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SPEAKERS

Renee Flaherty, Anthony Sanders, Jaimie Cavanaugh

A Anthony Sanders 00:25
"Lady Madonna, baby at your breasts, wonders how you manage to feed the rest..." Well I'm not going to subject you to more of that song, but if Lady Madonna was a Georgia resident, she would have more options for learning how to feed her child. And we're going to learn why that is today on Short Circuit, your podcast on the Federal Courts of Appeals. I'm your host, Anthony Sanders, Director of the Center for Judicial Engagement at the Institute for Justice. We're recording this on Thursday, July 20, 2023. And the reason why I brought up a song that mentions breastfeeding is because the state of Georgia thought it would be a good idea to license women who consult with new mothers about how to breastfeed their children. It was an onerous license that basically knocked out an entire industry. And it was challenged. Those women who challenged it were represented by a couple of my colleagues. And you, dear listeners, are lucky enough to have those colleagues here on Short Circuit today to talk about this victory at the Georgia Supreme Court. And we're also going to talk about economic liberty under state constitutions more generally. And I am very happy that both of my colleagues are women, so you don't have a man talking about breastfeeding for the next few minutes. So, welcome back to Short Circuit, Jamie Cavanaugh and Renee Flaherty. Hello, both of you.

J Jaimie Cavanaugh 01:57
Hi, Anthony.

R Renee Flaherty 02:00
Hello, it's great to be here.

A Anthony Sanders 02:02
Well, good. Well, we're gonna get into economic liberty, lactation consulting, which never, never ceases to draw a laugh, and then also what is going on in other states and how states

protect economic liberty a little differently than the US Constitution as currently interpreted. Now, unfortunately, I get this question a lot because I have written a lot about state constitutions. And so I get the question, "Well, how, how much more protective our state constitutions of economic liberty, of the right to earn a living, than the federal Constitution as it's currently interpreted?" and most people know that there's almost no protection under the US Constitution these days. The answer in the states is actually not that much better. A few states here and there protect economic liberty on the margins, but not a lot. But that may be changing. And to some extent, that never has really been the case in Georgia, which is one reason why my colleagues brought this case in Georgia. So Jaimie, take it from here. Tell us about what this license was in Georgia, who your clients were, and how you were able to achieve this victory.

J Jaimie Cavanaugh 03:24

Absolutely. So let's start with the clients. Our client, our lead client was Mary Jackson. She is a lactation care provider. She's been working for more than three decades. She is a pioneer in this field. She trains doctors and nurses and medical students. She's worked for the Women, Infants, Children, the WIC program, both for the state and federally. She's served on state task forces. I mean, she's really had a very storied career in breastfeeding, and then our other client is called Reaching Our Sisters Everywhere or ROSE. It's a nonprofit group that Mary and her friend Kimarie Bugg founded in 2011. And the express purpose was to offer education and breastfeeding support to women in communities of color where they don't have a lot of access necessarily to breastfeeding support. And Mary and Kimarie noticed that women want to have culturally appropriate care. They like having care from someone who looks like them and talks like them. So offering these services in communities that don't have as much access was really important to them. So they founded ROSE and with ROSE they train peer advisors to go out and work with women who are new breastfeeding moms. They also host something called a "Baby Cafe," where new moms can come into their office and just ask breastfeeding questions or meet other moms, and they do that once or twice a week. And importantly, they pay most of their employees to help to help these new moms with these services.

A Anthony Sanders 05:16

And for the benefit of listeners who maybe aren't of a certain age and have started learning about people having children and all that, and this is not something I really knew about until my wife and I had our kids is that, of course, we now know that breastmilk is better for babies than formula, if you can do it. And that it often surprisingly, to many people because it seems like an instinct, it often can be hard for a baby to latch and to be able to feed from its mother, and that's where these people sometimes are really important help for a young mother, especially for a first time mother who's just not used to this kind of thing.

J Jaimie Cavanaugh 06:01

Absolutely. And, you know, our clients tell us that the majority of moms have routine questions about how to position the baby, how to know if the latch is correct. Lactation care providers of any different type of training can't provide medical advice, they can't diagnose, they can't treat any conditions, just like a nurse can't do that. That stuff has to be done by a doctor. But this is

very important advice that they're giving new moms and new families, often in the first few days of a baby's life when parents are maybe a little stressed and sleep deprived and stuff like that. So they play an important role in meeting with new families, often in the hospital, while moms are still in the hospital and helping them get comfortable with breastfeeding. And so Mary and ROSE worked in Atlanta and in 2013 the General Assembly considered a bill to license lactation consultants. To become a lactation consultant there's lots of different private trainings that someone could do. And there's a range of how difficult or how long the requirements are. So the more restrictive requirements require college level courses and 500 to 1500 hours of clinical supervised hours, so actual on-the-job hours, whereas other trainings like those for WIC peer counselors, or the trainings that ROSE offer, can be completed in a few days. And each different type of training has its own scope of practice. So that's something that's important. The women who do these jobs understand what it is that they're supposed to be doing and they know not to go outside of their scope of practice or comment on things or diagnose issues that they're not supposed to be working on. So this system works in 46 states, there's no problem with this. In Georgia, there's no problem with this. There's no evidence that anyone's ever been harmed by any of these different types of lactation care providers, but in 2013, nonetheless, the General Assembly considered a bill to license lactation consultants and that would restrict licensure to one type of private certification called IBCLC. And that's the most burdensome type of training to complete. That takes a couple of years, it's the most expensive, you have to do all of the mandatory supervised clinical hours, that means you'd have to find an existing IBCLC to be your supervisor. And there are the fewest number of IBCLCs in the state of Georgia, so there are a lot of burdens to overcome to get that license. But, at the time, the Georgia Occupational Review Council looked at the proposal, looked at the bill, and said this actually wouldn't help families in Georgia, this would decrease access to care. And so they recommended that the General Assembly not pass that bill and the General Assembly didn't.

A

Anthony Sanders 09:17

And this is a board that the state is set up specifically to review occupational licensing, which would surprise probably a lot of critics of occupational licensing that the state is actually trying to be careful and not pass too onerous licenses. And they said, "Yeah, this this is too onerous. Don't do it." And, unusually for this law, there was no grandfathering of existing practitioners, because, often when these licenses come to effect, to kind of grease the wheels, they say, "Well, if you're already working, you don't need a license," or "We'll give you a long grace period to get the credentials." But it was just, the next day, all these women were out of work, which seems tactically to have been a bad move, I'll say, not that I want to give these people the best advice.

J

Jaimie Cavanaugh 09:36

Right. They actually looked at is there evidence that people are getting hurt? Would this solve some kind of problem? The review council said, "You know, it's important that people get this type of service and receive this type of education and support." So yeah, the council recommended against passing the law, and it didn't pass but unfortunately, someone introduced it again in 2016 and it did pass that time. So the law passed and we decided to challenge it a couple of days before it took effect. And we were lucky that we got an agreement from the Secretary of State not to enforce the license against unlicensed lactation care providers while the lawsuit was going on, so that was really helpful. But, you know, so Mary

Jackson is not an IBCLC, she has a different type of credential called CLC. But again, she's been working for more than three decades. She's the expert who trains doctors and nurses, the Women, Infants, Children program relies on her and her judgment. So it's crazy to say that "We're going to pass this law and Mary you can't get a license, so you can't work anymore." Yeah. Yeah, you're right, there was no grandfathering clause. Now there were some volunteer exceptions written into, or sorry, some exceptions written into the law. So one is for volunteers. If you're not getting paid, you can give out breastfeeding advice without being licensed. Other licensed providers, so doctors, dentists, chiropractors, other people with licenses could continue giving out breastfeeding advice.

A

Anthony Sanders 11:46

Because a lot of dentists do that.

J

Jaimie Cavanaugh 11:49

Right, exactly. I mean, we even talked to several physicians who said, "I didn't learn one hour of breastfeeding training in medical school. I don't know anything about it." So, you know, obviously, getting support from someone who is trained in this, whether or not they have a license, is better than hearing from a doctor who's never had one hour of training in lactation care and services. And there was also an exemption for government employees. So if you're working for the government you don't have to have a license and you don't have to go through this strict training to give out breastfeeding advice. Yeah. So, that's the law, and we challenged that. And I wanted to talk a little bit about why we brought the suit in Georgia and what we wanted to do with the law there. So I think Anthony mentioned at the beginning that Georgia has decades and decades of cases, a) saying that the right to earn an honest living is protected by the Georgia Constitution. So the right to economic liberty. And, you know, that's that's not as clear in a lot of other states. But there was even some question about whether that was a protected right, in our case, and I think Renee will talk more about that in a minute. But on top of the case law saying that that's a protected right, there were also decades and decades of really good case law in Georgia, where courts took a close look at the means that an occupational license uses and they they wanted to see does it actually fit with what the government says it wants to protect against? So if we're licensing plumbers, or photographers or electricians, I mean, these are all real examples. Does the license actually protect the public from some real harm? Is there a real safety threat here? Or is this more of a pretense for some other, you know, is this economic protectionism? Or is there some other reason that the government wants to license this profession that isn't necessary for public health and safety? So we wanted to call on that history, all of those cases here in Georgia. And we wanted to point out that the Georgia Supreme Court should say that in Georgia, the Georgia Constitution doesn't follow the federal rational basis test. So in federal court, when you're using the rational basis test, the government can come in and provide any type of reason to justify a law or federal law. The government isn't required to provide any evidence of its justification. It doesn't have to provide any proof. It can speculate. The justifications don't necessarily have to be plausible. They don't have to be what the legislators were thinking at the time the law was passed. Even worse, courts can supplement these reasons themselves. Judges can come up with their own additional justifications for a law, for holding that a law is constitutional or has some rational basis. And that's something that we're always trying to do at IJ, whether in our federal cases or in our state constitutional cases is telling courts that in these types of rational

basis cases or in economic liberty cases that challengers, plaintiffs, should be allowed to introduce evidence and introduce a record about whether or not a law achieves its goals and that the court should pay attention to the evidence in federal courts. Often, the court will ignore the evidence altogether or say, "Even though you did provide a good record, it doesn't matter, because the standard of review is so friendly to the government that the record you provided still doesn't overcome the fact that we have to rule for the government because there is a conceivable basis for a law."

A

Anthony Sanders 16:09

It's crazy that you can have a full trial on a case like that in federal court, and then the judge sees all the evidence and then can just ignore it. And that's basically okay.

J

Jaimie Cavanaugh 16:20

Right, right. And so, of course at IJ we're continuing to chip away at that problem. But another way to address the problem is to bring challenges under state constitutions and get states to recognize that their constitutions are more protective of economic liberty than the federal constitution. So even though there were decades of really good strong case law in Georgia, it wasn't altogether clear what the Georgia test for economic liberty cases is or was. So that was something that we wanted to get the court to talk about.

A

Anthony Sanders 17:03

And, Renee, you went and talked to some judges about that. How'd that go?

R

Renee Flaherty 17:08

I did. I talked to some judges twice about that. This case took five years to litigate. And that in itself isn't necessarily special, because the gears of justice grind slowly, and a lot of cases will take years and years. But it is special because we went up to the Georgia Supreme Court twice. And that doesn't always happen. So as Jamie said, we filed this case way back in 2018 and were pretty much immediately dismissed for failure to state a claim, which was pretty frustrating. We had two claims, we had due process and equal protection and we were dismissed on both claims. And so we went up on appeal directly to the Georgia Supreme Court because in that state you can skip the Intermediate Court of Appeals, so that sort of served to expedite things. And we got up there, and first of all, the trial court said, "Actually, there's no right to economic liberty in Georgia." It somehow looked at these decades of cases stating very clearly that there is a right to economic liberty in Georgia and said, "No, there's not." So we thought, "Well, that's a pretty good grounds for appeal." So we went up and we had oral argument and we were a little bit surprised at how interested the justices were in this issue of economic liberty and what the rational basis test was going to look like in Georgia. It was surprising and heartening. And so we ended up with a unanimous victory, sort of unsurprisingly, because of course there's a right to economic liberty in Georgia, and of course, we at least had stated a claim for equal protection. And so we went back down to the trial court and the government abandoned its motion to dismiss and we were off to the races with discovery. And

we built this amazing record that proved all of the things that Jamie was talking about that lactation consulting is safe, that there was no evidence that anyone, our clients or anyone else, had ever harmed a mother or baby in Georgia, that it's just an ordinary profession that women had been engaging in for thousands of years. And we we built this great record and we prevailed on summary judgment on our equal protection claim, kind of because of all of those exemptions in the law that Jaimie was talking about, and the fact that there's no reason to distinguish between CLCs and IBCLCs, but we lost on due process yet again. So I think the judge sort of saw the error of his ways in one sense, but sort of wanted to hang on to the fact that maybe he had been right. So we lost on due process, the government appealed on equal protection, and we cross appealed on due process. And we went back to the court and ended up, everything that we went through for five years was worth it, because we had this wonderful, unanimous victory and got pretty much everything we wanted. We got that clarity in the case law, we got yet again, a really strong statement that there's a right to economic liberty in Georgia, and that, most importantly, it was meaningful.

A

Anthony Sanders 20:40

Well, I was about to ask what what so what is the kind of the standard, then that the court laid out to distilling that some somewhat confusing case law?

R

Renee Flaherty 20:50

Sure. So it ended up with basically a three part test. And the first part of that test is, is this a legal profession? Other than the the occupational license, is this a legal profession? So you're not going to have an economic liberty right to manufacture methamphetamine, so sorry Walter White, but if you've got an ordinary occupation, like lactation consulting, then you pass that bar, and then is the sub part, so part one, A and B, part B is, "Are these regulations actually interfering with that right?" So if you've got an occupational license, obviously, that's a barrier to entry into the profession, and that's burdening the right to earn a living. So if the plaintiff is able to prove those things, then the burden actually shifts to the government to come up with a legitimate interest for interfering with that right. And this is where it gets interesting. The Court said that not every interest is going to be legitimate, not like the federal tests, where you can basically just say anything you want, and that's a good enough reason. They said, you know, protecting some groups from competition from others, so, protecting IBCLCs from competition, that's not legitimate. And there, you know, there was a history of case law in Georgia saying that, and so they clarified that protectionism is not good enough by itself. And then also, even more interesting, just some vague ambiguous interest in quality is not good enough. So they talked about this old case called Bramley, which was about licensing photographers, which, to me seems like a First Amendment problem, but it was actually a due process case, because it was way back in the day. And the court then talked about how photography is pretty much the most innocuous profession you can ever think of. And there's not some special thing about photography that would make it more susceptible to fraud or anything. And so some interest in "Oh, maybe if photographers are licensed, there'll be better quality pictures." That's just not good enough. And so here in this case, the court said just a general interest in quality is not good enough. So first part of the test, legal profession, is the regulation interfering with it? Second part, does the government have a legitimate interest for interfering with it? And then, in this case, the government failed there. They didn't have a legitimate interest for licensing lactation consultants, but we also pass the third part of the test, which is, if the government

does happen to come up with a legitimate interest, the plaintiffs are able to prove that the regulations aren't reasonably necessary to further that interest. And they can come forward with record evidence to prove that licensing lactation consultants doesn't further a legitimate government interest.

A

Anthony Sanders 24:05

And would you say that, I mean, the rest is different, too, but that seems like it's the most different from the federal standard that you can use actual record evidence. The government can't really make up facts and judges can't just speculate about facts. And then, although reasonableness leaves a lot of leeway for the government, there has to be some connection between those facts and what it's trying to achieve.

R

Renee Flaherty 24:35

That's exactly right. It has to be based on some real connection in the real world between these regulations and protecting the public. And that's a lot different from the federal test. And in fact, in the opinion, they call out the federal tests, they cite Beach Communications and they say, "No, it's not anything that's conceivable, anything under the sun. That's not what we're doing here. It's actually reasonably necessary."

A

Anthony Sanders 25:02

So one question before we get into the implications of that for economic liberty, one question some people might have, especially knowing what we do otherwise at IJ is, you mentioned the First Amendment could have been brought about that photography case, especially if it happened today. Why wouldn't this case be a First Amendment case, a free speech case, because these women were consulting with mothers? So why is it a right to earn a living case and not a free speech case?

R

Renee Flaherty 25:38

Well, you're right, that a lot of what they do is speech. But there is really enough hands on work that they do that takes it outside of occupational speech. Someone like a lawyer, who really is just speaking for a living, a lawyer is not moving a baby on a mother's breast. There's a lot of interacting with people and really showing them, demonstrating, just enough of that to really bring it out of a pure First Amendment challenge.

A

Anthony Sanders 26:13

So what are the implications going forward in Georgia then for this standard?

R

Renee Flaherty 26:21

Well, I think the government is on notice that if they want to license a profession, they'd better have a good reason. And I think moving forward, hopefully, this will have an effect on what the legislature does, and it will have an effect on existing regulations and how they're enforced. But I'm a little surprised that there aren't more outrageous laws in Georgia, and it honestly speaks well of them. And I think part of the reason is because they have that Review Council, which actually is going away, which is a little bit of a strange development, but I'm not exactly sure what's going to happen moving forward. I think there's been some momentum for occupational licensing reform in Georgia, but hopefully this is going to bode well for the state moving forward.

A

Anthony Sanders 27:20

Well, it's quite an accomplishment that you and the and the whole team have put together in this case, with a unanimous opinion at a state supreme court about a license being unconstitutional under a substantive due process theory. That doesn't happen very often. And I guess it's a testament to your work and our clients that that was achieved, but it's also a testament to both the case law in Georgia, but also the current justices of the supreme court there. In other cases I've written, seems like a lot more about that court than others when I write about state constitutions in the last few years, and not just in this area but in other areas, too. They seem to be a court that takes tech seriously, takes history seriously and tries to come to the right result, at least through some reasoned thinking. Of course, now they're going to disappoint me with some case that goes the wrong way in an area we care about, but I was impressed at least there. So looking beyond Georgia, this is not the only case that we have litigated, where we have achieved success for our clients and on the right to earn a living in a state. Now, we have been litigating at IJ for many years now. And so there's probably some cases that I'm forgetting, but the two most notable ones that listeners may know about where we have gone to a state supreme court, and the court has found some kind of protection, or at least a claim for economic liberty, one was in Texas. So our Texas listeners may know about this. There was a case in 2015 that also took, I think that case took like six years, but eventually it was ruled on by the Texas Supreme Court, and that was back when Judge Willett was Justice Willett and he wrote a wonderful concurrence to that case, but majority opinion found that the regulation, the license, that eyebrow threaders had to get, and we're not going to go into the whole "what an eyebrow threader is" right now, but basically, it's an occupation where you use a strand of thread to pluck hair off someone's face. It's a method of cosmetology, but applying a cosmetology license to those entrepreneurs was unconstitutional under the Texas Constitution. And the court said you have to have real facts when you are the government and you try and justify that burden. Renee, maybe take a side road here for a moment. Of course all of us at IJ love that opinion and that standard in Texas and we're using it in other cases now. Would you say that what the court in Georgia did is like that standard? Patel was the case's name, so the Patel standard? Is it a little bit different? How would you contrast the two?

R

Renee Flaherty 30:47

I would say it's very similar. In Patel, there was a lot of emphasis on the burdens imposed by the regulations and I think there's less of an emphasis on that in the Georgia opinion. I think it's still there in that first part of the test where the plaintiff proves that the regulation burdens their occupation, but really in Patel, a lot of the opinion, a lot of the work that was done was how burdensome it was. But you've got the same themes of "plaintiffs get to introduce record

evidence," and "everything has to be based on how these regulations work in the real world, and what these people are actually doing for a living." So I think the two the tests are very similar. And we certainly cited Patel and talked about Patel the entire time that we were in court and I was interested to see that the opinion didn't cite Patel. And I think that in a way, that doesn't surprise me because every state has its own unique constitutional law. And they, of course, want the emphasis to be on their constitution and what they're doing. And so they're not just going to say, "Oh, we decided to follow Texas and Pennsylvania," which is the other IJ case. But now, we have we have Patel, we have Ladd, and we have Jackson. And so, the rule of three, that's hopefully gonna create some serious momentum.

A

Anthony Sanders 32:18

Right. And so the other case you mentioned, Ladd, was, I believe one iteration of it we talked about on Short Circuit with the lead counsel on that case, Josh Windham. And that was it applying the full blown real estate licensing system to our client who was simply listing vacation rentals online and for the owners of those properties and, for some reason, they said she needed a full blown real estate license for that. That went to the Pennsylvania Supreme Court on a similar journey that you guys had where at first they said, "Well, there isn't even a claim for this type of infringement. There is no right at issue here even." And so the Pennsylvania Supreme Court said there is a claim. And then it went back down. I think it was the intermediate court, a commonwealth court, that then later said it was unconstitutional, and that's where the the case was left. So that and the Pennsylvania court also said in that case, I should be clear, that it was already clear in the case law but reaffirmed that the standard in Pennsylvania is a higher standard than the federal standard. Going beyond those three states, if anyone wants to really dig deep into this, I wrote a law review article a number of years ago now about state constitutional protections of economic liberty. I did point out in that article that Georgia was a really good state for economic liberty, by the way. So it's proved right by you guys. So you can get you can look into the issue if you want to read this old article of mine, but essentially there are a number of other states where there's case law out there that is helpful, but often in practice, what happens is courts just kind of go the federal way. And partly it's because judges aren't that careful when they're they're ruling on these matters. Partly though, it's that the lawyering often isn't the greatest and you can't really blame them. Sometimes these are entrepreneurs who are being prosecuted for some infringement of a silly law that maybe they didn't even know about. And they don't have a lot to pay their lawyer and the lawyer does not work for a public interest organization that has a lot of resources behind it, like we do, but then often these judges will use the federal standard because they think it's just good enough for the state. And in that way over the years, the federal rational basis test has unfortunately crept into a lot of state constitutional case law, not just in economic liberty, but in all kinds of other areas. And so there is hope under state constitutions, there should be, they're written differently than the federal Constitution, and they have their own histories. And a lot of federal constitutional law isn't even really good for the federal Constitution. So it's good that state judges go their own way. But there are not that many recent cases that are clear on this matter like they are in Georgia. A few others: there was one in Alabama a number of years ago that was a very helpful precedent, although it hasn't always been followed. And there's others that we could we could talk about. Montana has this amazing precedent that's been basically ignored, but it says that right to earn a living gets strict scrutiny, which we'll leave for another time. Yeah, it's almost too good to believe, which is what I'm sad the court did there. But there are many other opportunities in other states, and we hope that they learn from what's happened in Georgia. What is going on in Georgia now? What are your clients up to? What are their their plans now that this is been lifted? And any other news you want to update us about?

J Jaimie Cavanaugh 36:33

Well, they're continuing to work. Mary Jackson works at a hospital and the whole time this lawsuit was going on her superiors were telling her that if the law took effect, she would lose her job. So this was very serious. She's been worried for a long time. And now she gets to continue working. But there continue to be some consequences where the state is still interested in trying to prop up IBCLCs over other types of providers, unfortunately. But ROSE gets to carry out its mission, gets to keep working. ROSE is recognized nationally as a model that should be duplicated in other places. ROSE helps other states set up similar offices. So they're growing and getting to do all of their amazing work still.

A Anthony Sanders 37:23

So in addition to litigating economic liberty, Jamie is also part of our legislative team, and lobbies all over the country for economic liberty, including about Certificate of Need laws which is whole nother issue that we've talked about in the past. But Jamie, has there been much push for similar licenses in other states in this domestic dispute between lactation care providers, or was it just Georgia that this over the top license happened to get through?

J Jaimie Cavanaugh 38:00

So I mentioned earlier, there's four states, well, now three now that Georgia is license doesn't exist anymore, but there's three states that still license lactation care providers, but none of those states actually prohibit people without a license from working. So there are standards to get a license, but if you don't have those credentials, then you can continue working, you just can't call yourself a licensed provider. But there have been bills in lots of other states: Washington, Texas, New York, New Jersey, Massachusetts, where legislatures have considered licensing lactation consultants, and fortunately, they haven't passed these laws. And I think our victory here will really bolster the claim that states should not be passing these laws. There's no need to licensed lactation consultants and limit who can practice this profession.

A Anthony Sanders 38:08

That's great to hear, and I think anyone now, when they look up this issue, is going to find what the Georgia Supreme Court said, and even though they're in a different state it's definitely going to make them think twice about that. Renee, any parting thoughts about what it was like to go to state supreme court twice to argue the same case and this issue and any tips for any appellate practitioners out there?

R Renee Flaherty 39:21

Well, it was a little bit intimidating, because once I was up there the first time and realized, I was taken aback, honestly, by how friendly they were to our position, even though they were very tough on me from the bench, you could also tell that they were disposed toward us. And

so that put a little bit of pressure on coming back the second time and actually a little twist. The opinion was unanimous, but there are nine justices on the Georgia Supreme Court and the opinion was written by only eight of them because the second time we came up, since then, our opposing counsel who had argued the case against me the first time, was on the bench and was a justice on the Georgia Supreme Court. So he ended up having to recuse. So that added to the same cast of characters going forward the second time. Even though I didn't have to see him sitting up there against me, it was a lot of pressure to vindicate a right that they had very firmly said existed the first time. But thankfully, the record that we built ended up mattering. And that meant a lot.

A

Anthony Sanders 40:37

And I'm guessing he probably wasn't sad about recusing from this case, because what was it that, technically the defendant in the case, the secretary of state who is famous for other reasons that we don't need to get into, the current Georgia secretary of state, what did he say after losing this lawsuit?

R

Renee Flaherty 40:38

Oh, well, Secretary Raffensperger issued a press release praising the ruling and pointing out that when he was a legislator, whenever this was enacted, that he voted against it, and it's not very often that the defendant in your case ends up praising the decision in your favor. So that was sweet.

A

Anthony Sanders 41:20

Yes, that was a nice touch to the end of the story. Well, thank you both for coming on to talk about all things, lactation consultant and economic liberty today. We hope our Georgia listeners enjoyed this as well as listeners in other lands. And going forward there's going to be a little bit more economic liberty around those lands. So thank you again for coming on. And to the rest of you I hope you enjoyed this podcast. Stay tuned for next week, but in the meantime, I want all of you to get engaged.