

20-601 CAMERON V. EMW WOMEN'S SURGICAL CENTER

DECISION BELOW: 831 Fed.Appx. 748

LOWER COURT CASE NUMBER: 19-5516

QUESTION PRESENTED:

Through more than two years of litigation, the Secretary of Kentucky's Cabinet for Health and Family Services led the Commonwealth's legal defense of its law prohibiting abortions in which an unborn child is dismembered while still alive. While this matter was pending before the Sixth Circuit, the Secretary retained lawyers from the Kentucky Attorney General's office to represent him. After the Sixth Circuit upheld the permanent injunction against Kentucky's law by a divided vote, the Secretary decided not to appeal further.

As allowed by Kentucky law, Attorney General Daniel Cameron promptly filed a motion to intervene to pick up the defense of Kentucky's law where the Secretary had left off. Over a dissent, the Sixth Circuit refused to allow the Attorney General to defend Kentucky law. The Attorney General, the majority held, should have moved to intervene earlier, even though his office had been representing the Secretary.

Five days later, this Court decided *June Medical Services, L.L.C. v. Russo*, 140 S. Ct. 2103 (2020). The Attorney General raised *June Medical* in a timely petition for rehearing, arguing that it undercuts the panel's decision to invalidate Kentucky's law. Again over a dissent, the majority refused to allow the Attorney General's petition even to be filed.

The questions presented are:

Whether a state attorney general vested with the power to defend state law should be permitted to intervene after a federal court of appeals invalidates a state statute when no other state actor will defend the law.

And if so, whether the Court should vacate the judgment below and remand for further consideration in light of *June Medical*.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 3/29/2021