

Application No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WOMEN’S SURGICAL CENTER, LLC, d/b/a
Georgia Advanced Surgery Center for Women;
Dr. HUGO D. RIBOT, JR., M.D.; and
DR. MALCOLM BARFIELD, D.O.,

Petitioners,

v.

FRANK BERRY; and RACHEL L. KING

Respondents.

**ON APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION OF WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**

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December 29, 2017

To the Honorable Clarence Thomas, as Circuit Justice for the Eleventh Circuit:

Petitioners, Women’s Surgical Center, LLC, Dr. Hugo D. Ribot, Jr., and Dr. Malcolm Barfield (collectively “Petitioners”), respectfully request that the time to file a Petition for a Writ of Certiorari (“Petition”) in this matter be extended for thirty days to and including February 15, 2018.

The Supreme Court of Georgia issued its opinion on October 16, 2017, reported as *Women’s Surgical Center, LLC v. Berry*, 806 S.E.2d 606 (Ga. 2017) (see Appendix A, *infra*). Absent an extension, the Petition would therefore be due on January 16, 2017. Petitioners are filing this Application at least ten days before that date. See Sup. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1257.

Background

Petitioners brought this action in the Superior Court of Fulton County, pursuant to the Due Process and Privileges or Immunities Clauses of the Fourteenth Amendment and GA. CONST. art. III, § VI; art. I, § I, ¶ VII; and art. I, § I, ¶ I. Women’s Surgical Center is an outpatient surgery center in Cartersville, Georgia. After many other surgeons asked to operate there, Drs. Ribot and Barfield decided to add a second operating room and contract with other surgeons to let them use the facility. The only thing preventing them from doing either is Respondents’ enforcement of Georgia’s Certificate of Need (“CON”) laws.

Georgia’s CON laws, O.C.G.A. § 31-6-1 *et seq.* and GA. COMP. R. & REGS. 111-2-2-.01 *et seq.*, forbid Petitioners from contracting with qualified doctors to allow them to use their state-of-the-art surgery center and to serve

more patients, unless they effectively get permission from their own competitors. CON laws do not protect public safety and welfare, but instead allow existing medical providers to block Petitioners from offering more and better services to the public, *solely because existing providers want no new competition*. Those laws therefore constitute what one federal court has called a “Competitor’s Veto”: an arbitrary prohibition on Petitioners’ liberty to provide safe and competent services exclusively for the illegitimate purpose of protecting existing businesses from economic competition. *Bruner v. Zawacki*, 997 F. Supp. 2d 691, 697 (E.D. Ky. 2014).

Petitioners do not seek a CON; this is a facial and as-applied constitutional challenge to the very existence of the CON approval process. Respondents’ enforcement of the CON laws has caused a life-saving medical facility to sit idle, and has deprived patients of access to medical services, for no reason other than to protect existing medical providers from economic competition. That is a moral travesty, and it is unconstitutional.

Reasons for Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for thirty days for these reasons:

1. This case presents important constitutional issues involving Certificate of Need laws, which prevent competition in the healthcare market. These issues raise complex constitutional questions of national significance about limits on the government’s authority under the Fourteenth Amendment, including the scope of the Privileges or Immunities Clause. The latter issue was not briefed extensively in the courts below because the application of the

Privileges or Immunities Clause to Certificate of Need laws is foreclosed by this Court's precedents. *Slaughter-House Cases*, 83 U.S. 36 (1872). Only this Court can address this issue. *Agostini v. Felton*, 521 U.S. 203, 237 (1997).

Accordingly, extensive additional research is necessary to appropriately present these issues to this Court.

2. No prejudice would arise from the extension, as this Court would consider the Petition, and if granted, could hear oral argument and issue its opinion, in the October 2017 Term regardless of whether an extension is granted. Petitioners requested Respondents' position on this application. Respondents have no objection to the extension.

Conclusion

For the foregoing reasons, Petitioners ask that the time to file a Petition for a Writ of Certiorari be extended thirty days to and including February 15, 2018.

Respectfully submitted,

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Appendix A

806 S.E.2d 606
Supreme Court of Georgia.

WOMEN'S SURGICAL CENTER, LLC et al.
v.
BERRY et al.
Berry et al.
v.
Women's Surgical Center, LLC et al.

S17A1317

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S17X1318

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Decided: October 16, 2017

Synopsis

Background: Outpatient surgery center brought declaratory judgment action against Department of Community Health, challenging facial constitutionality of statute which required new institutional health services to obtain certificates of need (CON). The Superior Court, Fulton County, [T. Jackson Bedford, J.](#), denied Department's motion to dismiss complaint on jurisdictional grounds and granted summary judgment in favor of Department. Surgery center and Department both appealed.

Holdings: The Supreme Court, [Melton, P.J.](#), held that:

[1] surgery center had standing to bring declaratory judgment action;

[2] statute did not violate Anti-Competitive Contracts Clause of Georgia Constitution; and

[3] statute did not violate substantive due process.

Affirmed.

[Boggs, J.](#), concurred in judgment only as to Division 2 (b).

West Headnotes (11)

[1] **Declaratory Judgment**

🔑 **Subjects of relief in general**

Outpatient surgery center had standing to bring declaratory judgment action against Department of Community Health challenging facial constitutionality of statute which required new institutional health services to obtain certificates of need (CON), even if surgery center did not exhaust administrative remedies, where surgery center had immediate plans to open second operating room on its premises and these plans were subject to statute's CON requirement. [Ga. Code Ann. § 31-6-40\(a\) \(7\) \(C\)](#).

[Cases that cite this headnote](#)

[2] **Declaratory Judgment**

🔑 **Statutes Relating to Particular Subjects**

An action for declaratory judgment is available to test the validity of an alleged unconstitutional law, in order that a person desiring to practice his vocation may know whether he may proceed in disregard of the requirements of the law, or whether he must refuse to advance his interests that are regulated by the law until he can comply with its provisions.

[Cases that cite this headnote](#)

[3] **Declaratory Judgment**

🔑 **Necessity**

Declaratory Judgment

🔑 **Proper Parties**

While an entity may not seek a declaratory judgment where no actual controversy exists between the relevant parties, a party has standing to pursue a declaratory action where the threat of

an injury in fact is actual and imminent, not conjectural or hypothetical. Ga. Code Ann. § 9-4-2(a).

[Cases that cite this headnote](#)

[4] Constitutional Law

Exhaustion of other remedies

Unlike in situations where a constitutional claim is raised in the context of actual administrative proceedings or where the constitutional challenge is as-applied, there is no requirement to exhaust administrative remedies prior to bringing a legal action when the plaintiff challenges the constitutionality of a statute on its face.

[Cases that cite this headnote](#)

[5] Constitutional Law

Presumptions and Construction as to Constitutionality

Constitutional Law

Clearly, positively, or unmistakably unconstitutional

All presumptions are in favor of the constitutionality of an act of the legislature, and before an act of the legislature can be declared unconstitutional, the conflict between it and the fundamental law must be clear and palpable, and the Supreme Court must be clearly satisfied of its unconstitutionality.

[Cases that cite this headnote](#)

[6] Constitutional Law

Burden of Proof

Because statutes are presumed to be constitutional until the contrary appears, the burden is on the party alleging a statute to be unconstitutional to prove it.

[Cases that cite this headnote](#)

[7] Constitutional Law

Facial invalidity

A facial challenge to the constitutionality of a statute is the most difficult challenge to mount successfully, because it requires one to establish that no set of circumstances exists under which the statute would be valid, i.e., that the law is unconstitutional in all of its applications, or at least that the statute lacks a plainly legitimate sweep.

[Cases that cite this headnote](#)

[8] Antitrust and Trade Regulation

Medical services

Health

Need, public necessity

Statute which required new institutional health services to obtain certificates of need (CON) did not violate Anti-Competitive Contracts Clause of Georgia Constitution, even if such requirement impacted on certain providers' expansion plans, where statute did not authorize contracts between service providers or anyone else that would encourage monopoly, but instead only required that all such providers obtain CON before adding new services. Ga. Const. art. 3, § 6 para. 5(c) (1); Ga. Code Ann. § 31-6-40(a) (7) (C).

[Cases that cite this headnote](#)

[9] Antitrust and Trade Regulation

Constitutional and Statutory Provisions

Antitrust and Trade Regulation

Illegal Restraints or Other Misconduct

The Anti-Competitive Contracts Clause of the Georgia Constitution is an embodiment of the common-law rule which prohibited contracts in

general restraint of trade, and is limited expressly to contracts and agreements. Ga. Const. art. 3, § 6 para. 5(c) (1).

Cases that cite this headnote

[10] **Constitutional Law**

🔑 Health care;hospitals and nursing homes

Health

🔑 Need, public necessity

Statute which required new institutional health services to obtain certificates of need (CON) bore rational relationship to legitimate governmental objectives, and thus did not violate substantive due process, where statute was designed to avoid unnecessary duplication of services and to ensure geographically convenient access to healthcare for state residents at reasonable cost. U.S. Const. Amend. 14; Ga. Const. art. 1, § 1 para. 1; Ga. Code Ann. § 31-6-40(a) (7) (C).

Cases that cite this headnote

[11] **Constitutional Law**

🔑 Reasonableness, rationality, and relationship to object

Under the rational basis test, a statute does not violate due process in substance as long as it bears a rational relationship to a legitimate objective of the government. U.S. Const. Amend. 14; Ga. Const. art. 1, § 1 para. 1.

Cases that cite this headnote

*608 Superior Court, Fulton County, T. Jackson Bedford

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Opinion

MELTON, Presiding Justice.

Women's Surgical Center, LLC d/b/a Georgia Advanced Surgery Center for Women (hereinafter referred to as the “Center”) provides outpatient surgery services in Cartersville, Georgia. The Center has immediate plans to add a second operating room to its premises in order to create opportunities to form contracts with additional surgeons who could then use the Center in connection with their medical practices. However, any such *609 change to the Center could only be legally accomplished if the Center sought and was granted a certificate of need (“CON”)¹ by the Georgia Department of Community Health (the “Department”). Specifically, pursuant to OCGA § 31-6-40 (a) (7) (C):

On and after July 1, 2008, any new institutional health service shall be required to obtain a certificate of need pursuant to this chapter. New institutional health services include ... [c]linical health services which are offered in or through a diagnostic, treatment, or rehabilitation center which were not offered on a regular basis in or through that center within the 12 month period prior to the time such services would be offered, but only if the clinical health services [involve] ... [s]urgery in an operating room environment,

including but not limited to ambulatory surgery.

¹ See OCGA §§ 31-6-1 through 31-6-70; GA. COMP. R. AND REGS. 111-2-2-.01 through .42; GA. COMP. R. AND REGS. 274-1-.01 through .20. The Center sought and was denied a CON in 2014, but the denial of the CON is not what is at issue in the current appeal.

Because the Center believed that it should not be subject to the CON requirements, on June 30, 2015, the Center filed an action for declaratory and injunctive relief against the Department² in an effort to have Georgia's applicable CON law and the regulations authorizing it declared unconstitutional.³ On August 20, 2015, the Department moved to dismiss the complaint, arguing, among other things, that the trial court lacked jurisdiction over the case because the Center failed to exhaust its administrative remedies before filing its lawsuit. The trial court denied the motion to dismiss on February 10, 2016. On September 16, 2016 both the Center and the Department filed motions for summary judgment with regard to the Center's constitutional claims. In an October 31, 2016 order, the trial court rejected all of the Center's constitutional challenges and granted summary judgment to the Department. In Case No. S17A1317, the Center appeals from this ruling, and in Case No. S17X1318, the Department appeals from the denial of its August 2015 motion to dismiss. For the reasons that follow, we affirm in both cases.

² The Center originally filed its action against the previous Commissioner of the Department, Clyde Reese, III, and the Health Planning Director of the Department, Rachel King, in their individual and official capacities. Since that time, Frank Berry has replaced Reese as Commissioner, and the style of this case has been changed to reflect that Berry, rather than Reese, is the current Commissioner. For ease of reference, all of the defendants shall simply be referred to collectively as the “Department.”

3 While the Center initially appeared to be attempting to challenge the entire CON law statutory scheme in the trial court and in its brief to this Court, the Center conceded at oral argument before this Court that it is only seeking to challenge [OCGA § 31-6-40 \(a\) \(7\) \(C\)](#).

*S17X1318*⁴

4 We are addressing the cross appeal first, because, if the trial court had erred in denying the Department's motion to dismiss, there would be no need for us to reach the constitutional issues.

[1] [2] [3] 1. The Department argues that the trial court erred in failing to dismiss the Center's declaratory action because the Center failed to exhaust its administrative remedies before filing its declaratory action and did not have standing to bring such an action at this point. We disagree.

An action for declaratory judgment is available to test the validity of an alleged unconstitutional law, in order that a person desiring to practice his vocation may know whether he may proceed in disregard of the requirements of the law, or whether he must refuse to [advance his interests that are] regulated by the law until he can comply with its provisions.

[Jenkins v. Manry](#), 216 Ga. 538, 540–41, 118 S.E.2d 91 (1961). While an entity may not seek a declaratory judgment where no “actual controversy” exists between the relevant parties (see [OCGA § 9-4-2 \(a\)](#)), a party has standing to pursue a declaratory action where the threat of an injury in fact is “actual and imminent, not conjectural or hypothetical.” [Summers v. Earth Island Inst.](#), 555 U.S. 488, 493 (II), 129 S.Ct. 1142, 173 L.Ed.2d 1 (2009). See also [Georgiacarry.Org, Inc. v. Atlanta Botanical Garden, Inc.](#), 299 Ga. 26, 785 S.E.2d 874 (2016).

*610 Here, it is undisputed that the Center's imminent plans to add a second operating room would be subject to the approval of the Department under the CON laws. In fact, the Center had already been denied a CON for this same proposed expansion in 2014.⁵ However, even without filing a new application for a CON, the Center is still currently “faced with the prospect of either punishment if [it expands its facilities] without a [CON] or enduring much expense and effort to obtain the [new CON].” (Citation and punctuation omitted.) [Bruner v. Zawacki](#), 997 F.Supp.2d 691, 696 (III) (A) (E.D. Ky. 2014). Under such circumstances, we find that the Center is confronted with an injury in fact that is “actual and imminent, not conjectural or hypothetical” ([Summers](#), *supra*), such that it has standing to pursue its declaratory action here. See [Bruner](#), *supra*.

5 The denial of that CON is not what is at issue in the current appeal.

[4] Because the Center has standing to pursue, and is in fact pursuing, a direct facial constitutional challenge to [OCGA § 31-6-40 \(a\) \(7\) \(C\)](#) (see Division 2, *infra*), the Center was not required to exhaust its administrative remedies before filing its declaratory action. Unlike in situations where a constitutional claim is raised in the context of actual administrative proceedings or where the constitutional challenge is as applied (see, e.g., [Dep't of Pub. Safety v. Foreman](#), 130 Ga. App. 71, 202 S.E.2d 196 (1973)), “[t]here is ... no exhaustion requirement when, as in the present case, the [plaintiff] challenges the constitutionality of [a statute] on its face.” [King v. City of Bainbridge](#), 272 Ga. 427, 428 (2), 531 S.E.2d 350 (2000).

The trial court did not err in denying the Department's motion to dismiss.

S17A1317

2. The Center contends that [OCGA § 31-6-40 \(a\) \(7\) \(C\)](#) is unconstitutional on its face because the statute (a) violates the Anti-Competitive Contracts clause of the Georgia Constitution (see [Ga. Const.](#)

of 1983 Art. III, § VI, Para. V (c) (I)), and (b) violates the due process clauses of the Georgia and United States Constitutions (see USCS Const. Amend. 14 and Ga. Const. of 1983 Art. I, § I, Para. I).⁶ As explained more fully below, both of these contentions are without merit.

⁶ The Center also raised an argument below with respect to the Privileges and Immunities Clause of the Fourteenth Amendment and of Ga. Const. of 1983 Art. I, Sec. I, Par. VII. However, in footnote 3 of its appellate brief, the Center “concede[s] that [its] cause of action under the Privileges or Immunities Clause of the Fourteenth Amendment is foreclosed by the *Slaughter-House Cases*, 83 U.S. 36, 16 Wall. 36, 21 L.Ed. 394 (1872).” Furthermore, with respect to Georgia’s Privileges and Immunities Clause, the Center only mentions the Clause in one sentence in footnote 9 of its brief without developing any substantive argument on the issue. Accordingly, we find the purported claim relating to Georgia’s Privileges and Immunities Clause to have been abandoned on appeal. See Ga. Sup. Ct. Rule 22.

[5] [6] [7] In reviewing the Center’s facial challenges to OCGA § 31-6-40 (a) (7) (C):

we recognize at the outset that all presumptions are in favor of the constitutionality of an Act of the legislature and that before an Act of the legislature can be declared unconstitutional, the conflict between it and the fundamental law must be clear and palpable and this Court must be clearly satisfied of its unconstitutionality. Moreover, because statutes are presumed to be constitutional until the contrary appears, the burden is on the party alleging a statute to be unconstitutional to prove it.

(Citation and punctuation omitted.) *JIG Real Estate, LLC v. Countrywide Home Loans, Inc.*, 289 Ga. 488, 490 (2), 712 S.E.2d 820 (2011). Additionally,

[a] facial challenge “is, of course, the most difficult challenge to mount successfully,” *United States v. Salerno*, 481 U.S. 739, 745 (II), 107 S.Ct. 2095, 95 [L.Ed.2d] 697 (1987), because it requires one to establish “that no set of circumstances exists under which the statute would be valid, i.e., that the law is unconstitutional in all of its applications, or at least that the statute lacks a plainly legitimate sweep.” *Blevins v. Dade County Bd. of Tax Assessors*, 288 Ga. 113, 118 (3), 702 S.E.2d 145 (2010) (citation and punctuation omitted).

(Punctuation omitted.) *Bello v. State*, 300 Ga. 682, 685-686 (1), 797 S.E.2d 882 (2017).

*611 With these principles in mind, we address each argument in turn:

[8] [9] (a) *Anti-Competitive Contracts Clause*: The Center asserts that OCGA § 31-6-40 (a) (7) (C) violates the Anti-Competitive Contracts Clause of the Georgia Constitution because the Center is not allowed to effectively compete in the healthcare market by expanding its facilities if the Center does not first obtain the approval of the Department to receive a CON. However, the Center’s argument shows a fundamental misunderstanding of the scope of the Anti-Competitive Contracts Clause. That Clause provides:

The General Assembly shall not have the power to *authorize any contract or agreement* which may have the effect of or which is intended to have the effect of encouraging a monopoly, which is hereby declared to be unlawful and void. Except as otherwise provided in subparagraph (c) (2) of this Paragraph [providing for judicial enforcement

of contracts regulating competitive activities between certain entities], the General Assembly shall not have the power to *authorize any contract or agreement* which may have the effect of or which is intended to have the effect of defeating or lessening competition, which is hereby declared to be unlawful and void.

(Emphasis supplied). [Ga. Const. of 1983, Art. III, Sec. VI, Par. V \(c\) \(I\)](#). As the text of this Constitutional provision indicates, and as this Court has previously held, the Anti-Competitive Contracts Clause “is an embodiment of the common-law rule which prohibited contracts in general restraint of trade,” and is “limited expressly to *contracts and agreements*.” (Emphasis supplied.) [Exec. Town & Country Servs. v. Young](#), 258 Ga. 860, 863 (2), 376 S.E.2d 190 (1989). See also [Georgia Franchise Practices Commission v. Massey-Ferguson, Inc.](#), 244 Ga. 800 (2), 262 S.E.2d 106 (1979) (striking down provisions of Franchise Practices Act that authorized franchise agreements that permitted “franchised dealers to restrict competition and create a monopoly in the retail sale of motor vehicles”).

By its plain terms, [OCGA § 31-6-40 \(a\) \(7\) \(C\)](#) does not authorize monopolistic “contracts” relating to providers of new institutional health services. It only requires that all such providers obtain a CON before adding new services. While the CON requirement could have an impact on the expansion plans of certain providers within an existing market, this does not implicate the Anti-Competitive Contracts Clause of the Georgia Constitution in any way, as the requirement does not authorize contracts between service providers or anyone else that would encourage a monopoly. Because the Anti-Competitive Contracts Clause simply does not apply here, the Center's constitutional claim on this ground must fail. [Young, supra](#), 258 Ga. at 863 (2), 376 S.E.2d 190.

[10] [11] (b) *Due Process*: The Center claims that [OCGA § 31-6-40 \(a\) \(7\) \(C\)](#) violates substantive

due process under the Georgia Constitution and the Fourteenth Amendment of the U.S. Constitution because it restricts competition among health care providers by requiring them to seek a CON before adding new services. Because these substantive due process challenges do not involve a

fundamental right or suspect class ... we examine them under the lenient “rational basis” test. See [State v. Nankervis](#), 295 Ga. 406, 409, 761 S.E.2d 1 (2014) ... Under this test, a statute does not violate due process in substance as long as it “bear[s] a rational relationship to a legitimate objective of the government.” *Id.*

[Barzey v. City of Cuthbert](#), 295 Ga. 641, 645 (4) (a), 763 S.E.2d 447 (2014). See also [Quiller v. Bowman](#), 262 Ga. 769, 425 S.E.2d 641 (1993) (Where a due process challenge under the Georgia Constitution does not involve “a fundamental right, the rational basis test applies. Under this analysis, if the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied”) (citations and punctuation omitted).

Pursuant to [OCGA § 31-6-1](#), the purpose of the CON laws is

to ensure access to quality health care services and to ensure that health care services and facilities are developed in an orderly and economical manner and are made available to all citizens and that only *612 those health care services found to be in the public interest shall be provided in this state. To achieve such public policy and purposes, it is essential that appropriate health planning activities be undertaken and implemented and that a system of mandatory review of new institutional health services be provided. Health care services and facilities should be provided

in a manner that avoids unnecessary duplication of services, that is cost effective, that provides quality health care services, and that is compatible with the health care needs of the various areas and populations of the state.

This Court has previously found that “promoting the availability of quality health care services [is] certainly [a] legitimate legislative purpose [].” Gliemmo v. Cousineau, 287 Ga. 7, 11, 694 S.E.2d 75 (2010). Furthermore, we agree with courts in other jurisdictions with similar CON laws to Georgia's that have concluded that CON programs serve the legitimate purpose of “ensuring geographically convenient access to healthcare for [state] residents at a reasonable cost.” Colon Health Ctrs. of Am., LLC v. Hazel, 733 F.3d 535, 548 (III) (B) (4th Cir. 2013); Madarang v. Bermudes, 889 F.2d 251, 253 (II) (9th Cir. 1989). The government objectives with respect to Georgia's CON laws as stated in OCGA § 31-6-1 are indeed legitimate.

Furthermore, on the record before us, the Center has not shown that OCGA § 31-6-40 (a) (7) (C) does not bear a rational relationship to the legitimate government objectives outlined in OCGA § 31-6-1. By incorporating a review and approval process for the addition of new healthcare services in existing markets that might already have such services and those markets that may need such services, OCGA § 31-6-40 (a) (7) (C) potentially allows the Department to avoid the “unnecessary duplication of services,” which can in turn make health care more “cost effective” and “compatible with the ... needs of the various areas and populations of the state.” OCGA § 31-6-1. The Center has not shown under the record that the requirements of OCGA § 31-6-40 (a) (7) (C) are arbitrary or discriminatory, and the fact that the Legislature could have potentially come up with a different statute with a theoretically more effective means of accomplishing the stated goals of OCGA § 31-6-1 is irrelevant. Advanced Disposal Servs. Middle Georgia v. Deep S. Sanitation, 296 Ga. 103, 107 (2), 765 S.E.2d 364 (2014) (“[T]he Due Process Clause does not empower the judiciary to sit as a superlegislature

to weigh the wisdom of legislation”) (citation and punctuation omitted). OCGA § 31-6-40 (a) (7) (C) is the vehicle that was chosen, and the record before us does not show that this statute does not bear a rational relationship to the legitimate goals of government expressed in OCGA § 31-6-1.⁷ Accordingly, the Center's due process challenges to OCGA § 31-6-40 (a) (7) (C) are without merit. See, e.g., Planned Parenthood of Greater Iowa, Inc. v. Atchison, 126 F.3d 1042, 1048 (IV) (8th Cir. 1997) (“CON laws in general have been recognized as a valid means of furthering a legitimate state interest”).⁸

7

In this regard, we must emphasize that this is a case about the General Assembly's ability to regulate healthcare. The record in this case makes quite clear that the market for healthcare is not normal; indeed, there are few (if any) other private sector markets so dominated by government regulation. Much of that regulation is federal in nature, which limits the General Assembly's range of legislative options on healthcare issues. And in Georgia, some state healthcare regulation is also the natural result of state constitutional mandates. See Ga. Const. of 1983, Art. III, Sec. VIII, Par. I (“Provision shall be made by law for the regulation of insurance.”). Nothing in today's opinion should be understood to support sweeping economic regulation of this sort beyond this unique context.

8

To the extent that the Center argues that OCGA § 31-6-40 (a) (7) violates due process pursuant to case law indicating that “a State legislature is without constitutional power to fix prices at which commodities may be sold, services rendered, or property used, unless the business or property involved is ‘affected with a public interest’” [(Citation and punctuation omitted.) Harris v. Duncan, 208 Ga. 561, 564, 67 S.E.2d 692 (1951)], such arguments are misplaced. This Court held in Paramount Pictures Corp. v. Busbee, 250 Ga. 252, 257 (2), 297 S.E.2d 250 (1982), that “[t]he ‘affected by a public interest’ test ... applies *only to price controls* enacted by the legislature.” (Emphasis supplied.) The statute involved in this case is not a price control being implemented by the

Legislature to directly fix the prices at which
health services may be rendered.

Judgments affirmed.

***613** [Hines, C.J.](#), [Benham](#), [Hunstein](#), [Nahmias](#),
[Blackwell](#), [Peterson, JJ.](#), and Judge [Charles Bethel](#),

concur. [Boggs, J.](#), concurs in judgment only as to
Division 2 (b). [Grant, J.](#), disqualified.

All Citations

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