

The [Snopes piece](#) written by Bethania Palma questioning the accuracy of disability groups’ criticism of Brett Kavanaugh’s [opinion](#) in the *Doe v. D.C.* case is full of what Snopes claims to fight against—misinformation. Ms. Palma fundamentally misunderstands what the case was about.

In the case discussed, Judge Kavanaugh reversed a ruling in favor of people with intellectual disabilities under the District of Columbia’s care who challenged the District’s authorization of elective surgeries on them without even attempting to ascertain their wishes. The trial court had [concluded](#) that in doing so, the District had violated the plaintiffs’ constitutional rights. That court [noted](#) that “Defendant’s position . . . that a patient who is legally incompetent to make independent decisions about her medical care is also impervious to any meaningful communication about her wishes . . . offends both common sense and the dignity of [people with intellectual disabilities].” In contrast, Judge Kavanaugh stated that it “does not make logical sense” to consider the wishes of people who lack the legal capacity to make medical decisions.

Ms. Palma accuses disability groups of wrongly suggesting that Kavanaugh’s decision condoned the District’s forcing of individuals with intellectual disabilities to undergo unwanted abortions. “Kavanaugh’s ruling did not involve abortion,” Ms. Palma states. She is wrong. The claims dismissed by Judge Kavanaugh involved unwanted abortions performed on at least two women, Jane Does I and III, along with thousands of other elective surgeries performed on people with disabilities over a period of years. And a [ruling](#) by a new trial judge on remand following Judge Kavanaugh’s decision found that DC had violated the constitutional rights of Jane Does I and III by authorizing abortions on them without providing adequate procedures first.<sup>1</sup>

Ms. Palma appears to have misunderstood the comments of the plaintiffs’ lawyer when she interpreted his remarks that “the issue of whether [the plaintiffs] could consent to an abortion was not before the court” to mean that the case did not involve abortions. The lawyer’s

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<sup>1</sup> Ms. Palma points to Judge Kavanaugh’s statement that D.C. law required a court order before an abortion could be authorized for a person lacking capacity. While it is true that D.C. law was amended by legislation first enacted in 1998, long after the plaintiffs’ abortions took place, requiring a court order for abortions, sterilizations, and psycho-surgeries, this legislation did not change what happened to the plaintiffs. Moreover, the plaintiffs’ claims were based on the fact that the District’s *policies were inconsistent* with what D.C. law required. And in any event, what mattered for purposes of the plaintiffs’ procedural due process claims was not simply that a court order was required but that, as the district court found on remand, certain procedural protections be afforded, including (1) advance notice of a hearing to determine whether the government had an important interest at stake, whether performing the surgery would further that interest, and whether the surgery was in the person’s best medical interest and no less intrusive treatments would achieve substantially the same results, (2) the right of the person to be present at the hearing, (3) the right of the person to cross-examine witnesses, and (4) an advisor who understands the psychiatric issues involved.

comments are correct—the case was not about whether the plaintiffs had the capacity to consent to the abortions performed on them. The plaintiffs did not challenge the District’s conclusion that they lacked capacity to make medical decisions or claim that their wishes should automatically have been followed. All that they sought was to have their wishes *considered* by the District in accordance with its own law regarding authorizing medical procedures for people who lack capacity. Judge Kavanaugh ruled that they did not even have a right to that consideration. Indeed, what is alarming is that Judge Kavanaugh seems not to have understood what is important about trying to determine the wishes of the people involved, and that to even do so did “not make logical sense.” That is why this opinion matters to the disability community and should matter to those evaluating Judge Kavanaugh’s nomination.

Ms. Palma is incorrect that the case “did not involve abortions.” In asserting that a case where two women challenged the District’s authorization of abortions without considering their wishes “did not involve abortion,” Snopes both got the specifics wrong and also failed to understand the larger implications of Judge Kavanaugh’s decision on the lives of people with disabilities. In this case, it is Snopes that needs to be fact-checked.