

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Reproductive Health Center, :
Allentown Women’s Center, Delaware :
County Women’s Center, Philadelphia :
Women’s Center, Planned Parenthood :
Keystone, Planned Parenthood :
Southeastern Pennsylvania, and Planned :
Parenthood of Western Pennsylvania, :
Petitioners :

v. :

No. 26 M.D. 2019

Pennsylvania Department of Human :
Services, Teresa Miller, in her official :
capacity as Secretary of the :
Pennsylvania Department of Human :
Services, Leesa Allen, in her official :
capacity as Executive Deputy Secretary :
for the Pennsylvania Department of :
Human Service’s Office of Medical :
Assistance Programs, and Sally Kozak, :
in her official capacity as Deputy :
Secretary for the Pennsylvania :
Department of Human Service’s :
Office of Medical Assistance Programs, :

Respondents :

Argued: November 5, 2025

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

This original jurisdiction matter returns to us on remand from the Pennsylvania Supreme Court. In *Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*, 309 A.3d 808 (Pa. 2024) (*Allegheny Reproductive II*), the Supreme Court determined that Petitioners, who are abortion care providers (Providers), have presented a constitutional challenge to Section 3215(c) and (j) of Pennsylvania’s Abortion Control Act, 18 Pa.C.S. § 3215(c) & (j) (Coverage Exclusion), that is sufficient to survive preliminary objections. In so doing, the Supreme Court revisited its precedent regarding the Equal Rights Amendment¹ and equal protection provisions² of the Pennsylvania Constitution, reversed this Court’s decision sustaining preliminary objections, and remanded for further scrutiny of the Coverage Exclusion. Now before the Court is Providers’ application for summary relief. We conclude that the Coverage Exclusion violates the Equal Rights Amendment and the equal protection provisions of the Pennsylvania Constitution, beyond any genuine dispute of fact, and thus we grant Providers’ application for summary relief.

I. BACKGROUND

A. Statute at Issue

The Coverage Exclusion, which Providers challenge, restricts abortion care that would otherwise be provided under Pennsylvania’s Medical Assistance program, also known as Medicaid. “Medicaid is a joint federal-state program that provides medical assistance to the poor.” *Allegheny Reproductive II*, 309 A.3d at

¹ PA. CONST. art. I, § 28.

² PA. CONST. art. I, §§ 1, 26 & art. III, § 32.

820 n.4. Our Supreme Court explained that the Medical Assistance program is

a public insurance system providing eligible Pennsylvanians with medical insurance through either a fee-for-service or managed care health plan. Medical Assistance provides comprehensive medical care including inpatient hospital services, outpatient hospital services, physicians' services, clinic services at independent medical clinics and ambulatory surgical centers, and family planning services. It includes all pregnancy-related care, including prenatal care, obstetric, childbirth, neonatal and post-partum care. However, Medical Assistance does not cover all abortions.

Id. at 820-21 (footnote and citations omitted).

The Coverage Exclusion—Section 3215(c) and (j) of the Abortion Control Act—broadly prohibits Medicaid payments for abortion in Pennsylvania, allowing them only in very limited circumstances. Its full text is as follows:

§ 3215. Publicly owned facilities; public officials and public funds

* * *

(c) Public funds.--No Commonwealth funds and no Federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion, except:

(1) When abortion is necessary to avert the death of the mother on certification by a physician. When such physician will perform the abortion or has a pecuniary or proprietary interest in the abortion there shall be a separate certification from a physician who has no such interest.

(2) When abortion is performed in the case of pregnancy caused by rape which, prior to the performance of the abortion, has been reported, together with the identity of

the offender, if known, to a law enforcement agency having the requisite jurisdiction and has been personally reported by the victim.

(3) When abortion is performed in the case of pregnancy caused by incest which, prior to the performance of the abortion, has been personally reported by the victim to a law enforcement agency having the requisite jurisdiction, or, in the case of a minor, to the county child protective service agency and the other party to the incestuous act has been named in such report.

* * *

(j) Required statements.--No Commonwealth agency shall make any payment from Federal or State funds appropriated by the Commonwealth for the performance of any abortion pursuant to subsection (c)(2) or (3) unless the Commonwealth agency first:

(1) receives from the physician or facility seeking payment a statement signed by the physician performing the abortion stating that, prior to performing the abortion, he obtained a non-notarized, signed statement from the pregnant woman stating that she was a victim of rape or incest, as the case may be, and that she reported the crime, including the identity of the offender, if known, to a law enforcement agency having the requisite jurisdiction or, in the case of incest where a pregnant minor is the victim, to the county child protective service agency and stating the name of the law enforcement agency or child protective service agency to which the report was made and the date such report was made;

(2) receives from the physician or facility seeking payment, the signed statement of the pregnant woman which is described in paragraph (1). The statement shall bear the notice that any false statements made therein are punishable by law and shall state that the pregnant woman is aware that false reports to law enforcement authorities are punishable by law; and

(3) verifies with the law enforcement agency or child protective service agency named in the statement of the pregnant woman whether a report of rape or incest was filed with the agency in accordance with the statement.

The Commonwealth agency shall report any evidence of false statements, of false reports to law enforcement authorities or of fraud in the procurement or attempted procurement of any payment from Federal or State funds appropriated by the Commonwealth pursuant to this section to the district attorney of appropriate jurisdiction and, where appropriate, to the Attorney General.

18 Pa.C.S. § 3215(c) & (j). The Pennsylvania Department of Human Services (DHS) has implemented the Coverage Exclusion with regulations. *See* 55 Pa. Code §§ 1141.57, 1163.62, 1221.57. Care providers are subject to federal criminal prosecution, fines, and imprisonment for seeking Medical Assistance reimbursement for abortion procedures. *Id.* § 1101.74.

B. Petition for Review

Providers filed the original jurisdiction petition for review (Petition) naming DHS and other Commonwealth Respondents on January 16, 2019. The Petition alleges the following facts. Providers are a group of health centers, for-profit corporations, and nonprofit corporations that offer reproductive healthcare—including abortion—to women. Pet. ¶¶ 2-32. Medical Assistance generally covers the costs of all care they provide to women who choose to carry their pregnancies to term. *Id.* ¶ 48, 55. But the Coverage Exclusion forbids coverage for abortion unless the mother would otherwise die or the pregnancy results from rape or incest. *Id.* ¶ 54. There is no comparable exclusion of any health coverage—reproductive or otherwise—for men. *Id.* The medical costs of covering a pregnancy and childbirth far exceed the cost of an abortion. *Id.* ¶ 55.

Providers allege the Coverage Exclusion has caused women to carry pregnancies to term against their will. *Id.* ¶ 64. This harms both Providers and their patients. Women must choose whether to carry a pregnancy to term or to pay out of pocket for an abortion, diverting money they otherwise need for shelter, food, clothing, or childcare. *Id.* ¶ 59. These and other costs cause women to delay abortion care or forego it altogether. *Id.* ¶¶ 60-63. The maternal mortality risk of childbirth is 14 times greater than the mortality risk for abortion; women who cannot pay out of pocket are compelled to undergo the higher risks of childbirth. *Id.* ¶¶ 65, 67, 70. These risks are higher still for women with other health conditions. *Id.* ¶ 71.

The Coverage Exclusion has no exception for fetal abnormalities, no matter how severe. As a result, some women have suffered severe psychological harm knowing that the fetus they are carrying has a condition that will necessarily result in the child's death, but being unable to terminate the pregnancy because of the Coverage Exclusion. *Id.* ¶¶ 73-74.

Providers allege the Coverage Exclusion harms them as medical caregivers. They must dedicate money and staff time for ongoing maternal care for women who would choose to have an abortion but for the Coverage Exclusion. *Id.* ¶¶84. Providers regularly subsidize non-covered abortions—out of their own pockets, and with their own time by seeking charitable funding—to try to minimize the harms to women described above. *Id.* ¶¶ 85-86. The Coverage Exclusion interferes with Providers' counseling of their patients, requiring them to discuss sensitive and personal matters—such as whether the sex that led to the pregnancy was rape or incest—that have no medical purpose. *Id.* ¶ 87.

The Petition seeks relief in two Counts. Count I challenges the Coverage Exclusion as unconstitutional under Article I, Section 28 of the

Pennsylvania Constitution, known as Pennsylvania’s Equal Rights Amendment.³ Providers claim the Coverage Exclusion applies only to women, limiting healthcare only for women and not for men, and thus denies women essential healthcare services “solely on the basis of their sex.” Pet. ¶ 90.

Count II challenges the Coverage Exclusion as unconstitutional under the equal protection provisions of the Pennsylvania Constitution.⁴ Pet. ¶ 94.

³ The Equal Rights Amendment states:

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

PA. CONST. art. I, § 28.

⁴ The equal protection provisions, sometimes also known as the “equality provisions,” of the Pennsylvania Constitution, *Allegheny Reproductive II*, 309 A.3d at 917, state as follows:

All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

PA. CONST. art. I, § 1.

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

PA. CONST. art. I, § 26.

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:
2. Vacating roads, town plats, streets or alleys:
3. Locating or changing county seats, erecting new counties or changing county lines:

(Footnote continued on next page...)

Providers claim the Coverage Exclusion discriminates against women by limiting their freedom to choose to terminate a pregnancy. Relatedly, Providers characterize the right to reproductive autonomy—including the right to choose to terminate a pregnancy—as a fundamental right and seek a declaration to that effect. *Id.* ¶¶ 95-96 & Wherefore Clause. They claim the Coverage Exclusion unlawfully discriminates against women for attempting to exercise a fundamental constitutional right. *Id.* ¶ 96.

On both theories of relief, Providers seek a declaration that the Coverage Exclusion violates the relevant provisions of the Pennsylvania Constitution, and a permanent injunction against enforcement of the Coverage Exclusion and its enabling regulations.

C. Procedural History and *Allegheny Reproductive II*

DHS initially opposed the relief sought in the Petition and filed preliminary objections based on lack of standing and demurrer. While those preliminary objections were pending in this Court, certain members of the Pennsylvania General Assembly sought to intervene to defend the Coverage

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4. Erecting new townships or boroughs, changing township lines, borough limits or school districts:
 5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
 6. Exempting property from taxation:
 7. Regulating labor, trade, mining or manufacturing:
 8. Creating corporations, or amending, renewing or extending the charters thereof:

Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

PA. CONST. art. III, § 32.

Exclusion as constitutional. A panel of this Court granted the legislators intervention. *See Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 225 A.3d 902, 914 (Pa. Cmwlth. 2020), *rev’d*, 309 A.3d 808 (Pa. 2024).

Thereafter, this Court sustained the preliminary objections on both standing and demurrer grounds. *See Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 249 A.3d 598, 611 (Pa. Cmwlth. 2021) (en banc) (*Allegheny Reproductive I*), *rev’d*, 309 A.3d 808 (Pa. 2024). As to standing, we concluded that Providers met neither the third-party standing test nor the traditional test for standing based on financial harm to Providers under a “zone of interests” analysis. *Id.* at 607. We sustained the demurrer raised by DHS and the legislators based on *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985), *overruled by Allegheny Reproductive II*, 309 A.3d 808 (Pa. 2024). We concluded that all of the claims in the instant Petition had already been raised and rejected in *Fischer*, so Providers failed to state a claim by making those same claims here. *Allegheny Reproductive I*, 249 A.3d at 611.

In *Allegheny Reproductive II*, our Supreme Court overruled its own decision in *Fischer*, vacated our decision in *Allegheny Reproductive I*, reversed our earlier decision granting legislators intervention, and remanded with instructions.⁵

⁵ Justice Donohue authored the opinion of the Court. Justice Wecht joined that opinion in full and authored a concurring opinion. Justice Dougherty authored a concurring and dissenting opinion noting he substantially joined the principal opinion and its mandate, but dissented from Sections III.E and III.F.3.b—regarding the right to reproductive autonomy and reliance on that right in the equal protection analysis. *Allegheny Reproductive II*, 309 A.3d at 997-98 (Dougherty, J., concurring and dissenting). Justice Dougherty would have allowed this Court to address those claims in the first instance on remand rather than resolve them. *Id.* Because the matter was heard by six Justices, the parts of the opinion joined by three Justices constitute the majority opinion that is binding on this Court. Chief Justice Todd authored a concurring and dissenting opinion, joining in the procedural aspects of the majority opinion—standing and intervention—but dissenting from the mandate and the court’s overruling of *Fischer*. *Id.* at 988-89 (Todd, C.J., concurring and dissenting). **(Footnote continued on next page...)**

As to the procedural issues, the Supreme Court first concluded that Providers have standing to pursue their claims and reversed our determination to the contrary. In so holding, it clarified that no “zone of interests” analysis was necessary because Providers are immediately harmed by the fact that the Coverage Exclusion prohibits them from billing for procedures they provide to Medical Assistance-covered patients. 309 A.3d at 839. Second, the court concluded that the legislator intervenors’ interest in the Coverage Exclusion is too attenuated to justify intervention, and it reversed our decision granting intervention. *Id.* at 846-49.

On the merits, the *Allegheny Reproductive II* Court overruled *Fischer* on both the Equal Rights Amendment and equal protection issues. The Supreme Court initially recognized *Fischer*’s status as binding precedent, which the doctrine of stare decisis ordinarily protects. *Id.* at 850. But the Court noted the doctrine is not absolute and allows overruling earlier constitutional interpretations if under “any rules of constitutional construction recognized at the time of those decisions or now, the interpretation is patently flawed.” *Id.* at 883 (quoting *McLinko v. Dep’t of State*, 279 A.3d 539, 572 (Pa. 2022)).

Fischer involved a group of providers and patients challenging the Coverage Exclusion based on the same Pennsylvania constitutional provisions as in this case. The *Fischer* Court had rejected both challenges and upheld the statute. For equal protection, it applied rational basis review or, alternatively, intermediate scrutiny, finding an “important governmental interest” in the preservation of potential life. *Allegheny Reproductive II*, 309 A.3d at 856 (discussing *Fischer*). The *Fischer* Court also applied a “penalty analysis” common under the United States

dissenting). Justice Mundy authored a concurring and dissenting opinion explaining she would not have overruled *Fischer*. *Id.* at 998-99 (Mundy, J., concurring and dissenting). Justice Brobson recused.

Constitution, concluding that the Coverage Exclusion does not violate equal protection because it does not punish any person for the exercise of a protected right. *Id.* at 858-59. And it recognized an “exception” to the Equal Rights Amendment when sex-based discrimination is founded on “physical characteristics unique to only one sex.” *Id.* at 860. Our Supreme Court reexamined both issues in *Allegheny Reproductive II*.

The Court first addressed the Equal Rights Amendment. It noted that the *Fischer* court had “concluded that the [Coverage Exclusion] did not implicate the Equal Rights Amendment, [so] it declined to conduct any Equal Rights Amendment analysis.” *Allegheny Reproductive II*, 309 A.3d at 867. The Court began with an *Edmunds*⁶ analysis of the Equal Rights Amendment. It found the text of the Amendment unambiguous. *Id.* at 868-69. It reviewed the history of legal sex discrimination that led to the adoption of the Amendment and noted several Pennsylvania decisions that had struck down sex-based statutory distinctions after the Amendment was adopted. These included statutes that allowed payment of alimony pendente lite to wives but not to husbands; imposed minimum prison sentences on men but not on women; required a mother’s consent to adoption of her child but not the father’s consent; and presumed that fathers, not mothers, would be financially responsible for child support in a divorce. *Id.* at 874-75 (collecting cases). The Court noted *Cerra v. East Stroudsburg Area School District*, 299 A.2d 277 (Pa. 1973), where it had interpreted a statutory prohibition on sex discrimination

⁶ In *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991), the Supreme Court established a test for deciding whether a Pennsylvania constitutional provision provides more, less, or the same protection as a similar federal constitutional provision. The factors are: “(1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case-law; (3) related case-law from other states; [and] (4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.” *Id.* at 895.

to prohibit the school district’s termination of a teacher’s employment because of her pregnancy. *Allegheny Reproductive II*, 309 A.3d at 876 (citing *Cerra*). It reasoned that the *Fischer* Court had improperly distinguished *Cerra* as being based on the concept that pregnancy is a “disability,” rather than prohibited sex discrimination, and it clarified that “*Cerra* conclusively established that such differentiation is ‘sex discrimination pure and simple.’” *Id.* (quoting *Cerra*, 299 A.2d at 280). The Court next reviewed the decisions of other state courts, which “have concluded that the phrases ‘on account of sex’ and ‘because of sex’ encompass reproductive capabilities as well as stereotypical gender norms when applying their equal rights amendments to comparable Medicaid coverage exclusions. *Id.* at 878. Finally, the *Allegheny Reproductive II* Court addressed the quality of *Fischer*’s reasoning and concluded:

We recognize that our Equal Rights Amendment jurisprudence prior to *Fischer* did not address a law that distinguished between the sexes based on a physical characteristic unique to one sex. However, based upon the unambiguous text of the Equal Rights Amendment, there is no room for a carve out for laws that differentiate between the sexes for any reason. The *Fischer* Court contorted a simple, longstanding principle of Section 28 law by declaring that the basis for the Coverage Exclusion was not a distinction based on sex but abortion

. . . .

Fischer’s analytical device that transposes the recognition of the legislative policy for a statute with the recognition of Section 28’s constitutional protection guts the guarantee of the Equal Rights Amendment. The analytical device—by accepting legislative policy pronouncements in place of conducting any judicial scrutiny of sex-based classifications—avoids the difficult questions. While there may be a legitimate state interest in this Commonwealth for promoting potential life, the

question remains whether that legislative determination trumps the constitutional guarantee expressed in the Equal Rights Amendment that individuals are to be treated equally under the law and that rights cannot be denied or abridged based on sex. It is for the courts, not the Legislature, to conduct a searching inquiry to determine whether the balance struck by the Legislature runs afoul of the constitutional promise that rights will not be denied or abridged based on sex.

Finally, and most fundamentally, the *Fischer* Court's adoption of an exception to the Equal Rights Amendment for "physical conditions unique to one sex" is so contrary to the text of the Equal Rights Amendment that contains no exceptions that it constitutes a special justification for overruling that analysis. Consequently, we will not perpetuate its error by considering the flawed framework when addressing Providers' claim.

.....

Based on the foregoing interpretation of the Equal Rights Amendment, we overrule *Fischer's* interpretation of the Equal Rights Amendment. We further conclude that when a statute is challenged as violative of Section 28, a sex-based distinction is presumptively unconstitutional, and it is the government's burden to rebut the presumption with evidence of a compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy.

Allegheny Reproductive II, 309 A.3d at 885-91 (footnote and some citations omitted). Under this standard, "a sex-based distinction is presumptively unconstitutional," and "[i]t is the government's burden to rebut the presumption with evidence of a compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy." *Id.* at 891. "The judicial inquiry will be searching, and no deference will be given to legislative policy reasons for creating sex-based classifications. Given these parameters, we

acknowledge that few, if any, sex-based conferrals of benefits or burdens will be sustainable.” *Id.*

The Court addressed Providers’ other constitutional claim in two parts. First, in a part of the Court’s opinion joined by only a plurality of the Justices,⁷ the Court determined that the Pennsylvania Constitution guarantees a fundamental right to reproductive autonomy. *Id.* at 917. In an *Edmunds* analysis, the Court explained that the Pennsylvania Constitution’s unique Declaration of Rights (i.e., Article I of the Pennsylvania Constitution) protects fundamental, inherent rights—not rights created or granted by the government as a matter of grace. *Id.* at 897. It noted the long-recognized right to privacy found in Article I, Sections 1 and 8 of the Pennsylvania Constitution,⁸ which relies on and includes the inherent “right to be let alone.” *Id.* at 896-901. The Court opined that the real issue in this case is not the abortion procedure itself, but the “monumental impact on a woman making the decision to carry a pregnancy to birth or not,” and concluded that “if the Article I rights that this Court has recognized do not encompass this decision, it is hard to imagine a decision that would be encompassed.” *Id.* at 909. The Court noted that in other states whose constitutions provide for inherent rights, courts have recognized a right to reproductive choice. *Id.* at 912-16. The Court characterized this right, like other privacy rights protected by the Declaration of Rights, as

⁷ See *supra* n.5; see also *Allegheny Reproductive II*, 309 A.3d at 892 n.84 (noting this portion of the opinion is a plurality only).

⁸ The latter provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

PA. CONST. art. I, § 8.

fundamental. *Id.* at 903, 917.

Lastly, the Court turned to equal protection. It first noted that the *Fischer* Court had treated the Pennsylvania Constitution as containing essentially the same level of equal protection guarantee as the federal Constitution, which has been a common approach in Pennsylvania jurisprudence, including the federal “penalty analysis.” *Id.* at 918. The Court ultimately concluded *Fischer* had erred in doing this. *Id.* at 918, 934. In another *Edmunds* analysis, the Court noted that the text of Pennsylvania’s equal protection provisions “is notably different from the standalone federal Equal Protection Clause.^[9]” The Court reviewed its equal protection decisions, stating that although it will continue to apply federal equal protection *principles* when analyzing the Pennsylvania Constitution, such as means-ends analysis, this does not mean that the *level* of protection or *interpretations* of the two constitutions are in lockstep, as the *Fischer* Court had presumed. *Id.* at 933-34. The Court observed that several other states have interpreted their own constitutions to provide greater equal protection guarantees than the federal Constitution, leading some to conclude their constitutions protect abortion. *Id.* at 934-38. The Court then noted that *Fischer* had not treated Section 26 as appropriately distinctive, had skipped over the critical equal protection step of defining the level of scrutiny that applies, and had incompletely applied federal equal protection law to what should be a distinct state-law right, distinctly analyzed. *Id.* at 942-43. Finally, the Court noted: “[T]he foundation on which *Fischer*’s equal protection analyses were built has been overruled. That is, with *Roe* [*v. Wade*, 410 U.S. 113 (1973),] overruled [by *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022)], the case law in [*Roe*’s] wake, including the primary cases *Fischer* cited in order to justify its

⁹ U.S. CONST. amend. XIV.

penalty analysis, is also disrupted Therefore, following *Dobbs*, it is logical and necessary for this Court to reconsider the premise of *Fischer* and address the unique state constitutional questions that are otherwise unanswered.” *Allegheny Reproductive II*, 309 A.3d at 943. Having overruled *Fischer* on this issue, the Court concluded:

With the benefit of an *Edmunds* analysis, it becomes clear that Section 26 of our Charter affords broader protections than the federal Equal Protection Clause Thus, when a court is presented with a legislative classification that touches on the exercise of a civil right and it is being challenged on the basis that it is discriminatory, the court shall determine whether the classification operates neutrally with regard to the exercise of that right. If it does not, the court shall then conduct a commensurate means-end review.

. . . .

Section 26 prohibits not only the denial to any person the enjoyment of any civil right, but it explicitly prohibits the discrimination against any person in the exercise of any civil right Thus, the government must maintain a position of neutrality with regard to citizens’ exercise of their constitutional rights. It may only depart from this neutrality when there is a justification to sustain a legislative classification.

Id. at 945. The Court then commented on the commensurate means-ends review.¹⁰ Starting from its earlier conclusion—that the Coverage Exclusion burdens the fundamental right to reproductive autonomy—the plurality determined that strict scrutiny should apply to the Coverage Exclusion, such that it would survive only if the government can show that it is “necessary to the achievement of a compelling

¹⁰ Only a plurality of the Justices joined in the means-ends analysis in Section III.F.3.b of the opinion. *See supra* n.5 & *Allegheny Reproductive II*, 309 A.3d at 945 n.176.

state interest.” *Id.* at 946 (quoting *Commonwealth v. Bell*, 516 A.2d 1172, 1178 (Pa. 1986)).

The Court concluded with its mandate¹¹ to this Court, which reads in its entirety:

In this appeal by Providers from the orders of the Commonwealth Court, we rule as follows:

1. On the issues raised in preliminary objections, we decide that it was error to conclude that Providers lacked standing to assert the Pennsylvania constitutional claims raised in the [Petition].
2. We conclude that the lower court erred in granting the petitions to intervene filed by certain individual Pennsylvania Senators and Legislators.
3. Further, on the Commonwealth Court’s apparent alternative grounds for dismissing the [Petition] by the grant of a preliminary objection demurring to the claims raised in the [P]etition based upon this Court’s prior decision in [*Fischer*], we reverse.
4. We overrule *Fischer*’s interpretation of Article I, Section 28, and we hold that when a statute, such as the Coverage Exclusion, is challenged as violative of Section 28, a sex-based distinction is presumptively unconstitutional, and it is the government’s burden to rebut the presumption with evidence of a compelling state interest in creating the classification and that no less intrusive methods are available to support the expressed policy.
5. We overrule *Fischer*’s interpretation of Article I, Section 26, and we hold that a court, presented with a challenge to a legislative classification that touches on the exercise of a civil right on the basis that it violates Article I, Section 26, must determine whether

¹¹ A majority of the Justices joined the Court’s mandate.

the classification operates neutrally with regard to the exercise of that right. If it does not, the court shall then conduct a commensurate means-end review.

This appeal does not resolve the ultimate issues challenging the constitutionality of the Coverage Exclusion under the Pennsylvania Constitution. In response to the issues raised in the appeal, we reverse the January 28, 2020 order of the Commonwealth Court granting intervention, and we reverse the March 26, 2021 order of the Commonwealth Court sustaining the preliminary objections of DHS and dismissing the [Petition]. We remand to the Commonwealth Court for further proceedings consistent with the mandate contained in Part IV of this opinion.

Allegheny Reproductive II, 309 A.3d at 947.

After the Supreme Court’s decision and remand in *Allegheny Reproductive II*, DHS notified this Court that it would no longer defend the constitutionality of the Coverage Exclusion. This left no party adverse to Providers’ position. Providers filed their application for summary relief, and they and Respondents filed briefs supporting the application. The parties stipulated to essentially all of the facts alleged in the Petition, including specifically the following fact: “There is no comparable [Medical Assistance] coverage ban for men’s reproductive health care. There is no medical condition that only men experience for which [Medical Assistance] denies coverage.” Joint Statement of Undisputed Facts (Joint Statement) ¶ 27; *accord id.* ¶ 67. Following oral argument before this Court in February 2025, the Pennsylvania Attorney General sought leave to intervene in this matter to defend the constitutionality of the Coverage Exclusion under Section 204(a)(3) & (c) of the Commonwealth Attorneys Act.¹² This Court granted

¹² Act of October 15, 1980, P.L. 950, 71 P.S. § 732-204(a)(3) & (c) (authorizing Attorney General to intervene).

intervention, the Attorney General¹³ filed a brief opposing Providers' application for summary relief, and the Court heard supplemental oral argument.

II. ISSUES AND STANDARD FOR SUMMARY RELIEF

We grant summary relief only if the applicant's right to relief is clear and there are no genuine issues of material fact. *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1220 (Pa. Cmwlth. 2018) (en banc). A genuine dispute of fact precludes summary relief. *Id.* "We review the record in the light most favorable to the opposing party and resolve all doubts concerning the existence of a genuine issue of material fact in favor of that party." *Id.* "A material fact is one that directly affects the outcome of the case." *Dep't of Env't Prot. v. Delta Chems., Inc.*, 721 A.2d 411, 416 (Pa. Cmwlth. 1998) (en banc).

Providers' application for summary relief seeks judgment in their favor as a matter of law on both counts of the Petition, relying on the analytical frameworks established in *Allegheny Reproductive II*. Accordingly, the application and the parties' arguments address two broad issues. First, Providers ask us to declare the Coverage Exclusion unconstitutional under the Equal Rights Amendment. Second, they ask us to declare the Coverage Exclusion unconstitutional under the equal protection provisions. Entailed within that second issue, Providers ask us to declare that reproductive autonomy is a fundamental right under the Pennsylvania Constitution, and thus to apply strict scrutiny. But they argue alternatively that even if only rational basis review applies, they are entitled to summary relief because the Coverage Exclusion fails that means-ends test also. Consistent with its notice to this Court, DHS concurs in the relief sought.

¹³ For clarity, we refer to these arguments as the Attorney General's, though they are really made on behalf of the entire Commonwealth. See Section 204(c) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(c).

The Attorney General opposes all of the summary relief sought and asks us to allow the case to go to trial, maintaining there are genuine issues of fact.

III. DISCUSSION

A. The Equal Rights Amendment

1. Parties' Arguments

Providers argue the Coverage Exclusion cannot meet the stringent *Allegheny Reproductive II* test under any factual circumstances. They highlight that the Medical Assistance program covers all medical care for pregnant patients who continue a pregnancy—including prenatal care and childbirth—but withholds coverage when a patient seeks an abortion. This disparity, they argue, both reflects and reinforces unequal gender stereotypes of women as a class and obstructs their ability to participate fully in social, educational, civic, and economic life. They stress the disproportionate impact the exclusion has on women of color, who are more likely to rely on Medical Assistance. They dispute that any interest, let alone a compelling one with narrow tailoring, is present to justify this. They note that most other jurisdictions considering this issue have held that excluding abortion coverage from Medicaid violates their respective equal rights amendments. *See* Providers' Br. at 29-30 (collecting cases).

The Attorney General accepts the Supreme Court's holding that the Coverage Exclusion is a sex-based classification. He proffers three state interests that, he argues, are compelling, and for which the Coverage Exclusion is the least intrusive means of pursuit.

First, the Attorney General asserts a state interest in protecting fetal life. He cites the sovereign's inherent right and duty to protect life, liberty, and property. He notes the legislature's statement of its purpose "to protect the life and health of

the child subject to abortion,” 18 Pa.C.S. § 3202(a), and argues this statute recognizes a compelling state interest. Further, the Attorney General maintains this allegedly compelling interest applies for the entire duration of a pregnancy, and not only after some demarcated point of “viability.” *See* Attorney General’s Br. at 17-18. The Attorney General then argues the Coverage Exclusion is one mechanism through which the legislature is pursuing the state interest in preserving fetal life and asks us to defer to that legislative choice. He disputes other means, like contraception, as a route to that interest, claiming the interest at stake is narrowly in “protecting life already in being,” and that this is distinct from preventing unwanted pregnancy, which is not, he claims, in the Commonwealth’s interest. *Id.* at 23. With the interest so narrowed—i.e., an interest that cares only about ensuring pregnancies are carried to term—he argues the Coverage Exclusion is the least restrictive means for pursuing that interest. He frames the interest as “not funding the termination of a fetus,” *id.* at 15, and argues that the Coverage Exclusion is aimed directly at that interest because if the government subsidizes abortion, there will be more abortion, *id.* at 24.

Second, the Attorney General asserts a state interest in protecting the health of women. In his view, this includes a duty to protect women—who may voluntarily give their informed consent to abortion—from alleged psychological harm caused by their own medical choices. He requests the opportunity to prove at trial that abortion has harmed at least some women, and that some women later regret their choice of abortion. *Id.* at 19-20. He again frames any disagreement with this view as a policy dispute for which we should defer to the legislature. As to means, the Attorney General does not directly explain why the Coverage Exclusion narrowly promotes this alleged interest, except by saying that less funding for

abortions will mean fewer abortions. He claims that the interest in protecting women from abortion does not amount to coerced childbirth because it is only a matter of funding, and women are still free to subsidize their own abortions if that is what they choose.

Third, the Attorney General asserts a state interest in “not violating the conscience of those who object to abortion.” *Id.* at 20. He grounds this on the general right of conscience, and on the legislature’s stated policy in the statute to “respect and protect the right of conscience of all persons who refuse to . . . subsidize . . . abortions.” *Id.* at 21 (quoting 18 Pa.C.S. § 3202(d)). He once again asks us to defer to the legislature’s weighing of any countervailing conscience rights. The Attorney General does not directly address how the Coverage Exclusion is tailored to this conscience right for purposes of the Equal Rights Amendment.

Providers reply that the policy-driven rationales the Attorney General gives are geared toward satisfying rational basis review, which is not the standard under the Equal Rights Amendment. They dispute that any of those interests are sufficiently compelling to rebut the presumed unconstitutionality. Providers point out that the Attorney General’s proposal of deference to legislative policy judgments has already been rejected by the Supreme Court in *Allegheny Reproductive II*. They also note that for each of the three asserted interests, the question is not whether that interest is compelling in the abstract; it is whether that interest justifies a *funding disparity* under the Coverage Exclusion. And the interest asserted must be so compelling as to justify the coercion of at least some women’s carrying a pregnancy to term. Providers argue the Attorney General has simply not done enough to show that the abstract interests he advances are sufficiently compelling to support a sex-based classification.

Providers separately argue that, even if one or more of the asserted interests is sufficiently compelling, the Coverage Exclusion is not the least intrusive means of pursuing it. First, they argue the interest in fetal life can be pursued through a host of other, less intrusive means—funding for family planning and contraception, which are relevant to pregnancies that may occur, and funding for pregnancy counseling, maternal healthcare, and post-delivery care for the child and mother, which will encourage women to carry pregnancies to term. Second, regarding the interest in women’s health, they dispute that the Coverage Exclusion has any single effect on that interest. Rather, they argue, failing to fund abortion for women who rely on Medical Assistance will result in some of those women choosing to carry a pregnancy to term when they otherwise would not, which will profoundly harm the health—physical and psychological—of some of those women. Third, regarding the interest in the conscience rights of those who oppose abortion, Providers point out that satisfying all the conscience-based policy preferences of citizens may well be impossible, and that regardless, the state could use less intrusive means to protect this interest, such as a tax credit or tax choice program. In sum, Providers maintain that “the Commonwealth—whether through Respondents or [the Attorney General]—has not met its burden to show that the Coverage Exclusion accomplishes any compelling state interest in this context, much less that it is the least restrictive means to do so.” Providers’ Second Reply Br. (filed May 28, 2025) at 17.

2. Analysis

On this particular challenge to the Coverage Exclusion, we do not begin—as we usually would—with a presumption of constitutionality. Rather, “a sex-based distinction is presumptively unconstitutional, and it is the government’s burden to rebut the presumption with evidence of a compelling state interest in

creating the classification and that no less intrusive methods are available to support the expressed policy.” *Allegheny Reproductive II*, 309 A.3d at 947. “[T]he Coverage Exclusion is inherently sex-based.” *Id.* at 886; *accord id.* at 891. “[F]ew, if any, sex-based conferrals of benefits or burdens will be sustainable.” *Id.* at 891.

This is a constitutional case. We evaluate whether the asserted interest is compelling within the specific context of the Equal Rights Amendment and the Coverage Exclusion. *Id.* at 887. We do not simply defer to current legislative policy judgments, as we must in a case involving only statutory interpretation. *See id.* That would be circular reasoning and an abdication of our judicial responsibility to examine whether the legislature has strayed outside the confines of the Pennsylvania Constitution, which binds the legislature as well. *See id.* “[T]he traditional function of judicial review” in a constitutional case is independent constitutional interpretation by the judicial branch. *Id.* at 847.

Initially, we are not persuaded that the state interests the Attorney General has identified are compelling within the Equal Rights Amendment analysis. First, regarding fetal life, the Attorney General has narrowly defined this as an interest in preserving already-existing fetuses. He has disclaimed any interest in promoting human reproduction in general, or in preventing unplanned pregnancy. In this way, the Attorney General appears to have embraced the necessary implication of this view: the interest “can be understood only as an interest that is advanced at the cost of forcing women to bear children against their will. It will be DHS’s unenviable burden on remand to establish that a state interest that is advanced through the coercive use of women’s bodies is constitutionally compelling” *Allegheny Reproductive II*, 309 A.3d at 955 (Wecht, J., concurring). The Attorney General simply has not explained why *that interest* is compelling for the state. He

has not shown or argued why, as a matter of law, the state must ensure that every pregnancy is carried to term. The Attorney General has not met this burden on remand, and Respondents have stated they cannot meet it.

Second, regarding women’s psychological well-being, the Attorney General has not identified any other context in which we have found a *compelling* state interest in protecting a competent adult from feeling regret for her free choices. There may be such laws where a general state interest favors paternalism—think of seat belt legislation—but in this case, the interest must be compelling. To borrow a turn of phrase from a different context: although the state may have a compelling interest in “safeguarding the physical and psychological well-being *of a minor*” who is victimized and cannot truly give consent, we are not persuaded there is any compelling “paternalistic interest in regulating [*an adult’s*] mind,” such as that of a woman who chooses with informed consent to procure an abortion as medical care. *Contra Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (emphasis added) (quoting, in part, *New York v. Ferber*, 458 U.S. 747, 757 (1982)).

Third, regarding citizens’ conscience interests in state funding for abortion, we are not persuaded by the Attorney General’s argument. Just because the legislature *has in fact* expressed a policy preference for favoring one group’s conscience rights over another’s, that does not mean it has a *compelling* interest in doing so. This argument, like with the other interests the Attorney General asserts, relies principally on deference to extant legislative determinations, and fails to explain why this or the other interests rise to a compelling level in this context. We conclude that, though these three interests may be permissible state interests in the abstract, at least to some degree, the Attorney General has not shown that they are compelling.

Finally, even if we were to find one or more of those interests compelling, we agree with Providers that the Attorney General cannot demonstrate the Coverage Exclusion is the least intrusive means of pursuing them. Any state interest in promoting carrying a pregnancy to term is furthered at least as well by state investment in maternal and infant healthcare, and in childcare and other resources for new mothers, as it is by the Coverage Exclusion. Providers persuasively identify some such programs that exist now—federal block grant programs, state health policy, and the Women, Infants, and Children (WIC) program—and one can imagine others that may yet be created, such as subsidized childcare that defrays the enormous expenses of delivering and raising a child. Those means are less intrusive than coercing women who cannot afford to pay for their own abortion into carrying a pregnancy to term. The same is true for the alleged interest in women’s health. If the state believes certain medical procedures may psychologically harm women, the state can license, regulate, and educate around such care. That is less intrusive than taking an entire medical procedure off the table categorically for some women, some of whom may benefit from that procedure—a fact the Attorney General does not dispute. Finally, to the extent the legislature has any legitimate interest in favoring one policy or conscience view over another regarding abortion, the legislature has less intrusive means to favor that interest, such as a tax choice or tax credit program. In sum, the Attorney General has not shown there is any genuine dispute about whether the Coverage Exclusion is the least intrusive means of pursuing these interests. We do not need to hear evidence about whether abortion has had negative consequences for some women to know that the Coverage Exclusion is not the proper means for the state to address that issue.¹⁴

¹⁴ The lead Dissent says “the Commonwealth has the right to rebut the presumption of (Footnote continued on next page...)”

unconstitutionality with evidence at a hearing.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, ___ A.3d ___ (Pa. Cmwlth., No. 26 M.D. 2019, filed Apr. 20, 2026) (*Allegheny Reproductive III*) (McCullough, J., dissenting), slip op. at 13; *see also id.* (Wallace, J., dissenting), slip op. at 4-7 (arguing material facts remain in dispute). We customarily refer to taking evidence on the merits in our original jurisdiction as a “trial,” which would include discovery. That robust proceeding, which is sometimes years long—not a mere hearing—is what the Attorney General asks for. Attorney General’s Br. at 19, 51, 65. Of course, the Supreme Court was aware of our trial practice when it stated that the Commonwealth bears the burden to rebut the presumption of unconstitutionality “with evidence of a compelling state interest.” *Allegheny Reproductive II*, 309 A.3d at 947. On remand, the government refused that burden, the Attorney General finally arrived to defend the Coverage Exclusion, and we twice heard oral argument.

In a constitutional challenge, the government’s demand for trial does not preclude summary relief by *ipse dixit*. The asserted factual issues must be *both* disputed *and* material to the outcome. *See Haveman v. Bureau of Pro. & Occupational Affs.*, 238 A.3d 567, 579-80 (Pa. Cmwlth. 2020) (en banc). If, assuming the proffered facts to be in the respondent’s favor and considering the parties’ legal theories and the law, the asserted facts are not in dispute or not material, we will grant summary relief for the petitioner. *See id.*; *see also, e.g., A.S. v. Pa. State Police*, 87 A.3d 914, 923 (Pa. Cmwlth. 2014) (en banc) (granting summary relief for petitioner over agency’s claim of disputed material fact), *aff’d*, 143 A.3d 896 (Pa. 2016). *But see A.S.*, 87 A.3d at 933 (Brobson, J., dissenting) (agreeing with agency’s claim of disputed material fact). We acknowledge that the *Allegheny Reproductive II* Court contemplated the potential for an evidentiary proceeding, but we do not read that mandate as overriding this general law of summary relief.

When asked at oral argument which material facts he would seek to prove, the Attorney General identified three: (1) that some women are psychologically harmed by, or regret, abortion; (2) that fetal life exists, to be shown by expert testimony regarding fetal heartbeat; and (3) that the asserted conscience rights behind the Coverage Exclusion may impact the state budgetary process in the future. Even taking those putative facts as true, they do not require trial. Providers do not dispute that psychological harm around women’s healthcare is a matter of “relative risk.” Providers’ Reply Br. at 9 (quoting the Attorney General’s proffered evidence). They obviously do not dispute that a fetus is a form of potential life. Providers’ Second Reply Br. at 10-11. The practical effects of our decision on the budgetary process are not material to our analysis. As we have explained here, the Commonwealth’s burden is to come forward with evidence to show a compelling interest, and that the Coverage Exclusion is the least restrictive means of pursuing that interest. The Attorney General’s offered proof is not material in that, even if shown at trial, it would not allow him to prevail under that exacting legal standard.

Finally, we do not base this conclusion wholly on the Joint Statement (or Stipulations) and we certainly do not accept any stipulations of law. *Contra Allegheny Reproductive III*, (McCullough, J., dissenting), slip op. at 16. We ask broadly whether, assuming all facts in favor **(Footnote continued on next page...)**

Based on the foregoing, we conclude that the Commonwealth has failed to rebut the presumed unconstitutionality of the Coverage Exclusion—which is a sex-based classification—by showing it is the least intrusive means of pursuing compelling state interests. Accordingly, we hold that the Coverage Exclusion violates the Equal Rights Amendment and is unconstitutional.

B. Equal Protection

We next address the challenge based on equal protection under Article I, Section 26 of the Pennsylvania Constitution.¹⁵

of the nonmovant, the movant is entitled to relief as a matter of law. *Phantom Fireworks Showrooms*, 198 A.3d at 1220. It is not dispositive for the Attorney General, at oral argument, to disclaim agreement with the Joint Statement *in general*—stipulations on which, we note, he also relies. See Attorney General’s Br. at 24. The Attorney General has not *specifically* rebutted Providers’ argument that the facts he seeks to prove are either not disputed or not material.

¹⁵ We reach this issue despite that the first issue, based on the Equal Rights Amendment, is dispositive. Normally, principles of judicial restraint counsel that courts should not resolve multiple issues when a single issue is sufficient to resolve the case. See *Commonwealth v. Dunkins*, 263 A.3d 247, 253 n.5 (Pa. 2021). However, we believe the unique procedural posture of this case favors reaching this issue as well.

In its mandate, our Supreme Court expressly overruled *Fischer* as to *both* the Equal Rights Amendment issue and the equal protection issue. *Allegheny Reproductive II*, 309 A.3d at 947. It addressed each constitutional argument separately, and regarding the second issue, it held: “[A] court, presented with a challenge to a legislative classification that touches on the exercise of a civil right on the basis that it violates Article I, Section 26, *must* determine whether the classification operates neutrally with regard to the exercise of that right. If it does not, the court *shall* then conduct *a commensurate* means-end review.” *Id.* (emphasis added). The Supreme Court ordered this Court to act consistent with that mandate. *Id.*

This matter has now gone on for seven years, during which no court has finally addressed the merits of Providers’ arguments. The Supreme Court noted this delay, even at that earlier stage. See *Allegheny Reproductive II*, 309 A.3d at 912. It is in the interest of judicial economy not to delay resolution of the merits any longer with piecemeal litigation, as may occur if this Court were to address only one issue, creating the need for further remand after an appeal. We read the Supreme Court’s mandate as at least authorizing us—and perhaps directing us—to address both merits issues on remand.

1. Parties' Arguments

Providers contend that the Coverage Exclusion violates the equal protection provisions because it burdens the exercise of a fundamental right: reproductive autonomy. They note as persuasive the plurality conclusion in *Allegheny Reproductive II* that reproductive autonomy is fundamental, rooted in Article I, Section 1's guarantee of privacy. They ask us to adopt that reasoning in full, basing the fundamentality of the right to reproductive autonomy on the guarantee of privacy, and also on the Equal Rights Amendment, which is further textual support for an inherent right to reproductive autonomy. Based on their view that a fundamental right is involved, they argue the Coverage Exclusion treats pregnant patients differently depending on whether they choose to carry a pregnancy to term or terminate it. This differential treatment, they assert, is a textbook burden on the right. As before, they dispute that any compelling interest lets this burden survive strict scrutiny. In the alternative, they argue the Coverage Exclusion would fail even rational basis review, because it is not rationally related to the asserted interest in protecting fetal life. Providers emphasize that the equality provisions of the Pennsylvania Constitution are more protective than their federal counterparts.

The Attorney General maintains there is no disparate treatment because Medicaid recipients who seek abortions and those who continue pregnancies are not similarly situated for purposes of equal protection analysis. By making different ultimate choices about the pregnancy, they have situated themselves differently. The state's decision to subsidize one and not the other is a policy judgment rather than a classification. The Attorney General then argues there is no fundamental right to reproductive autonomy. He correctly notes the right is not found explicitly in the Constitution. He disputes the possibility for inherent rights to be nested within one

another—in this case, an implied right to abortion within an implied right to privacy under Article I, Section 1. The Attorney General cites history, including Pennsylvania history of criminalizing some abortions, to conclude there can be no fundamental right to reproductive autonomy.

The Attorney General argues that even if some right to reproductive autonomy is fundamental, the Coverage Exclusion does not burden that right, because that right does not extend to requiring the state to *pay for* the exercise of that choice. *See* Attorney General’s Br. at 33-34. The Attorney General notes that Pennsylvania courts have long held that the government’s failure to subsidize a choice does not constitute an unconstitutional burden on the right to make that choice. For this reason, the Attorney General contends that strict scrutiny is unwarranted because the law neither impedes access to abortion nor penalizes the decision to seek one. Alternatively, for the same reasons as discussed *supra* relative to the Equal Rights Amendment, the Attorney General argues the Coverage Exclusion would satisfy strict scrutiny.

In reply, Providers reemphasize the Supreme Court’s conclusion that the Article I, Section 26 protections are broader than, *not* in lock-step with, federal equal protection. Thus they dispute the relevance of cases like *Dobbs*, which dealt with federal substantive due process rights of a completely different nature and scope. Based on that distinction, Providers point out that the Attorney General’s deep-historical analysis is misplaced—it is answering the “history and tradition” question the United States Supreme Court applies, not the fundamentality question under the Pennsylvania Constitution. Thus, that historical analysis is answering the wrong analytical question, and Providers also argue even if it were relevant, it is factually flawed. Providers argue in the alternative that even if we find no

fundamental right, the Coverage Exclusion fails rational basis review under the Pennsylvania Constitution, because the law is plainly not aimed at protecting fetal life, but rather at coercing birth.

2. Analysis

After overruling *Fischer's* equal protection analysis, the Supreme Court explained the proper Article I, Section 26 analysis of the Coverage Exclusion this way:

In essence, equal protections generally provide that like persons in like circumstances will be treated similarly. That does not necessarily require that all persons enjoy identical protection under the law; thus, the Commonwealth is not absolutely prohibited from classifying individuals for the purposes of receiving different treatment, so long as those classifications are appropriately justified. Based upon judicial review, pursuant to the means-end test, the courts must determine whether such a classification is constitutional. By its express terms, the Abortion Control Act creates a classification. The Coverage Exclusion differentiates between pregnant women on Medical Assistance who would seek to obtain abortions and pregnant women on Medical Assistance who would seek to carry their pregnancies to term. The former receives no government funding for the reproductive care they seek, whereas the latter receives full coverage for the reproductive care they seek. The controlling factor influencing the statutory funding scheme is how a pregnant woman on medical assistance decides to exercise her reproductive choices.

Section 26 prohibits not only the denial to any person the enjoyment of any civil right, but it explicitly prohibits the discrimination against any person in the exercise of any civil right Thus, the government must maintain a position of neutrality with regard to citizens' exercise of their constitutional rights. It may only depart from this neutrality when there is a justification to sustain a legislative classification.

Allegheny Reproductive II, 309 A.3d at 945 (citations omitted). We determine “whether the classification operates neutrally with regard to the exercise of [the] right. If it does not, the court shall then conduct a commensurate means-end review.” *Id.* at 947. “Commensurate” here obviously signals the concept that the scrutiny of our means-ends review changes based on the nature of the right at issue. This requires us to conduct our analysis in two logical steps: “First, we determine the nature of the right—is it fundamental or something less. Depending on the nature of the right, we conduct a means-ends analysis, i.e., scrutiny tailored to the nature of the right, to determine whether the articulated government purpose is advanced by the legislation.” *Id.* at 889. Accordingly, we first examine whether the right at issue is a fundamental right.¹⁶

i. Fundamental Right

“Fundamental rights generally are those which have their source in the Constitution.” *Zauflik v. Pennsbury Sch. Dist.*, 104 A.3d 1096, 1118 (Pa. 2014). This was the rule under the Pennsylvania Supreme Court’s prior approach of treating state equal protection law as coextensive with the federal Equal Protection Clause. *See Fischer*, 502 A.2d at 121 (citing *James v. Se. Pa. Transp. Auth.*, 477 A.2d 1302, 1305-06 (Pa. 1984)). With *Allegheny Reproductive II* having overruled *Fischer*’s equal protection analysis, it is clear that going forward, assessment of whether a right is fundamental in Pennsylvania will turn squarely on our Declaration of Rights and the Pennsylvania Constitution, and will not follow federal fundamental rights jurisprudence. *See Allegheny Reproductive II*, 309 A.3d at 945; *see also id.* at 970-

¹⁶ Consistent with our decision to address Providers’ equal protection claim in the interest of judicial economy, *see supra* n.15, we must address this issue because identifying the level of scrutiny that applies “is crucial to any equal protection claim.” *Allegheny Reproductive II*, 309 A.3d at 942.

80 (Wecht, J., concurring) (noting several Declaration of Rights provisions that may prove to be sources of fundamental rights).

Because we have our own Constitution, we Pennsylvanians have our own fundamental rights. A plurality of our Supreme Court explained how the right to privacy has long been viewed as fundamental under Article I, including: the right to privacy in one’s home, one’s body and medical records, and one’s personal identifying information. *Id.* at 899-905. Privacy is not alone. We have recognized other fundamental rights: the right to vote;¹⁷ the right to reputation;¹⁸ and the right to public education.¹⁹ These are all fundamental under the Pennsylvania Constitution, regardless of their status under the United States Constitution. Fundamental rights are not some alien thing which we should be afraid to encounter, as the Attorney General seems to suggest. They are front and center in the compact of self-government the People created. *See* PA. CONST. art. I.

The claimed right is a right to “reproductive autonomy.” *Allegheny Reproductive II*, 309 A.3d at 892; *id.* at 997 (Dougherty, J., concurring and dissenting). The *Allegheny Reproductive II* plurality explained how the text and history of Article I and its embedded privacy rights—including the history of abortion regulation in Pennsylvania—demonstrate that reproductive autonomy is a fundamental right. *See id.* at 896-912. It showed how this is consistent with interpretations of other state constitutions. *Id.* at 912-16. After discussing the policy implications of finding a fundamental “right to reproductive decision-making,” the

¹⁷ *Ctr. for Coalfield Just. v. Wash. Cnty. Bd. of Elections*, 343 A.3d 1178, 1199 (Pa. 2025).

¹⁸ *Commonwealth v. Mucci*, 327 A.3d 1223, 1231 n.8 (Pa. Super. 2024), *appeal denied*, 340 A.3d 270 (Pa. 2025).

¹⁹ *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 294 A.3d 537, 955-57 (Pa. Cmwlth. 2023).

plurality concluded:

[T]he right we address transcends the privacy rights embedded in Sections 1 and 8 of Article I of our Constitution. In 1971, the People amended our Constitution and Article I by adopting the Equal Rights Amendment. As discussed, the Amendment was intended to enshrine equality of the sexes in our Commonwealth and to rectify centuries of subjugation of the rights of women. This would be a hollow promise if women did not possess the ability to control their destiny. Whether or not to carry a pregnancy, whether or not to give birth, whether or when to expand the size of their families, whether or when to make career, employment or other changes in the course of their lives are all decisions central to self-determination and ultimately, to equality in society.

The right to reproductive autonomy is the right to self-determination. While the right has been presented to us in terms of making the decision “to choose to end or continue a pregnancy,” it implicates the broader proposition that individuals have the right to make important reproductive healthcare decisions—a gender neutral right to make decisions without governmental intrusion into those private matters that play a defining role in the course of a lifetime. Our Constitution guarantees equality in the exercise of this right. The right of all individuals to be left alone to pursue happiness and enjoy liberty is central to our compact with the government.

Id. at 916-17 (footnotes omitted).

We find the plurality’s reasoning and conclusion highly persuasive and adopt them as our own. We agree with Providers that recognizing this fundamental right, as the plurality did, is necessary to restrict state government to its proper sphere, thus protecting our liberty. *See* Providers’ Br. at 33-35. This will mean that the state will face judicial scrutiny of its attempts to coerce reproductive choice.

Those choices are the People’s, not the government’s.²⁰ As with the other

²⁰ Judge Wallace dissents, opining that our recognition of a fundamental right reflects a lack of judicial restraint, a violation of the separation of powers, and a judicial “power grab.” *Allegheny Reproductive III* (Wallace, J., dissenting), slip op. at 1, 8-10. We respectfully disagree.

“All power is inherent in the people” PA. CONST. art. I, § 2. The People enacted a Constitution, which does nothing if it does not *limit* the power of government to interfere with civil rights and liberties that are “excepted out of the general powers of government.” PA. CONST. art. I, § 25. The Pennsylvania Constitution was painstakingly built around the core concept of limited government. *See Allegheny Reproductive III* (Wojcik, J., concurring), slip op. at 23-26. It is Pennsylvania’s supreme law. It binds the legislature, the executive, and the judiciary, and it is the judiciary’s duty to determine “what is within the bounds of our Charter” when that question is properly presented. *Allegheny Reproductive II*, 309 A.3d at 847; *see* PA. CONST. art. V.

Of course that means that judges should recognize our limited role, too. We do not invent new rights. But we cannot let healthy judicial restraint curdle into judicial abdication. We should not shirk our duty to interpret the Constitution correctly when squarely asked, even if the political branches would rather we not worry about it. We have learned that lesson the hard way. *See Plessy v. Ferguson*, 163 U.S. 537, 552 (1896) (denying claimed right to be free from racial segregation by government); *Korematsu v. United States*, 323 U.S. 214, 223 (1944) (denying claimed right against imprisonment in a concentration camp based on ancestry). When a court recognizes an extant constitutional right—even if the right has been denied before or is hotly contested—it is seeing something that was always there in the Constitution. *See Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (overruling *Plessy*). Constitutional rights are fixed—they do not move with the “evolving and ever-changing voice” of the popular will. *Contra Allegheny Reproductive III* (Wallace, J., dissenting), slip op. at 10. That is why *Korematsu* was “gravely wrong the day it was decided.” *Trump v. Hawaii*, 585 U.S. 667, 710 (2018) (repudiating *Korematsu*). Courts did not need to invent new rights to see *Plessy* and *Korematsu* for the legal errors and poor reasoning that they were. They need only recognize that the Constitution has knowable content and meaning, and then faithfully understand and apply it when presented with the question.

In this case, we have clear and detailed instructions on remand to address two constitutional questions. *Allegheny Reproductive II*, 309 A.3d at 947. One of those issues *requires* us, via binding precedent, to consider as part of the analysis whether a statute burdens a fundamental right. *Id.* at 946. That is what we have aimed at here. Not “because [we] want[] to.” *Contra Allegheny Reproductive III* (Wallace, J., dissenting), slip op. at 9. Because “we *must*.” *Learning Res., Inc. v. Trump*, 607 U.S. ___, No. 24–1287, slip op. at 20 (Feb. 20, 2026) (opinion of Roberts, C.J.) (emphasis added). We leave the rest of this conversation to the Pennsylvania Supreme Court—the ultimate arbiter of our Constitution’s meaning—and to the “court of history.” *Trump v. Hawaii*, 585 U.S. at 710.

fundamental rights, however, the right is not absolute. *See Allegheny Reproductive II*, 309 A.3d at 917. For that reason, we are not persuaded that recognizing this fundamental right will “short-circuit” political engagement with the issue of abortion. Attorney General’s Br. at 60. Our decades-old recognition of the fundamental right to vote has, to put it mildly, not short-circuited debate over election policy in this Commonwealth, and it is far from the last judicial word on that subject. Recognizing the fundamental right to reproductive autonomy is an initial analytical step, but it then requires the proper level of scrutiny be applied to the governmental action. We now turn to that analysis.

ii. Strict Scrutiny

The Coverage Exclusion allocates funding—or withholds funding—for a woman’s medical care. “The controlling factor influencing the statutory funding scheme is how a pregnant woman on Medical Assistance decides to exercise her reproductive choices.” *Allegheny Reproductive II*, 309 A.3d at 945. Thus, we conclude that the Coverage Exclusion does not operate neutrally with respect to a person’s exercise of the fundamental right to reproductive autonomy. Accordingly, the commensurate means-ends review is strict scrutiny, which the Supreme Court plurality explained, citing authority, as follows:

A statute that discriminates against any person in the exercise of a fundamental right is deemed unconstitutional unless the state can demonstrate it is “necessary to the achievement of a compelling state interest.” *Commonwealth v. Bell*, . . . 516 A.2d 1172, 1178 ([Pa.] 1986). In other words, the lower court “must determine if the infringement is supported by a compelling state interest and if the infringement is narrowly tailored to effectuate that interest.” *Hiller v. Fausey* . . . , 904 A.2d 875, 885-86 ([Pa.] 2006). The state bears a heavy burden of justification, and the statute must be closely scrutinized in light of its asserted purposes. *Dunn v. Blumstein*, 405

U.S. 330, 342-43, . . . (1972). The statute must be drawn with precision and tailored to serve its legitimate objectives. *Id.* at 343 “[I]f there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose ‘less drastic means.’” *Id.* (internal citation omitted).

Allegheny Reproductive II, 309 A.3d at 946.

In his brief, the Attorney General treats both the Equal Rights Amendment and equal protection issues as being controlled by the same strict scrutiny standard. *See* Attorney General’s Br. at 14, 29-30; *see also Allegheny Reproductive II*, 309 A.3d at 977 n.193 (Wecht, J., concurring) (“Although the Majority does not designate its approach [to the Equal Rights Amendment] as strict scrutiny, I understand the searching judicial inquiry that it articulates to be just that.”). We agree with Justice Wecht that the strict scrutiny analysis for equal protection purposes is substantially the same as that for our Equal Rights Amendment analysis above. The Attorney General does not advance any distinct compelling interest that relates to the equal protection analysis, beyond the three interests identified earlier. Because we have already concluded that (1) those interests are not compelling, and (2) the Coverage Exclusion is not the least restrictive means of pursuing them, we see no opportunity for a different conclusion here. Accordingly, we conclude that the Commonwealth has not met its heavy burden of justification for the Coverage Exclusion on this Count either. *See Dunn*, 405 U.S. at 342-43. We see no issue of material fact that would allow it to do so at trial. Accordingly, the Coverage Exclusion facially violates the equal protection provisions of the Pennsylvania Constitution.

iii. Rational Basis Review

Lastly, we agree with Providers that even if we were not to recognize a fundamental right to reproductive autonomy, and thus were to apply a lesser degree of scrutiny, we would still grant summary relief to them on other grounds. If the classification implicates “neither suspect classes nor fundamental rights[, it] will be sustained if it meets a ‘rational basis’ test.” *Allegheny Reproductive II*, 309 A.3d at 918 (quoting *James*, 477 A.2d at 1305-06). Neither choosing to have an abortion, nor reliance on Medical Assistance, is a suspect class, so if no fundamental right is at issue, rational basis review applies. Under that test, a legislative classification must be sustained “unless it is ‘patently arbitrary’ and bears no rational relationship to a legitimate governmental interest.” *Singer v. Sheppard*, 346 A.2d 897, 905 (Pa. 1975) (quoting *Frontiero v. Richardson*, 411 U.S. 677, 683 (1973)).

Conceding that the three interests the Attorney General asserts—preserving fetal life, protecting women’s health, and protecting the conscience rights of those who oppose state-funded abortion—may be legitimate governmental interests, the coverage exclusion is not rationally related to those interests. On the first interest, the Coverage Exclusion contains no exception allowing an abortion even when it is known, *to a medical certainty*, that the fetus will not survive birth. If such a complete absence of potential life is not enough to allow an abortion under the Coverage Exclusion—and it is not—then the exclusion is not rationally related to an interest in preserving potential life. *See Allegheny Reproductive II*, 309 A.3d at 956 (Wecht, J., concurring). It must be pursuing some other interest, or no coherent interest at all.

On the second interest—women’s health—the Attorney General seeks to prove by evidence that some women, under some circumstances, have suffered

psychological harm from abortion. While neither comparing nor minimizing anyone's suffering, we note that the Attorney General does not dispute the parties' stipulated facts that women have also suffered concrete medical harms in the course of pregnancy, including pregnancies that they were coerced into carrying to term because of the Coverage Exclusion. Joint Statement ¶¶ 33, 47-57. We agree with Providers that "[i]t is simply irrational to refuse to facilitate prompt access to health care for people carrying a pregnancy with severe or fatal anomalies, or people whose health is threatened by the pregnancy, based on a government interest in encouraging those people to stay pregnant against their will." Providers' Br. at 46.

On the third interest—protecting taxpayers' conscience rights—it is not clear what the Attorney General means by "conscience." If the interest is in favoring one group of taxpayers' religious beliefs by making tax expenditures that favor those beliefs over other citizens' contrary beliefs of conscience, that does not seem like a legitimate state interest. *See* The Establishment Clause, U.S. CONST. Amend. I; *Allegheny Reproductive II*, 309 A.3d at 968-69 (Wecht, J., concurring) (discussing Establishment Clause); *id.* at 980 (discussing Pennsylvania Constitution's Article I, Section III "rights of conscience"). In contrast, if the interest is content-neutral—a desire to protect the conscience rights of *all* similarly situated taxpayers who oppose government use of their tax payments for objectionable things—then the Coverage Exclusion is only selectively, not rationally, related to that interest. The conscience interest the Coverage Exclusion protects is extremely narrow: it is only the interest of those who oppose state-funded abortion for women who rely on Medical Assistance, except in cases where the life of the mother is at risk and cases of rape or incest, but with no exception for the mother's health or the viability of the fetus. It is irrational for the Coverage Exclusion to protect only that very narrow conscience

interest and no others.

Thus, even if rational basis review applied, we would find the Coverage Exclusion does not withstand that review because it is not rationally related to any of the claimed state interests.

IV. CONCLUSION

For the foregoing reasons, we conclude that the Coverage Exclusion violates the Equal Rights Amendment in Article I, Section 28 of the Pennsylvania Constitution. Further, we conclude that Article I of the Pennsylvania Constitution guarantees a fundamental right to reproductive autonomy, that the Coverage Exclusion does not operate neutrally with respect to that right and is not properly justified in doing so, and accordingly the Coverage Exclusion violates the equal protection guarantee in Article I, Section 26 of the Pennsylvania Constitution. Providers are entitled to summary relief in their favor on both Counts of the Petition.

/s/ Matthew S. Wolf

MATTHEW S. WOLF, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Allegheny Reproductive Health Center, :	:	
Allentown Women’s Center, Delaware :	:	
County Women’s Center, Philadelphia :	:	
Women’s Center, Planned Parenthood :	:	
Keystone, Planned Parenthood :	:	
Southeastern Pennsylvania, and Planned :	:	
Parenthood of Western Pennsylvania, :	:	
Petitioners :	:	
	:	
v. :	:	No. 26 M.D. 2019
	:	
	:	
Pennsylvania Department of Human :	:	
Services, Teresa Miller, in her official :	:	
capacity as Secretary of the :	:	
Pennsylvania Department of Human :	:	
Services, Leesa Allen, in her official :	:	
capacity as Executive Deputy Secretary :	:	
for the Pennsylvania Department of :	:	
Human Service’s Office of Medical :	:	
Assistance Programs, and Sally Kozak, :	:	
in her official capacity as Deputy :	:	
Secretary for the Pennsylvania :	:	
Department of Human Service’s :	:	
Office of Medical Assistance Programs, :	:	
Respondents :	:	

ORDER

AND NOW, this 20th day of April 2026, Petitioners’ Application for Summary Relief is GRANTED. It is hereby DECLARED that Section 3215(c) and (j) of the Pennsylvania Abortion Control Act, 18 Pa.C.S. §§ 3215(c) & (j) (Coverage Exclusion) is unconstitutional, as it violates the Pennsylvania Constitution’s Equal Rights Amendment, PA. CONST. art. I, § 28, and the Pennsylvania Constitution’s

equal protection guarantees, PA. CONST. art. I, §§ 1, 26. The Commonwealth is permanently ENJOINED from enforcing the Coverage Exclusion and its associated regulations.

/s/ Matthew S. Wolf

MATTHEW S. WOLF, Judge