



Goliath Has Just Slayed David

Social and traditional media outlets are all abuzz celebrating the destruction of a 10-year grassroots effort by a coalition of Georgians to pass licensure for the International Board Certified Lactation Consultants (IBCLC) in Georgia.

Why are so many celebrating?

This lawsuit wasn't about lactation or breastfeeding families.

This lawsuit was not, and never was, about race or equity.

This lawsuit was a carefully crafted media and legal strategy of the far-right libertarian organization, the Institute of Justice (IOJ). The IOJ has funded, marketed and argued over 100 such cases seeking to eliminate all occupational licensing. The Georgia licensing law was just next in line. Ask any dietitian in Florida because they are next. The IOJ has filed a lawsuit to declare the dietetics license unconstitutional claiming dietitians are the same as diet coaches/trainers. *Del Castillo v. Secretary, Florida Department of Health*, No. 19-13070 (11th Cir. 2022).

The winning argument in the Georgia lawsuit was that if you do the "same work" as another group, well, then you are all the "same" legally and can't be licensed differently. Think about the implications between the many different occupations and professions where there is overlap of competencies and/or scopes of practice such as between nurses' aides and nurses, EMTs and paramedics, optometrists and ophthalmologists, audiologists and ENT physicians, lay midwives and physician obstetricians, or psychologists and psychiatrists.

Before you jump on the bandwagon to celebrate this ruling, know what you are championing:

- You are rejoicing that one judge just wiped out a FUNDED Medicaid benefit for tens of thousands of black, brown and economically challenged breastfeeding families in Georgia.
- You are rejoicing that we return to the status quo where only those who can afford to pay out of pocket (or are privately insured) can easily access clinical lactation care.

- You are rejoicing, if you are an IBCLC, that your hard work—your college education and clinical training, time and money have just been discarded because a Certified Lactation Counselor (CLC) certificate (after a one-week education course that has no prerequisite—not even a high school diploma—and no clinical training) equals the IBCLC credential.
- You are rejoicing that health insurers that credentialed lactation consultants for the first time in Georgia *because they had a license*, may now kick them out of their provider panels.
- You are rejoicing that our innovative and first of its kind Pathway 2 program in a state-funded Technical College is in jeopardy.
- You are rejoicing that the clinical jobs that a number of black holders of the IBCLC credential have secured in Georgia hospitals as licensed lactation consultants may be at risk.

Instead, be outraged that tens of thousands of breastfeeding babies will not be able to access clinical lactation care through Medicaid in Georgia because of a private lawsuit.

Instead, question the logic of an opinion which claims there is no difference between the IBCLC and the CLC. While they are complementary, and both valued, they are not the same.

Instead, post that the judge clearly found that the Georgia law *does not* and *never did* prevent the non-IBCLC from working for pay (a false claim made repeatedly in this case and in social media).

There is no equity here for low-income families in Georgia- their Medicaid access was just destroyed.

There is no equity here for aspiring lactation consultants– their access to state and federal scholarship and grant monies to seek training at our local Technical College Program is now in jeopardy.

There is no equity here for the IBCLC who lacks another healthcare license, because clinical, patient-care employment in Georgia hospitals is dependent upon their license.

As an attorney, an IBCLC for ten years and a public health advocate for 25 years in Georgia, as someone who attended every single public hearing on licensure in Georgia in person for five years, as someone who was deposed, who attended the arguments in the Supreme Court of Georgia and read the Complaint and every single brief in this lawsuit (*not one other person purporting to offer social media opinions on this effort can say the same*), I assure you it's a sad day for Georgia breastfeeding families and a blow to equitable access to clinical lactation care everywhere.

Instead of rejoicing, I would post: Goliath just slayed David in Georgia.

Because that's what happened.

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For additional resources which outline fact vs. fiction about this lawsuit, please see:

1. The USLCA's Georgia chapter, the Southeastern Lactation Consultant Association has worked to correct erroneous statements, social media posts and statements since 2016. Please see their statement here:
http://selca.info/wp-content/uploads/2016/10/SELCA-response_edit.pdf
2. The Journal of Human Lactation peer reviewed published manuscript, *Georgia, USA: A Bellwether in Lactation Care*, about the Georgia grassroots advocates journey for licensure of the IBCLC
<https://doi.org/10.1177/08903344211006380> (Aldridge LS, Gober M, Walker M, Strong G. Georgia, USA: A Bellwether in Lactation Care. J Hum Lact. 2021 Aug;37(3):539-546. doi: 10.1177/08903344211006380. Epub 2021 Apr 5. PMID: 33813927.)
3. See also attached document outlining the misstatements of the Plaintiffs to the Supreme Court of Georgia as reflected in the Hearing Transcript with a link to same.



DIRECT QUOTES from ORAL ARGUMENT BEFORE THE SUPREME COURT OF GEORGIA

Mary Jackson and ROSE (Reaching Our Sisters Everywhere) sued the Georgia Secretary of State seeking relief from compliance with the Georgia Lactation Consultant Practice Act. On January 14, 2020 counsel for Mary Jackson and ROSE appeared before the Justices of the Supreme Court of Georgia for oral argument.

In order to educate the public, the press and other interested parties, NLCA has outlined below many of the inaccuracies presented by Mary Jackson and ROSE to the Georgia Supreme Court.¹

Counsel for Mary Jackson and ROSE Assert in Oral Argument	Reality
<p>There is no difference between a mom and the “leading lactation consultant teacher in the universe.” Both are “equally competent.” 17:05 (refers to the minute and section in the archived recording)</p>	<p>If that were true, the CDC, Academy of Breastfeeding Medicine, American Academy of Pediatrics, American College of Obstetricians & Gynecologists, American Academy of Family Physicians, and many other medical professionals would not have published the plethora of research and guidance that has been generated on the need for clinical breastfeeding care over the last ten years. In fact, Mary Jackson makes her living helping mothers breastfeed and, as one Supreme Justice pointed out, uses “CLC” credentials after her name as an “indicia” of greater skill than the average mother. The entire field of lactation support exists because most mothers need qualified support to succeed. Indeed, Georgia data shows that most mothers stop breastfeeding before they had intended because of clinical issues that they are unable to solve themselves.</p>
<p>“Georgia is the only state” that regulates lactation consultants. 11:49</p>	<p>Not true. At the time the Georgia Act was passed in 2016, Rhode Island already had its 2014 law regulating lactation consultants.</p>

¹ 1/14/20 Oral Argument, Ga Supreme Court, Jackson et al. v. Brad Raffensberger. The oral argument is archived here. <https://www.gasupreme.us/watch/oa-01-14-20/>

<p>Lactation consultants are required to have a college degree. 12:29</p>	<p>Not true. The Georgia Act does not require a college degree. It requires the same college level courses in 14 subject areas required by IBLCE. IBLCE does not require a college degree. Further, all courses may be taken online, at community or technical colleges and CLEP exams can be substituted for college classes.</p>
<p>“This Act requires someone to stop working and do hundreds of hours of unpaid clinical work.” 12:48</p>	<p>Nothing in the Georgia Act requires the clinical hours to be unpaid or for anyone to stop working. In fact, there is an exception for student practice in O.C.G.A. section 43-22A-13(3). Supervised work experience is specifically approved by IBLCE for clinical hours.</p>
<p>Q: “If the Act allowed some period of time that you were practicing when the Act went into effect and within three years you had to do that, would that be an excessive regulation?” A” That sounds more reasonable, but that’s not what’s happening here.” 12:51-13:07</p>	<p>That is almost exactly what the Georgia Act did! The Georgia Act allowed two years for non-IBCLCs to get the education and training required to become licensed before enforcement. The bill was signed into law in the Spring of 2016, but enforcement was delayed, per the statute, until July 1, 2018. See, O.C.G.A. § 43-22A-11. The two-year period was the estimate provided to the legislature to complete the training and education requirements. Indeed, the Lactation Consultancy program at Georgia Northwest Technical College is a two-year program from start to finish.</p>
<p>“This is a law that was written by IBCLCs, for IBCLCs.” 14:23</p>	<p>Not true. The law was written by legal counsel to the Legislature. It was amended over 10 times including twice by language proffered by Sahira Long, M.D. and Kimarie Bugg representing ROSE. Other amendments were proffered by the Georgia Nursing Association, the Georgia Hospital Association, the Secretary of State’s office and many others. Other than the part of the bill written by ROSE, none of these parties were IBCLCs. Moreover, the non-profit leading the advocacy effort for the legislation was Healthy Mothers, Healthy Babies Coalition of Georgia whose Board President and Chair of its Advocacy Committee at the time was Merrilee Aynes Gober, BSN, RN, JD. Ms. Gober has decades of maternal and infant expertise, but is NOT an IBCLC. There were also more than a dozen letters of support from medical, hospital, and other healthcare organizations.</p>
<p>“Lactation Consultants provide woman on woman advice about breastfeeding.” 2.22</p>	<p>Legal counsel consistently refers to Mary Jackson as a “lactation consultant.” However, her certificate from Healthy Children designates her as a “counselor.” Further, “lactation consultants” may be men; nothing requires them</p>

	<p>to be women. Finally, by claiming lactation consultants only offer “advice”, Mary Jackson and ROSE belittle the work of lactation consultants worldwide who work with high acuity patients in NICUs and post-discharge in the community offering clinical care for our most vulnerable newborns. Notably, “lactation consulting” includes medical histories, physical assessments, clinical applications of skill and knowledge, and a plan of care. It is not mere “advice”. See the Georgia Act for an outline of “lactation care and services.”</p>
<p>“If the Act goes into effect it would instantly put over 800 women who do this type of work out of work”. 3:03</p>	<p>This claim is patently false. The majority of CLCs in Georgia have another healthcare license and would be exempt under O.C.G.A. § 43-22A-13(1). Healthy Children estimates that over 75% of its certificants have another healthcare license. Further, in Georgia, many CLC’s through the years have also attained their IBCLC certification. Other CLCs work for WIC as peer counselors; they too are exempt from licensure and can continue to work in their jobs. CLCs who are providing education whether employed or self-employed can also continue their work. To clarify, the only CLCs who are impacted by this law are CLCs who work for pay, outside of the WIC program (or outside of any state or federal program), who do NOT have another healthcare license and who are working clinically. All education and classes are EXEMPT (no matter who performs them). Working students are EXEMPT. Mary Jackson and Rose claim ALL CLCs would be out of work blatantly ignoring the many exceptions to the law and Healthy Children’s own data.</p>
<p>“All lactation consultants have practiced safely in Georgia for decades with equal competency” 9:44</p>	<p>The Georgia Legislature was proffered letters and heard testimony documenting harm from unskilled, non-IBCLC care in Georgia. There were six different public hearings which included testimony of mothers and physicians who presented proof of harm. The bill was debated in two regulatory hearings (including one where ROSE testified), three hearings before the House, one hearing before the Senate and was debated on the floor of both the House and the Senate. Further, opposition hired a paid lobbyist to present their case. The issue was before the General Assembly for five (5) years which, after hearing from new mothers, IBCLCs, physicians, and public health advocates, carefully balanced its goal of protecting our new mothers and babies with access to care. They concluded minimum education and training standards were essential to protect</p>

	<p>the public. This type of minimum educational and training standards are also in place for each and every other licensed healthcare provider in Georgia – from dietitians to OTs to nurses. It was the very issues of safety and competency which led the General Assembly to regulate this profession.</p>
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