioned, parts of it are ludicrous. Since elective abortions are not medically necessary, I cannot see how denial of such abortions is a breach of the Eighth Amendment obligation to provide prisoners with needed medical care. And given that non-prisoners have no rights to funding for abortions, I do not see why prisoners should have such rights. Of course, I recommend that you deny this petition, but I think the Court will probably grant it. Judge Higginbotham simply went too far; this case is likely to become the vehicle that this Court uses to create some very bad law on abortion and/or prisoners' rights.

DENY

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April 26, 1988

May 12 Conf., p. 2